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TAXED, TRAPPED AND TREADING WATER:
Breaking the cycle of imbalance in South Africa

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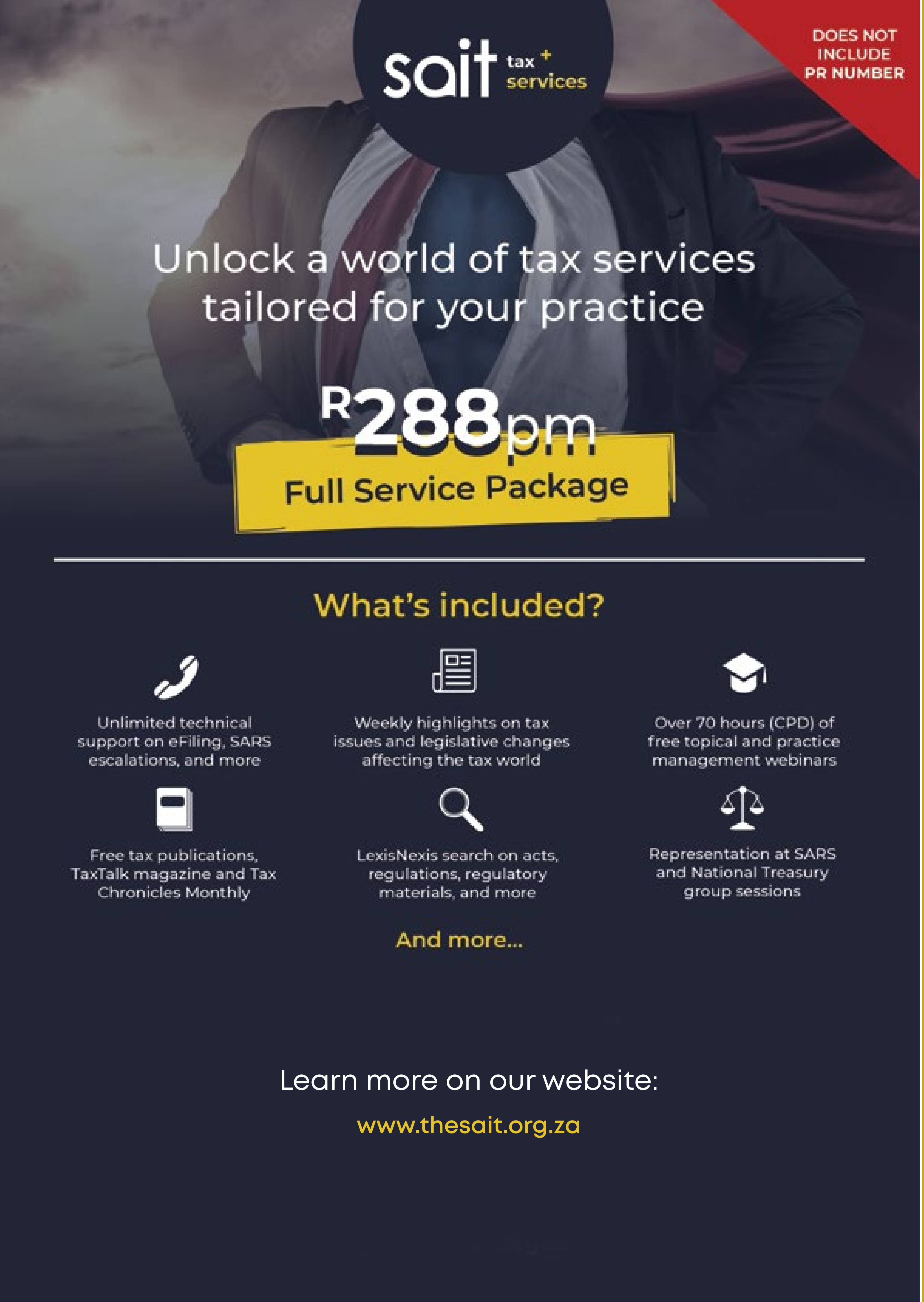

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5hrs CPD in this issue

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TAXED, TRAPPED AND TREADING WATER:
BREAKING THE CYCLE OF IMBALANCE IN SOUTH AFRICA

VAT RATE CHANGE ON THE ROPES

THEO STEYN, Managing Director at VZLR Incorporated

South Africa's push to raise the VAT rate amid fiscal pressure has sparked legal and political backlash. While the proposed increase from 15% to 16% was shelved—leaving a R75 billion revenue gap, it was defended as necessary and efficient. This, while critics argue it risks violating constitutional rights and adds to deepening inequality. This article considers the implications of the legal challenges questioning the Minister's authority under section 7(4) of the VAT Act. Experts suggest that instead of burdening consumers, SARS should focus on closing the VAT compliance gap through stronger enforcement and digital tools. The debate reflects a broader struggle over how to fund the state fairly and sustainably.

In the wake of ever-increasing fiscal pressure, the spotlight has again turned to VAT. Long touted as the most efficient and stable source of government revenue, VAT again finds itself at the centre of an ideological and political battleground. The debate is not just about rates and exemptions. It cuts to the heart of what kind of tax state South Africa wants.

The VAT position in South Africa

As it goes with all worthwhile tales, let us start at the beginning. VAT was introduced at a rate of 10% in 1991. This was when South Africa transitioned from GST to VAT. VAT was regarded as a more efficient and broad-based form of indirect tax, which aimed to simplify tax administration and broaden the tax base. On 7 April 1993, the VAT rate was increased by 4% to increase revenue collection. The following 1% increase only came more than two decades later, on 1 April 2018. This brought the VAT rate to its current 15%. This change was part of a broader effort to reduce South Africa's fiscal deficit and raise revenue.

The increase

On 12 March 2025, the Minister of Finance ("Minister") announced that the VAT rate would increase by 0.5% on 1 May 2025 and by a further 0.5% on 1 April 2026. On the same date, the Minister published the Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill. Clause 5 and 6 of this Bill proposed to amend section 7(1) of the Value-Added Tax Act 89 of 1991 ("VAT Act") to give permanent legislative effect to the new VAT rates of 15.5% and 16% respectively. Provision was also made for the addition of three items to the zero-rated goods in schedule 2 to the VAT Act. This was arguably included to provide some relief resulting from the proposed VAT rate increase in line with the progressive tax policy.

The legal challenge

The Minister's announcement caused opposition political parties to launch an urgent application to the High Court on 3 April 2025. Despite the Minister at first opposing the application, an agreed order was eventually granted on 27 April 2025. The order provided that:

(i) *the Minister's announcement on 12 March 2025 made under section 7(4) of the VAT Act whereby the VAT rate is increased on 1 May 2025 to 15,5% and on 1 April 2026 to 16% is suspended pending the passing of legislation regulating the VAT rate or the determination regarding the constitutionality of section 7(4), whichever occurs first; and*

(ii) *the resolutions by the National Assembly and the National Council of Provinces on 2 April 2025 to accept the report of the Standing Committee on Finance and the Select Committee on Finance in respect of the 2025 Fiscal Framework are set aside.*

The law

Section 7(4) of the VAT Act empowers the Minister to make an announcement in the national annual budget (as contemplated in section 27(1) of the Public Finance Management Act 1 of 1999) that the VAT rate is to be altered. The change is effective from the date determined by the Minister in the announcement and applies for 12 months from the effective date, subject to Parliament passing legislation which gives effect to the announcement within 12 months. The Minister's announcement consequently constitutes a statutory power that has already been exercised.

