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South Africa's Leading Tax Journal

Issue 72 September/October 2018

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Message from the CEO

During my career in tax, I have had the luxury of holding many diverse posts. I have worked in Government, the private sector and now within the non-profit space. One benefit of my current role at SAIT is having the opportunity to work with the South African tax community as a whole.

The South African tax community may be small but the community has significant expertise coming from a diverse range of job locations. As CEO of SAIT, I am required to know where these local skills exist overall. The Tax Indaba has become one central means of bringing this diverse community together. The event has now crossed several milestones in terms of private sector and Government attendance. The articles that follow in this

magazine represent but a sample of this attendance.

Knowing the shape and nature of our tax community is important in a number of respects. From a governmental point of view, the shape and nature of the tax community indirectly influences tax policy and directly impacts the nature of tax administration. From a private sector point of view, the shape and nature of the tax community influences the options available for exercising one's skills, the level of competition and the existence of business opportunities.

Provided on page 6 is an outline of the South African tax network. This network offers a rich array of services that can be accessed. As one can see, the number of

South African human resources dedicated to taxation is not trivial. A large portion of profits and earnings are collected as tax revenues. The full tax community described is largely aimed at ensuring these taxes are fully paid.

We also profile some of the elder statespersons and rising stars within the South African tax world.

We hope that you will enjoy this community-focused issue.

Keith Engel
Chief Executive Officer
South African Institute of Tax Professionals

Notes from the EDITOR

This edition was inspired by the annual Tax Indaba and created in the spirit of the South African tax community. The articles on page 26 to 51 have been drawn from the conference programme to tie in with the trending topics that will be discussed. We look at the state of tax morality and the tax gap, South Africa's treatment of controlled foreign companies, the implications of interest-free loans to trusts, the aftershock of limiting exemptions for expats, collections by SARS during disputes, and tax in the age of fintech.

Are you familiar with the elements that make up your tax community? This edition kicks off with an outline of the four segments that embody our industry, including the groups within each segment; all of which have a very specific tax role to play.

Because the greatness of any community depends on the passion of its members, we profile some of our top tax leaders who offer their insights

on the state of the South African tax climate (page 11 to 25). To further gauge the perspective of the local community, our Voices from the Community article on page 52 poses 3 topical questions to a few highly regarded industry players with varying career histories.

Our comprehensive Tax Directory wraps up the edition and comprises key contacts from national advisory firms and independent practices.

Let us celebrate our community spirit successes so that others may be inspired to do the same.

Tania Wolson
Editor





Tell us what you think. Questions and suggestions can be sent to editor@thesait.org.za

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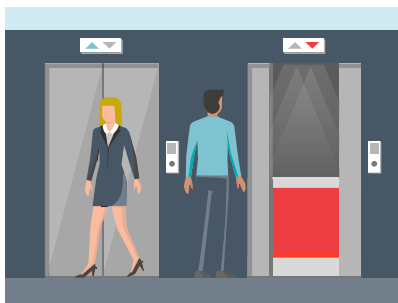
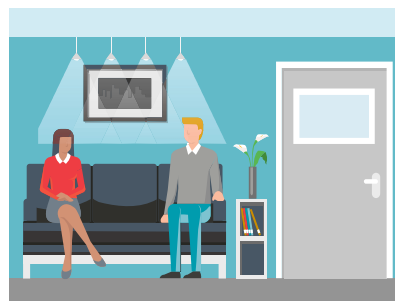
South African
Institute of
Tax Professionals

THE SOUTH AFRICAN TAX COMMUNITY:

DEPTH AND DIVERSITY

► **KEITH ENGEL, SAIT**

CEO of SAIT, Keith Engel, provides us with a bird's-eye view of the South African tax community.





GOVERNMENT

Government is not a single institution but a diverse range of actors with different agendas. Coordination amongst these actors may or may not exist, with different organisations having different levels of “pull” in terms of tax policy and administration.

National Treasury

National Treasury sets overall tax policy and has direct authority over implementing tax legislation. Key operating employees in charge of tax are within the chief directorates in charge of economic tax analysis and legal tax design. These directorates operate under the authority of the Deputy-Director General of Tax and Financial Regulation, who in turn reports to the Director General of National Treasury and the Minister of Finance.

The South African Revenue Service (SARS)

SARS has over 14 000 employees who are tasked with assessment, audit and collection of taxes (and customs and excise duties) in terms of the national South African system. SARS is headed by the Commissioner with an executive group that heads a series of functions (i.e., “business” lines). These functions loosely include the processing of returns, audit and assessment, dispute, interpretation and tax policy support.

The SARS head office is located in Brooklyn, Pretoria. The former Large Business Centre mainly operated in Megawatt Park, Johannesburg. SARS has many regional and local branch offices. Most taxpayers submit their returns electronically but often have need of local SARS branches for isolated activities. Tax practitioners have their own independent channels for access.

Tax Ombud

The Office of the Tax Ombud is the newest governmental organisation, having been created by virtue of the Tax Administration Act, 2011. The Office of the Tax Ombud operates as a mediator in terms of administrative process issues arising between taxpayers and SARS.



TURN TO PAGE 58, FOR AN
EXCLUSIVE INTERVIEW WITH
THE TAX OMBUD.

Parliament

The key actors in Parliament come from the Standing Committee on Finance (National Assembly) and the Select Committee on Finance (National Council of Provinces). The committees approve tax legislation. The committees also provide oversight over SARS and tax policy direction.

Other Ministerial departments

Various Ministerial departments occasionally involve themselves in tax policy matters, most notably the Department of Trade and Industry. The Department of Trade and Industry often concerns itself with tax incentives to complement grant and other subsidies. The Department of Trade and Industry also has a leading policy say in customs duty and trade issues. Other Ministerial departments occasionally involved in selective tax matters include the Department of Mineral Resources, the Department of Science and Technology and the Department of Environmental Affairs. These departments mostly seek additional tax instruments (e.g., mining royalties) but may also be involved in select incentives (e.g., the 150% deduction for research and development).

At the end of the day tax policy development is not entirely driven by the National Treasury. SARS generally drives tax administration but with increasing oversight from Parliament and others.

Government tax policy and administration are not just driven by South African governmental actors. International forces are also at play. Outside governments (e.g., tax legislation and operations) set the scene in terms of competitiveness and comparability. Multilateral organisations, such as the OECD and ATAF, have become permanent features in lending their views.



PRIVATE SECTOR

Like Government, the South African private sector engaged in tax is not a uniform monolith. In addition to the taxpaying public, tax experts come in a variety of capacities. As of 2018, the South African private sector has approximately 22 000 tax practitioners registered with SARS. We also believe that the South African private sector has another 50 000 or so tax experts operating as employees or in other capacities not requiring official registration.

Tax accounting / preparation firms

Most tax experts and preparers have a financial background of sorts, many of whom are ex-SARS. Tax accounting firms fall into three spheres: (i) the big four (PWC, Deloitte, EY and KPMG), (ii) the mid-size firms (e.g. BDO, Grant Thornton, Sizwe, Nolands and Moore Stephens) and (iii) independent practices. Independent firms with three or less senior tax personnel represent the bulk of the tax community in terms of raw numbers. The core function of all three sets of firms entails tax preparation and compliance with varying levels of tax advisory skills.

Law Firms

Law firms are having a rising influence in the tax arena. A small number of “blue circle” law firms have sizeable tax departments; most of these firms have offices in Sandton and Cape Town (e.g., ENSafrica, Webber Wentzel, Cliffe Dekker Hofmeyr, and Bowmans), with Shepstone and Wylie being a notable exception with offices located in Durban. Most other firms have one or two senior tax experts who focus on wealth planning, small business restructuring and a rising amount of SARS litigation. Various tax advocates (e.g., senior counsel) have now regularly become involved in complex tax disputes.

Boutique firms

The South African landscape includes a number of boutique firms that directly advise on tax issues of varying kinds. Most of these boutique firms tend to focus on cross-border wealth planning and general financial advice.

In-house tax personnel

Many of the larger listed companies (and some larger privately-held companies and parastatals) have dedicated tax personnel. Most of the larger companies employ a tax director and varying numbers of tax staff. Banks and long-term insurers, along with mining and telecommunications companies, tend to employ a large contingent of in-house tax personnel. Other larger companies may have a single tax director overseeing a small staff. The vast majority of companies employ a financial manager who spends a portion of his or her time on income tax and VAT return preparation. This vast majority of companies also hire dedicated payroll personnel whose duties include the calculation and payment of payroll taxes.



Upon review of the above, it should be realised that most professionals engaged in tax focus solely on tax preparation and compliance. This emphasis on tax preparation and compliance exists given the voluminous annual and monthly filing requirements attendant with any sophisticated tax system like that of South Africa. Individual and entity taxpayers first and foremost must comply.

Advisors and litigators represent only a minority of the experts in the field of tax. Yet, this group tends to be the most vocal in terms of policy and press coverage. For Government, tax advisory services represent a threat to the tax system given their perceived penchant for reducing tax. For the private sector, tax advisory services ensure that taxpayers pay no more than what is legally due. Tax advisory services may also be required to ensure that tax does not become a barrier to genuine non-tax-motivated business transactions.





EDUCATIONAL

This segment of the South African tax landscape involves formal education which may have a complete or partial focus on tax.

Universities and universities of technology

Unlike most other countries on the African continent, South Africa has a fair number of universities and universities of technology with a significant tax focus. Many South African universities have courses solely dedicated to tax. Most of these courses come from accounting departments, with a smaller selection of courses coming from law departments. Universities of technology also offer tax courses from their accounting departments.

“South Africa has a fair number of universities and universities of technology with a significant tax focus.”



NON-PROFITS

The last segment of the South African tax landscape involves various non-profit organisations dedicated to specific mandates. The specific mandates may have a complete or partial focus on tax.

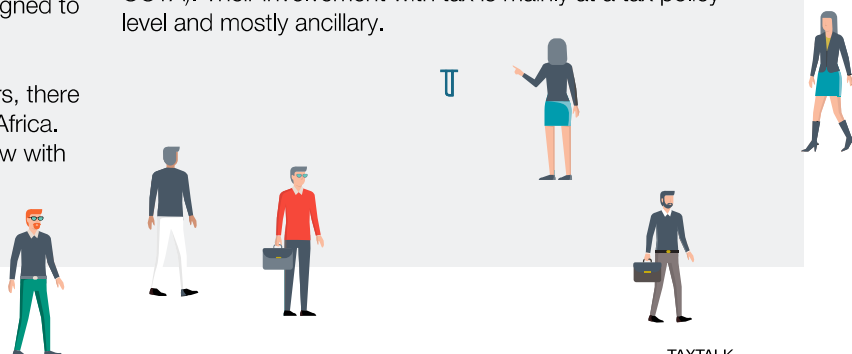
Recognised controlling bodies (non-profits connected to SARS)

SAIT is a non-profit operating as a controlling body recognised as such by SARS in terms of the Tax Administration Act, 2011. As a recognised controlling body, SAIT's mandate includes the regulation of tax practitioners. As a professional non-profit association, SAIT is designed to serve the tax community as a whole.

While SAIT has the largest number of tax practitioners, there are 11 other recognised controlling bodies in South Africa. Most of these other bodies relate to accounting or law with only a partial tax focus.

Other non-profits

The South African landscape contains a fairly large set of non-profits who fall outside of recognised controlling body status. Many of these are industry bodies or represent some other form of single sector (e.g., BUSA ASISA and the Banking Council). Others represent select issues (e.g., OUTA). Their involvement with tax is mainly at a tax policy level and mostly ancillary.





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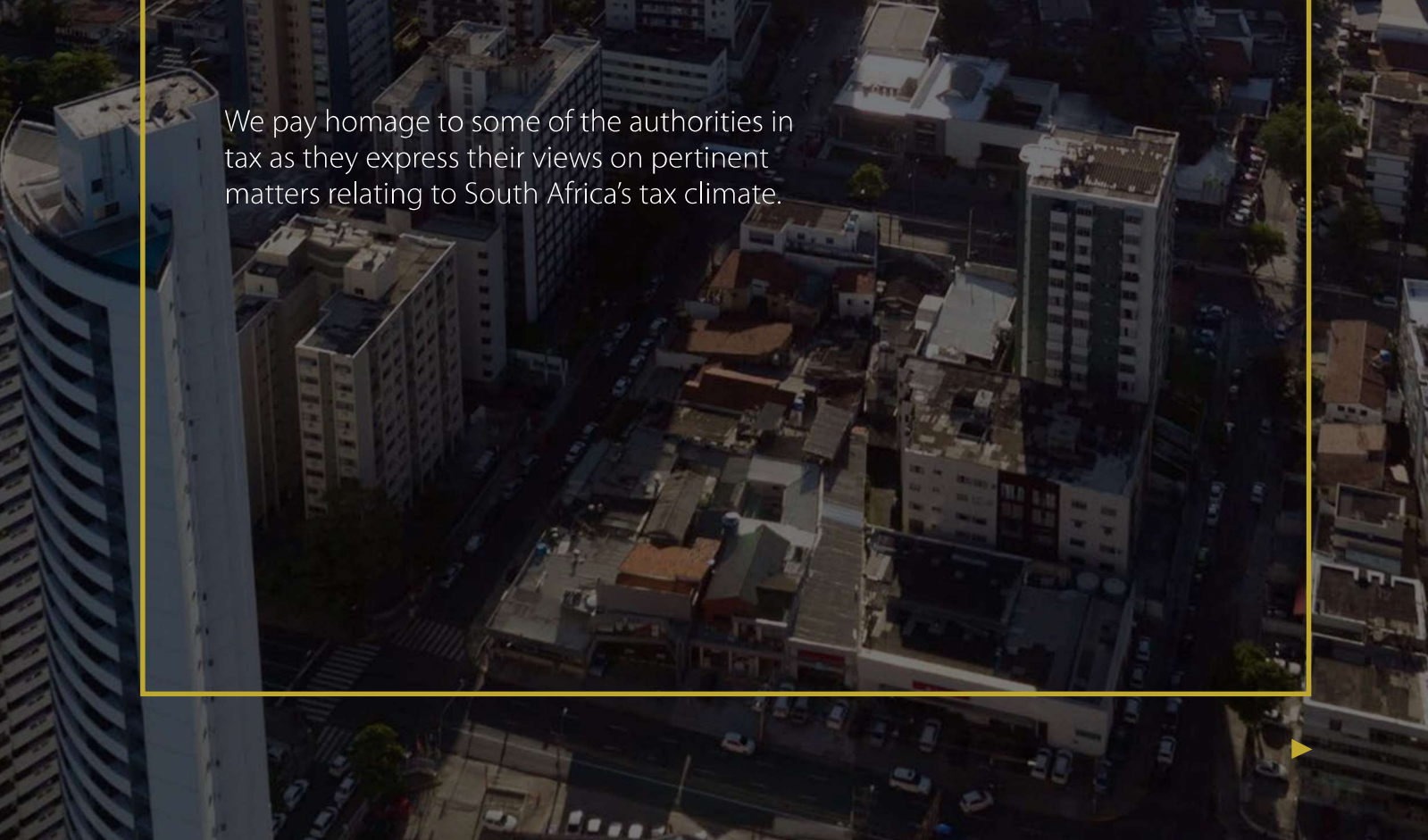
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VIEWS FROM THE TOP



We pay homage to some of the authorities in tax as they express their views on pertinent matters relating to South Africa's tax climate.



DR THEODOR EMIL BRINCKER

Director: Tax and National Head of Tax
and Tax Exchange Control Division,
Cliffe Dekker Hofmeyr

Expert in all areas of tax

In my spare time I like to... Golf

The most interesting book I've read recently is... My reading is very technically orientating. On holidays, I read my wife's leftovers. Our latest read was: *Eleanor Oliphant is Completely Fine*. It is a debut novel by Gail Honeyman which is a funny and sad tale of a survivor and the very worst and very best that humans are capable of.

I get my inspiration from... My wife Isabeau

If I had to describe myself in one word it would be... Dedicated

If I had not gone into tax I would... Have been a professional golf caddy – you share in the prizes without having to make the putt yourself.

Q Based on your extensive experience, what is your general view of the legal structure of the South African tax system as compared to other countries internationally?

The legal structure of the South African tax system is relatively complex compared to other countries. The most significant aspect, however, is that one often finds that there is no black or white answer whereas other jurisdictions have endeavoured to provide such clarity. One often finds foreign advisors being bemused with the apparent uncertainty that exists within the South African tax system.

Q SARS is now 20 years old. What is your view of the administrative efficacy of SARS today as compared to 20 years ago? Did the leadership really have an impact on the quality of the institution?

There have obviously been improvements pertaining to the administrative efficacy of SARS, such as the introduction of eFiling. The one important difference is that it has become more difficult to address problems as Call Centres are often unable to assist with specific issues. An important difference also relates to the perception of taxpayers compared to actual reality, which perception may be at a low currently.

Q Where do you believe is the biggest portion of the tax gap in South Africa today and does SARS / National Treasury have the capacity to close this gap?

The biggest portion of the tax gap in South Africa today is probably found in the small to medium business environment. At this point in time it is difficult for SARS to close this gap given the extra manpower that will be required to address the problem.



"The biggest portion of the tax gap in South Africa today is probably found in the small to medium business environment."

Q SARS recently introduced a "Service Charter". What is your view on the impact of the Service Charter and does South Africa still need a formal Taxpayer Bill of Rights?

In my view, one still needs a formal Taxpayer Bill of Rights given the fact that, in practice, one often finds that there may be administrative ignorance on the part of the parties involved. A formal Taxpayer Bill of Rights will clearly draw the line of what has to be implemented and what rights a taxpayer can rely upon.

Q If you had to start again, would you still have chosen your career as a tax specialist? What are the best and worst parts of a career in tax?

I would definitely have chosen the same career as a tax specialist. Even though it is quite demanding, given the fact that legislation changes on an annual basis, new and interesting issues arise on a daily basis, which makes it both challenging and interesting.

Q Of all your tax skills, which ones make you stand out in the field?

I would say that one should always endeavour to cater for clients' needs within the shortest possible turnaround time.

Q What are your biggest daily challenges in terms of assisting your clients in tax matters?

The biggest challenge to assist clients is probably the time delays in resolving disputes from a letter of audit findings to the ultimate resolution of a matter. Sometimes it can take years. Given the technical nature of tax it may not always be logical to explain to clients.

Q What words of advice would you provide to junior professionals in the tax field?

Keep on persevering as you will have job security and the results are worth the time and effort.



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ANNE BENNETT

Partner in the Tax Practice,
Webber Wentzel

*International tax and South
African company tax specialist*

In my spare time I like to... Spend time in the bush, relax with friends and family, read, listen to music and go to the theatre

The most interesting book I've read recently is... *Shoe Dog* by Phil Knight, *Second Hand Time* by Svetlana Alexievich, and *Educated* by Tara Westover.

I get my inspiration from... People I meet or have known for a while and who are inspirational in a variety of different ways. I also get inspiration from things I read about

If I had to describe myself in one word it would be... Fortunate

If I had not gone into tax I would... Be a game ranger or maybe a historian or study neuroscience

Q *Based on your extensive experience, what is your general view of the legal structure of the South African tax system as compared to other countries internationally?*

South Africa ranks highly in terms of the progressivity of our tax system, i.e., in terms of ensuring that the greatest incidence of tax falls on those who are best able to pay it. However this can go too far. The burden of tax in South Africa is borne by disproportionately few taxpayers which is not healthy. In addition, the complexity of our tax system is arguably too great in view of the resources available to the majority of South African taxpayers to assist them with tax compliance, and the ability of SARS to administer the collection of taxes accurately and efficiently. Simplifying certain areas of tax law could bring administrative benefits without necessarily resulting in a loss of revenue for SARS.

Q *SARS is now 20 years old. What is your view of the administrative efficacy of SARS today as compared to 20 years ago? Did the leadership really have an impact on the quality of the institution?*

Leadership within any organisation can have a massive impact on the performance of that organisation, and SARS is no exception. During the Pravin Gordhan era, SARS became world class in terms of its administrative efficiency and the technical expertise of its personnel. It has been very disappointing to see the significant decline of this efficiency and expertise in more recent times, which resulted from top leadership within SARS being focused on things other than quality and service delivery. Fortunately, we are once again in an era of new leadership at SARS. Even though this happened only a few months ago, we have already seen change for the better. Mark Kingon is hugely respected both within SARS and in the taxpayer community. Sadly, it always takes longer to rebuild something than it does to destroy it, but I am optimistic that under current SARS leadership we will see SARS' credibility restored.

Q *Where do you believe is the biggest portion of the tax gap in South Africa today and does SARS / National Treasury have the capacity to close this gap?*

The clients with which I work most often are big companies, many of which are listed and many of which are part of multinational groups. These taxpayers operate with a high level of tax morality and a strong focus on good governance and proper tax compliance. This makes me poorly qualified to comment on where the biggest portion of the tax gap may be in South Africa today. However, in any society there will be taxpayers who will go to exceptional lengths to avoid paying tax. To identify these parties and bring them to book, SARS needs to focus on rebuilding and replacing the significant expertise it has lost in recent years. It also needs to pursue all such taxpayers with equal fervour, regardless of who they may be or what political connections they may have. Part of the tax gap is also likely to be attributable to individuals whose tax morality is negatively influenced by Government corruption, excessive spending and poor service delivery. SARS and National Treasury can help to rebuild trust with taxpayers but do not on their own have the power to address all the root causes of this type of non-compliance.

"A lot can be achieved for clients if there is a relationship of mutual respect between the advisor and the regulators."

Q SARS recently introduced a "Service Charter". What is your view on the impact of the Service Charter and does South Africa still need a formal Taxpayer Bill of Rights?

The introduction of the Service Charter is a welcome development. It is part of SARS' open acknowledgement that trust needs to be rebuilt in the organisation. Although criticisms of the Charter have been made, in particular in regard to its policy around refunds, SARS should be given time to evidence to taxpayers that it is serious about improving its quality of service before dismissing the Charter as something that will not really have an impact.

A Taxpayer Bill of Rights, which was recommended by the Davis Tax Committee, is something that could be of value to taxpayers in addition to the Charter. However, many core taxpayer rights such as the right to privacy, confidentiality and administrative fairness are already enshrined in existing legislation such as the Tax Administration Act, Promotion of Administrative Justice Act and/or the Constitution. With SARS' new focus on rebuilding trust, we hope we will see SARS adhering more rigorously to these kinds of obligations which may avoid the need to push for a Taxpayer Bill of Rights.

It should also be borne in mind that building trust is a two way street. Taxpayer rights are critically important and should be rigorously protected, but taxpayers in turn also have duties to SARS.

Q If you had to start again, would you still have chosen your career as a tax specialist? What are the best and worst parts of a career in tax?

Yes, I would. I love to travel and be exposed to new things. My career as an international tax advisor has taken me all over the world and given me exposure to a wide variety of different cultures, and insights into many different business sectors. I have worked with and encountered amazing people. Many colleagues and clients who started off as business acquaintances have become good friends along the way. The work has been stimulating and interesting. In doing it, I have also had a lot of fun. All of this has definitely outweighed the negatives, one of which is the fact that tax law constantly changes, not only in South Africa but globally. Keeping up to date requires a lot of hard work for international tax advisors!

Q Of all your tax skills, which ones make you stand out in the field?

It is flattering to be asked this question but it's not an easy one to respond to. I'd rather turn the spotlight off myself and talk

about what, in my opinion, is likely to make any tax advisor stand out. It goes without saying that a tax advisor must be very knowledgeable about his or her subject. That should be a given, but it is not enough on its own. We are in a service industry. An advisor must have the ability to walk in a client's shoes, understand the issues from that client's perspective and provide solutions that will be best for that client, as opposed to a "one size fits all" approach. Many years ago, the CFO of a multinational group told me it was important to him for tax advisors to care enough about the company's tax problems to think about them while flossing their teeth. An advisor whose behaviour evidences personal commitment, and who regularly communicates with, and listens carefully to, his or her clients will stand out from the crowd.

Q What are your biggest daily challenges in terms of assisting your clients in tax matters?

Finding enough hours in the day to give everything that needs to be done the right amount of attention can be challenging. Other frustrations arise because our local tax legislation is frequently amended and often poorly drafted with the result that inconsistencies and uncertainty are created. Also, while I appreciate that Treasury/SARS need to be vigilant in curbing tax avoidance, there are times when South Africa seems determined to be a leader rather than a follower in terms of how it designs and implements legislation dealing with cross-border issues. This can lead to inequitable results and lack of competitiveness for South African based multinationals.

Q What words of advice would you provide to junior professionals in the tax field?

I would say that they have made a good choice of career. In pursuing it, I refer to my previous comments about the importance of being accessible to clients, of understanding their needs and the pressures they are dealing with, and of keeping in mind that at the end of the day, a tax advisor's job is as much about good service delivery as it is about knowledge of the law. In addition, as an advisor, personal reputation is important. I have been fortunate enough to work in firms with high standards of integrity and I would encourage junior professionals to seek out this type of work environment. In my experience, a lot can be achieved for clients if there is a relationship of mutual respect between the advisor and the regulators.



ERNEST MAZANSKY

Head of Tax Practice, Werksmans Attorneys

Specialist in corporate tax, tax dispute/tax controversy, tax and estate planning for high-net-worth individuals, and international tax

In my spare time I like to... What spare time? (Travel and read)

The most interesting book I've read recently is... *I am Pilgrim* by Terry Hayes; *Waterloo: The History of Four Armies, Three days and Three Battles* by Bernard Cornwell.

I get my inspiration from... My grandchildren

If I had to describe myself in one word it would be... Driven

If I had not gone into tax I would... I cannot think of anything else that I would have preferred to have done

Q *Based on your extensive experience, what is your general view of the legal structure of the South African tax system as compared to other countries internationally?*

I believe that our tax structure is about as sophisticated as it gets. I say this on the basis of the framework of the tax structure, in that it contains all of the features of a highly sophisticated fiscal system, including worldwide tax, CGT, CFC rules, financial instrument rules, cross-border rules, and so on. The only major element that it is missing is group taxation. That is not to say that our tax Acts are as sophisticated as some of the leading economies of the world. In many respects our Income Tax Act, in particular, is less sophisticated, but in regard to the detail, rather than in regard to the overall structure. So, for example, whereas in a particular aspect our Act might contain ten rules and five exceptions, in the USA the corresponding provision might contain thirty rules and fifty exceptions.

Q *SARS is now 20 years old. What is your view of the administrative efficacy of SARS today as compared to 20 years ago? Did the leadership really have an impact on the quality of the institution?*

I think that the leadership had a profound effect on the quality of the institution in two broad areas. The first was introducing an IT system (including eFiling) that was not merely world class, but probably ahead of most, if not all, of the other countries in the world. Another major difference was staffing the Large Business Centre with additional skills drawn from

the private sector, with the result that the quality of the interaction between taxpayers and practitioners on the one hand, and SARS on the other hand, was at a significantly higher level than previously. These two highlights aside, however, I think that at the lower levels, or when dealing at the branch level, there was no significant improvement once a taxpayer ceased dealing with the computer and had to deal with a warm body. Of course, in the last five years or so there has been a deterioration in all spheres.

Q *Where do you believe is the biggest portion of the tax gap in South Africa today and does SARS / National Treasury have the capacity to close this gap?*

I do not believe that there is one single answer to this. Certainly in the area that I practise, involving large corporates and high net worth individuals, the tax morality is still high, though that is not to say that taxpayers are not prepared to take a view on the law, provided that it is backed up with suitable advice. So the difficult areas for SARS would be, in my view, in three broad areas: The first, and this is a legal issue, is in dealing with cross-border and transfer pricing issues. Secondly, and this is more of a compliance issue, it involves bringing a lot of small and medium-sized enterprises into the net, or being more compliant when already in the net. And, thirdly, I think there is a lot of abuse on the customs and excise front. In relation to all three of these issues, I do not believe that SARS has the capacity at present to close the gap.

Q SARS recently introduced a “Service Charter”. What is your view on the impact of the Service Charter and does South Africa still need a formal Taxpayer Bill of Rights?

The new draft service charter was introduced and distributed in electronic form. I can therefore safely say that it is not worth the paper that it is not written on! SARS has had these service charters in the past and has done nothing more than pay lip service to them. The problems are that (a) there is no way in which legally to hold SARS to account for failing to meet the standards in the charter, and (b) there are no penalties for failing to meet the standards. Nothing short of a justiciable Act of Parliament, with suitable penalties, will achieve anything close to an objective.

Q If you had to start again, would you still have chosen your career as a tax specialist? What are the best and worst parts of a career in tax?

Absolutely! Every day is another day of intellectual stimulation, and one never stops learning. Tax law is the area of law (internationally) which sees the most changes annually, whether in the form of amendments to the statute or in the form of judgments of the court. The best part of my career was being able to concentrate on all the areas that stimulate me the most, and avoid the areas that I find boring. The worst part of my career in tax is that it will come to an end in the not too distant future.

Q Of all your tax skills, which ones make you stand out in the field?

I think that the skill that I have mastered the best is to combine a thorough knowledge of the law with a practical approach to advising clients. Generally, clients do not want to hear about what the Act says; instead they want advice as to how to structure their affairs or implement a deal or restructure in a manner that is devoid of as much complexity as possible and that makes good business sense. One also needs to speak to clients in the knowledge that they are laypersons and not legal or tax specialists. I also believe that I have the skill to be creative in an approach in finding a solution, and this is merely a variation on the same theme. When it comes to dispute resolution, i.e., representing clients in relation to objections, alternative dispute resolutions and the like, once again a thorough knowledge of the law is required coupled with a tough mindset.

But overarching this, in my view, is the need to fight only disputes that are winnable. One does one's client and oneself no service when one seeks to argue the inarguable in a protracted dispute with SARS.

Q What are your biggest daily challenges in terms of assisting your clients in tax matters?

Once again, bearing in mind the stratum in the business sector in which I operate, I do not find myself facing big daily challenges in assisting clients. My clients tend to be large and sophisticated, and are therefore in a position to understand that there are limits to what can and cannot be done. I think that where one is servicing the smaller and medium market, and taxpayers who are less sophisticated, managing their expectations must be a huge difficulty, because they do not understand that sometimes when you are saying no to them, it is in their own best interests. They do not always understand a tax advisor is not necessarily telling them what they want to hear, but what they need to hear.

Q What words of advice would you provide to junior professionals in the tax field?

The best advice I can provide to a junior professional in the tax field is not to rush into tax consulting. In my view, whether in the law firms or accounting firms, trainees move into the tax department too early in their careers. It is not enough for a tax advisor to know the law. A tax advisor should also have a good, all-round understanding of business and the economy in general, because tax advice cannot be given in isolation of what is going on in the business world around them. Whether one is an accountant or an attorney, after qualifying individuals should spend a number of years in the profession, whether auditing in the case of accountants, or in the commercial department of the law firm, in the case of attorneys. When one has got three or four years of post-qualifying experience under one's belt, that is the time to do the specialist tax degree, and thereafter move into the tax department. In my view, such an individual will make for a much better tax advisor than one who virtually does his or her articles in the tax department.

The best part of my career was being able to concentrate on all the areas that stimulate me the most, and avoid the areas that I find boring.



JULIA BOLTAR

Advocate and Member
of the Johannesburg Bar

Expert advisor on applicability and effect of tax legislation and tax litigation

In my spare time I like to... Spend time with my family

The most interesting book I've read recently is... *Fifty Things that Made the Modern Economy* by Tim Harford

I get my inspiration from... My teenagers, who are so energetic and passionate about social issues

If I had to describe myself in one word it would be... Analytical

If I had not gone into tax I would... Still do law, just focusing on a different area

Q *Based on your extensive experience, what is your general view of the legal structure of the South African tax system as compared to other countries internationally?*

South African tax legislation is generally clearer and more comprehensive than the tax legislation of some neighbouring countries. However, there are other countries which provide more clarity to their taxpayers than South Africa does. There are too many circumstances where, despite South African taxpayers doing their best to comply with tax legislation, they cannot be certain that they have done so because the tax legislation is unclear and open to different interpretations.

Q *SARS is now 20 years old. What is your view of the administrative efficacy of SARS today as compared to 20 years ago? Did the leadership really have an impact on the quality of the institution?*

I believe the SARS leadership has had an impact on the quality of the institution. While SARS started off as a model of what a well-run public body could achieve, there has been a significant decline in the quality of the institution over the last decade and it has lost many committed and highly qualified individuals to the private sector. There are still competent people at SARS, but they are now spread too thinly and I think this has sometimes resulted in cases which SARS should not pursue going to court.



"The long-term rewards of practising in this rapidly changing, niche area are well worth it."

Q *Where do you believe is the biggest portion of the tax gap in South Africa today and does SARS / National Treasury have the capacity to close this gap?*

There seem to be so many multi-millionaires around when one looks at the number of expensive cars and mansions people have. Yet there are surprisingly few multi-millionaires according to SARS' records and there must be a tax gap here. The way to decrease this seems to be to conduct lifestyle audits. The knowledge amongst taxpayers that such audits are common could in itself act as a significant deterrent to tax evasion.

Q *SARS recently introduced a "Service Charter". What is your view on the impact of the Service Charter and does South Africa still need a formal Taxpayer Bill of Rights?*

The impact of the Service Charter is dependent on whether SARS is committed to ensuring its contents are adhered to and whether there are sufficient competent and qualified SARS employees able to give the relevant service. A Taxpayer Bill Of Rights would be a way of counterbalancing the sometimes draconian powers vested in SARS. However, again, in order for such a bill to have an impact, SARS needs to be committed to those rights.

Q *If you had to start again, would you still have chosen your career as a tax specialist? What are the best and worst parts of a career in tax?*

I would still have chosen this career. The best part is that I am constantly challenged by its demands and, due to the fact that it requires an understanding of so many areas and is constantly evolving, I never become bored. The worst part is the time which has to be devoted to keeping up with the rapid pace at which tax law changes and expands.

Q *Of all your tax skills, which ones make you stand out in the field?*

The extensive knowledge of tax law gained from having practised it for decades and having being involved in leading tax cases which are now part of that law. The practical experience of having to argue tax cases in court enhances my ability to predict what approach a tax court is likely to take in relation to various tax provisions, and my lecturing experience assists in explaining what are sometimes complicated provisions to judges who might not be tax experts.

Q *What are your biggest daily challenges in terms of assisting your clients in tax matters?*

The biggest challenge is ensuring that I have covered all relevant material, particularly in light of the rapid pace at which tax law changes and expands and its increased complexity over time.

Q *What words of advice would you provide to junior professionals in the tax field?*

It takes time to build up a tax practice and it requires an understanding of tax law as well as many other areas of tax. However, the long-term rewards of practising in this rapidly changing, niche area are well worth it.

KYLE MANDY

Partner/Director:
Tax Technical & Policy, PwC

Corporate tax and tax policy specialist

In my spare time I like to... Cycle and boat with the family

The most interesting book I've read recently is... *The Panama Papers* and *The President's Keepers* by Jacques Pauw

I get my inspiration from... The natural beauty of our world

If I had to describe myself in one word it would be... Competitive

If I had not gone into tax I would... Be an investment banker



Q *Based on your extensive experience, what is your general view of the legal structure of the South African tax system as compared to other countries internationally?*

South Africa has a highly developed tax system which is the equal of most developed countries. Our VAT legislation is relatively clear and stable and our VAT is amongst the most economically and administratively efficient in the world due to the relatively few exemptions and zero-ratings. We have relatively complex income tax legislation, particularly for a middle-income developing country with a comprehensive residence-based tax system, extensive controlled foreign company legislation, capital gains tax and numerous withholding taxes on royalties, interest and dividends, amongst others. On top of this, the Income Tax Act is replete with anti-avoidance provisions directed at closing perceived loopholes.

Most of the significant developments in our income tax legislation over the last 20 years have been directed at broadening the tax base. This enabled the income tax rates to be lowered significantly over time from what they were, despite the recent reversals in this regard. However, a negative side effect of this has been that our income tax legislation has become exceedingly complex and difficult for anyone other than a tax expert to understand and apply.

Q *SARS is now 20 years old. What is your view of the administrative efficacy of SARS today as compared to 20 years ago? Did the leadership really have an impact on the quality of the institution?*

There is no question that SARS is a far more professional and efficient tax authority today than was the former Department of Inland Revenue. This remains the case despite its recent

challenges. Unquestionably, leadership was instrumental in turning SARS into a globally respected tax authority and the envy of any of South Africa's peers. It is imperative for the interests of the country and its citizens that SARS recaptures the ground it has recently lost and ultimately emerges as a stronger and better institution which has the respect and trust of the country's taxpayers and broader society.

Q *Where do you believe is the biggest portion of the tax gap in South Africa today and does SARS / National Treasury have the capacity to close this gap?*

An unfortunate narrative has taken root in recent years to the effect that a large part of the tax gap is due to base erosion and profit-shifting (BEPS), particularly through transfer pricing, by large multinational companies in particular. While there is undoubtedly still tax to be collected by SARS in this area, I don't think the tax gap is as big as it is perceived to be by some stakeholders. In my view, the biggest tax gap in South Africa today actually lies entirely within the domestic economy in the form of closely held and family-owned businesses. This is particularly the case insofar as businesses operating in the cash economy are concerned. The tax gap in this area covers income tax, VAT and even employees' tax.

The effort factor required to address this sector of the economy is obviously much greater than that involved with a relatively small number of large businesses that pay the bulk of taxes, whether for their own account or as a collection agent. One gets the sense that SARS has started to acknowledge that there is a significant tax gap in this area. However, this will require SARS to do the hard yards to enforce compliance, which they are capable of doing if they have the will and allocate the appropriate resources, including making use of technology to identify non-compliance.

Q SARS recently introduced a “Service Charter”. What is your view on the impact of the Service Charter and does South Africa still need a formal Taxpayer Bill of Rights?

While the Service Charter is not without faults, it is a step in the right direction and will hopefully be refined and improved over time. It will hopefully make some impact by raising awareness of the rights of taxpayers and service timelines with both SARS officials and taxpayers. Although the Service Charter includes a limited set of rights, it is arguably not sufficiently comprehensive and is not legally enforceable save through the mechanisms provided by laws such as the Promotion of Administrative Justice Act, which are not readily accessible to ordinary taxpayers. Accordingly, a comprehensive Taxpayer Bill of Rights which is legally enforceable through the Tax Ombud, as recommended by the Davis Tax Committee, is needed to provide for full protection of taxpayer rights and provide some balance against the far-reaching powers of SARS.

Q If you had to start again, would you still have chosen your career as a tax specialist? What are the best and worst parts of a career in tax?

This is a difficult question to answer! I think every person at times asks the “what if?” question. However, I certainly have no regrets about choosing tax as a career. It has been extremely rewarding. What one realises as your career develops is how little you knew when you left school, at university and in the early part of your working life. What I found is that your career is ultimately defined by a series of decisions taken and paths chosen as your working life unfolds. For me that path started with my decision to study to become a Chartered Accountant at the end of my school life. To be honest, while I obviously had a broad awareness of what that entailed and the opportunities it would present, I was naïve to a large degree. I vividly remember attending my first auditing lecture at university and thinking “I have made the biggest mistake of my life.” Obviously I was not going to make auditing a career! On the other hand, I was immediately enamoured with tax (much to the shock of friends who found the subject tedious and boring) and it soon became apparent to me that I could make a career out of this. From there on, most of my career decisions were directed towards making this happen and developing my knowledge and skills in the subject.

Q Of all your tax skills, which ones make you stand out in the field?

One of the key skills that has become vital in this era is the ability to interpret the tax law correctly in light of the new approach to interpretation. This requires a departure from the old approach of literalism to an approach that interprets the legislation in context having regard to its apparent purpose. The new approach necessitates a far greater understanding of the law or a part of the law and the purpose that it serves.

A key skill that supports the ability to interpret in this manner is an understanding of tax policy and the reasoning behind specific pieces of tax legislation and the objective at which it is directed. I’ve been fortunate to have been able to be deeply involved in the tax policy and design arena over the last ten years which has resulted in significant advantages for both myself and the

“One of the key skills that has become vital in this era is the ability to interpret the tax law correctly.”

firm in terms of the quality of service we are able to provide to our clients. It is unfortunate that today tax as a subject is taught from a purely legal perspective without providing students with a grounding in the philosophies underlying taxation in general and specific tax types, as well as the fundamental tax policy principles such as efficiency and equity.

Another critical skill is the ability to structure tax solutions. It is relatively easy to apply the law to a given set of facts and circumstances to determine the tax result. However, it is a completely different matter to be able to structure a transaction or series of transactions in order to achieve the most desirable tax result. This requires an in-depth knowledge and understanding of the tax law and other relevant laws such as company law, commercial awareness and the ability to think creatively.

Q What are your biggest daily challenges in terms of assisting your clients in tax matters?

One of the biggest challenges is uncertainty, instability and complexity in our tax law, particularly in our income tax law. This often acts as an impediment to commercial activity and increases the cost of doing business.

Q What words of advice would you provide to junior professionals in the tax field?

Obviously it is crucial to develop your tax knowledge and skills and this is a continuous process throughout your career. Learning doesn’t stop after you’ve completed your formal studies. This will only provide you with a small fraction of the knowledge you will require to become a leader in the tax field. Much of your knowledge and skills will be gained through experience. However, you need to take responsibility for developing your technical knowledge outside of formal learning. Read, read and read some more – journals, case law and text books. You will be amazed at how much you learn even from something you have read ten times before.

You need to stay up to date with tax developments, not only in terms of legislation and case law, but also in terms of the environment (economic, social and political, local and international). Any seasoned tax professional will tell you that the current environment is completely different to that which existed ten years ago and you need to be able to adapt.

Finally, do not neglect your other skills. You need to develop your commercial acumen and understand the domestic and global environment. Develop your soft skills, such as relationship building and communication.



PROFESSOR DEBORAH TICKLE

Adjunct Associate Professor at
University of Cape Town

Specialist in corporate and international tax

In my spare time I like to... Walk along the Atlantic Seaboard seafront; read; travel; spend time with my husband, father sister and niece; do Zumba; occasionally play a very bad game of golf!

The most interesting book I've read recently is... *Sapiens* and *Homo Deus*, both by Yuval Noah Harari

I get my inspiration from... Looking at the sea and talking to interesting people

If I had to describe myself in one word it would be... Tenacious

If I had not gone into tax I would... Can't think of anything I would have preferred to do; I have no regrets

Q Based on your extensive experience, what is your general view of the legal structure of the South African tax system as compared to other countries internationally?

In my view, South Africa's tax laws (now split between technical laws and administrative laws), which are based on well entrenched Roman-Dutch law and overlaid with a world acclaimed Constitution, supported by a dispute resolution and court procedural system that is still viewed as being independent of Government, can be measured favourably against other countries, especially in the developing world. The laws also align with international norms when it comes to cross-border dealings. Thus, the background to the South African tax system is strong from a statutory perspective. It nevertheless needs a strong tax administration to implement the laws.

Although it could be argued that South Africa's tax legislation is too complex for a developing country, as many elements of South Africa's economy are highly sophisticated (especially in the large corporate and high net worth arenas which often have complex financing and cross border dealings) and the tax laws need to be able to appropriately deal with these. Nevertheless, there are areas where improvements could be made to make the laws easier for laymen to work with.

Q SARS is now 20 years old. What is your view of the administrative efficacy of SARS today as compared to 20 years ago? Did the leadership really have an impact on the quality of the institution?

The SARS of 2018 is very different to the SARS pre-2014. When Pravin Gordhan was appointed Commissioner of, the then, Inland Revenue his first initiative was to overhaul and modernise it creating the South African Revenue Service (SARS). SARS then comprised, inter alia, call centres, the large business centre, employees who believed their job was to serve South Africa by collecting taxes for the good of all and, of course, a little later, eFiling, all of which gave rise to a much improved administration. As a consequence, through the 2000s SARS was revered, globally, as a top-class revenue authority – it was efficiently and effectively run and, although tough with evaders, was known to be fair with taxpayers generally. Tax compliance was improving and collections increased significantly every year. Over the last four years, however, since the appointment of Tom Moyane as Commissioner, there has been a perceived deterioration in the quality of SARS' services. Even though the people in the branches are generally pleasant and try to do a good job, experienced staff at the top have been lost, the large business centre has been significantly changed, refunds have been slow to be paid and, we are told, politically connected errant taxpayers have not been pursued. SARS is no longer the revered tax authority of the 2000s.

Based on these experiences it would seem that, as in all things, the leadership has had a definite impact.

Q *Where do you believe is the biggest portion of the tax gap in South Africa today and does SARS / National Treasury have the capacity to close this gap?*

Dr Randall Carolissen (head of research at SARS) has publicly advised on a number of occasions that “the number of corporate tax returns outstanding is up 87% to almost 2 million, and increases of 77% in PAYE and 32% in VAT, where the 1.68 million outstanding returns represent a significant chunk of all returns. Late filing of returns without payment have deteriorated sharply too”. It is thus clear how the tax gap (being the difference between what is owed to SARS and what is collected) in South Africa has grown. The bigger question is, of course, why? I believe there is a combination of factors: The pedestrian growth in the economy is an obvious one, as struggling businesses and individuals will try to make up their cash flow shortages by failing to pay debts, including taxes; the reduced staff at SARS since 2014 (14 000 to 12 600) might explain some reduced enforcement issues; of greater concern to most of us, though, is the reduced fiscal citizenship or tax morality that has arisen due to the reduced trust between Government, including SARS, and taxpayers. This reduced trust has arisen due to heavy media exposure of government corruption, based on Auditor General reports of “irregular and wasteful expenditure”, service delivery protests and a SARS Commissioner and Deputy Commissioner that are being investigated for maladministration and corruption, respectively.

Acting Commissioner Mark Kingon and Treasury may well be able to improve enforcement and trust in SARS itself, but the broken social contract between Government and its people is a much larger job which will take longer and will need a degree of trust to be restored not only in SARS but in Government as a whole.

Q *SARS recently introduced a “Service Charter”. What is your view on the impact of the Service Charter and does South Africa still need a formal Taxpayer Bill of Rights?*

In the context of the current perceptions of SARS, it was a brave move of Acting Commissioner Mark Kingon to upload the long-awaited Service Charter onto the SARS website on the first day of the 2018 tax season (1 July 2018). Nevertheless, the move is perhaps designed to be symbolic of a turning point and is, consequently, welcomed.

In amongst a list of 13 points, the Charter states that SARS:

- Counteracts fraud and corruption;
- Demonstrates values of accountability, fairness, honesty, integrity, respect, transparency and trust; and
- Communicates promptly, respectfully and effectively.

On the last point, the Charter also contains a section entitled “Engagement” wherein timeframes are given for SARS to provide service or responses in various parts of its interactions with taxpayers.

These are righteous promises indeed. In my view, however, it is only if SARS can successfully implement the Service Charter that the lost trust in SARS will start to be restored. This will take time. Thus, at this juncture, I believe that a Bill of Rights, as suggested by the Davis Tax Committee in its Tax Administration Report, might have more credibility, due to its legal standing and, therefore, more impact for both SARS and taxpayers.

Q *If you had to start again, would you still have chosen your career as a tax specialist? What are the best and worst parts of a career in tax?*

Although when I started my BCom at Wits I had no long-term objective to become a tax advisor, or even the preceding CA(SA), the path that the course, and my vacation work at Aiken and Carter (as KPMG was then called), took me was that route. Although I found auditing to be a great learning experience (in the mid-1980s we did everything on spreadsheets and “ticked and bashed” everything in sight, so got to understand clients’ financial businesses in detail) by my final year of articles I was itching to do something else. Since I couldn’t get excited about the 1s and 0s of computers (the only other option at that time if I wanted to stay in the firm in Cape Town) I asked if I could join what was then a fledgling tax department and study the UCT Tax Honours course under Professor John Morris.