On 24 April 2025, shortly before the court order being granted, the Minister issued a media statement to announce his intention to maintain the VAT rate at 15%. The legal mechanism required to do this is by way of the Rates and Monetary Amounts and Amendment of Revenue Laws Bill, which is dealt with in accordance with the procedure established by section 75 of the Constitution, since it is a Money Bill as contemplated in section 77 of the Constitution. This Bill was introduced in Parliament on 24 April 2025 and clause 13 thereof maintains the VAT rate at 15%.

In his media statement, the Minister indicated that the decision to forgo the VAT increase came after extensive consultations with political parties. Also, careful consideration of the recommendations of the parliamentary committees. The Minister noted that "the initial proposal for an increase to the VAT rate was motivated by the urgent need to restore and replenish the funding of critical frontline services that had suffered reductions necessitated by the country's constrained fiscal position".

The debate

The sequence of events and the practical success of the urgent application raise questions about the announcement and whether such wide statutory powers as are afforded to the Minister in section 7(4) of the VAT Act are constitutionally sound.

The Minister's rationale for the VAT hike announcement was that:

- the government considered the potential contributions of each of the main tax instruments;
- VAT is an efficient source of revenue;
- VAT is broad based, and its design is simple with minimal exceptions; and
- South Africa's VAT rate is relatively low compared with peer countries.

In the context of the urgent application, the Minister's view from a policy perspective was that the alternatives the National Treasury considered in formulating the revenue proposals (including the VAT rate increases), represented potentially more detrimental outcomes in terms of economic growth and employment than the VAT proposals. National Treasury formulated the 2025 Budget with due regard to section 27 of the Public Finance Management Act 1 of 1999. After assessing multiple scenarios, it concluded that the marginal increase in the VAT rate would be less damaging to growth and employment than alternative options, such as raising personal or corporate income tax rates. That being said, when political pressure mounted, the Minister was quick to reverse the VAT increase.

"VAT again finds itself at the centre of an ideological and political battleground"

On the constitutionality of section 7(4), the Minister argued that the section only grants a conditional authority to adjust the VAT rate which is subject to Parliament's power to enact legislation. Furthermore, that plenary legislative authority is not automatically unconstitutional and must be measured against the test set out by the Constitutional Court in *Nu Africa Duty-Free Shops (Pty) Limited v Minister of Finance and Others* [2022] ZACC 31.

In attacking the constitutionality of section 7(4), the DA, among others, alleged that a VAT increase would infringe the rights of access to food and healthcare protected under section 27(1) of the Constitution. As one of the few taxes that touches every household, any reform to VAT faces significant legal, political and constitutional constraints. The South African Constitution enshrines the principles of equity and progressive taxation. Attempts to raise VAT across the board, particularly if it disproportionately affects the poor, risk falling foul of section 27 of the Constitution.

VAT remains relevant

As of 1 July 2024, 175 countries and territories in the world had implemented VAT. The average standard VAT rate among OECD countries was 19.3% as of 31 December 2024. At 15%, South Africa's VAT rate is among the lowest in the world compared to OECD countries. The OECD reports that the period between 2009 and 2016 marked a considerable increase in the standard VAT rate in many countries, often in response to financial pressures caused by economic crises. VAT standard rate increases played a key role in many countries' strategies. Raising additional revenue from VAT rather than from other taxes was often considered more effective as it generates immediate additional revenue. A VAT increase is also less detrimental to economic growth and competitiveness than taxes on income.

Most OECD countries that impose VAT apply reduced or zero VAT rates to various goods and services to pursue specific policy objectives. Most often, the promotion of equity (on food, health and hygiene products) and culture (on books, magazines and shows). The current South African VAT system includes a host of zero-rated and exempt items intended to shield the poor from regressivity. While these measures serve an important social purpose, they also erode the tax base and reduce revenue efficiency.

Shortly before the 2018 VAT increase, the Davis Tax Committee (DTC) issued a VAT report during March 2018. The DTC was required "*to inquire into the role of the tax system in the promotion of inclusive economic growth, employment creation, development and fiscal sustainability*". In particular, as it relates to VAT, to give specific attention to: "*5. . . . efficiency and equity. In this examination, the advisability and effectiveness of dual rates, zero rating and exemptions must be considered". Referring to a study by the World Bank, the DTC report remarked that poverty is higher in the presence of the VAT system than it would be in the absence of such a tax.*

That poverty (as measured by Stats SA's "lower bound poverty line") increases by about five percentage points because of indirect taxes. However, it was found that from a purely macroeconomic standpoint, an increase in VAT is less distortionary than an increase in direct taxes.

A further important aspect the DTC considered was the 'tax gap'. It described this as the difference between the tax due under the VAT legislation and the amount of actual tax collected in a VAT environment. The size of the gap "*can be seen as an indicator of the effectiveness of VAT enforcement and compliance measures, as it arises as a consequence of revenue loss through cases of fraud and evasion, tax avoidance, bankruptcies, financial insolvencies, as well as miscalculations*".

More recently, SARS indicated that it would focus on addressing the tax gap to improve revenue collection. Digital reporting and effective audits have played a significant role in reducing the VAT gap in recent years. Increased digitalisation has enabled tax authorities to develop new tools for detecting and combating VAT non-compliance and fraud. Within the European Union, digitalisation, coupled with more efficient tax audits, seems to have contributed to a strong reduction of the VAT gap in several countries.

Policymakers continue to regard the expansion of VAT as an option in the South African market, where personal income tax is nearing saturation and corporate tax collections are volatile. According to National Treasury estimates, a one percentage point increase in VAT could yield upwards of R25 billion annually—a figure not easily matched by other means. However, this is still a far cry from the estimated R75 billion revenue gap.

Conclusion: A delicate balance

The VAT debate in South Africa continues. The question is not whether to change the system, but how to do so in a way that is equitable, legal and sustainable.

Commissioner Kieswetter has identified stronger enforcement as a better alternative than a VAT hike to balance the South African budget. This acknowledges strengthened tax administration as a key focus area capable of contributing revenue, while minimising the negative impact on the economy. In the Commissioner's preliminary report on revenue collection for the 2024/2025 fiscal year, he reported preventing outflows of R146.7 billion of impermissible refunds. He remains deeply concerned about the ever-present threat of refund fraud and abuse of the system. The Commissioner reported that preliminary indications at that stage were that SARS' efforts avoided leakage worth R74 billion. The success was ascribed to syndicated crime investigation, investigative audit and tax verifications.