I have loved my career in tax ever since. Why? The constantly changing laws gave me the opportunity to perpetually study (a love of studying is critical in the tax field - I’m a total “tax nerd”); the growth of the tax field gave me the opportunity to grow in the firm whilst I was mentored by amazing people. I was also able to contribute to growing new people in the tax field. I did this through KPMG, through writing tax articles for newspapers and journals, and also through a continued relationship with UCT (where I studied for my CTA, CA and Tax Honours) where I assisted on a small scale after qualifying and now am able to dedicate more time as a Tax Masters lecturer in the Finance and Tax Department.

"I have come across amazing people from all over the world who are dedicated to making sure the right amount of tax is paid by hard-working taxpayers."

I have come across amazing people from all over the world, both from the tax profession and from revenue authorities, who are dedicated to making sure the right amount of, but not too much, tax is paid by hard-working taxpayers.

Tax also opened up many opportunities for me to be involved in the "bigger picture" through an international secondment to London in 1991, through membership of the southern region and, later, national, tax committees of SAICA and through an invitation to sit on the Davis Tax Committee which was offered to me in 2015 and was an amazing experience albeit a lot of work.

Q *Of all your tax skills, which ones make you stand out in the field?*

I believe, firstly, my desire to constantly learn about all facets of tax and to try to provide and apply my insights to others, be they clients, more junior consultants or my students, has helped me to see the "bigger picture" when providing more specialised advice in my chosen tax fields (being international corporate tax and transfer pricing). I have found it is important to see the commercial picture and also to be clear that even though I am consulting in a certain area there may be other tax implications to consider.

Secondly, I have been willing to provide a view, be it technical or from a broader perspective (e.g., at Budget time) in public fora (media articles, seminars, radio and TV) as well as comments through SAICA, SAIT or Parliament's Standing Committee on Finance on proposed legislation.

Q *What are your biggest daily challenges in terms of assisting your clients in tax matters?*

Over the years the biggest daily challenges when dealing with client matters have, for me, been time management (ensuring that clients get the best advice within the prescribed time constraints and budgets whilst simultaneously dealing with growing internal admin burdens – all necessary but time consuming, nevertheless). Working in a top-class team of tax professionals has helped ease that burden and helped to ensure we got to the right answers.

A further challenge has been educating clients to understand the ever-increasing complexity of taxes, together with the tax costs and reputational risks that can arise if they don't get their taxes right. Aligned to this is the ever-increasing amount of time, and aligned costs, it can take to help clients to ensure that things are right, but that they may not appreciate. The world of tax often seems to move faster than clients' understanding of the risks and costs aligned to the changes.

Q *What words of advice would you provide to junior professionals in the tax field?*

I would firstly advise a junior professional to be clear that if they don't like studying tax constantly, tax is not for them. If they do, then they are halfway there on the technical side. Thereafter, it is a case of hard work (always), and learning from more experienced professionals (choose a couple of mentors amongst people you respect and admire, even if you don't tell them they have this position in your mind) and learn as much as possible from them. If you disagree with someone on a tax technical matter, argue your point. Just because someone is more senior, for example, doesn't mean they are right or wrong. They generally appreciate that you have spent the time to come to a view based on well researched and supported argument. Evaluate your own and the other person's point of view and, if necessary, be prepared to change ... you too are not always right.

Be prepared to write articles (usually in your own time) and to stand up in front of an audience (be it a client or a public audience) and give your valuable and well prepared and researched tax knowledge and views, so that you build credibility and a name for yourself.

Never lose sight of the fact that it is your job to make sure the taxpayer is paying the right amount of tax at the right time, based on the laws prevailing. This may also mean that you have to assist the taxpayer not to be forced to pay too much tax by an over-zealous SARS.



PETER SOLOMON SC

Expert advisor on the tax implications and consequences of transactions and structures in terms of the various tax Acts, and appearing in tax cases involving tax disputes before the courts

In my spare time I like to... Paint and do sculpting, play golf, go on walks and read

The most interesting books I've read recently are ... Various novels by Phillip Roth, including *American Pastoral*, *After the Prophet* by Lesley Hazelton, *The Heart of the Matter* by Graham Greene, *Jackson Pollock: A Biography* by Deborah Solomon, *Jerusalem: The Biography* by Simon Sebag Montefiore, *the Quadriology* of books by Elena Ferrante, *Picasso: A Biography* by Patrick O'Brian, and *Waterloo* by Bernard Cornwell

I get my inspiration from... Art

If I had to describe myself in one word it would be... Very private

If I had not gone into tax I would... Have become an artist or an architect



"The best part of a career in tax is that it is a particularly interesting area from a legal perspective."

Q Based on your extensive experience, what is your general view of the legal structure of the South African tax system as compared to other countries internationally?

The legal structure of the South African tax system is generally acceptable but in some procedural respects is unduly biased in favour of SARS and against taxpayers.

Q SARS is now 20 years old. What is your view of the administrative efficacy of SARS today as compared to 20 years ago? Did the leadership really have an impact on the quality of the institution?

The administrative efficiency of SARS today is an improvement on what it was 20 years ago but has declined over the last three or four years. There is still a great deal of room for improvement.

Q Where do you believe is the biggest portion of the tax gap in South Africa today and does SARS / National Treasury have the capacity to close this gap?

The biggest portion of the tax gap in South Africa is in the informal sector and, in particular, in the sector which operates on a cash basis (e.g., taxi operators, businesses which sell goods or services for cash). SARS has the legal powers to close this gap but does not have the necessary skilled staff to do so. It is also uncertain whether the political will is there to bring into the tax net many of the people referred to above.

Q SARS recently introduced a "Service Charter". What is your view on the impact of the Service Charter and does South Africa still need a formal Taxpayer Bill of Rights?

The Service Charter is welcome. It remains to be seen how efficiently it is implemented. A Taxpayer Bill of Rights is desirable. However, it will only be effective if the necessary machinery for its enforcement exists.

Q If you had to start again, would you still have chosen your career as a tax specialist? What are the best and worst parts of a career in tax?

Yes. I would have chosen to be a tax specialist. However, in my view it is not sufficient to specialise in tax without being well grounded in other areas of the law. The best part of a career in tax is that it is a particularly interesting area from a legal perspective, very often presenting challenges requiring a high degree of skill and analysis.

Q Of all your tax skills, which ones make you stand out in the field?

I think that I have analytical skills and an extensive knowledge of the law generally and the tax law in particular.

Q What are your biggest daily challenges in terms of assisting your clients in tax matters?

Being able to devote the necessary time to each matter in which I am briefed and keeping up with the constant changes to the tax laws.

Q What words of advice would you provide to junior professionals in the tax field?

Make sure that you have the necessary in-depth knowledge of the tax laws and the law in general; being prepared and able to devote substantial time and effort to your career.

TAX MORALITY

AND THE TAX GAP



► **RUAAN VAN EEDEN**, ruaan@gmgfinancial.com and
JOHNCI MEINTJES, johnci@gmgfinancial.com

Our authors explore the concepts of “tax morality” and “tax gap” in the context of declining tax revenues.

An interesting pattern has emerged over the last couple of years where the concept of “tax morality” has bubbled to the surface in public statements made, very often by representatives from revenue authorities. SARS is no stranger to this as its suspended Commissioner, Mr Tom Moyane, called for tax morality at the 2016 Tax Indaba and later at the International Association of Financial Executives World Congress.

But what does it really mean? Is it a somewhat convenient phrase that masks the inability to efficiently collect taxes or a matter that drills down to the core of a South African tax base fed up with contributing taxes to a government struggling to curb rampant corruption and draining the fiscus as a result? Tax morality therefore starts at government level as taxpayers will be more willing to contribute if they know that taxes paid on hard-earned income are spent in the correct manner. President Cyril Ramaphosa captured the essence of the problem by stating that “... tax morality is reliant on an implicit contract between taxpayers and government ...” which implies that taxpayers receive value for money by paying their fair share in a system free of corruption. Despite the uncertain South African political and economic climate, the question still remains as to whether taxpayers must only pay what is legally due or pay in accordance with what is morally correct. The latter essentially eliminates the tax planning element, but more on that later in this article.

Decline in tax collections

The tangible result of a declining economy is a material reduction in tax collections. This is not a problem isolated to South Africa. However, domestic socio-economic and political factors play a large role in contributing to the

steady decline. Murmurings of a silent tax revolt surfaced in 2017, SARS noted a decline in compliance and revenue targets were adjusted for the 2018 fiscal year. In spite of the aforementioned, the revised revenue target of R1.217 trillion was missed by only 0.06%. Granted, the 0.06% represents a cool R700 million, but can that really be ascribed to a decline in tax morality?

The more concerning figure was the estimated R48.2 billion revenue shortfall on the original ambitious target for the 2018 fiscal year of R1.265 trillion. Treasury blames the aforementioned shortfall on below average economic growth, administrative challenges at SARS and increased tax avoidance. Objectively, one can understand and economists can quantify the impact of weak economic growth on tax collections, many global factors of which are outside the control of the average South African. Blaming a decline in revenue on an increase in tax avoidance is convenient in our view, as this is not necessarily quantifiable. Even if it were, SARS possesses an arsenal of targeted anti-avoidance legislation, peppered throughout the various Acts it administers, but which it is seemingly unwilling or unable to utilise in combatting the perceived tax avoidance. A case in point is that we are yet to see the revised general anti-avoidance legislation in Part IIA of the Income Tax Act being tested in court.

The crux of the matter, in our view, lies in the self-confessed administrative challenges at SARS. This is again a subjective benchmark to determine the exact impact on a decline in revenue collection. Nonetheless, and whatever the official administrative challenges may be, it is evident in the media that there has been a marked decline in corporate governance, a substantial drain of highly skilled investigators and an increase in aggressive, yet technically

“The question still remains as to whether taxpayers must only pay what is legally due or pay in accordance with what is morally correct.”



INTEGRITY

inefficient audits. Many of these resulted in unnecessary disputes and a mistrust of the overall tax system. The inquiry into SARS is a step in the right direction, as it addresses the cause of decay in the tax system rather than smoothing over the symptoms. A well-respected, efficient and technically proficient SARS will automatically change the perception of the South African tax base and the concept of tax morality will, hopefully, become largely academic.

Plugging the tax gap

A decline in tax revenue and the factors contributing to aforementioned are slightly different to the so-called “tax gap”. This is the difference between revenue actually collected versus taxes owing if every taxpayer pays what is legally due. SARS has consistently estimated the tax gap in South Africa to be between 15% and 30% of actual tax revenue collected.

The tax gap is exacerbated by a decline in effective and targeted enforcement initiatives by SARS. Granted that SARS’ move to a complete self-assessment system will increase its enforcement ability. However, an increased enforcement ability will be an exercise in futility if it is not backed up by highly trained and technically proficient auditors. These auditors should not only be able to interpret the technical aspects of

a particular piece of taxing legislation, but also be able to deal with the tax administrative side of an investigation in a fair manner, whilst acknowledging taxpayers’ rights. These rights have fundamentally fallen by the wayside in recent years.

Going forward

The vast majority of the South African tax base pays what is legally due without the ability to enter into complex tax planning arrangements resulting in legal tax avoidance. But legal tax avoidance is perceived not to be in the spirit of the legislation, which is exactly the conundrum we face on the tax morality argument.

The Achilles heel is uncertainty and inconsistency in SARS’ interpretation and application of tax legislation, which creates opportunity for tax planning and could be abused if left unchecked. Tax planning can also result in aggressive schemes, completely devoid of commercial logic. The point is stressed again that Treasury has equipped SARS with powerful anti-avoidance legislation to address and deter what, in its view, is regarded as an immoral or abusive approach to tax planning.

The tax morality discussion is not settled in a South African context as long as tax

revenue continues its decline. However, fixing the core of the problem from a SARS administrative side will go a long way in re-establishing taxpayer trust in the system.



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CFCs: HAVE WE GONE TOO FAR?



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Controlled foreign company rules were introduced in 2001 to counter tax avoidance by preventing the use of low tax jurisdictions to shift income outside South Africa. Our authors ask whether it is time to review the old rules.

South Africa's controlled foreign company (CFC) rules are anti-avoidance provisions aimed at preventing South African residents from shifting taxable income to outside the South African tax net into lower tax jurisdictions by investing in or transacting through foreign companies. These CFC rules were introduced into South African tax legislation in 2001 as part of South Africa's shifting of its tax system from a "source plus" to a "residence minus" tax system.

The CFC rules, which have principally remained unaltered since introduction, are mechanical in nature and represent what, at the time, National Treasury regarded as a balance between the principles of anti-deferral, international competitiveness and administrative efficiency. To contextualise the era: In 2001 Facebook did not exist, the JSE Limited all share index had an average value approximately one-fifth of what it is today and it would be over a decade before the OECD's action plan on base erosion and profit shifting (BEPS) would see the light of day.



Fast forward to 2018 and we encounter new business forms that in 2001 were not even conceptualised yet, operating in the "post-BEPS" environment characterised by transparency and transfer pricing systems that place greater emphasis on where work is actually performed by personnel as opposed to simply carrying contractual risk. In addition, some South African multinationals have become truly global players and operate abroad through (acquired) businesses that pose very little risk of tax avoidance to the South African fiscus.

Despite this, returns of CFC income, determined based on 17-year-old mechanical rules, must be filed routinely in South Africa. In practice, the preparation of such returns for a major multinational may consume hundreds if not thousands of man hours, with relatively little taxation resulting in South Africa.

Whilst the little tax revenue may speak of an effective CFC system, the disproportionate amount of compliance time indicates that more can and should be done regarding the efficiency of the current CFC system.

History and application of the South African CFC system

In 1997, the Katz Commission was appointed to inquire into the ability of the South African tax system to deal with the consequences of globalisation. The Katz Commission recommended that the residence-based system of taxation be adopted gradually in South Africa. Coinciding with the introduction of a residence-based system, a host of anti-tax avoidance measures, including the introduction of CFC rules as

well as transfer pricing and thin capitalisation rules, were also introduced.

Insofar as CFCs are concerned, a revised section 9D was introduced in the Income Tax Act, which was designed to prevent the deferral of tax by using South African owned foreign entities. The CFC rules were primarily aimed at:

- Mobile foreign business income, being income from paper shell businesses without economic substance;
- Diversionary foreign business income that a CFC generates from certain sales and services transactions conducted with related South African residents; and
- Passive income, being income from passive assets such as dividends and interest from portfolio shares and bonds, which items do not involve any direct international competitiveness concerns because no business is directly involved.

In defining CFC income, National Treasury opted for a mechanical employee and establishment test, as opposed to a more "facts and circumstance" based test which for example is applied by the United States of America. This mechanical employee and establishment test was intended to remove some of the complexity of other more fact intensive tests. National Treasury's approach was consistent with, for example, the UK's then exempt activities test (the UK subsequently abolished the exempt activities test as part of "lightening" its CFC rules).

Since inception, South Africa's CFC rules have remained principally unaltered but have over time arguably become less

"The disproportionate amount of compliance time indicates that more can and should be done regarding the efficiency of the current CFC system."

- flexible and more arduous. This is particularly so in relation to meeting the so-called "foreign business establishment" substance test. For example, historically, section 9D(10) (a) and (b) of the Income Tax Act allowed the Minister of Finance the discretion to deem the foreign business establishment threshold to have been met in certain circumstances where there was little or no risk of erosion to the South African tax base. This discretion has been abolished. The result is the application of old mechanical substance rules, deemed appropriate in 2001, to modern era business forms which differ substantially in form compared with what was commonplace in 2001.

Practical experience has proven that South African CFC rules are very time consuming for taxpayers to comply with as well as for SARS to review. This is not surprising, considering the comment by the Davis Tax Committee that South African CFC rules are some of the most sophisticated and complicated within the G20. Furthermore, whilst hard data from SARS on total CFC collections are not made available to the public, the sense of many experienced tax professionals is that the tax revenue collected as a result of the CFC rules is insignificant relative to the taxpayers' total tax cost.

Current CFC environment

CFC rules are the subject of much international debate, most notably by the OECD as part of the BEPS initiative. The OECD Report on BEPS Action Item 3: "Designing

Effective Controlled Foreign Company Rules" (Action 3 Report), published in May 2015, addresses the recovery by jurisdictions in which a parent entity is resident of taxes that are theoretically foregone where profits are derived by foreign entities. The Action 3 Report recommends widespread adoption of CFC legislation globally. When measured against the recommendations in the Action 3 Report, South Africa's CFC rules can be described as robust and complex, but unclear in some respects.

In addition to CFC rules, the current international tax environment is characterised by country-by-country reporting and the requirement to prepare and file master files and/or local files with SARS (or equivalent) in accordance with Multilateral Competent Authority Agreements (MCAA) and bilateral Competent Authority Agreements.

Closer to home, the Davis Tax Committee recently published its findings following an analysis of South African CFC rules against the Action 3 Report recommendations and made, inter alia, the following closing remarks / recommendations:

- The South African CFC system is largely in line with CFC systems used by many developed countries in Europe, North America, East Asia and the Pacific.
- Many European systems have softened their CFC systems since 2000. Countries such as the UK and the Netherlands (major competitors in the region) have fairly light CFC systems. Given South Africa's limited status



on the global stage, South Africa cannot afford to be a leader in this field but should follow the practice set by others.

- Consideration could be given to adopting a CFC system similar to that of the UK or the Netherlands in order to improve South Africa's tax competitiveness in the long term. This approach should, however, be taken with caution, as simplification at this late stage after a long and protracted period of development of CFC legislation may open holes in the current system, which could compromise the fiscus.
- Care should also be taken to ensure that the rules are not so rigid that they hinder legitimate business establishments. This is particularly so with regard to service income anti-diversionary rules for the foreign business exemption.
- Care should be taken to ensure that the CFC rules are not made so onerous that they pose an excessive compliance burden on South Africa-based companies.

South Africa remains the only country in Africa to have implemented CFC legislation.

The way forward

The current international business and tax environment is very different to that of 2001 when South Africa introduced its CFC system. Business forms have evolved and, from a tax perspective, there is much greater transparency and

focus on substance in anchoring tax profits in a particular jurisdiction outside of CFC rules.

The OECD recognises the importance of providing greater tax certainty to taxpayers to support trade, investment and economic growth and that this has become a shared priority of governments and businesses alike. Empirical evidence suggests that tax uncertainty has an adverse effect on investment and trade (Tax Certainty: IMF/OECD Report for the G20 Finance Ministers, March 2017, page 6). The current South African CFC system is complex and unclear in certain respects and therefore hinders tax certainty.

Whilst CFC legislation does have its rightful place in the comprehensive BEPS package, considering the targeted CFC income identified at the time of introducing CFC legislation in South Africa, a case can be made to "lighten" CFC legislation in the short term without increasing the risk of eroding the South African tax base. This may be in the form of limited amendments to the current provisions of section 9D, for example to the foreign business establishment exemption and / or the "high tax exemption". The amendments could be aimed at specific areas, as opposed to the wholesale revision of CFC rules to align with, for example, those of the UK.



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INTEREST-FREE



LOANS TO TRUSTS:

DOES THE COMPLIANCE BURDEN OUTWEIGH THE BENEFITS?

► **HANNEKE FARRAND**, hfarrand@ensafrica.com

In the past, issuing of interest-free loans to discretionary trusts was widely used as a tool for domestic estate planning. We look at whether the benefits are worth the bother.

Interest-free loans as a tool for domestic estate planning

Issuing interest-free loans to discretionary trusts has for many years been seen as an effective tool for estate planning. This is largely because these loans facilitate the growth of the funder's assets during his or her lifetime whilst simultaneously capping the amount of tax for which the funder would be liable upon his or her death.

Certain tax anti-avoidance measures are, however, aimed at curbing the transfer of wealth to trusts on loan account where such loans bear no interest.

Compliance costs

The issuing of interest-free loans is now subject to donations tax and as such, residents who make donations must disclose such fact to SARS in writing when submitting their tax returns and furnish any information which may be required by the Commissioner. In cases where no interest is charged on loans to non-resident trusts, there is also the added burden of having to calculate one's taxable income as if the terms of the loan were consistent with the arm's length principle (which would require a determination of an arm's-length interest rate).

Should the arrangement between a resident and a non-resident trust also constitute a "reportable arrangement" as defined in the Income Tax Act, the parties to the arrangement would have to disclose its existence to SARS within 45 business days, failing which, penalties will be imposed.

Anti-avoidance rules

The following tax anti-avoidance measures apply to interest-free loans to trusts.

Donations tax

Section 54 of the Income Tax Act states that donations tax is payable on the value of property disposed of under any donation by any resident at a rate of 20%, subject to certain exclusions. Outright donations to any trusts would trigger a donations tax liability in the hands of the resident individual. In cases of interest-free loans to trusts, the interest-free portion of the loan is also considered to be a donation.

Donor attribution rules

Section 7 of the Income Tax Act provides that income accruing to or received by a trust, and which is income made in consequence of, inter alia, a donation, may be taxed in the hands of the donor. These rules are also applicable to interest-free loans or loans where interest is charged at less than a market-related rate of interest.

Where the trust is a non-resident, the income of the trust is determined as if the trust were a resident trust, and such income should then be apportioned on a pro rata basis to determine the amount of income which is attributable to the interest which was not charged.

Deemed donation rules

In terms of section 7C of the Income Tax Act, interest-free loans made to trusts will be deemed to be donations made to that trust by the donor and subject to donations tax.

In accordance with section 7C(3), the value on which donations tax is imposed is the amount that is equal to the difference between the amount of interest incurred by the trust in respect of the loan and the amount of interest that would have been incurred by the trust at the official rate of interest (as defined) during a year of assessment.

The provisions of section 7C require that the interest-free loan be directly or indirectly provided to a trust (i) by a natural person who is a beneficiary, or a relative of a beneficiary, of the trust; or (ii) at the instance of that person, by a company in relation to which that individual is a “connected person” (as defined in the Act). Section 7C is also applicable in instances where the loan is subject to interest, but at a rate lower than the official rate.

The value of the deemed donation will be equal to the difference between the actual interest incurred by the trust and the amount that would have been incurred at the official rate of interest, and it is this amount on which 20% donations tax is levied. Donations tax will be charged for the duration of the period of time during which the trust does not repay the loan.

Transfer pricing rules

The South African transfer pricing rules are applicable to, inter alia, any transaction where the transaction constitutes an “affected transaction”. Section 31 of the Income Tax Act defines the term “affected transaction” as, inter alia, a transaction entered into for the benefit of either or both a resident person, and any other person that is not a resident, both of which or whom are connected persons in relation to each other. Additionally, affected transactions include terms that are different from terms which would have existed had the persons involved in the transaction been independent persons dealing at arm’s length (as defined).

Accordingly, an arm’s length interest rate must be charged in respect of the cross-border provision of loan funding by a South African resident to a non-resident trust. Consequently, the provisions of section 7C would not apply in cases where the transfer pricing rules are applicable.

Where the interest rate on the loan is less than an arm’s length interest rate, the difference between the actual amount of interest charged and the arm’s length amount would be included in the taxable income of the resident. Additionally, the transfer pricing rules would deem the amount of that difference to be a donation made by the resident to the non-resident.

South African trusts

Interest-free loans made to South African trusts will be subject to both the donor-attribution rules as well as the provisions of section 7C. In terms of the former, the market-related rate of interest will be utilised on the amount of the benefit derived from the interest-free loan (which will be up to a maximum of

“Residents who make donations must disclose such fact to SARS in writing when submitting their tax returns.”



- ▶ the amount of the loan) in order to arrive at the amount which will be attributed to the resident and subsequently taxed as income in his or her hands. In the latter case, the difference between the amount of interest attributed and the amount of interest which would be charged at the official rate of interest (as defined) will also then be subject to donations tax.

Non-resident trusts

The donor-attribution rules will also be applicable to interest-free loans made to non-resident trusts. The income attributed to the resident donor is limited to the amount of the benefit derived by the trust from the donation and is equal to the difference between the actual amount of interest charged and the arm's length amount which would have been charged. (This is applicable both in instances where the loan is interest-free and where the interest charged is lower than an arm's length interest rate.)

The transfer pricing rules will then also be applicable in instances where an interest rate lower than an arm's length interest rate has been charged or where no interest rate has been charged. Section 7C would, technically, also apply to the differential between the market-related rate of interest actually charged and the official rate of interest (as defined), where such a differential exists.

Ways in which to mitigate the effect of section 7C

There are a few ways in which an individual may mitigate the application of section 7C of the Income Tax Act:

- Where possible, repay all loan accounts.
- In the context of South African trusts, the yearly exemption of R100 000 means that in cases where the value of the disposal on loan account is equal to or less than R1 250 000, after the imposition of an interest rate of 8% (being the current official interest rate), the amount on which donations tax will be charged will be less than the yearly exemption, thereby exempting that amount from donations tax.
- A resident could charge an arm's length interest rate on the loan and state in the loan agreement that interest must be reviewed at the end of a tax year and if the official rate of interest (as defined) is higher, an upward adjustment must be made.

Recently proposed amendments

The proposed amendments provided for in the Draft Taxation Laws Amendment Bill will be applicable to this discussion in the following way:

Where a foreign trust, to which a resident person makes a donation, owns shares in a foreign company from which dividends accrue to the trust and where more than 50% of the total participation rights or voting rights in that foreign company are directly or indirectly exercisable by the resident donor, the exemption from tax on the dividends income provided for in section 10B(2)(a) (which would ultimately be attributable to the resident donor) will be disregarded. It should be noted, however, that the partial exemption in section 10B(3) may still be applicable.

Equitable transfer of wealth

The various anti-avoidance measures applicable to loans to South African and offshore trusts ensure that wealth is not transferred without the payment of some income tax liability on the growth of the assets in the hands of the donor. It is worth noting that these principles have been in place for many years in respect of loans to offshore trusts because of the application of the transfer pricing regulations. Section 7C made these provisions also applicable to loans to South African trusts.

It remains to be seen whether the cost of compliance will outweigh the benefit of the tax collected by SARS. It is, however, an important mechanism to ensure the equitable transfer of wealth in a society where economic imbalances remain a critical and largely unsolved debate.



ABOUT HANNEKE FARRAND

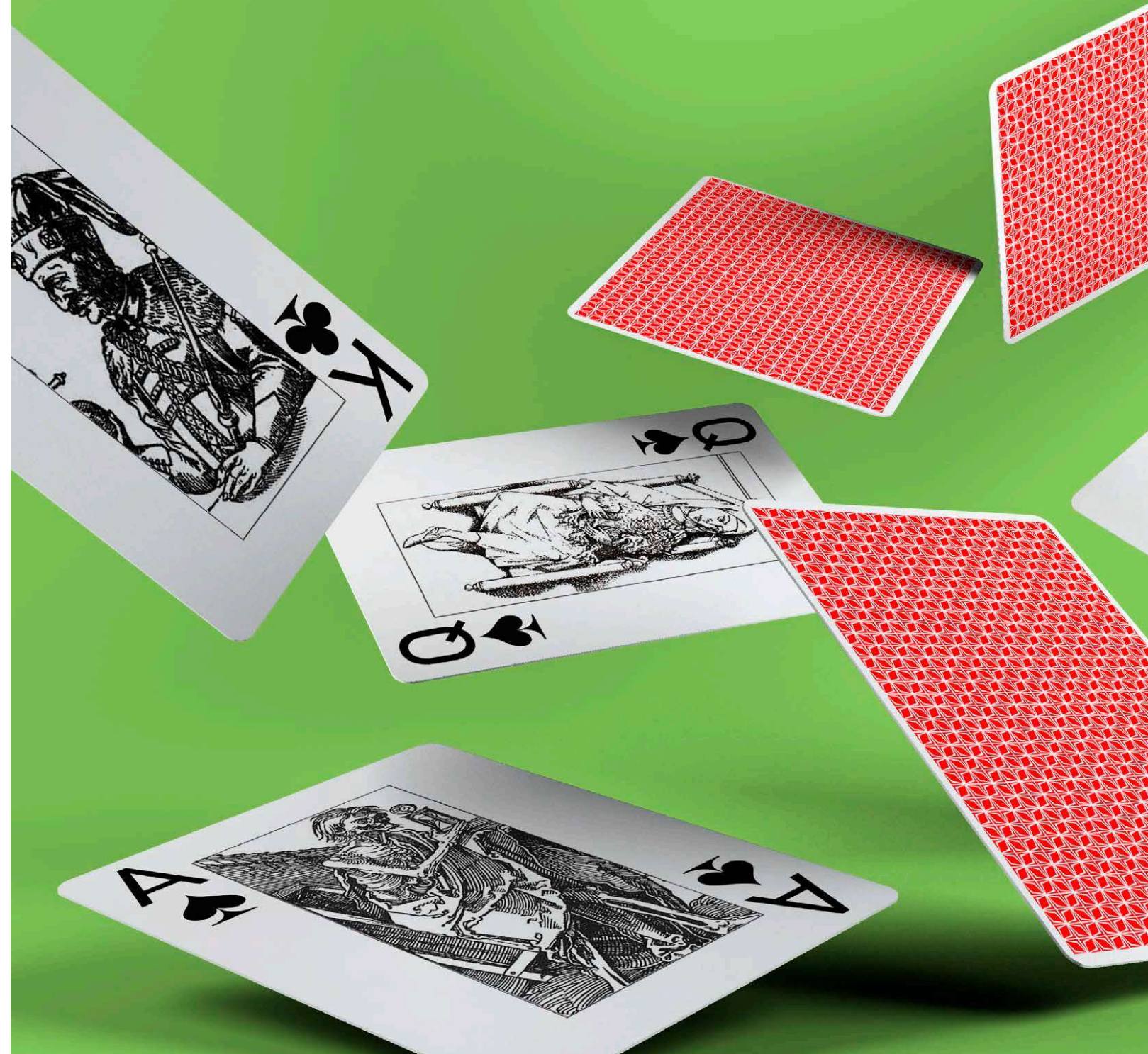
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EXPAT AFTERSHOCK: SURVIVING WITHOUT THE EXEMPTION



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Since 2001, employment income received by South African tax residents for services rendered outside the country was exempt from income tax. In terms of a 2017 amendment to the law, the exempt amount will be capped at R1 million. We look at the effect on employees and employers alike.

South Africa has a residence-based system of taxation and in terms of this system, South African tax residents are taxed on their worldwide income. Section 10(1)(o)(ii) of the Income Tax Act provides an exemption in respect of employment income that is received by or that accrues to a South African tax resident, during any year of assessment, in respect of services rendered outside South Africa for or on behalf of any employer. This exemption can only be claimed where an individual can satisfy specifically defined criteria, which is that the individual must have been outside of South Africa for a period or periods exceeding 183 days in aggregate during any 12-month period, which must include a minimum of 60 continuous days outside South Africa, during that 12-month period.

This legislated pre-emptive exemption limits South Africa's taxing rights, in instances where the above criteria have been satisfied, by enabling foreign employment income to escape the South African tax net. This ultimately means that South African tax residents may be employed outside South Africa without triggering a South African income tax liability. It is important to note that the payment of tax on the foreign employment income (in another country) is not a requirement for this exemption to apply. It is therefore possible that no income tax is paid by South African tax residents, in respect of periods worked outside of South Africa.

Employers who employ South African tax residents to work outside South Africa currently benefit from the exemption, in that the pre-emptive exemption can be claimed on the payroll as opposed to via the employees' South African tax return for the relevant year of assessment. This has a substantial cash-flow benefit for these employers. A further benefit exists in that employers are not required to prove the income tax paid on the foreign remuneration, in order to claim the credits on the payroll. However, as South African tax residents, the individuals will be required to declare their foreign employment income in their annual South African tax returns and claim the foreign service

exemption in such returns. SARS may require proof of taxes, paid in a foreign jurisdiction and in respect of foreign earnings, to be submitted for verification purposes.

Proposal to repeal exemption

This exemption for South African residents employed abroad has been substantially amended by the Taxation Laws Amendment Act of 2017, promulgated on 18 December 2017. This Act amended this pre-emptive exemption by providing that with effect from 1 March 2020 the foreign service exemption would only be available in respect of the first R1 million of foreign-earned remuneration (per annum) subject to the above criteria. This is a more favourable position compared to the announcement made in July 2017 by National Treasury with the release of the Draft Taxation Laws Amendment Bill, 2017, for public comment. Still considered as one of the most controversial proposals in the Draft Bill, the announcement made was for the repeal of section 10(1)(o)(ii) in its entirety.

Justification for the amendment includes National Treasury's view that the foreign service exemption creates opportunities for double non-taxation, particularly where the foreign service is rendered in a foreign country with a low or zero personal income tax rate. Further, this foreign service exemption is not available to South African residents employed by a national, provincial, or local sphere of government or any public or municipal entity, which creates unequal treatment. South Africa also seems to have had a less extensive treaty network available at the time of the introduction of the exemption. Lastly, at the time this exemption was introduced in 2001, it was an internationally accepted practice for foreign employment income of a resident to be exempt in instances where the resident was outside his or her country of residence for a period exceeding 183 days.

What are the adverse impacts?

The amended capped foreign service exemption should not have an adverse impact on South African tax residents working in high income tax jurisdictions outside South Africa and who

earn below the R1 million per annum threshold. However, South African tax residents working outside South Africa as well as non-South African tax residents who trigger South African tax residency whilst on assignment to South Africa, and who earn above the threshold, will be impacted by this amended legislation. The amendment will create a double tax situation in instances where the South African tax resident is liable for income tax on the foreign employment income earned in the foreign country in which they render services and simultaneously has an income tax liability in South Africa in respect of the same income, on the basis that they are South African tax resident and therefore subject to tax on their worldwide income. The double tax liability will only exist in respect of the income tax due on the foreign remuneration that exceeds the threshold of R1 million per annum.

Employers with South African tax resident employees working outside of South Africa may also be impacted, particularly those with tax equalisation and tax protection models, that make the employer liable for any income tax implications that arise for an individual employee by virtue of an international assignment.

In instances where a double tax liability exists, relief from foreign taxes paid on the foreign income portion that does not qualify for the amended capped exemption, i.e., foreign remuneration in excess of the R1 million exemption, will exist in the form of tax credits. These credits are available in terms of section 6quat of the Income Tax Act. Tax credits will only be required to provide relief from double tax where the same income is taxable in the foreign jurisdiction as well as South Africa and exclusive taxing rights cannot be determined in terms of an existing double taxation agreement between the two countries. Although tax credits may be available in South Africa to provide relief from double tax, such credits would be limited to the amount of tax the individual would have paid had the income been earned in South Africa. However, tax credits cannot be claimed in respect of taxes, such as social security, that have been paid abroad but that do not qualify as income tax under South African legislation. Foreign tax credits are normally claimed via the individual's tax return. However, employers may apply for a "tax directive" from SARS permitting the employer to claim the tax credit in advance through its payroll.

Is renouncing tax residence the only way out?

It would seem initially that the only escape South African tax residents will have from the adverse impact of this amended capped foreign service exemption is to cease their South African tax residency status. Doing so may expose them to a possible capital gains exit charge. They would be deemed to have sold their worldwide assets a day before ceasing their residency. For employers of South African tax residents working abroad, hiring South African tax residents for services to be rendered outside of South Africa is no longer an attractive model to adopt. This may lead to a change in their global mobility strategy, which may now look to attract non-South African resident talent for roles requiring services to be rendered outside of South Africa.

"Still considered as one of the most controversial proposals in the Draft Bill, the announcement made was for the repeal of section 10(1)(o)(ii) in its entirety."



The challenges of claiming tax credits

On a practical note, substantial challenges may still materialise once the amendment becomes effective. Claiming tax credits may prove to be frustrating, as determining what SARS would accept as sufficient proof of foreign taxes paid upon assessment may be a challenge. This is especially true in countries that do not have individual tax filing obligations and those where self-assessment taxes do not require assessment from the revenue authorities. As provisional taxpayers, South African tax residents working abroad, who are required to estimate their earnings for provisional tax liability calculations may be frustrated, as no foreign country's tax year is aligned to that of South Africa.

One thing is definitely clear in discussions around surviving the amendment of the foreign service exemption and that is the fact that the death of the uncapped foreign service exemption creates uncertainty and casts a dark cloud over the future of the South African global mobility landscape.



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SHAKING THE BARREN MONEY TREE

30 minutes CPD

COLLECTIONS DURING LEGAL TAX DISPUTES

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Our authors argue that during a dispute, proper administration of the Tax Administration Act will help to find the right balance between the interests of taxpayers and the fiscus, and may also increase collections of tax revenue.

In the 2018 Budget Speech, the Minister of Finance stated that Government proposes to raise additional revenue of R36 billion in the 2018/2019 financial year with the largest contributor of R22.9 billion being through the increase in the VAT rate. Government intends collecting R1.34 trillion in overall tax revenue during the present financial year.

Given that SARS only collected R1.216 trillion in the 2017/18 financial year and in so doing failed to meet its reforecast revenue outcome by R700 million, the overall tax revenue collection target of R1.34 trillion appears ambitious.

Although gross tax collections have, since December 2017, shown signs of improvement, collections remain shy of the required monthly targets to meet the overall tax revenue collection target. We can therefore expect SARS to aggressively pursue and collect taxes during the 2018/2019 financial year.

Liability for tax

A taxpayer becomes liable for tax pursuant to him or her submitting their annual tax returns and SARS issuing a notice of assessment in terms of the Tax Administration Act. A notice of assessment must set out, inter alia, the amount of the assessment (i.e., the taxpayer's tax liability

to SARS) and the date for paying the assessed amount. Where the taxpayer fails to pay the assessed amount by the date stipulated in the notice of assessment, interest begins to accrue on the outstanding tax liability.

Pay now, argue later

Where a taxpayer is aggrieved by an assessment, the taxpayer's first right of recourse is to lodge an objection against the assessment within a period of thirty days from the date of the assessment. Lodging an objection does not, however, suspend the taxpayer's liability to settle the tax liability in accordance with the "pay now, argue later" principle.

The "pay now, argue later" principle was affirmed in the *Metcash Trading Limited v Commissioner for the South African Revenue Service* 2001 (1) SA 1109 (CC) at paragraph 100 insofar as it relates to a taxpayer's constitutional right to due adjudication. The Constitutional Court also stated that where a senior SARS official is afforded the right to exercise his or her discretion to suspend the obligation to pay tax pending the outcome of an objection and/or appeal, as under the Tax Administration Act, then the possible prejudice that the "pay now, argue later" principle may cause to an individual taxpayer was reduced.

"Lodging an objection does not suspend the taxpayer's liability to settle the tax liability in accordance with the 'pay now, argue later' principle."

Collections

In terms of section 164(6) of the Tax Administration Act, SARS may not proceed with collection steps from the day it receives a request for suspension of debt or where SARS revokes a suspension of debt, and ending 10 days after notice of SARS' decision or revocation has been issued. In practice, however, this provision is seldom followed. This is due to the fact that the collections process is separate to that of the eFiling process, where objections and requests for debt suspensions are lodged. Given this disconnect, taxpayers who have lodged an objection and a request for debt suspension have experienced instances where collections steps have been taken against them. It is therefore advisable to follow up on any request for a suspension of debt owing to SARS.

SARS may take collection steps where a taxpayer does not pay within the period specified on the assessment and the taxpayer has not lodged a request for debt suspension or the request for debt suspension has been disallowed. The Tax Administration Act affords SARS the option of:

- Applying to civil court for recovery;
- Instituting sequestration or liquidations proceedings; or
- Recovering the tax liability from third parties to satisfy tax debts (similar to a garnishee order).

Interestingly, SARS has outsourced some of its debt collection functions by appointing eight external debt collection agencies in an attempt to recoup up to R16.6 billion in tax debt owing to the fiscus. SARS states that there are over 2.3 million taxpayers and traders which, collectively, owe SARS approximately R150 billion. In an attempt to recover more taxes, SARS has also started publishing the names of convicted tax offenders. SARS has justified this course of action by stating that taxpayers will be more willing to comply if they are aware that their names can and will be published for their failure to comply with their tax obligations.

Dispute process

After a taxpayer has lodged an objection SARS must consider the objection and must, within 60 days, notify the taxpayer whether the objection has been disallowed or allowed in whole or in part and provide reasons for its decision. If the taxpayer remains dissatisfied with the outcome of the objection, the taxpayer may appeal the decision within a period of 30 days or an extended period where reasonable or exceptional circumstances exist that justify the extension.

In appropriate circumstances, the taxpayer and SARS may, by mutual agreement, attempt to resolve the matter through alternative dispute resolution proceedings. Where, however, alternative dispute resolution cannot be agreed to, the matter will be referred to the Tax Court for argument. The court



- will consider the matter and provide a final assessment. If the taxpayer remains dissatisfied with the assessment, the taxpayer may appeal against the decision to the High Court.

The fundamental difference between the tax dispute process and the normal civil dispute process is that it is far easier for SARS to collect from a taxpayer. In the ordinary course of litigation, a complainant would only be able to claim the debt pursuant to a judgment being delivered. In terms of the tax dispute process and subject to a debt suspension request, SARS is not precluded from collecting a tax debt. Furthermore, enforcing a civil judgment is far more onerous than SARS enforcing a tax judgment. The Tax Administration Act affords SARS almost unfettered collection mechanisms.

Collections during the dispute process

An important consideration is when SARS should consider making collections during the legal dispute process. The point at which a taxpayer has submitted its request to suspend its liability to pay the assessed amount and its objection is arguably the most important time to consider collection. At this point in time, SARS can consider whether there are any reasonable prospects of success in the objection being allowed or whether the objection is frivolous or vexatious.

An issue arises, however, when SARS is of the view that there are no reasonable prospects of success to the objection. Where the taxpayer settles the assessed amount in such circumstances, but pursues the dispute resolution process contemplated under the Tax Administration Act right through to the tax court or a higher court, the risk is that SARS will be liable to refund the interest accrued on the tax amount paid. Given that the dispute process can often be protracted, extending over several years, the interest may be significant and an unnecessary cost to the fiscus. The prejudice to the taxpayer is clear and although a taxpayer will ultimately be refunded with interest, the taxpayer has to endure a cash shortfall, often for significant periods of time.

The decision not to suspend the taxpayer's liability to settle an assessed amount should, therefore, be approached with caution and circumspection and viewed in the context of the circumstances giving rise to the assessment. On the one hand, when viewed in the context of a stagnant economy, taxpayers have to endure challenging economic circumstances and should not unjustifiably be deprived of their resources. On the other hand there has been a perennial struggle between tax authorities seeking to protect the integrity of the tax base and taxpayers who have consistently implemented aggressive tactics to reduce their liability for tax (See for example *Ayrshire Pullman Motor Services and DM Ritchie v CIR* 1929 14 TC 754 at 763 - 764).

Emphasis should, therefore, be placed on whether the taxpayer or the fiscus would be unjustifiably burdened if a request of debt suspension is allowed or disallowed. The Tax Administration Act sets out important and relevant considerations to be taken into account when making such a determination. Unfortunately, the process contemplated under the Tax Administration Act is not always adhered to.

For taxpayers to mitigate the risk of SARS enforcing collection against them, they should in the appropriate circumstances consider offering security for the assessed amount, which obviously bolsters their request for the suspension of debt. This may include the taxpayer offering tax refunds due to them by SARS as a form of set-off of a tax debt.

Conclusion

Despite the legal protections and specific mechanisms afforded to taxpayers under the Tax Administration Act, taxpayers are often unjustifiably prejudiced during the collection process. The Tax Administration Act should therefore be properly adhered to by both the taxpayer and SARS to avoid placing undue strain on either the tax base or the fiscus. Proper administration of the Tax Administration Act would also increase collections of tax revenue.

In the best interests of the fiscus, SARS should carefully consider all requests for the suspension of debt in light of all surrounding circumstances and only disallow frivolous and vexatious debt suspension requests. This too would allow for more efficient collections and go a long way to assist SARS in achieving its ambitious tax collection target for the 2018/2019 financial year.

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ABOUT NIRVASHA SINGH NOGUEIRA

NIRVASHA is a partner in the Tax Practice at Webber Wentzel. She has more than 11 years' experience in tax-related matters and four years of litigation experience. She has provided technical advice to clients in respect of salary structuring, public benefit organisations, trust deeds and the development of PAYE tax strategies, and has been involved in major tax litigation matters between SARS and companies in the oil and gas and mining sectors. She is also experienced in drafting and reviewing rehabilitation trusts and drafting advance tax rulings for, inter alia, mining tax structuring. Prior to joining Webber Wentzel, Nirvasha was a Legal Manager at SARS and has the advantage of understanding the intricate workings of all legal aspects within SARS.



ABOUT WESLEY GRIMM

WESLEY is an Associate at Webber Wentzel. He specialises in dispute resolution, focused on tax-related matters. He works with both the corporate and litigation teams on various matters including advising clients during large transactions and assisting clients who are being audited or investigated by the South African Revenue Service. He also assists clients with all aspects relating to applying for and being granted public benefit organisation (and tax exempt) status. His dispute resolution experience includes work in the High Court of South Africa.



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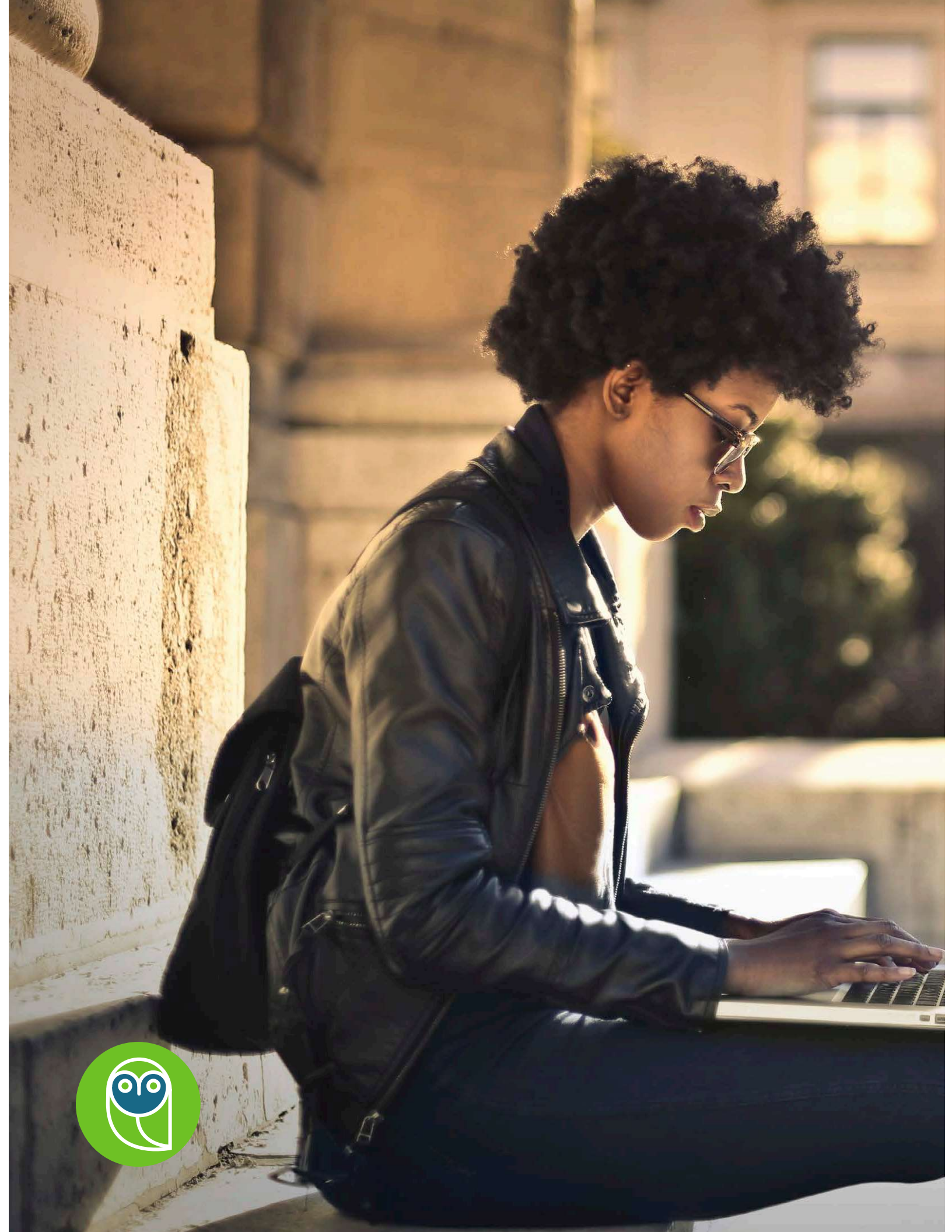
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Developments in technology, particularly automation and artificial intelligence, coupled with the ever-increasing volume of knowledge readily available through the internet challenges tax professionals to ensure their business model offers value to their client. With customers being more empowered than ever before, the question remains as to what it takes to survive the tax practice digital revolution where routine tax compliance is becoming increasingly automated. In fact, an Oxford University study ranked tax preparers as among the top ten roles most susceptible to digitisation out of more than 700 jobs analysed.