Fraud and abuse of the tax system is not only a South African problem. It is well documented that payment of refunds can create significant opportunities for fraud and corruption. An effective refund system, supported by a well-designed and operated risk-based compliance strategy and by a comprehensive audit strategy is critical to success.

With more resources allocated to SARS, it seems possible that SARS may be able to shrink the estimated deficit. It may do so by continuing its enhanced strategies and the diligent implementation of compliance measures. Tightening compliance and enforcement, investment in digital tax infrastructure and increasing SARS' efficiency to widen the base without increasing rates, may just save the day.

15minutes CPD

Taxing the future: WHY SOUTH AFRICA'S YOUTH cannot be taxed into prosperity

NTOKOZO NELSON ZAMA, Director at Kairos Chartered Accountants

Introduction: A nation on the brink

South Africa stands at a critical crossroads. Economic growth remains sluggish, unemployment continues to rise and the country's tax base is both overstretched and alarmingly narrow. At the centre of this crisis lies the youth, who represent both South Africa's greatest potential and its most urgent challenge. With youth unemployment hovering near or above 60% (Statistics South Africa, 2024), the country is effectively taxing a dwindling number of earners to sustain a growing number of dependents. This model is unsustainable.

While tax policy remains a vital lever in fiscal planning, it is no longer sufficient to pull South Africa out of stagnation. The hard truth is this: South Africa cannot tax its way out of the current fiscal imbalance. Without bold structural reforms aimed at stimulating growth, broadening economic participation and opening up trade and industry to greater competition, the tax system will continue to buckle under pressure.

The cost of unemployment

Unemployment in South Africa is not merely a social issue; it is a tax issue. A jobless society cannot contribute meaningfully to the fiscus. According to the most recent Quarterly Labour Force Survey (Q1 2025), youth unemployment remains above 60%, with overall unemployment close to 33% (Stats SA, 2025).

This economic inactivity has profound fiscal implications. With fewer individuals employed, personal income tax collections stagnate, VAT contributions shrink due to lower consumption and the burden on the social grant system grows heavier (National Treasury, 2024 Budget Review). South Africa's tax base is increasingly defined by those who are overburdened, while millions remain entirely excluded.

The limits of the current tax approach

South Africa's tax system is already nearing its limits. The country relies heavily on personal income tax, VAT and corporate income tax, with a relatively small percentage of the population contributing to the majority of revenue (SARS, 2023 Tax Statistics).

Tax morale is declining, emigration is rising among skilled professionals (SAIT, 2024) and small businesses often struggle under a complex compliance environment. SARS has made commendable strides in improving compliance and rebuilding institutional integrity, but even the most efficient tax collection agency cannot generate revenue where economic activity is absent.

Calls to raise existing taxes or introduce new ones must be tempered with the reality that the system is saturated. Additional taxation without economic expansion will only deepen inequality and disincentivise productivity.

Structural Constraints on Growth

To understand why the tax system is failing, we must examine the structure of the economy itself. South Africa's market dominance in key sectors is a major barrier to inclusive growth.

Banking Sector: Over the past two decades, South Africa has had five major banks control the vast majority of the financial sector, limiting access to capital for new entrants and SMMEs (Competition Commission, 2021).

Retail Sector: Four supermarket chains dominate national distribution, creating high barriers to entry for local producers and small businesses (Bureau for Economic Research, 2022).

The above are examples of sectors that a few players dominate. This lack of market competition stifles innovation, entrenches monopolies and excludes youth in particular from entrepreneurial participation. Without breaking these structural bottlenecks, we cannot expect employment to rise meaningfully.

Opening up trade and industry, especially by leveraging the African Continental Free Trade Area (AfCFTA), could spur regional export opportunities and expand the market for South African products (DTIC, 2023). However, this requires government policy that actively supports diversification, entrepreneurship and regional integration.

What reform looks like

If South Africa is to break the cycle of fiscal imbalance, it must act decisively on several fronts:

Labour market reform: Create targeted youth employment incentives, simplify hiring processes for small businesses and reduce red tape.

Competition policy: Enforce anti-monopoly laws and incentivise market access for new entrants in banking, retail and telecommunications.

Skills alignment: Strengthen the connection between education and employment by aligning TVET colleges and universities with the future needs of the digital and green economies.

Tax reform for growth: Instead of higher rates, SARS should focus on modernising collection in the digital economy, taxing illicit flows and simplifying tax for informal and small businesses to encourage compliance (OECD, 2024).

Conclusion: You cannot tax what does not exist

Tax revenue is the output of a growing, inclusive and active economy. Without more contributors to the system, the few who are taxed will increasingly feel the burden. South Africa must accept that while tax reform is necessary, it is not sufficient.

What the country truly needs is bold structural change: policies that unleash entrepreneurship, open up closed markets and get millions of young people working. Only then can the tax base grow sustainably and only then can South Africa begin to swim against the tide of fiscal imbalance.

> ***"Calls to raise existing taxes or introduce new ones must be tempered with the reality that the system is saturated"***

SHARP FOCUS, BIG IMPACT:

SARS' intensified tax collection drives rise in VAT estimated assessments

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Taxpayers may be unaware of the four types of assessments available—original, additional, reduced or jeopardy—all of which can be based on estimates.

On 11 December 2023, SARS implemented the estimated assessment functionality for VAT, targeting vendors who fail to provide the requested material during the VAT verification process. This move reflects the systemic challenges faced by taxpayers, including the need to navigate complex compliance requirements and respond to fiscal demands.

The increased use of VAT estimated assessments fits into the broader fiscal strategy of SARS, which aims to maximise revenue collection amidst economic pressures.

However, though beneficial for revenue collection, this strategy places additional strain on taxpayers, who must contend with the possibility of receiving assessments based on increased estimated assessments rather than actual audit findings. An estimated assessment is a prolonged verification process that has a prescribed timeframe wherein the vendor has an opportunity to submit information SARS has requested before the estimated assessment becomes final.

An estimated assessment is an assessment that SARS may issue, in whole or in part, based on an estimate as per section 95 of the Tax Administration Act No. 28 of 2011 (TAA). Estimated assessments, similar to additional assessments, are pivotal in the administration of VAT by SARS.

This article aims to clarify the procedure in dealing with estimated assessments before they become additional assessments. It also aims to assist taxpayers in their interactions with SARS to address disputes by following the correct procedure and facilitating better tax compliance. The estimated assessment will remain until the taxpayer responds to SARS. However, vendors must be mindful of the timeframes in which to respond, as SARS will take action to collect the assessed amount if the vendor does not adhere to the deadlines. The request from SARS would generally request the taxpayer to submit a revised return; failing which, it must comply with the request for information.

Under the TAA, SARS is empowered to issue various types of assessments, including original, additional, reduced or jeopardy assessments based on estimates. Estimated assessments are dealt with in section 95 of the TAA as follows:

- **Non-submission of returns:** If a taxpayer fails to submit a return, SARS may issue an estimated assessment.
- **Incorrect or inadequate submissions:** Submissions containing incorrect or inadequate information, either in the VAT return or in response to a request for information, can lead to estimated assessments.
- **Non-compliance with requests for information:** Failure to respond adequately to requests for relevant material after multiple notices can trigger an estimated assessment.