The benefits of digital transformation are abundant. The automation and digitisation of tax has the ability to drive efficiencies through enhanced standardisation of processes enabling the tax compliance function to be delivered at a lower cost and with fewer errors. In light of this, it is predicted by Grant Thornton that the future role of tax professionals is likely to be focussed on the interaction between human and artificial intelligence.

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The South African Institute of Tax Professionals (SAIT) founded The Tax Faculty as an independent tertiary learning provider and centre of excellence. Accredited by the Quality Council for Trades and Occupations, The Tax Faculty offers occupation-centric and competency-based qualifications.

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The Tax Faculty



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1

We create an environment where our course participants are engaged and love to learn.

2

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3

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4

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5

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ACCREDITATION	UNISA
QUALIFICATION ID	70971

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INVESTMENT	R 14650-00
LECTURER	Dr. Carika Fritz
ACCREDITATION	UNISA
QUALIFICATION ID	70874

CERTIFICATE IN VALUE-ADDED TAX

APPLICATIONS OPEN	1 September 2018
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DURATION	6 Months
INVESTMENT	R 14650-00
LECTURER	Wessel Smit
ACCREDITATION	UNISA
QUALIFICATION ID	70912

ADVANCED CERTIFICATE IN VALUE-ADDED TAX

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LECTURER	Christo Theron
ACCREDITATION	UNISA
QUALIFICATION ID	70963

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* Credit may be awarded for prior learning/qualification, i.e. B Com, LLB, National Diploma, Certificate in Taxation, etc

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NEW TRIPARTITE PACT UNDERPINNED BY TAX TECHNOLOGY BECKONS

► **MARCUS BOTHA**, mabotha@bdo.co.za and **TIM DEARDEN**, tdearden@venacorp.com

Our authors take a critical look at restoring trust, the promises of fintech and the role of data in creating tax value.

The terms of reference of the contested SARS Commission of Inquiry, currently sitting, include the impact of the conduct of SARS management on the public image of SARS upholding the basic values and principles governing public administration envisaged in section 195 of the Constitution. In terms of this section, SARS (as an organ of state) must always act with a high standard of professional ethics and act impartially, fairly, equitably and without bias.

There is little doubt that the President has demonstrated his commitment to restoring the reciprocal relationship of trust between the government, the tax administration and the country's taxpayers – a tripartite trust which has been badly eroded in recent times. The government of the day, the tax administration and the taxpayer all have their respective crucial roles to play in re-establishing such trust, based on the underlying principles of mutual respect, transparency and a cooperative and constructive working relationship. Such mutual trust can further lead to a collaborative relationship to create a more certain and positive business environment to the economic benefit of all parties. The crux to tripartite trust is that it needs to be demonstrable. In order to achieve a natural progression to demonstrable trust, an assessment of the immediate benefits that technology can provide is relevant.

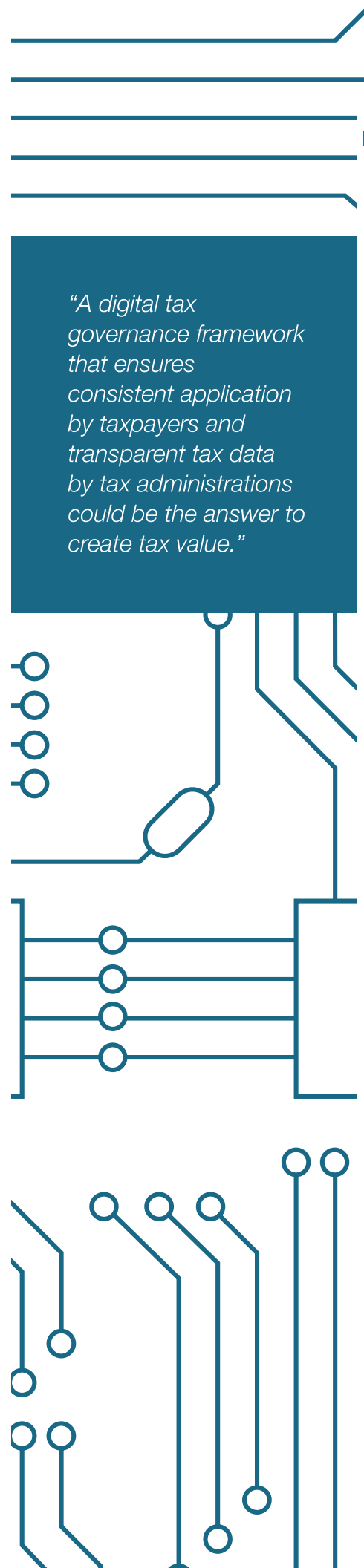
Human Rights

It is instructive to note that the President confirmed in his State of the Nation Address that “tax morality is dependent on an implicit contract between taxpayers and government that the state spending provides value for money and is free from corruption”. Continuous and independent performance

measurement of this implicit contract could be the answer to enhanced trust, increased tax morality and sustainable tax value created in society. His assertion resonates with a Report of the International Bar Association's Human Rights Institute Task Force on “Tax Abuses, Poverty and Human Rights”, which has a particular focus on tax abuses that have negative impacts on developing countries. The Task Force concluded that tax abuses negatively impact the enjoyment of human rights, as they deprive governments of the resources required to provide the programmes that give effect to economic, social and cultural rights and to create and strengthen the institutions that uphold civil and political rights. The Report emphasises that actions of states that encourage or facilitate tax abuses could constitute a violation of their human rights obligations. As such, there could be an argument for negligence if available measures (or technologies) are not employed to mitigate tax abuses, reduce poverty and enhance human rights.

The SARS Service Charter

The role of SARS, in its capacity as the custodian and administrator of the tax system, is to build the confidence of all taxpayers in the system and uphold the implicit contract which in turn would encourage taxpayers to do the right thing by fulfilling their lawful responsibilities. The SARS Service Charter, which was published recently, is a welcome development which undertakes to uphold the South African Constitution and Bill of Rights to provide a service that is fair, accurate and based on mutual trust and respect and to demonstrate values of accountability, fairness, honesty, integrity, respect and transparency – all aspects in which SARS appears to have fallen short recently.



“A digital tax governance framework that ensures consistent application by taxpayers and transparent tax data by tax administrations could be the answer to create tax value.”

- A question to ask is whether SARS should consider responding with technological remediation and implement digital tax governance in our tax system, whereby enhanced data transparency is facilitated.

In terms of large corporate taxpayers, tax authorities globally have been introducing initiatives to ensure that a company's approach to managing tax is overseen by its board of directors. This requires tax data. In Australia, when engaging with such a taxpayer, an important departure point for the Australian Tax Office is to understand a taxpayer's tax governance framework (TGF).

Last year the Australian Tax Office expanded its “Tax Risk Management and Governance Review Guide”, which sets out both board and management level responsibilities for the management of tax risk, together with a framework for controls and testing and the corresponding digitalisation of tax. The guide now includes a “director's summary”, which outlines the responsibilities of directors and public officers in the context of TGF, as well as guidelines for the various internal stakeholders to assist in the testing and self-assessment of the operational effectiveness of a corporate taxpayer's TGF. In addition, the ability afforded by the Australian Tax Office to large corporate taxpayers to report voluntarily under a “Tax Transparency Code”, to conclude an “Annual Compliance Agreement” with the Australian Tax Office and to strive for a low risk rating in terms of the “risk differentiation framework” of the Australian Tax Office are all factors which encourage the maintenance of open and constructive relationships between the two parties.

In the South African context, corporate governance principles expressly recognise the role and responsibilities of the board and the audit committee in governance and oversight, including the formulation of a tax strategy and policy that are aligned with responsible corporate citizenship and wider stakeholder considerations. However, lack of guidance on the corporate governance tax responsibilities and duties of boards and audit committees, and failure to operationalise tax strategy and policy have resulted in tax value lost in our society. Again, a digital tax governance framework that ensures consistent application by taxpayers and transparent tax data by tax administrations could be the answer to create tax value.

Restore confidence

The President has acted quickly in taking the first step to restore public confidence in SARS. Large corporate taxpayers in South Africa should now evidence their bona fides in contributing to a new spirit of fiscal partnership by endorsing and operating within clearly defined tax principles and communicating their tax approach, including tax technology, to all stakeholders. This would be an important first step in both establishing trust and building credibility, with not only the fiscal authorities but also institutional investors, civil society and the public at large. Reciprocally, SARS should establish its own internal digital tax governance framework and procedures to foster cooperative and collaborative relationships with its corporate taxpayer clients, based on a commercial and operational awareness of their industries and supply chains, as well as on the existence and effectiveness of the taxpayer's governance and risk management framework.

The key is in data

In order for SARS and corporates to be effective and transparent and to feasibly adhere to the ever changing domestic and global landscape, the key is in technology and, more specifically, in data. In 2018, the use of technology for solving everyday processes has become commonplace, with every company having a computer-based general ledger, banking automation, automated filings to tax administrations and regulatory bodies, consolidation tools and workflow tools. Despite all this access to technology we have yet to solve the problem, we have yet to substantially reduce risk. In fact, risk has increased, with finance and tax teams and boards still feeling exposed and under water. The issue largely rests in three parts: the sheer volume of data and information, decreasing deadlines and timetables, and most importantly the inability for systems to speak and reconcile to each other.

Every accounting and tax periodical that you open currently praises the wonders of artificial intelligence and machine learning, the miraculous time savings they generate and the nirvana of this future world. As we look to the future, let's remember the history of technology.

In the late 1990s and the 2000s we were promised a new era of technology with online shopping, robotic droids, instant access

to data and a dream world of productivity. This was followed by the dot.com crash! Yet in 2017, Amazon completed their first automated drone delivery with a 20-minute turnaround from ordering to door step. The use of Google is now pervasive and online shopping is an everyday occurrence (just 20 years later than was promised).

The promise of fintech has been similar. Now, as we stand 10 years into a fintech cycle, we are starting to see the light and the art of the possible with fit-for-purpose applications in a finance and tax context.

For the finance, tax, tax administration and national treasury fraternity – trying to get through data gathering and preparation, closing processes, filing of returns, tax seasons and budgets – the key is in data: The organisation, structuring, transparency and flow of data. This data does not only consist of the debits and credits, but also the operational data, HR data, sales data, project or transactional information, capital expenditure, down to journal entries. This is the data that drives taxpayers, tax administrations and ultimately the country.

A brief universal example

If you request the tax department of an organisation to provide the bottom-line pre-tax taxable income for the 2018 financial year, it will differ from the bottom-line income before tax used by the same organisation's financial accounting department. In most cases it will differ from the group strategic plan. This exposes a board of directors, the audit and risk committees and senior management. Each party is constantly moving between different data sets with no clear reconciliation between them, signing off on accounts, attesting to balances internally and with multiple regulators. Add layers of operational data and then ask the questions: How confident are you in your data? At what cost? Can you demonstrate the financial and tax value your organisation created and disclose this in the annual and integrated reports?

The same issue exists within tax administrations when the same tax department files these data sets in their returns or submissions. The result: a systemic tax problem that impacts society and faith in the fairness and transparency of the tax system.

Create tax value with the exchange of transparent data

If you start with a single trial balance, the difference between a set of statutory accounts, a tax filing, internal management reporting and strategic planning is simply the rules and the method in which data is summarised and aggregated. The base starting point is identical.

Technology today allows you to move from these reported views with ease, reducing risk, creating transparency and value; allowing for a single data platform for use and access across the enterprise and between both internal and external stakeholders; with financial, tax and operational data centrally managed and sourced. This approach allows for transparency internally and to government. It clearly demonstrates the data gaps and allows corporates and government to work together to create a long-term sustainable tax ecosystem.

Tax technologies are the often neglected, poor cousins of the finance departments when it comes to the allocation of IT and resources. We need to explore the building blocks of how to leverage the investment in technology and create tax value so as to at last deliver on the fintech promises.

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ABOUT MARCUS BOTHA

Marcus is a Director with BDO Tax Services (Pty) Ltd and the Head of Corporate Tax Consulting. He has extensive experience in tax strategy, tax related internal audit, governance and enterprise risk management.

Marcus specialises in providing internal assurance on tax risk to audit committees, boards and management teams. He has assisted various clients with the mitigation of tax risk and assessing the design and effectiveness of internal tax controls in order to provide ultimate internal assurance to both internal and external stakeholder groups.

He has been actively involved in creating best practice in the tax strategy and integrated reporting field in Africa, both in a consulting capacity and in commerce and industry. His main practice area is financial services, with a particular focus on banks and asset managers.



ABOUT TIM DEARDEN

Tim serves as Chief Strategy Officer of Vena Solutions Inc. and served as its Chief Financial Officer. He is responsible for the strategic direction on product roadmaps, all financial and management reporting, financial planning and analysis, as well as investor relations.

Tim is a seasoned finance professional with over 18 years' experience in the financial governance and management industry. He has held a number of positions in a wide range of businesses, starting as an entrepreneur with technology start-ups, to managing IT finance functions at Credit Suisse and Morgan Stanley. He has worked in financial centres and managed teams around the world, from London to New York, Hong Kong and Tokyo.

He holds a BCom degree from the University of Cape Town and is a Chartered Accountant.

VOICES FROM THE COMMUNITY

Is South Africa experiencing a decline in tax morality? Five industry players with varying career histories provide their perspectives on this very important topic, as well as the nature and challenges of tax in practice.



MICHAEL HONIBALL

Professor of Practice in Taxation, University of Johannesburg & Director, Werksmans Attorneys

AREAS OF SPECIALISATION: High-net-worth individuals, offshore trust structures and international corporate tax

MH



KAREN MILLER

Specialist Consultant, Webber Wentzel

AREAS OF SPECIALISATION: International transfer pricing

KM



FRANK MOSUPA

Tax Partner, PwC

AREAS OF SPECIALISATION: Corporate tax and M&A tax

FM



KENT KARRO

Managing Director: Crowe Taxation Cape (Pty) Limited

AREAS OF SPECIALISATION: SA tax system (income tax, VAT, capital gains tax, estate duty, donations tax), exchange control regulations, and tax planning and compliance

KK



CAOILFHIONN VAN DER WALT

International Tax Partner, Regan van Rooy

AREAS OF SPECIALISATION: International tax, focused on Africa inbound & outbound

CvdW

What are the biggest challenges facing you in daily tax practice?

MH The biggest challenge is educating myself so that I can keep my clients fully up to date about tax issues which may impact upon their affairs. A tax advisor must not only understand local tax and exchange control laws, but in cross-border cases must also have in-depth knowledge of the Organisation for Economic Co-Operation and Development (OECD) initiatives, such as Common Reporting Standards (CRS) which impact individuals, and the Base Erosion and Profit Shifting (BEPS) Action Points which impact corporates. A client needs to trust that the tax advisor has the necessary knowledge and that the tax advisor will use such knowledge in the client's best interest. Continuous CPD is therefore essential and is often very time-consuming. My biggest challenge is therefore keeping up to date with the fast-moving international developments in my areas of specialisation.

KM As a transfer pricing specialist, working with clients to ensure they are pricing cross-border transactions in order to be compliant with South Africa's transfer pricing rules in section 31 of the Income Tax Act is always a challenge. Transfer pricing is a grey area and there are no defined right and wrong answers. What is critical, however, is that sufficient support for the pricing adopted is compiled to ensure the best position is being put forward.

I can think of three key areas which impact the advice I provide to clients. The first is around debt funding and how this is supported as being appropriate for the purposes of complying with the transfer pricing rules. The OECD has issued its final guidance on excessive interest deductions contained in Section 4 of the BEPS reports. The Davis Tax Committee has also issued its final guidance in response to the OECD recommendations. What is needed now is certainty from SARS on the path they will take in determining what is considered excessive in terms of debt levels and interest rates applied to debt. Following the change in section 31 to bring thin capitalisation into the transfer pricing rules, there has been no final and definitive guidance from SARS on how they will apply the transfer pricing rules to debt transactions.

This, coupled with many other sections of the Income Tax Act limiting interest deductions, makes these transactions an area of great uncertainty for inbound investment into South Africa.

A notable second area of challenge is what constitutes acceptable comparable data to support cross-border transactions. Unlike many other countries, South Africa does not have formal requirements for non-public companies to file annual statutory accounts, which means such information is not publicly available to source comparable data. This, in addition to the increase in transfer pricing controversy, results in the adequacy of the comparable data used coming under scrutiny and often being disregarded by SARS. It is essential that the groundwork undertaken to support the pricing for supplies of cross-border goods and services within multinational groups provides the best defence available. However, lack of guidance as to what data is acceptable to SARS creates a great deal of uncertainty.

FM Besides long working hours, one of the biggest daily challenges is unpredictable client demands. Although not a daily challenge per se, there are many changes and developments to keep up with in tax law. Despite the hundreds of pages in the relevant tax Act, practice notes, case law and interpretation notes, there are still grey areas about how the tax rules apply to any given situation.

KK Time and fees remain as constant challenges. If a tax practitioner works an eight-hour day and could charge normal rates for all that time, he could reach nirvana.

The truth is that one has to deduct from those eight hours the time spent on maintaining one's level of knowledge of the tax industry. With constant

legislative changes and tax case developments and information published by SARS, many hours a day (on average) are spent on the treadmill just to maintain your current level of knowledge.

Then there is SARS and the non-chargeable time wasted in dealing with inadequately trained staff and trying to obtain for clients what they are entitled to – VAT refunds, tax refunds, responses to requests, reasons for assessments, etc.

Finally there are the clients themselves who omit vital information in regard to their tax affairs. Often due to ignorance but sometimes with a more sinister motive.

CvdW We work mainly in Africa, so the fast-changing pace across the continent is a constant challenge, particularly with regard to in-country case law and precedent.

We also find that the new multilateral instrument (MLI), i.e., the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, is creating new challenges. So far, the MLI has been signed by 11 African countries, including South Africa, Nigeria, and Mauritius, with more expected to sign later this year. This means we can no longer assume that the existing double taxation agreements will apply in the same way.

For signatory countries, this will mean that reference can no longer be made merely to the relevant domestic law and applicable treaty in determining cross-border taxation rights. Now reference must also be made to the MLI itself, the OECD MLI explanatory statement and also to both countries' MLI Template (where they choose to opt in or out of certain provisions). This has created significant uncertainty and, given the complexity, we do not expect it to be resolved quickly.



Much has been written in the media about the decline in South African tax morality. Have you experienced a decline in the willingness to pay tax? Do you find that certain clients fail to disclose information in order to reduce their taxes?

MH Other than historical cases encountered as part of a VDP process, I have not experienced a deliberate failure to disclose information to SARS. Following the recent SVDP, many high-net-worth individuals have fully regularised their tax affairs and are now willing to pay tax on all their income and assets going forward. I have, however, noticed that some taxpayers have become very aware of their overall tax burdens and so increasingly resort to tax structuring to minimise their taxes. Some of them seem to be more open to aggressive tax structuring and sometimes justify this on the basis of the wastage and corruption within Government departments and parastatals. Emigrations are also increasingly being considered as a last resort "tax saving" option by high-net-worth individuals.

KM Most of my clients are large multinational corporates, so the level of tax morality is very high. There is, however, some degree of frustration around the manner in which SARS operates, notably in the event of an audit. Often extensive information is obtained and clients go to extreme lengths to try and ensure SARS gets the complete picture. In certain cases, however, there is a sense that either SARS has not given fair consideration to the information supplied or has ignored substantive parts of it. Clients incur considerable time and management costs obtaining and collating information for SARS and if this is not given fair consideration it can be frustrating for all.

There are occasions where some clients have been reluctant to supply information, especially if that information is held by an offshore entity. Our view as a practice is that it is better to provide all the information you can to support your position as well as possible at the time it is requested. By not supplying information when it is relatively easily obtainable, taxpayers may find themselves in a disadvantageous position later on during the audit, especially when looking to enter into settlement discussions with SARS, or even wanting to rely on that information itself.

FM For as long as people have little confidence that the taxes they pay are spent wisely, they will certainly be hesitant to pay more tax going forward. The above being said, I have not experienced a decline in the willingness to pay tax or deliberate non-disclosure of income and/or clients overstating deductions. In any

event, it is the tax advisor's ethical responsibility to inform clients that they have an obligation to make full disclosure of income and expenditure.

KK One of the main reasons for delays in the payment of tax due is simply lack of funds. The reduced turnover and rising costs in many businesses have created cash crunches which taxpayers are finding difficult to negotiate. There is obviously also an extreme frustration amongst taxpayers who justifiably feel that their hard-earned tax monies have, to put it politely, not been productively used. Has this affected tax morality? I think not to the extent that people surmise. I do not think that a taxpayer, who has until recently been correctly disclosing all his income in his annual tax returns, will suddenly decide to enter into the world of tax evasion. They will scream and shout but those who are ethical and moral will (leaving aside the few mavericks and exceptions) continue to be so.

Having taken a serious interest in tax advisory more than 40 years ago, I have seen a major change in the attitude of taxpayers. In those days, tax planning was simple and amazingly effective. It consisted of non-disclosure. Non-disclosure to family members, accountants and tax advisors and, of course, to SARS (in its then structure). As the capacity of SARS increased and strengthened, this attitude slowly changed. Of course, none of these individuals even considered they were committing a crime and therefore it was only when SARS became wiser and stronger that the prospect of being classified as a criminal concentrated the minds of these offenders.

It is this new consciousness, coupled with the opportunities granted by the various tax and exchange control amnesties over the past 15 years, that has encouraged these previously delinquent taxpayers to seek advice, and to make disclosures of previously undisclosed income and assets (local and foreign). And, if you speak to them now, they will tell you that they sleep much better at night. They no longer have to fear the proverbial "knock at the door".

CvdW We do not see any changes here as our clients are mainly large corporates and all adhere to best tax practice and tax governance. We have, however, noticed the trend anecdotally, but we hope to see improvements in this area, particularly with the new leadership at SARS and in South Africa in general.

What is the nature of your tax practice and what motivated you to take your current position?

MH I have a wide portfolio of both high-net-worth individual and corporate clients. I assist clients with offshore trust structuring, cross-border mergers and acquisitions, exchange controls and the setting up of hedge funds and private equity funds offshore. Most of my clients are not South African tax residents. Werksmans is distinguished by the people, clients and work that it attracts and retains and is therefore an exciting base from which to provide innovative tax advice in these specialist areas.

KM I have been a transfer pricing specialist for over 18 years, both in South Africa and Australia. I have worked in the audit profession, working with clients to ensure they have robust supporting transfer pricing documentation. I have also worked at SARS, leading the transfer pricing team and introducing the transfer pricing questionnaires still used today. Returning to private practice, the opportunity to work with a highly skilled tax controversy team in Webber Wentzel was a great opportunity for me. I have been privileged to be involved in some of South Africa's largest transfer pricing disputes, which have provided the team with excellent experience of negotiating transfer pricing settlements. During my time at the firm, we have also enjoyed some key transfer pricing wins in which no adjustments were finally made by SARS.

FM My tax practice can be quite varied. On any given day, a fair amount of time may be spent working on many different matters, including structuring an acquisition, writing a tax opinion, or giving general tax advice. The intellectual challenge of practising a complex area of the law and providing expert advice that can help clients structure transactions in a tax-efficient manner, were overriding factors in taking up my current position.

CvdW We are a women-only firm focusing on three main areas:

1. Supporting inbound and outbound investment into Africa from the tax, structuring and related (i.e., treasury, foreign exchange, exchange control) perspectives;
2. Optimising net African withholding tax positions, as WHT is often the largest single cost to doing business in Africa;
3. Providing tailor-made technical up-skilling programmes to young professionals in our areas of expertise, namely tax, corporate finance, and company secretarial, in order to accelerate high potential personnel.

We saw a gap in the market for these offerings, and believe we can meaningfully contribute to all three areas. We believe that addressing these areas will not only benefit South Africa but Africa as a whole.

We treasure our uniqueness as a women-only firm. One of our key goals is to continuously support each other to develop and grow, and to consciously provide support to women in the business world in general.

"For as long as people have little confidence that the taxes they pay is spent wisely, they will certainly be hesitant to pay more tax going forward."



SHORT-TERM INSURANCE: DOCUMENTATION FOR VAT PURPOSES



► **TANIA ELS**, elsta@out.co.za

Short-term insurance transactions are arguably the most complicated transactions from a VAT perspective. It is therefore no surprise that SARS has issued a detailed guide on the VAT implications of short-term insurance transactions (VAT 421) and has published rulings to clarify the VAT implications of transactions specific to the industry.

Queries often arise as to the documentation that is required by a VAT registered insured to substantiate the deduction of input tax on insurance transactions, possibly because insureds are unaware of a specific ruling issued by SARS which deals, amongst others, with these documentary requirements. The specific documentary requirements in relation to short-term insurance transactions, as set out in Binding General Ruling (VAT) No. 14 (Issue 2) (BGR14), are explained below.

Policy document being a “tax invoice”

The VAT Act requires that a person must be in possession of a tax invoice to deduct the VAT paid to a supplier as input tax. Insurers have traditionally not issued tax invoices due to the large volume of the transactions processed on a monthly basis, and due to the fact that most monthly premiums are paid by debit order. In BGR14, the Commissioner directed that the policy document will be regarded as a tax invoice, under section 20(7)(a) of the VAT Act, even if it does not contain the words “tax invoice”, “VAT invoice” or “invoice”, provided certain conditions are met.

SARS requires that the policy document must contain a statement explaining that BGR14 regards the policy document as a tax invoice. SARS has provided an example of the wording of such a statement, as follows.

“In terms of Binding General Ruling No. 14, this document constitutes a tax invoice, debit or credit note as contemplated in section 20(7)(a) and 21(5)(a) of the VAT Act.”

In order to serve as a tax invoice, the policy document must also contain the following:

- The name, address and VAT registration number of the insurer.
- The name, address and VAT registration number of the insured.
- A full description of the risks insured, the policy number and the date the policy is issued.
- The premium payable must be specified, either as a VAT inclusive amount with a statement of the VAT rate at which the VAT is included, or the premium amount exclusive of VAT, the VAT amount and the VAT inclusive premium amount.

If the policy document contains all the above information, the insured is entitled to deduct the VAT paid on the premium as input tax based on the policy document. The insured must hold proof that the premiums as specified in the policy document have actually been paid, for example a bank statement indicating the payments made.

Excess payments made to insurer

Excess payments are a common feature of short-term insurance policies. The excess amount is the uninsured portion of a risk covered by an insurer, and will be for the expense of the insured in the event of a claim.

The payment of the excess amount could either be made directly to the supplier of the service, for example the panel beater in the case of a vehicle accident claim, or the excess could be paid to the insurer.

In the scenario where the insured pays the excess directly to the service provider or the third party supplying the goods, the third-party supplier will issue a tax invoice to the insured for the amount of the excess. The insured is then entitled to deduct the VAT on the excess amount based on the third-party supplier's tax invoice.

If the insurer pays the total amount in relation to the claim to the third-party supplier and recovers the excess from the insured, the payment which the insurer receives is not in respect of the supply of goods or services and the insurer does not have to account for output tax. The insured, as a registered vendor, may claim the VAT on the excess amount paid as input tax if the goods or services supplied by the third-party supplier are not zero-rated or exempt from VAT. To enable the insured to deduct the VAT as input tax, the insurer must supply the insured with a document containing the following information:

- The name, address and VAT registration number of the insurer.
- The name, address and VAT registration number of the insured.
- The name and VAT registration number of the third-party supplier.
- A full description of the goods or services supplied by the third-party service provider.
- The date on which the supply was made by the third-party service provider.
- The amount of the excess paid or payable by the insured, reflecting either the VAT amount separately or a statement that the excess amount payable includes VAT and the rate at which VAT is included.

This document will then serve as a tax invoice to enable the insured to deduct the VAT on the excess amount. The deduction will apply if the insured is a registered vendor, the third-party supplier is a registered vendor and both the insured and the insurer obtain and retain the document issued by the insurer.

Documentation to be issued in respect of indemnity payments

A VAT registered insured is required to account for output tax in terms of section 8(8) of the VAT Act on any indemnity payment made by the insurer to the insured, and on any payment made by the insurer to a third party to indemnify the insured under an insurance policy.

An indemnity payment is defined in BGR14 as “a cash payment made by the insurer under an insurance policy to indemnify the insured on the occurrence of the insured event”. Indemnity payments therefore also include payment made to third parties, for example, should an insured be the guilty party in respect of an accident, the insurer will pay the third party on behalf of the insured.

“The Policy document must contain a statement explaining that BGR14 regards the policy document as a tax invoice.”

In order to ensure that the insured meets its VAT obligations in respect of the indemnity payment made by the insurer, BGR 14 requires that the insurer must inform the insured that a potential output tax liability may arise under section 8(8). The insurer is required to comply with this requirement regardless of whether the insured is a vendor or not. Informing the insured can either be made via SMS, email or posted letter.

Conclusion

BGR14 provides guidance on the documentation that has to be provided by a short-term insurer to an insured enabling the insured to be compliant with the VAT Act. It will be to the insured's advantage to keep updated with these requirements to avoid penalties and interest due to non-compliance.



ABOUT TANIA ELS

Tania is the Head of Tax at the OUTsurance Group. She specialises in corporate tax, VAT and transfer pricing. She is a CA(SA) with a Postgraduate Certificate in Advance Taxation (Unisa) and a Diploma in Legislative Drafting (Pretoria). She is currently in the process of completing a master's degree in taxation.

FIVE YEARS OF FAIRNESS

In the five years of its existence, has the Office of the Tax Ombud (OTO) lived up to its promise of promoting fairness in tax administration? We put some questions to Tax Ombud Judge Bernard Ngoepe and share his answers with our readers.

Q The OTO is celebrating its fifth birthday. Congratulations! In these five years, has the OTO been able to achieve its goal of being independent and impartial, standing as it were in the space between SARS and taxpayers?

A The purpose of the OTO is to promote a fair tax administration system. We ensure that taxpayers are treated fairly by SARS, while also encouraging people to pay their due taxes.

Truly speaking, a lot has been done in the last five years. It was a challenge but we believe we have made a huge contribution towards promoting fairness in the process. Well, I wish the office could have been made, structurally, completely independent of SARS as the office is supposed to be some kind of a watchdog over SARS. I would be happy to see the office attain its full independence, financially and structurally. I am quite satisfied that whenever we deal with taxpayer complaints, we are completely impartial. We are neither for SARS nor the taxpayer – we ensure fairness.

Q Tell us about the Office's achievements so far. Are there specific constraints that prevent you from doing even more?

A The Office has worked hard to create confidence in taxpayers. If we look back throughout the years, more than 80% of taxpayer complaints were resolved in favour of taxpayers. This is a reflection of the commitment of our service. It is true that a lot still has to be done to continuously help build trust and confidence in the tax administration system. I believe we have helped nurture a sense of tax compliance on the part of taxpayers. That is what happens when they feel that whenever they have complaints, they are being attended to. The ultimate

objective thereof is to help tax authorities collect as much tax as possible, but in a fair manner. I believe we have made a meaningful contribution.

As for the constraints, there are indeed a few but unimportant. As I have already said, we are not yet financially fully independent. The structure or form of the institute also needs to be looked at. We are also concerned that the office is not able to initiate review into what appear to be systemic problems with tax collection by SARS. We must first get the Minister's prior approval. I should also say that sufficient funding is required to deal with the increasing complaints volumes as more taxpayers and tax professionals become aware of the OTO, with increasing confidence that their complaints will be addressed impartially and expeditiously.


Q We have heard of changes to the organisational model of the OTO. Can you tell us more about these?

A We engaged the Government Technical Advisory Centre (GTAC) for the development of a business case for a cost-effective independent organisational model for the OTO. The work included an analysis of the existing mandate, service delivery, operational and funding models of the OTO and challenges that should be overcome by OTO. A month or so ago I wrote to the Minister for an audience with me on this point; I am still waiting to hear from him.

Q Are there any other plans for the future of the OTO that you can share with us?

A One of our plans is to seriously look into having provincial footprints. After all, the complaints we receive come from all over the country. I hope for the country to have an effective OTO which would compare favourably with similar offices in the world.





"I am quite satisfied that whenever we deal with taxpayer complaints, we are completely impartial. We are neither for SARS nor the taxpayer – we ensure fairness."

Q On a personal note: You moved from being a judge (Judge President of a High Court and acting Supreme Court judge) into the world of tax and specifically tax administration. How have you experienced the tax world so far?

A It is a very specialised and technical field. Yet it is imperative that at the very least people, at least to some extent, understand how the system works. Tax is something which people sometimes get emotional about; nobody enjoys paying tax. Yet we all have to understand it must be collected. In the tax world, sometimes emotions run high. The tax world is therefore a challenging environment.



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Q&A

The Tax Helpline service is available exclusively to SAIT members. Log your tax-related technical queries via www.thesait.org.za



We present a few tax-related questions from the community and answers from our tax experts

Q A person passed away before 1 March 2016 and a substantial amount of interest and rental income received was awarded to the heir of the estate. The estate was finalised during the 2018 tax year. When is the income distributed to the heir taxable?

The matter is dealt with in section 25(1) of the Income Tax Act – of course, as it read before 1 March 2016. For ease of reference we copied it here:

“Any income received by or accrued to or in favour of any person in his capacity as the executor of the estate of a deceased person, and any amount so received or accrued which would have been income in the hands of the deceased person had it been received by or accrued to or in favour of such deceased person during his lifetime, shall, to the extent to which such income or amount has been derived for the immediate or future benefit of any ascertained heir or legatee of such deceased person, be deemed to be income received by or accrued to such heir or legatee, and shall, to the extent to which such income or amount is not so derived, be deemed to be income of the estate of such deceased person.”

The 2015 Explanatory Memorandum explained the purpose of the “old” section 25 as follows:

“Section 25 makes provision for any income received or accrued and expenses incurred by the deceased estate for the benefit of ascertained heirs and legatees to be deemed to be income received or accrued or expenses incurred by those heirs and legatees.”

“The result of these provisions is that the deceased estate is treated as a conduit in respect of the income received by it if it has been derived for the immediate or future benefit of an ascertained heir or legatee.”

It is true that the money would generally only be paid to the heirs when the estate fell open, but the moment an amount (of income) “has been derived for the immediate or future benefit of any ascertained heir or legatee” of the deceased person, that amount is then “deemed to be income ... accrued to such heir or legatee”.

Q Is an employer allowed to claim the input VAT on reimbursed cell phone costs if the cell phone bill is in the employee's name? What happens in the instance of subsistence costs and meals when travelling away on business and the employee is reimbursed? Can the input VAT be claimed?

The principle here is that the services must have been “acquired by the vendor” – see the definition of “input tax” in section 1(1) of the VAT Act. This concept is not defined and therefore takes its normal meaning.

“A vendor, is entitled to make a deduction of input tax on expenses incurred in the course or furtherance of his, her or its enterprise even if the tax invoice is issued in the name of his employee, provided that:

- *the registered vendor pays for the cost on the account or, alternatively, reimburse the employee;*
- *the registered vendor retains the tax invoice which was issued to the employee; and*
- *the registered vendor maintains sufficient records to adequately identify the nature of the costs incurred.*

The employee acts in the capacity of agent for the vendor in terms of section 54(2).”

Note, the above is an extract from an old SARS VAT Ruling, but essentially the input tax can only be deducted in the hands of the person who acquired the services as principal.

SARS has published the following guidelines as to the difference between an agent and a principal (see Interpretation Note No 42, para 4.2): A principal will become the owner of the goods or services acquired on his behalf by the agent; the principal may alter the nature or value of the supply; the total sales represent the principal's turnover and the mark-up is his profit, while an agent normally earns a commission or fee and the principal declares the gross sales as income for income tax purposes.

The vendor bears the onus to prove that the services are supplied to the vendor (and not to the employee). As the contract, from the information provided, is in the name of the employee, the services are more likely than not acquired by the employee and not by the vendor.

According to section 17(2)(a) of the VAT Act and notwithstanding anything in that Act to the contrary, a vendor is not entitled to deduct from the sum of the amounts of output tax any amount of input tax in respect of goods or services acquired by such vendor to the extent that such goods or services are acquired for the purposes of entertainment. There are a number, nine in all, of provisos to this denial – we will deal with the specific one below. Note that the word “entertainment” is defined in the Act and it means the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by the vendor.

Section 17(2)(a) does not apply where “(i) such goods or services are acquired by the vendor for the consumption or enjoyment by that vendor (including, where the vendor is a partnership, a member of such partnership), an employee, office holder of such vendor, or a self-employed natural person in respect of a meal, refreshment or accommodation, in respect of any night that such vendor or member is by reason of the vendor’s enterprise or, in the case of such employee, office holder or self-employed natural person, he or she is by reason of the duties of his or her employment, office or contractual relationship, obliged to spend away from his or her usual place of residence and from his or her usual working-place.”

Q Where a South African company pays an employee who qualifies as a non-resident in terms of South African legislation and deducts PAYE, is the taxpayer exempt from local tax if the ship on which he travels is a foreign vessel?

Generally, as far as employment on a ship is concerned, the source of the services is not the determining factor. You however, need more information before you can correctly advise your client or the parties here.

We accept that the individual, the employee concerned, is not ordinarily resident in the Republic of South Africa or is a person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation.

The resident status of the individual may however not be important – unlikely in your scenario. This is because it is common, where treaty countries are involved, for “remuneration derived in respect of an employment exercised aboard a ship ... operated in international traffic, or aboard a boat engaged in inland waterways transport ... to be taxed in the Contracting State in which the place of effective management of the enterprise is situated.”

The currency of payment, or the place of payment, is also not relevant to determine the tax consequences of the amount.

You will notice that the exemption from normal tax in section 10(1)(o)(i) of the South African Income Tax Act depends on how the ship is engaged – either in the international transportation for reward of passengers or goods; or in prospecting, exploration

or mining from the seabed outside the Republic. The individual must then be employed as an officer or crew member solely for purposes of ‘passage’. See interpretation note 34, issue 2, for the practice generally prevailing in this regard. If the individual is an officer or crew member of a South African ship, section 10(1)(o)(iA) will apply, if the ship is engaged in international shipping (a defined term) or in fishing outside the Republic. See interpretation note 96 for the practice generally prevailing in this regard. If the exemption applies, there will be no employees’ tax to be withheld by the South African employer.

With regard to both these exemptions, the practice generally prevailing is that the “potential for an exemption under section 10(1)(o)(i) (or (iA)) does not automatically waive the obligation of an employer to deduct or withhold employees’ tax under the Fourth Schedule to the South African Income Tax Act. An employer that is satisfied that the provisions of section 10(1)(o)(i) (or (iA)) will apply in a particular case may, however, elect not to deduct or withhold employees’ tax in a particular case.”

Q A client has to invoice for professional services rendered to a client in Australia. Does he charge VAT?

The relevant law is found in section 11(2) of the VAT Act. Services physically rendered in the Republic to a person who is not a resident of the Republic can only be zero-rated if section 11(2)(l) (or section 11(2)(k), unlikely in this instance) applies and the required documents to prove this have been obtained (section 11(3)). Please refer to Interpretation Note 31 (Issue 3) regarding the documents that are required in order to substantiate the entitlement to apply the zero rate.

If we accept that services are not supplied directly in connection with land or any improvement thereto situated inside the Republic, there are two issues which must be considered.

The recipient must be “a person who is not a resident of the Republic” (of South Africa). The term “resident” is a defined concept and basically requires that the company based in Australia must not carry on in the Republic any enterprise or other activity and from a fixed or permanent place in the Republic relating to such enterprise or other activity. Our guidance assumes that the “client” is not a resident of and does not carry on an activity in the Republic. If this assumption is not correct the guidance may not be appropriate.

The second issue then is that the said person (the “client”) or any other person must not be in the Republic at the time the services are rendered. In this instance, the “client” must not be present in the Republic at the time the services are rendered (section 11(2)(l)(iii)) for the rate of 0% to apply. If the non-resident is present in the Republic at the time, the service will be standard rated (section 7(1)(a)).

For section 11(2)(l) purposes the place of supply is not relevant. Section 11(2)(k) may apply if the services are rendered outside the Republic – also a rate of 0%.

SAIT: DEPARTMENTS AT YOUR DISPOSAL

MEMBERSHIP

Our Membership Department is dedicated to exactly that - members.

As a professional body we understand that we are comprised of a number of components that make up the whole, and no component is more important than the people who make up our membership base.

The Membership Department is made up of four sub-departments, each with a specific function to assist members effectively. Members also have dedicated membership consultants to assist them with payments, queries and compliance.

Some of the SAIT benefits that the membership team can assist you with include:

➤ **Tax Practitioner Registration:** Our membership provides you with the means to easily obtain a "practitioner number" from SARS within 48 hours. We even have a dedicated eFiling specialist who will help you through the process.

➤ **Tax Designation:** Our membership is recognised by the South African Qualifications Authority (SAQA) so that your tax expertise can be fully recognised by your peers, clients and the public at large.

➤ Access to the **SAIT Professional Indemnity Programme** which provides members with general professional indemnity insurance cover up to R5 million

➤ **Continuous Professional Development (CPD):** When you join SAIT, you obtain discounted access to our regular offering of seminars, webinars and large scale events, including discounted subscription offerings.

➤ **Tax Helpline:** SAIT membership gives you access to an exclusive digital helpline for your tax related queries.

➤ **Newsletter and TaxTalk Magazine:** SAIT keeps you informed of the latest news from Treasury, SARS and other sources via the TaxTalk Weekly newsletter. Members also receive the bi-monthly TaxTalk magazine.

➤ **Government stakeholder management:** SAIT makes submissions to, and meets with, government stakeholders in terms of tax legislation, interpretation and operations on behalf of members.

➤ SAIT also offers **Affiliate Membership** at discounted rates for tax specialists who are already in good-standing with another recognised controlling body.

DID YOU KNOW?

OUR MEMBERSHIP
DEPARTMENT ASSISTED OUR
MEMBERS WITH

9142 CALLS

SINCE JANUARY 2018

To contact our Membership department directly, email info@thesait.org.za

EDUCATION

At SAIT, we believe that the concept of lifelong learning is a powerful one.

The SAIT Education Department offers two qualifications:

➤ **Tax Professional (NQF8)**

The Occupational Certificate Tax Professional is a specialised entry into SAIT membership on Advisor Level with the designation of Tax Advisor (SA). The qualification allows candidates automatic entry into SAIT membership and QCTO Tax Professional Certificate (NQF8). Candidates are also able to register as Tax Practitioners with SARS.

➤ **Tax Technician (NQF6)**

This qualification is recognised by SAIT for full membership and professional status. The qualification leads to the designation Tax Technician (SA).

Since the launch of the Tax Technician and Tax Professional qualifications in 2015, **154** students have successfully completed their chosen courses.

Currently, there are over **773** students in the learnership programme

DID YOU KNOW?

THE EDUCATION DEPARTMENT
AT SAIT HOSTS AN ANNUAL
TAX STUDENT CONFERENCE.
THE 2018 TAX STUDENT
CONFERENCE WELCOMED

281 LEARNERS IN
JOHANNESBURG
AND
195 LEARNERS IN
CAPE TOWN

TECHNICAL

The Technical Department is a service department to members and to internal staff.

As a SAIT member you have exclusive access to the Tax Helpline. The helpline is manned by a dedicated team of tax specialists who are available to guide you on tax legislation, SARS operational and eFiling/e@syfile queries. The consultants strive to respond to your queries within 48 business hours.

The SAIT Technical Team also represents SAIT members at all SARS Regional and National meetings. Members are able to submit their operational issues to the team for discussion with SARS management.

The team coordinates working groups and committees in specialised fields who combine expertise to provide valuable comments and input on South African tax legislation; thereby shaping how future tax laws will affect you.

DID YOU KNOW?

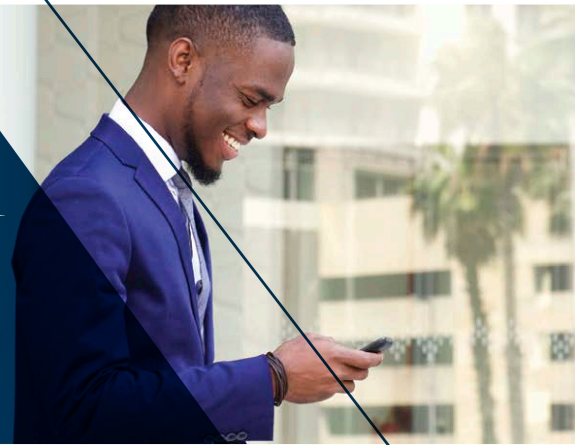
BETWEEN JANUARY & JULY 2018,
THE TAX HELPLINE RECEIVED

2050 QUERIES

OUR 6 DEDICATED CONSULTANTS
RESOLVED **94.8%** OF THOSE
QUERIES IN UNDER **48 HOURS**.

Case Law

Wrap-up



► **KELSEY JAYES, LEBITSI NTOELE, NATASHA WILKINSON & KYERA MICHAELIDES,**
Tax Consulting South Africa

Case law summaries covering accounting standards that should be applied in determining the diminution value of closing stock, SARS' obligation to adhere to the provisions contained in the Tax Administration Act, and the valuation of preference shares for capital gains tax purposes.

XYZ (PTY) LTD v CSARS TCIT 13626

Issue

This matter addresses the following issues:

1. Whether the taxpayer (XYZ (Pty) Ltd) was entitled to diminish the value of its closing stock in terms of section 22(1) of the Income Tax Act; and
2. Whether such diminution was a just and reasonable representation of the diminution amount.

Facts

The taxpayer's main business is to sell machinery and equipment imported from Sweden, where its parent company operates from. The machinery and equipment is used primarily in the mining industry in South Africa. Due to the nature of the taxpayer's business, the taxpayer held many thousands of items of equipment, spare parts and consumables (trading stock) at the end of each relevant year.

The taxpayer contended that there was, in terms of section 22(1)(a) of the Act, a diminution amount of R30 191 000 in respect

of its 2008 closing stock, and a diminution amount of R33 402 000 in respect of its 2009 closing stock. SARS contended that there was factually no diminution value at all and hence the cost price of such stock should apply.

SARS issued additional assessments to the taxpayer which stated that "there was no diminishing in value at year end for a deduction to be claimed as a result of damage, deterioration, change of fashion, decrease in the market value in respect of trading stock" and consequently, added the disputed amounts back. In addition, SARS levied interest in terms of section 89quat of the Act in respect of the disputed amounts. The taxpayer objected to the additional assessment and SARS disallowed the objection. The taxpayer therefore appealed the disallowance.