The estimated assessments are based on information that is readily available to SARS when making these estimates. Similar to an additional assessment, in relation to a VAT estimated assessment:

- the assessment is issued as a VAT217 notice of assessment, termed an 'estimated assessment', which includes references to section 95 as guidance on how to deal with the assessment;
- the obligation to provide the information requested by SARS remains;
- a vendor is not allowed to request a correction of the VAT return for a tax period in which an estimated assessment was issued;
- a vendor may request SARS to suspend the obligation to make payment (refer to section 164 of the TAA) where the estimated assessment resulted in an amount payable to SARS for that period; and
- SARS must provide the reasons or grounds for the assessment.

Where the vendor is not in agreement with SARS' estimated assessment, the vendor can request SARS to reduce or adjust the estimated assessment before the assessment becomes final by submitting the relevant material requested by SARS within 40 business days from the date of the estimated assessment, or longer, if the taxpayer requests the SARS Commissioner to extend the 40-day timeframe.

From a system functionality process, vendors must submit the relevant information via e-filing; where this option is not available, the SARS Online Query System on SARS' website is the next best option.

Where the taxpayer submits a return or a revised return, the supporting information requested by SARS should also be submitted. SARS is required to give the taxpayer written notice of its decision; the time period in which to object to the assessment will be calculated from the date of this decision. However, where SARS does not give the written notice, the taxpayer will not be able to take the matter forward, as an estimated assessment is only subject to objection and appeal if SARS provides its written decision not to make a reduced or additional assessment, after the taxpayer submits the return or relevant material.

If SARS does not issue the written notice informing the taxpayer of its decision not to issue a reduced or additional assessment, the taxpayer will not know whether SARS has made a decision. This creates uncertainty as to whether the taxpayer can object to the assessment. In addition to this confusion, the TAA states that an estimated assessment is considered to be final if SARS has not received the relevant material within the timeframes. So, if the taxpayer does submit the relevant information, it must wait for SARS' decision in order to progress the dispute with SARS.

Legislatively, this means the estimated assessment will remain until SARS either issues a reduced or additional assessment or informs the taxpayer that it will not alter the estimated assessment. Practically, if SARS remains silent after the taxpayer has submitted the relevant material, the taxpayer appears to have no remedy at its disposal. SARS has not provided any written guidance in this regard.

It is submitted that where the taxpayer has submitted the information requested and SARS does not respond, the taxpayer can also file a notice of objection within 80 days from the date of the estimated assessment as per the rules for dispute resolution.

In summary, once an estimated assessment is issued, and the relevant request and information have been submitted, SARS could either:

- issue an additional assessment, reducing or adjusting the estimated assessment; where the taxpayer is satisfied with the outcome, the additional assessment will stand. Where the taxpayer does not agree with SARS' additional assessment, subsequent to the provision of relevant request and information, the taxpayer can follow the normal dispute resolution process; or
- make a written decision not to revise the estimated assessment, in which case such a decision will serve as the date of the additional assessment, commencing the normal dispute resolution process, allowing the taxpayer to object against the assessment.
- However, SARS could do neither and the taxpayer would have no remedy at their disposal except to lodge a formal objection to the assessment.

It is clear that with estimated assessments, it is crucial for taxpayers to demonstrate compliance (which will be advantageous in a dispute) with the TAA by keeping meticulous records of transactions included in the VAT return and confirming that information and documentation requests from SARS are fully responded to. In addition, it will be important to follow up with SARS on all correspondence submitted.

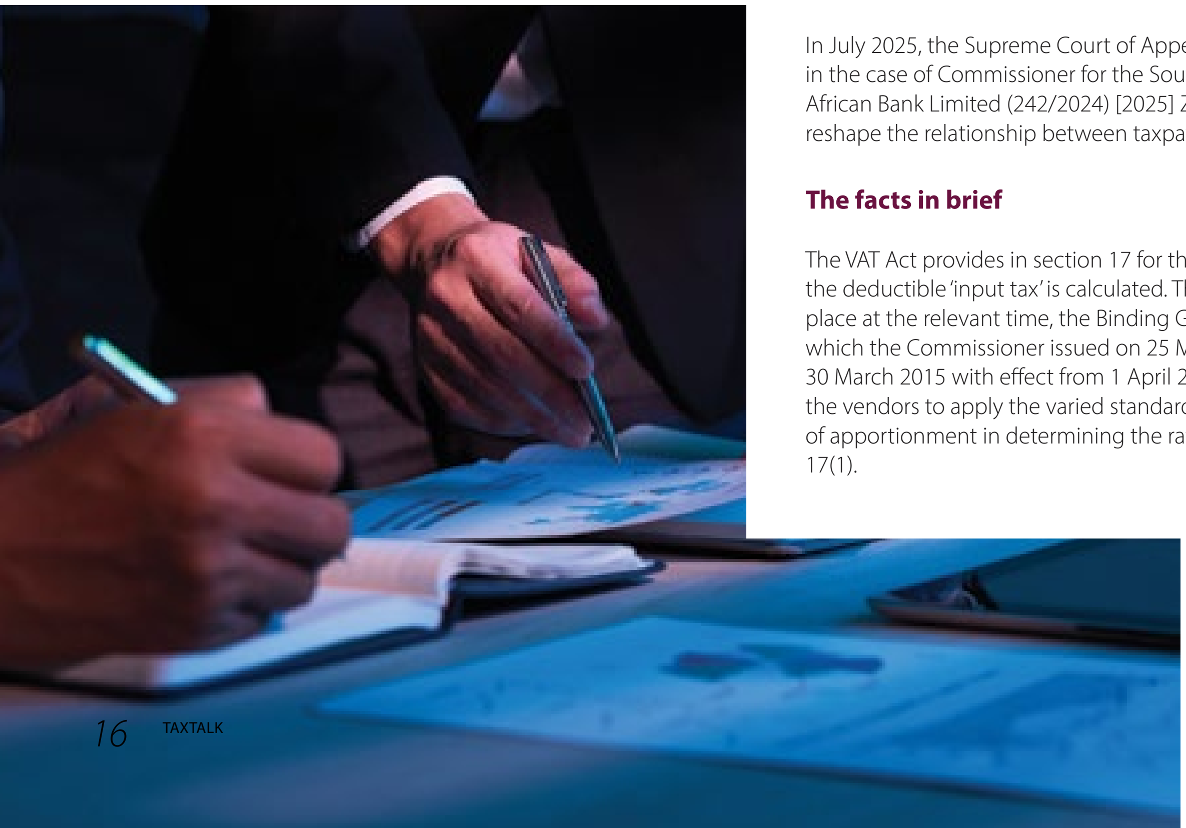
When in doubt, always consult tax professionals for any assistance with VAT-related issues.

TAX LAW ON TRIAL:

How South African courts are redefining the balance of power

▸ **DR NELSON KEKANA,** Director at Nchelane Tax Advisory & Consulting, Senior Lecturer at North-West University, and part-time Lecturer at the University of Johannesburg

The phrase 'a taste of your own medicine' has been understood to mean one is going to receive harsh or unpleasant treatment that one has been unleashing upon others.



In the context of tax law, this idea assumes new relevance as courts examine legal provisions that were once predominantly used against taxpayers. However, the tables are turning, courts are starting to ask: should the rules not apply equally to everyone, even the most powerful authorities? Suddenly, the phrase takes on a whole new meaning, reminding us that justice is about balance, no matter who you are.

Deeming provisions in tax laws

In many instances, especially in tax laws, we often hear or find the words 'deemed' or 'deeming'. The words are used to create a legal fiction of accepting something to be true for the sake of convenience, assuming certain facts to be true even if they are not. Typically, it will be the revenue service that always has the power to apply these deeming provisions against taxpayers to establish a particular fact, the result of which will be favourable to the fiscus.

Have the tables turned?

In July 2025, the Supreme Court of Appeal (SCA) delivered a judgment in the case of Commissioner for the South African Revenue Service v African Bank Limited (242/2024) [2025] ZASCA 101, a case that could reshape the relationship between taxpayers and revenue authorities.

The facts in brief

The VAT Act provides in section 17 for the method in terms of which the deductible 'input tax' is calculated. There was a ruling that was in place at the relevant time, the Binding General Ruling 16 (BGR 16), which the Commissioner issued on 25 March 2013 and re-issued on 30 March 2015 with effect from 1 April 2015, and which authorised the vendors to apply the varied standard turnover-based method of apportionment in determining the ratio contemplated in section 17(1).

On 21 September 2020, the taxpayer's representative requested the Commissioner to issue a binding VAT ruling to approve a method to determine the apportionment ratio. Also seeking confirmation from the Commissioner for it to continue to apply the transaction count apportionment method . . . with some modifications set out in section 5 of [its] application. On 23 September 2021, the Commissioner issued a substantially different ruling, unilaterally approving another alternative method not requested by the taxpayer. The taxpayer objected, but the objection was disallowed. The taxpayer then appealed to the tax court.

Proceedings at the tax court

In its special plea, the Commissioner contended there was no refusal decision, meaning there was no decision which was subject to objection and appeal; that being the case, the jurisdiction of the tax court was not engaged. The tax court was of the view that if the Commissioner agrees with the vendor, it approves the method contained in the request and, if the Commissioner disagrees with the method requested by the vendor, it refuses or declines the request and determines which method is to apply. [What we end up with is a 'decision', an appealable decision]. The tax court dismissed the Commissioner's special plea.

Proceedings at the Supreme Court of Appeal

The question before the SCA was whether the Commissioner's refusal to approve the method requested by the vendor for determining the apportionment ratio contemplated in section 17(1) is a 'decision' that "*may be . . . appealed against under the Tax Act*". The Commissioner argued that because he determined an apportionment ratio in this case, albeit not the one requested, there was no refusal decision.

Interpretation of the relevant provisions

In interpreting section 17(1) and section 32(1)(a)(iv) of the VAT Act, the court took into consideration the interpretative approach established in *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13 and reaffirmed in *Capitec v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99.

The court was of the view that the literal interpretation of the word 'refusal' in the text of section 32(1)(a)(iv) may be understood to mean that it is only where the Commissioner has refused outright to approve a method to determine a ratio that the taxpayer will be entitled to object to and appeal against such refusal. Ultimately, it was found that the literal interpretation may only be correct if one ignores the context and purpose of the provision of section 32(1)(a)(iv) as read with section 17(1). For that reason, the literal interpretation was found not to be correct; it was also found that it impermissibly undermines the ruling request mechanism provided by section 17(1).

The court was of the view that the plain material effect of the Commissioner's [alternative] ruling was to refuse to approve the ratio calculation method sought [by the taxpayer]. The SCA concluded that the tax court was correct; therefore, in finding that because

"The power previously held by the Commissioner to deem or assume certain facts to be true, even if they are not, can now also be exercised by the taxpayer"

The implications of the approval of the alternative by the Commissioner

Can this be the case where, in its interpretation of the said provisions, though not so expressed by the court, it is implied that absent the Commissioner making any pronouncement on that which was presented by the taxpayer, by providing and approving an alternative method, the Commissioner was presumed to have negatively pronounced—refused that which was presented and sought by the taxpayer? If so, then the conclusion is strong that in similar cases, the Commissioner is expected to explicitly refuse before providing and approving an alternative method; absent an outright refusal, it can be inferred that the Commissioner has made a refusal and, consequently, a decision.

The reasoning and the conclusion by the SCA may have inadvertently created a concept of deemed refusal or a 'deemed decision'. Even though the Commissioner may not have outrightly refused or made a decision, he is deemed to have refused and ultimately deemed to have made a decision which was subject to objection and appeal by the aggrieved taxpayer. In this way, the Commissioner is now subject to the same legal fictions historically applied against taxpayers—a true taste of his own medicine. The power previously held by the Commissioner to deem or assume certain facts to be true, even if they are not, can now also be exercised by the taxpayer by deeming the Commissioner to have made a refusal decision even when no such refusal decision was made. Courts are now redefining the balance of power.

NO PLACE TO HIDE:

How shrinking deductions and expat rules are squeezing SA's taxpayers

SACHIN VIR JUNPATH, Director at Tax Cloud

Imagine getting an annual salary increase of 6%, yet you still end up with less spending money each month and wonder why.

Over the past decade, South Africa's tax landscape has changed dramatically in ways most people never expected. Now, in 2025, it is not just the lower-income groups feeling the pressure. Individuals in middle and higher income groups are also affected by the policy reforms implemented by SARS.

There was a time when South Africans enjoyed a stable economy, where the cost of living aligned with inflation and municipalities reported surpluses year after year. However, those days are long gone. With decades of mismanagement, poor economic decisions and growing corruption, the stability of the economy has gradually eroded. Therefore, many businesses have ceased operations, leading to a significant rise in unemployment. Many South Africans who previously experienced a comfortable standard of living have transitioned out of higher income brackets, with some facing severe economic hardship.

With these challenges, an exodus of professionals and entrepreneurs has left in search of better prospects abroad and SARS has stepped up its collection efforts to make up for a shrinking tax base. However, while these reforms may have increased revenue collection, they have come at a time when the economy is under tremendous pressure, with fewer taxpayers shouldering most of the burden.

While many taxpayers are trying to adapt to these changes, they now face even more aggressive reforms targeting the tax relief benefits they once relied upon to reduce their taxable income. These benefits are rapidly fading, giving people an early glimpse into a bleaker tax future. In recent years, ongoing policy amendments implemented by SARS have gradually reduced or eliminated many of the historic deductions previously available to taxpayers. As a result, taxpayers have fewer opportunities to benefit from these deductions against their already high taxes. While often described as modernisation or simplification, these changes typically raise tax exposure for the middle class.

With reliefs fading fast and tax authorities around the world exchanging information, South Africans both at home and abroad are discovering they really have nowhere to hide.