The taxpayer's argument to SARS was that it is entitled to estimate the diminution of the value of its stock by invoking section 22(1)(a) of the Act and that it did so in terms of its fixed internal policy, which, according to the taxpayer, is in line with International Accounting Standards 2 (IAS2) and Inventories Financial Reporting Accounting Standard (IFRS2) and is therefore just and reasonable. This policy states that the taxpayer is entitled



to write down the value of its closing stock by 50% if such closing stock has not been sold in the previous 12 months, and by 100% if not sold in the previous 24 months. The policy further permits the taxpayer to write down its overstock by 50%. However, SARS argued that such percentages are arbitrary and contained no basis or justification.

Fundamental to the entire dispute was the application and interpretation of section 22(1)(a) of the Income Tax Act and whether the net realisable value of the taxpayer's closing stock may and should, where it is lower than the cost price of such stock, be accepted as representing the value of trading stock held and not disposed of at the end of the relevant years.

Outcome

The taxpayer's appeal was successful and the Commissioner's additional assessments for the 2008 and 2009 tax years were set aside.

Core Reasoning

The purpose of section 22(1)(a) of the Act is to provide an equitable balance which ensures that a taxpayer need not pay tax in the year of assessment on more than what the stock can be expected to realise for that taxpayer.

In this regard, the court held that the net realisable value as set out in the IAS2 is an appropriate method by which to determine the actual value of trading stock in the hands of the taxpayer at the end of the relevant year of assessment. The net realisable value of the taxpayer's closing stock for the 2008 and 2009 tax years, calculated in accordance with IAS2, IFRS and the policy, may and should, where it is lower than the cost price of such trading stock, be accepted as representing the value of trading stock held and not disposed of by the taxpayer at the end of the relevant years for purposes of section 22(1)(a).

It could not have been the intention of the legislature to require a trader to assess each individual item of closing stock. If this was the case, then such a requirement could only be achieved in respect of traders with a small number of trading stock.

The court further held that section 22(1)(a) of the Act is considered as a timing provision and not a deduction provision.

Takeaway

This case reiterates the notion that appropriate accounting standards should be applied by taxpayers in determining the diminution value of closing stock. There is no set method to determine the net realisable value of trading stock and this is an estimation to be made by the taxpayer by taking into account certain relevant factors, such as trading history.

This begs the question of how far taxpayers will be allowed to go when determining the net realisable value of their closing stock and whether hard and fast rules will ever be laid down by the courts in this regard.

Another aspect of the case to consider is the court's finding that section 22(1)(a) is a timing provision and not a deduction provision. This is particularly interesting because section 11(e) of the Act makes provision for the deduction of an amount by which the value of machinery, plant, implements, utensils and articles has diminished by reason of wear and tear or depreciation during the year of assessment.

MR X v CSARS ITC 13726

Issues

The court addressed the following issues in this matter:

- Whether the audit conducted prior to the additional assessment is valid;
- Whether the subsequent additional assessment is valid; and
- Whether the lump sum payment received by the appellant at the termination of his employment was a "severance benefit" as defined in the Income Tax Act.

Facts

Mr X, the appellant taxpayer in the matter, had been the chief executive officer of a company for just over 16 years, when his employment contract with the company ended in 2012 and the company paid him R7 066 530 as an amount equal to a severance package calculated in accordance with its retrenchment policies. The amount was declared and described as a "lump sum payment for separation package" in his 2012 income tax return.

SARS disputed the appellant's treatment of the lump sum payment he had received in his 2012 income tax returns. SARS alleged that the appellant had been dismissed and relieved of his duties in terms of clause 14.2 of his employment contract and therefore should declare the lump sum payment he received as income in his tax return. SARS further argued that the appellant had failed to provide sufficient proof of the retrenchment by way of documentation and an IRP5 form. ►



- SARS accordingly issued additional assessments following audits having been conducted.

The appellant informed SARS in writing that he was unable to obtain the requested IRP5 certificate from his former employer due to an ongoing dispute regarding his retrenchment.

A further request for information was made to the appellant on 17 July 2013. Thereafter the appellant was advised that SARS had disallowed his objection based on the lack of response to its queries of 6 May 2013 and 17 July 2013.

The appellant therefore lodged the appeal under discussion.

Outcome

The appeal was upheld by the court, resulting in SARS' entire 2012 additional assessment in respect of the appellant being set aside.

The interest calculated in respect of the assessment was remitted. SARS was ordered to pay the appellant's costs of the appeal.

Core Reasoning

In its ruling, the court considered sections 40 and 42 of the Tax Administration Act. Section 40 of the Tax Administration Act allows SARS to select a person for inspection, verification or audit based on any consideration relevant for the proper administration of a tax Act, including on a random or a risk assessment basis.

Section 42(1) of the Tax Administration Act states that a SARS official involved in or responsible for an audit under the Tax Administration Act, must provide the taxpayer with a report indicating the stage of completion of the audit, in the form and in the manner as may be prescribed by the Commissioner by public notice.

Section 42(2) of the Tax Administration Act states that once the audit or criminal investigation has been concluded and it was inconclusive, SARS must inform the taxpayer of this within 21 business days. Alternatively, if the audit identified potential adjustments of a material nature, SARS must within 21 business

days, or longer depending on the complexities of the audit, provide the taxpayer with a document containing the outcome of the audit, including the grounds for the proposed assessment or decision referred to in section 104(2) of the Tax Administration Act.

Section 33 of the Constitution providing for "the protection of the right to administrative action that is lawful, reasonable and fair", was also considered by the Tax Court in its decision.

The appellant stated that he had never heard of or been informed of the SARS' intention to conduct an audit into his tax affairs prior to the "Statement for Grounds of Assessment" provided for in its Rule 31.

On this basis, the Tax Court held that "SARS was not permitted to rely on a procedurally flawed audit conducted without the taxpayer's knowledge as a new ground of assessment in its Rule 31 statement, as it would violate the principle of legality."

The Tax Court stated that an additional assessment constitutes administrative action as contemplated in section 33 of the Constitution, therefore, "an assessment that is procedurally flawed due to a lack of reasons or failure to give reasons, is inconsistent with the principle of legality."

Accordingly, the Tax Court found that SARS breached the principle of legality in that it failed to comply with the provisions contained in section 42(1) of the Tax Administration Act by failing to inform the appellant of the audit or provide him with written progress of the completion of the audit into his affairs.

SARS infringed on the provisions contained in section 42(2)(b) of the Tax Administration Act as it failed to provide the appellant with the right to reply to issues or queries that arose during its inspection of his tax affairs.

The court therefore held that SARS' failure to comply with the provisions contained in sections 40 and 42 of the Tax Administration Act amounted to a contravention of the Constitution and the principle of legality. The additional assessments issued without notice were consequently set aside and held to be invalid.

Takeaway

This decision highlights the court's view on SARS' obligation to adhere to the provisions contained in the Tax Administration Act as meticulously as a taxpayer is required to when assessing a taxpayer's returns.

The court emphasised that the decisions taken by SARS amounted to administrative actions as contemplated in the Constitution. SARS is therefore required to comply with the provisions of the applicable Act and be cautious in the application of its provision. Failure to do so would therefore amount to a contravention of section 33 of the Constitution and the principle of legality.

CSARS v Deceased Estate Y

Issue

Whether the holder of the deceased's preference shares converts these shares into ordinary shares without an amendment to the Memorandum and Articles of Association (the company documents), which required the written approval of 75% of the holders of each class of shares in the issued share capital of the company.

Facts

This matter involves the valuation of preference shares for capital gains tax purposes. In that SARS was required, in terms of paragraph 40 read with paragraph 31(3) of the Eighth Schedule to the Income Tax Act, to decide on the capital gains resulting from the deemed disposal of preference shares. The preference shares were held by a deceased natural person and formed part of the share capital of a company.

Paragraph 40(1) provides that a "deceased person is treated as having disposed of his/her assets ... for an amount received or accrued equal to the market value of those shares at the date of the person's death".

As the company is not listed on a recognised exchange, paragraph 31(3) stipulates that the market value must be calculated according to the price that could have been obtained upon the sale of the shares between a willing buyer and willing seller dealing at arm's length.

The respondent (being the executors of the deceased's estate) contended that the value of the preference shares must be determined on the basis that the deceased was precluded from converting these shares to ordinary shares without obtaining the necessary approval. The respondent further contended that if the deceased's preference shares were converted to ordinary shares, the rights attaching to the existing ordinary shares would be varied in consequence of the conversion. This would constitute a drastic drop in the value of those shares, creating the required approval.

The deceased enjoyed sufficient voting power to ensure a conversion of the preference shares to ordinary shares. The balance of the voting power would not be changed nor would there be any alteration of the rights, privileges and conditions attaching to the ordinary shares as a class.

Despite the above, SARS valued the preference shares at a market value of R563 376 418 for the purposes of calculating capital gains tax. The respondent indicated that the 112 000 per cent redeemable preference shares were worth R1 each. This resulted in the respondent placing a value on the shares, as at the date of the deceased's death, of R112 000 (being the par value of the shares). The respondent further contended that the shares could not be converted to ordinary shares as the company documents precluded the deceased from doing so, based on their wording.

SARS, in its appeal documents, indicated that the nominal value of the shares (R112 000) does not reflect the market value of the shares. The basis for SARS' contention is that the voting rights attached to the shares entitled the deceased to convert the shares into ordinary shares.

The respondent, on the other hand, submitted that special conditions in the company documents precluded the deceased from converting the shares to ordinary shares without the vote being passed by 75% of the ordinary shareholders.

Outcome

The Supreme Court of Appeal agreed with SARS that the wording of the company documents was sufficiently clear to entitle the deceased, on the date of his death, to convert the shares to ordinary shares; resulting in the shares being valued for purposes of paragraph 40 read with paragraph 31(3) of the Eighth Schedule to the Income Tax Act.

On a proper reading of the wording of the company documents, the court held that any class of shares, by special resolution, can be converted from ordinary shares to preference shares. For this reason, the respondent's defence is not successful as the deceased's voting rights would have enabled the deceased to convert the shares into preference shares at the time of death.

In determining the meaning to be given to the company documents, the court held that consideration must be given to the language used in light of the ordinary rules of grammar and that the wording in no way supported the arguments raised by the respondent.

Takeaway

This case serves as a word of caution to taxpayers who seek to minimise tax consequences where, on a proper reading of the company documents (or any other supporting documents relied upon by a taxpayer), the wording is clear and does not support same.

BINDING

RULINGS

► RUAN BOTHA & TENIELLE PANTHER, Tax Consulting South Africa

We cover the tax consequences of the settlement of a loan, the transfer of units, donations to a special trust and relief from the double taxation of interest.

BINDING PRIVATE RULING 304

Debt reduction and subsequent liquidation of debtor

Issue

The tax consequences of the settlement of a loan by way of set-off from the outstanding subscription price of a new issue of additional shares and the subsequent liquidation of the issuer.

Facts

The applicant is a resident company, and the shareholding is divided between the co-applicant (majority shareholder of 74% in the company); Trusts A, B and C; and Companies D and E (minority shareholders of 26% in the company).

The applicant and the co-applicant established an unincorporated mining and production joint venture (JV), in which the applicant holds 26% of the undivided shares in the assets. The co-applicant advanced money to the applicant to enable the applicant to meet its obligations towards the JV.

In terms of section 36 of the Income Tax Act, the applicant has accumulated a significant assessed loss and unredeemed capital expenditure balance. The applicant and the

co-applicant want to dispose of their respective interests in the assets of the JV to a non-connected third party. The sales price is less than 10% of the total loan balance owing to the co-applicant.

Once the mine is disposed of, the applicant will have no assets except for the disposal proceeds, and the shareholders wish to subsequently liquidate the applicant company.

The transaction process is as follows:

1. The interest accrued on the loan amount will be waived by the co-applicant.
2. The applicant will receive its share of the sale proceeds from the disposal of the assets of the JV, put aside a portion of the proceeds for the repurchase of the minority shareholder's shares and use the remaining portion to repay part of the principal debt owing to the co-applicant.
3. The co-applicant will subscribe for ordinary shares of the applicant for a subscription consideration equal to the applicant's principal debt owing to the co-applicant after the repayment of the sale proceeds and waiver of the capitalised interest.
4. The subscription consideration owing by the co-applicant to the applicant will be settled by way of set-off against the remaining principal debt owing by the applicant to the co-applicant on loan account.

5. The parties will enter into a share buy-back agreement whereby the minority shareholders will repurchase the applicant's shares.
6. The applicant will commence liquidation steps.

Ruling

The ruling made in connection with the proposed transaction is as follows:

- The payment of the share subscription price by way of set-off against the co-applicant's loan will qualify as expenditure actually incurred for the acquisition of the applicant's ordinary shares for purposes of paragraph 20(1)(a) of the Eighth Schedule to the Income Tax Act.
- The fully paid subscription price for the applicant's shares will qualify as "contributed tax capital" as defined in section 1(1) of the Income Tax Act.
- The payment by the applicant to the co-applicant in settlement of its loan owing to the co-applicant by way of set-off against its subscription claim, will be regarded as consideration for the reduction of the debt as contemplated in section 19 of the Income Tax Act and paragraph 12A of the Eighth Schedule to that Act.
- Pursuant to the interest levied in respect of the loan by the co-applicant to the applicant being irrecoverable, the amount of interest claim against the applicant written-off by the co-applicant will be an amount included in the applicant's income by virtue of section 19 read with section 8(4)(a) of the Income Tax Act. The co-applicant will be entitled to a deduction of the amount of interest which will become irrecoverable under section 24J(4A)(a) of that Act.
- The amount of the proceeds received by the minority shareholders that exceeds the subscription price paid for the acquisition of the shares will constitute a "dividend" as defined in section 1(1) of the Income Tax Act. Dividends received by trusts A, B and C will be subject to dividends tax at the rate of 20%. Dividends received by Companies D and E will be exempt under section 64F(1)(a) of that Act.

BINDING PRIVATE RULING 305

Registration of units in the name of beneficial owners

Issue

This ruling determines the consequences of the transfer of units in an equity fund registered in the name of a nominee for the beneficial owner.

Facts

There are three different parties to the agreement: the applicant and co-applicant who are married and tax residents, and the co-applicant children, who are all major residents.

In terms of the transaction, the applicant and co-applicant acquired 3000 units in an off-shore global equity fund. It was further decided that the children should also invest in the fund

using money held in off-shore bank accounts in the children's names.

The rules of the fund did not permit minors to purchase fund units in their own names and it was decided, due to the status of the minor children, that the units were to be purchased by the applicant and co-applicant and registered in their name. The children would, however, be registered as the beneficial owners of the units.

The applicant and co-applicant purchased 3 600 units for each of the children and each held half of the units on behalf of the children, who were recorded as the beneficial owners of the units with Fund X.

The units held by the co-applicant on behalf of the children were transferred to the applicant, whilst the children remained the beneficial owners of the units. At the same time 1400 of the co-applicant's own units were registered in the applicant's name, whilst the co-applicant remained the beneficial owner of those units.

In terms of the ruling, the applicant intends to: have all of the units that are held in her name in respect of the children registered in their names; and have the 1 400 units registered in her name in respect of the co-applicant registered in the name of the co-applicant.

Ruling

The ruling made in connection with the proposed transaction is as follows:

- The transfer of the units from the applicant to the co-applicant will not constitute a disposal of an asset as contemplated in paragraph 2 of the Eighth Schedule to the Income Tax Act.
- Section 54 of the Income Tax Act will not apply to the transfer of those units.
- The transfer of the units from the applicant to the children will not constitute a disposal of assets as contemplated in paragraph 2 of the Eighth Schedule.
- Section 54 will not apply to the transfer of those units.
- The base cost of the units held by the children is equal to the original purchase price of the units at the time of their acquisition.

BINDING PRIVATE RULING 306

Tax consequences of a donation to a special trust in terms of the Income Tax Act

Issue

The determination of the donations tax consequences of a cash transfer which is made to a special trust.

BINDING PRIVATE RULING 307

Relief from the double taxation of interest in terms of the Convention between the Government of the Republic of South Africa and the Government of the Federative Republic of Brazil

Issue

The determination of the country that has the taxing right in respect of interest income on bonds issued in the government of a contracting state and paid to a resident of the other contracting state to a double taxation agreement.

Facts

The applicant is a South African resident company that has received interest income in the Republic of South Africa on bonds that have been issued by the Federative Republic of Brazil ("the Brazilian Government").

The proposed transaction is for trades made by the applicant in respect of bonds issued by the Brazilian Government and which will be executed through one of the following methods of acquisition:

1. An agreement with international counterparties in terms of which the issued bonds will be acquired from the counterparties and resold to the counterparties. The price to be paid by the applicant will be "manufactured payments" which will be calculated with reference to the interest expected to be received by the applicant for the issued bonds; or
2. The acquisition of bonds in the market without entering into any associated agreements referred to in paragraph 1 above.

Ruling

Should the first method, identified in paragraph 1, be selected, the applicant will be obliged to recognise the bonds at fair value in profit or loss in terms of the International Financial Reporting Standard ("IFRS") 9 and section 24JB(2) of the Income Tax Act will be applicable.

The ruling is valid for a period of 5 years, from 25 May 2018.

Facts

The applicant is a South African resident individual who suffers from the early onset of a debilitating malady known as dementia. The applicant is still lucid and does possess the necessary contractual capacity. The applicant created and registered a special trust, of which the applicant is the primary beneficiary and her descendants the secondary beneficiaries. The rights of primary and secondary beneficiaries to receive income or assets from the special trust are subject to the trustees exercising their discretion. In respect of the secondary trustees, this discretion may only be exercised upon the passing of the primary beneficiary. The special trust was created solely for purposes of providing for the applicant's well-being and upkeep in the event of becoming debilitated by the malady.

The proposed transaction would be a transfer of a cash amount to the special trust. The cash amount being transferred is not representative of the applicant's entire estate.

Ruling

The ruling is based on the interpretation and application of sections 54 and 55 of the Income Tax Act.

SARS has confirmed that the proposed transaction will not be considered as a donation in terms of sections 54 and 55, respectively. The transaction will accordingly not be subject to donations tax.

The ruling is valid for a period of three years, from 21 February 2018.

S A T A X D I R E C T O R Y

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NATIONAL ACCOUNTING PRACTICES



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Kubashni provides clients with tax opinions on various tax matters, primarily specialising in corporate restructuring. She is intricately involved in the dispute resolution process between taxpayers & SARS which includes the submission of objections & appeals as well as regularly attending ADR hearings on the client's behalf. She assists with the preparation of transfer pricing policy documentation, obtaining of advanced tax rulings & frequently compiles tax-related articles for public distribution.



ALEXA MULLER
Tax Specialist

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Alexa Muller provides tax advice to clients on diverse matters – including South African & cross-border corporate restructures & trust & estate planning for individuals. She assists clients with advance tax ruling applications, voluntary disclosure programme applications as well as exchange control compliance.



TRUDIE ROHLANDT
Partner: Tax

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Trudie Rohlandt has been heading up the Tax Department at PKF Octagon since 2014 with a demonstrated history of working across various industries. She is skilled in tax advisory, international tax, corporate tax, high-net-worth individuals, indirect taxes, tax compliance, dispute resolution & voluntary disclosure programme. Trudie completed her MCom (Tax) in 2011. The topic of her thesis was on the Royalty Act, 'An evaluation of whether there is a future for the Mineral & Petroleum Resources Royalty Act in South'.



VELI NTOMBELA
Partner: Tax

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With over 27 years of experience & as the current Head of Tax, Veli has brought positive changes in the Tax Division within the organisation. Veli is a seasoned tax specialist with an in-depth understanding of all aspects of corporate tax advisory, including direct & indirect taxes. His clients include private and state-owned companies. Veli is also an admitted advocate of the High Court of South Africa.



KHANYISA CINGO-NGANDU
Tax Director

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Khanyisa has over 9 years of experience in tax. She specialises in corporate tax advisory, taxation of REITs, corporate restructuring & tax digitalisation. In her capacity as a Tax Director, Khanyisa has been pushing forth through new & innovative ideas. She has made a great impact in the marketplace through the development of a number of useful tools like the FATCA reporting tool & the Value-Added-Tax analyser. The Value-Added-Tax analyser enables clients to easily analyse enormous amount of data for VAT compliance prior to submission of VAT returns to SARS.



AZWINNDINI MAGADANI
Tax Director

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Azwinndini has over 14 year experience in the tax consulting & auditing environment. He specialises in corporate tax advisory (including M&A), tax audits, tax due diligence & tax dispute resolutions. His knowledge & experience has proven to be invaluable to our wide range of clients within private & public sectors. One of the key roles that helped establish him as a tax practitioner was his tenure as senior tax auditor for SARS.

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INDEPENDENT TAX PRACTICES

KEY

STANDARD TAX OFFERINGS

■ ITR12

■ ITR14

■ VAT201

■ EMP201

■ OPINION WORK

■ SARS DISPUTES



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FinApex strives to provide an accurate & timely record of all your taxation & other financial transactions. FinApex promises that our clients will be aware of all the necessary compliance guidelines during these transactions. FinApex has the ability to bring a comprehensive knowledge of the financial sector, which changes from time to time.

RANKING OF STANDARD TAX OFFERINGS:



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BazingaWorx is an employment tax incentive (ETI) specialist. We focus on clients who have existing payroll systems & already claimed ETI. We assist clients in accessing the unclaimed benefit & we also ensure there are no ETI losses going forward.

RANKING OF STANDARD TAX OFFERINGS:



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At CREST TRUST we comprehend the inevitability of death & its ensuing uncertainty, particularly financial insecurity. For this reason, our specialised unit, Crest Trust Fiduciary Services, was established to render support to clients in their time of bereavement, in addition to extensive estate planning.

CREST TRUST not only assists with the drafting of wills & the administration of deceased estates, but also plans ahead in terms of the registration of trusts, relevant contracts, codicils & other legally binding agreements that come into effect in the event of death or contested wills.

CREST TRUST also discharges an important supporting role in the areas of estate planning & structuring.

We offer specialised tax advice on estate duty, VAT, CGT, transfer duty & related taxes as a supporting service to our core business of fiduciary services above, as well as the legal auditing & management of trusts; comprehensive estate planning & structuring; & the drafting of fiduciary-related contracts & agreements.



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GMG's highly experienced tax practitioners provide bespoke tax & exchange control solutions in a complex domestic & international business environment. GMG's global reach & integrated advisory through to implementation approach, positions us at the forefront of client risk mitigation & opportunity identification.

RANKING OF STANDARD TAX OFFERINGS:



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With offices in Johannesburg & Port Elizabeth, HSFM provides a professional accounting & taxation service to individuals & small to medium business corporations. We work closely with clients, providing them with the necessary services to survive in today's competitive market. Optimum results are achieved through excellence.

RANKING OF STANDARD TAX OFFERINGS:



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We provide excellent tax-related services to our clients, & carefully interpret & apply relevant laws. We take reasonable care in completing all returns & respond promptly to audit-related queries or letters of audit findings. We are reliable & diligent.

RANKING OF STANDARD TAX OFFERINGS:



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M Xulu and Associates specialises in tax, management consulting & business advisory. This incorporates payroll management, training & skills development, capital raising & financial planning, business turnaround & rescue, corporate governance, statutory compliance (i.e., UIF, COID & CIPC registrations & returns), B-BBEE advisory, tax consulting & debt counselling & rescue to mention but a few services that we offer including other professional services.

RANKING OF STANDARD TAX OFFERINGS:





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MFG Accountants Incorporated is a multi-disciplined firm of registered auditors/chartered accountants practicing in Lynnwood, Pretoria.

Our directors & associates are all registered as tax practitioners with SARS. Our tax personnel enjoy many years of experience in the tax field, including:

- Tax return preparation
- Monthly, provisional or annual tax returns
- Tax compliance
- Objections & dispute resolutions
- Understanding of tax matters
- Assisting with all tax audits
- Tax planning

RANKING OF STANDARD TAX OFFERINGS:



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We provide financial & management accounting, taxation & payroll services. Contact us for your personal income tax return – we will guide you to ensure all relevant income & deductions are covered. We pride ourselves in providing professional, quality services.