NO PLACE TO HIDE

"your tax liability grows faster than your income in real terms, silently putting pressure on the middle class"

The impact of reduced tax relief programmes on your overall tax liability

Since 2010, SARS has steadily reduced major tax relief programmes, giving taxpayers fewer options. Deductions that once benefited taxpayers are now limited, offering little relief from increasing tax burdens.

How recent tax reforms have reshaped key deductions

- **Medical deduction**
  The medical deduction, which previously allowed taxpayers to claim up to one-third of qualifying expenses, has been reduced and now provides limited relief, including for persons with disabilities.

- **Retirement annuities**
  Retirement annuities still allow deductions of up to 27.5 percent of taxable income, however, the annual cap of R350,000 limits the benefit for higher earners.

- **Capital gains exclusions**
  The annual capital gains exclusion and the primary residence exclusion remain in effect; however, as these thresholds have not increased with inflation, a greater number of taxpayers are now subject to capital gains tax. At the same time, others who were always subject to capital gains tax are paying even higher taxes due to rising asset values.

- **Expat relief changes**
  South Africans working abroad no longer get full relief on their foreign income. Since 1 March 2020, SARS has capped this exemption at R1.25 million a year. So, even if you spend more than 183 days outside the country, including 60 consecutive days, any income above that limit is subject to tax in South Africa. Foreign tax credits may be claimed to prevent double taxation on the same income; however, SARS sets out specific regulations for this process.

Other tax benefits at risk

- Donations tax exemptions remain at R100 000 per year for individuals, but in real terms, the value of this exemption has reduced. With no adjustment for inflation and rising asset values, its effectiveness as a wealth transfer or estate planning tool has diminished significantly.

- Pension lump sum tax thresholds have seen little adjustment, making it harder for pensioners to reduce the tax they pay on their payouts. At the same time, many face larger tax liabilities because the interest income exemption set at R34 500 for those over 65 and R23 800 for under 65 years has not been updated for inflation since 2014, resulting in a larger portion of their income being taxed.

- Remote workers, freelancers and sole proprietors have seen the tax rules tighten significantly in recent years.

- Deductions for home offices and vehicle expenses are now subject to more specific requirements, including the need to maintain detailed logbooks and comply with stricter eligibility criteria. Adding to this challenge, SARS has increased its enforcement of provisional tax and VAT rules, making it harder for independent and self-employed taxpayers to keep more of what they make.

Each of these reforms helps SARS bring in more revenue. However, for taxpayers, it means fewer deductions, more disclosure and progressively higher tax liabilities.

How inflation-linked salary increases can increase your tax bill

In addition to recent tax deduction reforms, many individuals are increasingly experiencing the financial impact of bracket creep. For example, if your annual salary increases by 6% with inflation but the annual tax brackets only rise by 3%, you may pay higher taxes on more income without an increase in purchasing power. This means your tax liability grows faster than your income in real terms, silently putting pressure on the middle class. With fewer deductions and tighter rules, people are left with less income to manage their daily living expenses.

The rising tax burden of working abroad

Before 1 March 2020, South Africans working abroad could fully exempt their foreign employment income under section 10(1)(o)(ii) of the Income Tax Act 58 of 1962, provided they met the 183-day and 60 continuous-day tests. There was no cap, which sometimes led to unintended tax avoidance and erosion of the tax base.

From 1 March 2020, the exemption was limited to R1.25 million. Since then, SARS has increased scrutiny, extending audits to dual status taxpayers and demanding detailed proof such as daily residency logs, bank statements, utility bills and other related documents to confirm time spent outside South Africa.

While these measures help protect revenue, they also increase compliance costs for taxpayers. DTAs reduce tax burdens but are more complex than full exemptions. Many expats find these stricter rules overwhelming.

The talent exodus: South Africa's growing brain drain

South Africa is quietly losing some of its brightest minds. An increasing number of skilled professionals are choosing to leave the country, a trend that migration data and private sector reports can no longer overlook. Although official Stats SA figures show only a modest increase, independent studies highlight a steady and worrying rise in the number of high-income earners and specialists whose talents are crucial for South Africa's future.

What is driving this steady outflow? One key factor is the increasing pressure of tax rules. Since the amendment to section 10(1)(o)(ii) of the Income Tax Act, 1962, South African expats face taxation on foreign earnings above R1.25 million, significantly narrowing the reliefs that were previously available to them. While Double Taxation Agreements offer some relief, they do not provide full exemption and come with complex disclosure obligations that make compliance a minefield.

The 2023/24 SARS Annual Report highlights a growing focus on South Africans living abroad, with stringent residency tests and more aggressive debt recovery efforts. For many expats, it feels like yet another obstacle, making them feel even more distant from home.

If these challenges are not addressed soon, South Africa risks continuing to lose both valuable skills and the revenue it depends on.

Building a fair and competitive tax system: Lessons from abroad

With shrinking tax relief and rising living costs, many South Africans are struggling financially. The National Treasury 2024 Budget Review indicates that medical tax credits have not kept up with growing healthcare costs. At the same time, expats face complex disclosure requirements just to benefit from the available tax relief programmes, a problem highlighted in SARS' 2023 Compliance Report.

Tax brackets have not kept pace with inflation, causing people to pay more tax despite unchanged real incomes. National Treasury has also raised concerns about this in recent reviews.

In comparison, other countries like Portugal, as reported by PwC, offer special tax benefits through their Non-Habitual Residency (NHR) programme to attract skilled workers and pensioners. Similarly, the Canada Revenue Agency states that Canada taxes only income earned within the country for non-residents, which helps keep things fair and avoids overburdening residents. These examples show ways to balance fairness and competitiveness in the tax system. Implementing this strategy in South Africa could enhance the country's appeal.

Reforming South Africa's tax system to deliver fairness and value to citizens

Tax analysts and industry stakeholders have proposed the following recommendations to improve fairness and ease of compliance:

- Adjusting medical tax credits annually to help ease the burden of rising healthcare costs.
- Replacing the fixed cap on retirement annuity deductions with a sliding scale to encourage higher savings.
- Simplifying expatriate tax requirements by introducing digital residency verification.
- Adjusting the tax brackets annually in line with inflation to prevent individuals from paying higher tax rates when their income hasn't increased in real terms.

While these measures are not immediate solutions, with appropriate planning and implementation, they have the potential to enhance fairness and transparency in South Africa's tax system.

TAX AVOIDANCE ON AN INTERNATIONAL SCALE:

A CONSIDERATION OF THE CFC RULES

▶ **ORORISENG MAEMA,** Associate at Mncedisi Ndlovu and Sedumedi Attorneys

South African residents are taxed on income earned anywhere in the world, whereas non-residents are taxed on income earned from a source within the Republic.

This leaves SARS in a precarious position, in instances where South African residents invest in foreign companies and park earnings overseas without repatriating such earnings. This could lead tax avoidance and ultimately the erosion of the South African tax base in that residents could easily invest their capital in overseas companies and never claim any income due to them from such investments with the intention of not being taxed on those earnings. Alternatively, residents could establish foreign entities for the receipt and spending of such income equally denying SARS any benefit.

This possibly has the effect of placing pressure on the legislature and SARS to increase domestic taxes which would affect ordinary South African residents negatively.

To combat the possible tax avoidance strategy, the legislature introduced specific anti-avoidance measures in section 9D of the Income tax Act 58 of 1962 (the "Act") in terms of which:

- South African residents are required to account for an amount equal to the net income of a Controlled Foreign Company (CFC); and
- The net income is calculated as if the CFC were a South African tax resident in terms of certain sections of the Act.

While South Africa wants to foster an internationally competitive economy, the considerations of international competitiveness are diametrically opposed in that anti-avoidance warrants complete taxation, whereas international competitiveness warrants complete exemption.

While countries want to get as much tax as possible from their residents and economic activities, they have to balance that with being economically attractive to other countries for business and investment. As such, countries tend to want to avoid applying taxes where taxes have already been applied.

Without derogating from international norms, section 9D of the Act favours a balanced approach. This is so because the provisions impose tax obligations to combat tax avoidance While favouring international competitiveness (i.e., exemption) where the income stems from active operations. The relevant provisions of the Act are discussed, below.

What exactly is a CFC?

As alluded to above, a CFC is a Controlled Foreign Company. For purposes of income tax, rules relating to CFCs are dealt in in section 9D(2) :

> *"There shall be included in the income for the year of assessment of any resident (other than a resident that is a headquarter company) who directly or indirectly holds any participation rights in a controlled foreign company— (…)*
>
> *(a) on the last day of the foreign tax year of that controlled foreign company which ends during that year of assessment, an amount equal to—*
>
> *(i) where that foreign company was a controlled foreign company for the entire foreign tax year, the proportional amount of the net income of that controlled foreign company determined for that foreign tax year, which bears to the total net income of that company during that foreign tax year, the same ratio as the percentage of the participation rights of that resident in relation to that company bears to the total participation rights in relation to that company on that last day; or*
>
> *(ii) where that foreign company became a controlled foreign company at any stage during that foreign tax year, at the option of the resident, either—*
>
> *(aa) an amount which bears to the proportional amount determined in accordance with subparagraph (i), the same ratio as the number of days during that foreign tax year that the foreign company was a controlled foreign company bears to the total number of days in that foreign tax year; or*
>
> *(bb) the proportional amount determined in the manner contemplated in subparagraph (i) (as if the day that foreign company commenced to be a controlled foreign company was the first day of its foreign tax year), of the net income of that company for the period commencing on the day that the foreign company commenced to be a controlled foreign company and ending on the last day of that foreign tax year; or (…) "*

"The considerations of international competitiveness are diametrically opposed in that anti-avoidance warrants complete taxation, whereas international competitiveness warrants complete exemption"

In short, there are two requirements to be considered for there to be a CFC, the first being that there must be a company established anywhere other than in the Republic (i.e., a foreign company) and the second being that such company must be controlled by a South African resident(s). For clarity:

- for purposes of section 9D, a foreign company is a company besides a company with its place of effective management in the Republic; and

- A foreign company will be controlled by South African residents where the South African residents directly or indirectly hold more than 50% of the total participation (i.e shares) or voting rights in a foreign company.

Once the above requirements have been met, a CFC is established.

In addition to the provisions of section 9D, regard must always be had to arrangements provided for in Double Taxation Agreements which may be concluded between South Africa and other tax jurisdictions when determining the liability of a taxpayer.

Without derogating from the arrangements provided for in Double Taxation Agreements which may be concluded between South Africa and other tax jurisdictions, and in line with international standards section 9D requires South African residents to account for income in respect foreign companies controlled by South African residents for purposes of the Act.

What are you required to do once you have established that there is a CFC?

Once it has been established that a company is a CFC, a South African Resident is required to apportion a part the net income of the CFC to the taxpayer's income.

South African residents who have participation rights (e.g.shares) in a CFC are potentially subject to tax on the 'net income' of that CFC as if that net income were immediately repatriated when earned by the CFC.

South African residents are deemed to receive CFC net income only to the extent of their proportional ownership in the CFC. However, this deemed income rule does not apply to South African residents who own less than 10% (after taking into account connected persons) of both the participation rights and voting rights in the CFC. The rationale behind the 10% threshold is that it prevents this defined income rule from applying to minority owners who have no practical control over the CFC's strategy and /or outlook.

In essence, residents are required to account for the income of that foreign company as part of their income in direct proportion to their shareholding.

Exclusions (What a CFC is not)

To expand on the aspect of international competitiveness, section 9D (9) of the Act provides for the following exemptions in respect of the income which must be accounted for by the South African residents:

- The Designated Country Exception;
- The Foreign Business Establishment Exception;
- The Concurrently Taxed Exception;
- The Related and Intra-Group Exceptions; and
- The Share Participation Exception.

For purposes of this article, we focus on the Foreign Business Establishment (FBE) exception as this is the most significant one. The FBE allows CFC business income to escape the ambit of section 9D unless that income is diversionary or passive.

In order for CFC income to be exempt under this provision, the income must be attributable to a 'business establishment.' A business establishment essentially involves a business that has some permanence, some economic substance, and a non-tax business reason for operating abroad rather than domestically.

An exempt business establishment is required to operate through a fixed location that suggests a level of permanence, this requires that the business involved is not mere mailing address, website, or momentary single business project.

The location of the business establishment must additionally contain further substance. This substance must be demonstrated in terms of operation and in terms of business purpose.

In operational terms, the business must be suitably equipped with on-site operational managers and employees, equipment and other facilities to conduct the primary operations of that business. In business purpose terms, the business must have a *bona fide* non-tax business reason for operating abroad rather than in South Africa.

Therefore, income obtained by a CFC from an FBE is exempt. Below, we discuss a recent case where the Supreme Court of Appeal (SCA) was required to determine whether income of a CFC w exempt from tax on account of being an FBE.

CSARS V Coronation Investment Management SA (Pty)

The concept of an FBE was considered by the SCA in *CSARS V Coronation Investment Management SA (Pty)* (1269/2021) [2023] wherein the SCA the court had to determine whether a CFC had met the "*foreign business establishment exemption*" from imputation of income under S9D.

Brief facts

In the Coronation case, the SCA had to determine whether the Irish Coronation group company had sufficient substance to its operations and complied with all the requirements of the FBE definition. To the extent that it did not qualify for the FBE exemption, the Coronation holding company in South Africa would have to impute profits of the Irish entity in its South African tax return.

It was accepted that the Irish entity had a fixed place of business that was staffed by on-site operations and managerial employees. However, the key issue was whether the office was suitably equipped and staffed for conducting the 'primary operations' of the Irish entity. Coronation contended that its primary operation in Ireland was 'fund management' which included the active management of its service providers, plus regulatory compliance.

It furthermore submitted that the functions that it outsourced and did not conduct in Ireland comprised the larger fund management services (i.e. 'investment management') provided to investors in conjunction with the investment manager, which was not its primary operation. The argument was therefore that because it outsourced its investment management functions to other entities, that was not its primary business operation and therefore its FBE in Ireland did not need to be suitably staffed by individuals conducting the 'investment management' services.