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Specialising in trust accounting & administration since 2001, I have dealt with over 7 000 trusts. As an educated Certified Financial Planner & Executor of Estate, I believe in a holistic approach to tax, estate & financial planning – ensuring your prosperity. Services include: trust accounting & administration, estate planning, executor of estates services, financial coaching & opinion work.



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Shamu Bookkeeping Services has offices in Johannesburg & the Vaal Triangle. We offer complete comprehensive tax & accounting services to both personal & corporate clientele. All we require from you, the taxpayer, is full disclosure.

We specialise in the preparation & submission of simple & complex personal tax submissions, & this for a nominal fee starting from R285 (exclusive of VAT). Your fee is based purely on the content of your tax submission & is quoted to you in advance. The fee you are quoted is the fee you pay, no hidden costs or add-ons at a later stage.

We will also assist you with any SARS disputes or SARS objections or appeals, should you feel that SARS may have misinterpreted the facts of your tax submission(s). Our tax professionals & practitioners are on hand to assist you with any SARS matters.

We have staff on hand to assist you or your employees with registering on SARS eFiling so that they may have continued access to their tax affairs in years to come.

We attend to assist with all businesses & corporate company tax returns, VAT201 returns, EMP201 & EMP501 returns. We have become proactive in assisting taxpayers with dealing with ITR14SD & dividends tax returns.

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Comprehensive SARS dispute resolution assistance for tax practitioners, accountants & lawyers. Specialist support on your clients' complex & large quantity items, securing quicker & better legal outcomes. Includes SARS processes & resolving matters through tax board, tax court & high court.

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TAX SA consists of registered professionals with more than 30 years of experience. We offer income tax, VAT & PAYE submission services and registrations & also specialise in Tax Advisory services by assisting our clients with their tax audits, tax litigation and claiming back tax refunds.

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Unicus Tax Specialists SA is a niche tax advisory service firm specialising in corporate income tax & VAT, more specifically in the context of VDP applications, tax opinions, tax dispute resolution, advance tax rulings & non-binding private opinions.

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As a registered tax practice, VDJ is equipped to deal with all tax needs, ensuring clients receive the most up-to-date information. VDJ can assist with the registration of all tax types, submission of returns, reviewing of assessments & submission of objections.

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Getting tax matters off the hook has never been easier thanks to the accessibility of reliable service from Rilascan Accountants. We cater for SMEs and assist with filing their tax returns hassle-free. Our prices are very competitive and we enjoy representing our clients (section 153 of the TAA).

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Africorp Accounting is a niche South African tax & accounting firm with services that are complimented by an expert team consisting of chartered accountants, master tax practitioners, admitted attorneys & legal advisors. We offer a comprehensive tax accounting solution, while attending to secretarial duties & payroll obligations.

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The DLR Group is an international financial advisory business. Our main focus is family & business advisory. We offer a variety of wealth, fiduciary, local & international tax, & accounting related services. The new merged DölbegLumenrock was established in 2017 with our oldest office established in 1914. We have offices all around Southern Africa.

RANKING OF STANDARD TAX OFFERINGS:



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An accounting/tax consultancy which has been in operation for the past 20 years, offering top quality accounting & tax advice & expertise to suit both individuals & companies. Services include monthly/yearly income tax/PAYE/VAT submissions, CIPC registrations, drafting of financial statements & IRP5 recons.

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Maximise growth, minimise risk, save time & money.

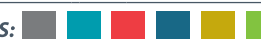
FIDATO (Pty) Ltd was founded in Cape Town almost two decades ago with a focus on tax legal advice & business restructuring.

Today, we have a track record of delivering superior long-term returns to our clients across South Africa & abroad with a value-driven approach to maximise growth and reduce risk. Proactively in tune with market trends & tax regulations, we anticipate new entrants & disruptive trends, & ensure your business can respond to regulation in both a pragmatic & optimistic manner.

Our industry expertise extends across corporate governance, tax risk, holistic payroll tax structures, asset optimisation, individual compliance & investor support across South Africa and abroad. We focus on mitigating your tax exposure, improving operational efficiency & enhancing overall cash flow to help you lead in the markets where you compete.

Our promise – The savings our advice affords will far outweigh the cost.

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Revelation Consulting has been working with SARS over the past 20 years & is extremely conversant with the various tax acts & SARS systems. Revelation Consulting has a proud history of resolving many tax audits & disputes.

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**Worldwide
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South Africa & United Kingdom

WORLDWIDE TAX SOLUTIONS (SOUTH AFRICA AND UNITED KINGDOM)

Teresa Seaton, Master Tax Practitioner & Accountant



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031 764 2889



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worldwidetax.co.za

We focus on the application of relevant tax & accounting laws both locally & internationally. We deal with all accounting & tax-related issues pertaining to local individuals, companies, expatriates, off-shore oil industry personnel, commercial divers, off-shore riggers, & both local & foreign-going seamen. We focus on all accounting & tax issues pertaining to individuals, close corporation, companies, insolvent estates, deceased estates, trusts, non-profit companies, public benefit organisations, emigrations, etc. We offer presentation to individuals & companies on the "Education of Taxes" & "Soft Skills" ranging from self-development to strategic management. Our personnel have extensive operation knowledge on South African, UK, Australian & Canadian taxation system. We have a branch in the United Kingdom dealing with all queries relating to HMRC & assisting South Africans living abroad with their SARS queries. We liaise with SARS on all dispute & legal related matters including payroll structure & strategic company portfolio planning. We aspire to be a company that is focused, well integrated, flexible, accountable, proud, motivated, skilled & professional.

RANKING OF STANDARD TAX OFFERINGS:



**KEY:
STANDARD
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OFFERINGS**

■ ITR12

■ ITR14

■ VAT201

■ EMP201

■ OPINION WORK

■ SARS DISPUTES

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To ensure your practice is listed in our next Tax Directory, send a mail to editor@thesait.org.za for details and pricing.

NATIONAL



BENDELS
CONSULTING

BENDELS CONSULTING THE TAX AND DISABILITY SPECIALIST

Richard Rogers, Director



0861 BENDELS or
0861 236 3357



info@bendelsconsulting.co.za



bendelsconsulting.co.za

Bendels Consulting provides specialist disability tax services to individuals where there is a disability in the family. Our key focus is on the complex tax treatment of medical & disability expenses. In particular, we aim to ensure that qualifying taxpayers obtain all applicable tax relief in respect of current, future & prior years. As disability tax specialists, we have a greater understanding of the nature, challenges & expenses associated with disabilities & we know the importance of ensuring that non-discretionary expenditure translates to tax relief. We have also written & spoken extensively in this specialist area, including speaking on national radio, expert articles in the press, & presentations at special needs schools, care centres, hospitals, government forums, universities, & non-government organisations.

Director, Richard Rogers, obtained his MCom (Taxation) Degree with his thesis topic being the tax relief that is available to families where there is a person with a disability. Richard has also been selected as one of the Nelson Mandela Bay Business Chamber's Top 40 Under 40 Achievers. Each member of the Bendels Consulting team is passionate about all matters relating to disability & securing tax relief for qualifying taxpayers.

RANKING OF STANDARD TAX OFFERINGS:



PKF
chartered accountants
& business advisers

PKF SA

Paul Gering, Tax Partner



031 573 5000



paul.gering@pkf.co.za



pkf.co.za

PKF's professional services include: Registrations (income tax, VAT, PAYE, SDL, UIF); completion of individual, company & trust tax returns; calculation & submission of provisional tax returns; tax clearances (Tender/Good standing/ Foreign Investment); tax directives (gratuities/fixed percentages); completion & submission of dividend tax returns & withholding tax on interest returns; completion & submission of VAT201 returns; completion & submission of IT14SD returns; assisting clients in various administrative tasks such as updating personal & banking details with SARS; assisting clients with SARS audits of all tax types; assistance with the dispute resolution process (which includes the preparation & lodging of objections, appeals, requests for remission of penalties, requests for suspension of payment, requests for a reduced assessment or the withdrawal of an assessment, attendance at ADR hearings, & representing taxpayers at the Tax Board or Tax Court); & tax consulting/advisory services (which includes providing written tax opinions on various tax topics such as the interpretation on the application of specific tax provisions, corporate restructuring, estate planning & trust structuring; obtaining of advanced tax rulings; & assisting with the preparation of transfer pricing policy documents).

NATIONAL LAW PRACTICES




EMIL BRINCKER

Director and National Head of Tax and Exchange Control

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Professor Emil Brincker is a Director and National Head of CDH's Tax and Exchange Control Practice. Emil's experience includes the areas of corporate finance, corporate reorganisation and restructuring, exchange control, export finance, funding, general banking and commercial including derivative transactions, empowerment transactions, JSE Ltd and Takeover Regulations Panel, project finance and tax law including income tax, tax controversy, VAT, stamp duties, PAYE, capital gains tax and other fiscal statutes.

Emil was the first attorney to appear in the Supreme Court of Appeal in *Erf 3183/1 Ladysmith v CIR*. He has authored and co-authored numerous books and articles and has advised on billions of rand of structured finance transactions.

Chambers Global has consistently ranked Emil in Band 1 for tax from 2003-2018. The Legal 500 EMEA series 2018 ranked Emil as a "leading individual" for tax.


DRIES HOEK

Director

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Dries Hoek is a Director in CDH's Tax and Exchange Control Practice. He is an expert in all aspects of tax law with a particular interest in the tax issues that flow from mergers and acquisitions, with over ten years' experience advising South African and international companies on domestic and cross-border transactions. Dries has extensive experience in conducting due diligence reviews, the appraisal of acquisition and disposal transactions, financial modelling and providing clients with general corporate tax planning and advisory.

The Legal 500 EMEA 2018 recommended Dries for tax.


GERHARD BADENHORST

Director

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Gerhard Badenhorst is a Director in CDH's Tax and Exchange Control Practice. He is a chartered accountant and specialises in VAT matters in various industries, including financial services, mining and property. Gerhard acts for various private, public and multinational corporations and non-profit organisations. He is a guest lecturer on VAT at the University of Pretoria and the University of the Witwatersrand and serves as a member of the South African Institute of Chartered Accountants VAT Subcommittee, and was an ad hoc member of the VAT Subcommittee of the Davis Tax Committee.

Gerhard has been advising on VAT matters since its implementation in South Africa. He has advised and assisted Counsel with the VAT litigation of clients in the Tax Court, the High Court and the Supreme Court of Appeal. Chambers Global 2009-2018 ranked him in Band 1 for indirect tax. Legal 500 EMEA 2014-2018 recommended Gerhard in tax.


MARK LININGTON

Director, Sector Head Private Equity

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Mark Linington is a Director in CDH's Tax and Exchange Control Practice and is the Sector Head for Private Equity. He has over 22 years' experience in tax. Mark specialises in corporate tax services, particularly in relation to mergers and acquisitions activity such as private equity fund formation and portfolio movements, business restructurings, acquisitions, disposals and BEE structuring.

Mark's recent experience includes tax structuring for the largest buyout transactions in South Africa's history. He also has significant experience in corporate tax advisory services such as tax opinions and dispute resolution.

Chambers Global 2017-2018 ranked Mark in Band 1 for tax consultants. Chambers Global 2007-2016 ranked him in Band 2 for tax consultants. The Legal 500 EMEA 2016-2018 recommended Mark for tax.


PETR ERASMUS

Director

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Petr Erasmus is a Director in CDH's Tax and Exchange Control Practice. He specialises in customs and excise law. Petr started his career as a Customs and Excise Officer at SARS: Customs in 1996. He was deployed across a wide range of customs and excise positions and offices before being appointed as a Tax Lawyer/Legal Advisor in 2007 at SARS' head office in Pretoria. During this time, Petr was exposed to numerous matters relating to the entire scope of customs and excise. He is able to assist with the full scope of customs and excise matters including licencing and registration, dispute resolution (internal remedies and litigation), opinions, audits, training and (tariff, valuation and origin) determinations.


MARELI TREURNICHT

Director

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Mareli Treurnicht is a Director in CDH's Tax and Exchange Control Practice. She has experience in applying for advanced tax rulings, drafting opinions and advising on general tax matters, and in particular corporate restructures, trusts, international tax, exchange control, and share incentive schemes. Mareli also has experience in general and tax litigation, has advised on commercial transactions and has experience in drafting commercial agreements.



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Structuring & planning, due diligence, dispute resolution, risk management & opinions across all industries, including financial services, insurance, retail, technology, media & telecommunications & cross-border trade including customs.



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Transfer pricing, thin capitalisation, application of international double tax agreements, exchange control regulations & international tax.

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TAX MOVES

Tax industry career moves that took place over the past 12 months.

BAKER MCKENZIE

- » **Okkie Kellerman** joined Baker McKenzie Johannesburg as a Senior Executive in the Tax Practice on 1 August 2018. He was previously a Tax Advisor and Practitioner at ENSafrica.

BDO

- » **Rowan Pretorius**, previously employed with PwC, joined BDO Tax Johannesburg on 1 January 2018 as Senior Tax Specialist.
- » **Anton Kriel**, previously employed with Grant Thornton, joined BDO Tax Cape Town as Head of Tax Compliance (and Director) on 1 March 2018.
- » **Dave Honeyball**, previously employed with Grant Thornton, joined BDO Tax Port Elizabeth as Tax Director on 1 March 2018.
- » **Chris Smith**, previously employed with Grant Thornton, joined BDO Tax Cape Town as Tax Director on 1 March 2018.
- » **Steve Curr**, previously employed with Grant Thornton, joined BDO Tax Cape Town as Tax Director on 1 March 2018.
- » **Bruce Russell**, previously employed with Grant Thornton, joined BDO Tax as Tax Director Cape Town on 1 March 2018.
- » **Ray Eskinazi** joined BDO Tax as Senior Tax Specialist and Interim Head International Tax and Transfer Pricing, effective 1 March 2018.
- » **Ian Statham** resigned as BDO Tax Director Johannesburg, effective 31 December 2017.
- » **Helen Fourie** resigned as BDO Tax Associate Director Johannesburg, effective 31 December 2017.
- » **Shohana Mohan** resigned as BDO Tax Director Johannesburg, effective 30 June 2018, and emigrated to Australia.
- » **Roxanna Nyiri** resigned as BDO Tax Director Johannesburg, effective 13 July 2018, to pursue personal interests.

BOWMANS

- » **Adèle de Jager**, previously from KPMG, joined the Bowmans Johannesburg office on 1 March 2018 as Partner.
- » **Kelly Wright** was promoted from Senior Associate to Partner in the Bowmans Johannesburg office as from 1 March 2018.
- » **Michael Rudnicki**, previously from KPMG, joined the Bowmans Johannesburg office on 1 March 2018 as Partner.
- » **Robyn Berger** joined the Bowmans Johannesburg office on 1 July 2018 as Partner.
- » **Nikhil Hira** joined the Bowmans Nairobi office on 1 August 2018 as Director.

CLIFFE DEKKER HOFMEYR

- » **Heinrich Louw** was promoted from Senior Associate to Director, with effect from 1 April 2018.

DELOITTE

- » As of 1 June 2018, **Delia Ndlovu** was promoted to Managing Director of Deloitte Africa Tax & Legal service line.
- » **Bernadette Abbott**, as of 1 June 2018, took the role of Chief operating officer within the Africa Tax & Legal service line.
- » **Philip Cronje** joined Deloitte on 2 January 2018 from PwC as a Deloitte Africa Tax & Legal Partner, with lead responsibilities specifically for the Insurance Sector of the Financial Services Industry.
- » **Louis Le Grange** joined Deloitte Africa Tax & Legal Financial services team as an Associate Director from 2 January 2018. He is the Industry Leader for Financial Services.

ENSAFRICA

- » **Mike Benetello**, previously Tax Partner at PwC, has taken the role of Executive Tax at ENSafrica as from March 2018.
- » **Melanie Harrison**, previously Associate Director Tax at KPMG, has taken the role of Executive Tax at ENSafrica as from June 2018.
- » **Stephan Minne** (Tax Consultant) joined ENSafrica on 1 Feb 2018. He was previously a Tax Advisor at KPMG.

MAZARS

- » **Graham Molyneux**, previously employed with EY, joined Mazars as a Tax Partner, with effect from March 2018.

NORTON ROSE FULBRIGHT

- » **Candice Gibson** joined the Norton Rose Fulbright tax team in July 2018 as a Senior Associate.

WEBBER WENTZEL

- » **Cor Kraamwinkel**, previously from PwC, joined Webber Wentzel in June 2018 as Partner.
- » **Kyle Beilings** was promoted from Senior Associate to Partner in March 2018.

CORPORATES AND OTHER

- » **Lutando Mvovo**, previously the Director: International Tax and Treaties at National Treasury, has joined Vodacom as Executive Head: International as from 1 June 2018.
- » **Shohana Mohan**, previously the Director and Head of Individual & Expatriate Tax at BDO Johannesburg, has joined TaxAuditor Solutions Incorporated (SA and Australia) as Specialist: Global Employment, Expatriate Tax Advisory and Africa Payroll Services, effective from 1 July 2018.
- » **Mari Loubser's** 18 years of experience prior to joining Bravura in July 2018 as a Principal, includes various areas of management consulting, business analysis, auditing, accounting, taxation and structuring.
- » **Nikki Oberholzer**, previously Head of International Tax at Vodacom Group Ltd, joined Coca-Cola Beverages Africa (Pty) Ltd as Head of Tax in December 2017.

TRUSTS & DECEASED ESTATES

 SEMINAR

 4 HOURS

ARE YOU UP TO DATE WITH THE LATEST ON TRUSTS AND DECEASED ESTATES?

Join us from 18 to 28 September for the latest on Trusts and Deceased Estates which covers the ins and outs of trusts and estate issues.

The following content will be covered:

- Deceased estates
- Trusts
 - » The risks when trusts are used to mitigate estate duty and donations tax
 - » The tax consequences of contributions to trusts, earnings in the trust and distributions by the trust



PRESENTERS

Piet Nel CA(SA)

*Head of School of Applied Taxation
at The Tax Faculty*

Daylan Staude (CA) SA, MCom (taxation)

*Senior lecturer: Post graduate taxation
University of Fort Hare*

DATES

18 Sep-18	Johannesburg
19 Sep-18	Kempton Park
20 Sep-18	Pretoria
21 Sep-18	Webinar
26 Sep-18	Durban
27 Sep-18	Cape Town
28 Sep-18	Port Elizabeth

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MONDAY, 10 SEPTEMBER 2018

>> TAX POLICY MEETS ETHICS – KEEPING THE ECONOMY AFLOAT

8:30 – 8:40	Opening of ceremonies
8:40 – 9:20	Keynote speaker
9:20 – 10:00	Keynote speaker
10:00 – 10:30	BREAK
10:30 – 11:45	SARS Executive Committee - Meet the Chiefs
11:45 – 12:30	Now that the dust has settled, what's next for the economy and tax revenues?
12:30 – 13:30	LUNCH
13:30 – 14:15	Government's responsibility to the taxpaying public
14:15 – 15:00	Balanced choices: Taxpayers versus practitioners versus SARS
15:00 – 15:30	BREAK
15:30 – 16:30	The future role of audit firms in tax (advisory and compliance)

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10 – 14 SEPTEMBER 2018
**// SANDTON CONVENTION CENTRE **

TUESDAY, 11 SEPTEMBER 2018

>> INTERNATIONAL TAX // INVESTMENTS AND ESTATES

8:30 – 9:30	The forces of BEPS versus the resurgence of tax competition	
9:30 – 10:30	In conversation with The Office of the Tax Ombud	
10:30 – 11:00	BREAK	
	STREAM ONE	STREAM TWO
11:00 – 11:45	Controlled foreign companies (CFCs): Is South Africa an international outlier?	Interest-free loans to trusts (section 7C): Has the compliance burden outweighed the benefits?
11:45 – 12:30	The CFC business establishments exemption threshold: Active establishments versus window dressing	Offshore planning: The new realities
12:30 – 13:30	LUNCH	
13:30 – 14:00	Multi-lateral instrument (MLI) and holding company jurisdictions: Will Mauritius have anything left to do?	Death, dispute and divorce: Keeping your precious business alive
14:00 – 14:30	Permanent establishments and BEPS aftermath	Offshore private foundations: The mystery box
14:30 – 15:00	SA Inc: Subsidiary profit and loss extraction of foreign multinationals	Decoding cryptocurrencies
15:00 – 15:30	BREAK	
15:30 – 16:30	Navigating compromise and peaceful resolution (Town hall session)	

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WEDNESDAY, 12 SEPTEMBER 2018

» SMALL TO LARGE BUSINESS CORPORATE TAX // PAYROLL AND EMPLOYEE RELATED COMPLIANCE

8:30 – 9:30	Co-operative tax compliance: Any hope of progress?	
9:30 – 10:30	Risks and rewards of investing in the youth (tax, labour and grants related)	
10:30 – 11:00	BREAK	
	STREAM ONE	STREAM TWO
11:00 – 11:45	Flip flops in debt cancellation: The latest developments	Overcoming challenges in payroll taxes
11:45 – 12:30	Selling your shares: Tactics in a post-buyback world	Expat aftershock: Surviving without the exemption
12:30 – 13:30	LUNCH	
13:30 – 14:00	Bad and doubtful debt: Writing off the losses "non-banks"	Loans to shareholders, executives and general employees: What's best for business?
14:00 – 14:30	Private equity trusts, partnerships and companies: Pick your poison	Cross-border pensions: Growing old with a foreign piggy bank
14:30 – 15:00	Annual small business withdrawals: Salary, interest and dividends	Vehicle travel allowances and reimbursements: Mapping the landscape
15:00 – 15:30	BREAK	
15:30 – 16:30	Corporate tax centre, to large business centre, to something (Town hall session)	

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10 – 14 SEPTEMBER 2018
**// SANDTON CONVENTION CENTRE **

THURSDAY, 13 SEPTEMBER 2018

» INDIRECT TAXES AND LEVIES // PRACTICE MANAGEMENT WORKSHOP

8:30 – 9:30	Tax digitisation (Part A)	
9:30 – 10:30	The psychology of VAT pricing: VAT inclusive or exclusive and does zero-rating really assist the poor?	
10:30 – 11:00	BREAK	
	STREAM ONE	STREAM TWO
11:00 - 11:45	Making sense of VAT as applied to financing	Transformation: A “firm” embrace
11:45 – 12:30	Tax and the deadly sins: Sin, sugar and carbon tax	“I did it my way ...” - Overcoming challenges of starting your own practice
12:30 – 13:30	LUNCH	
13:30 – 14:00	The 1% increase: Who would have thought it would be so complicated	Sage Payment solutions for your practice
14:00 – 14:30	VAT refunds: Balancing fraud against cash flow	Tax digitisation (Part B)
14:30 – 15:00	VAT and e-commerce revisited: South Africa versus the world?	
15:00 – 15:30	BREAK	
15:30 – 16:30	Disputing disputes (Town hall session)	

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2018

FRIDAY, 14 SEPTEMBER 2018



8:30 – 9:15	Shaking the already barren money tree: SARS collections
9:15 – 10:00	TAA, PAJA and the Constitution: To serve and protect
10:00 – 10:30	Recent judicial decisions relating to tax administration
10:30 – 11:00	BREAK
11:00 – 12:00	The Office of the Tax Ombud and PwC present The SARS Systemic Investigation Survey results
12:00 – 12:30	SARS Service Charter
12:30 – 13:30	LUNCH
13:30 – 14:15	The Office of the Tax Ombud: 5 years on – Have your say!
14:15 – 14:30	CLOSING CEREMONY

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MID-YEAR SEMINAR 2018

PAYROLL TAXES AND ASSOCIATED LEGISLATION



PRESENTED BY ROB NOWICKI
12th - 19th OCTOBER 2018

DATE	VENUE
12 th October 2018	Durban, Southern Sun Elangeni & Maharani
15 th October 2018	Cape Town, D'Aria Venue
16 th October 2018	Cape Town, Park Inn by Radisson Cape Town Foreshore
18 th October 2018	Johannesburg, Emperors Palace
19 th October 2018	Pretoria, CSIR International Convention Centre

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