The SCA disagreed with Coronation's submissions and held that the argument that 'investment management' is not the Irish entity's core business was at odds with what was stated in its founding documents, which specifically referred to establishing specified collective investment undertakings and carrying on the business of investment and financial management. In addition, the fact that the Irish entity's primary source of income was from investment was, according to the SCA, another indication that its core function was investment management.

The SCA Concluded that:

- the primary operations were those of a fund management;
- not conducted in the country where the was located (outsourced); and
- therefore the requirements are not met.

Proposed amendments to section 9D

The President promulgated the Taxation Laws Amendment Act 42 2024 in terms of which section 9D is amended as follows:

> *"(1) Section 9D of the Income Tax Act, 1962, is hereby amended —*
>
> *(a) by the substitution in subsection (1) in paragraph (a) of the definition of "foreign business establishment" for subparagraph (ii) of the following subparagraph:*
>
> *"(ii) that fixed place of business is suitably staffed with on-site managerial and operational employees of that controlled foreign company who [conduct the primary operations of that business] perform all the important functions of that business for which the controlled foreign company is compensated;" (b) by the substitution in subsection (1) in paragraph (a) of the definition of "foreign business establishment" for subparagraph (iii) of the following subparagraph: "(iii) that fixed place of business is suitably equipped for [conducting the primary operations of that business] performing all the important functions of that business for which the controlled foreign company is compensated;"*

The term 'important functions' is not defined in the Act. Thus, the ordinary dictionary meaning of these words would apply. The functions of a business are the activities carried out by an enterprise and can be the core revenue-generating activities or support activities. The word 'important' means of significance or value. The proposal means that no important functions of a CFC's business, which are revenue-generating (ie compensated) may be outsourced to third parties, with the CFC employing people to manage the outsourcing.

Alternatively, the CFC can still rely on the FBE exemption only if it outsources to a group entity located and tax resident in the same country as the CFC's fixed place of business.

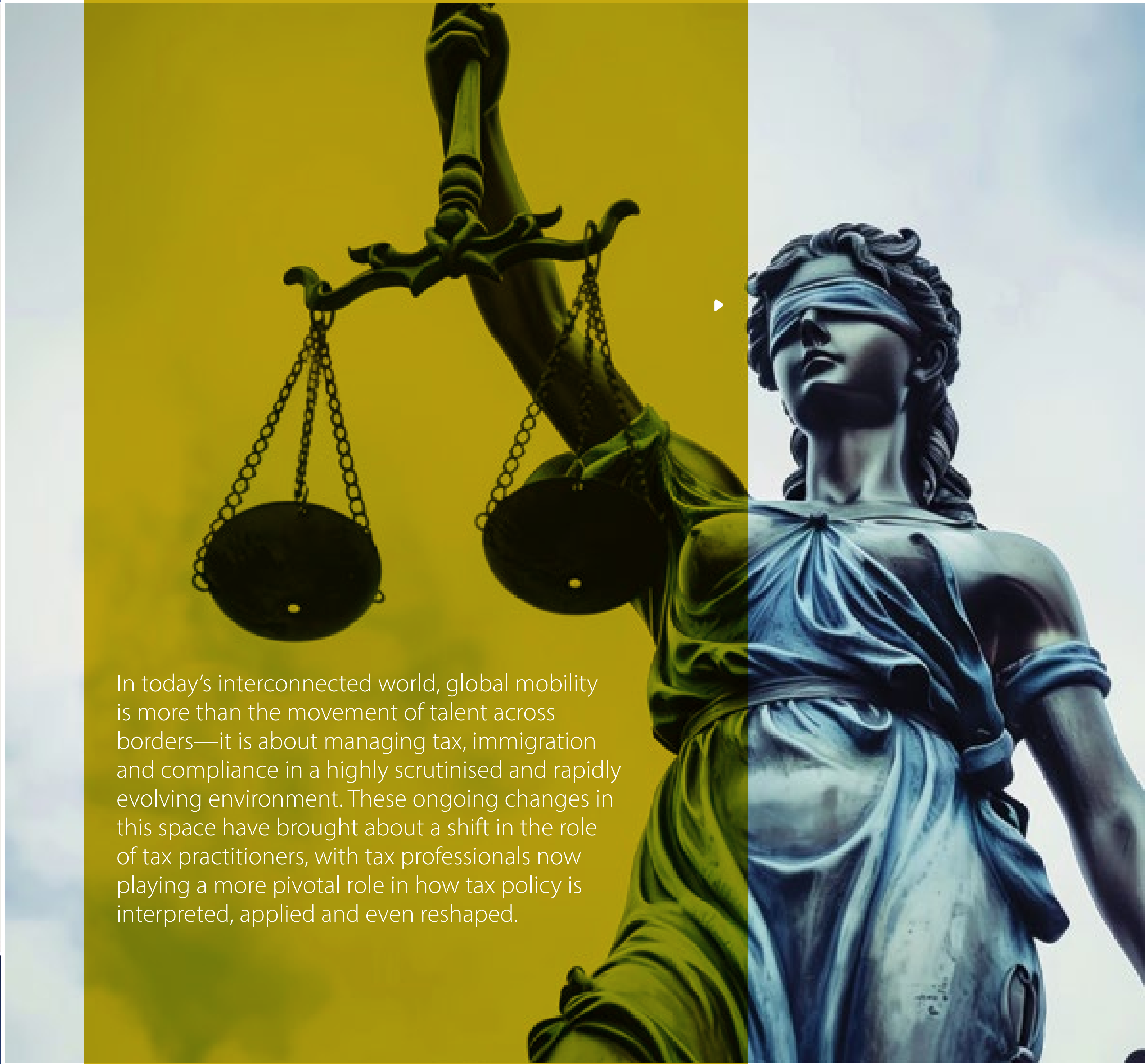
Be that as it may, prior to investing in a foreign entity, South African residents should err on the side of caution by consulting tax advisors to advise as to whether the investment will lead to increased tax liability.

15minutes CPD

GATEKEEPERS OF FAIRNESS:

The strategic and ethical role of tax practitioners in global mobility

▶ **CINZIA DE RISI,** Managing Partner at Tax Connect



In today's interconnected world, global mobility is more than the movement of talent across borders—it is about managing tax, immigration and compliance in a highly scrutinised and rapidly evolving environment. These ongoing changes in this space have brought about a shift in the role of tax practitioners, with tax professionals now playing a more pivotal role in how tax policy is interpreted, applied and even reshaped.

From technical experts to strategic advisors

Historically, tax professionals functioned behind the scenes—interpreting legislation, filing returns and ensuring that cross-border workers remained compliant with host-country laws. But as governments adopt more robust anti-abuse frameworks and seek to address global fiscal imbalances, tax practitioners are stepping into a more visible, strategic role.

Today's global mobility tax practitioners do much more than calculate tax liabilities or manage compliance deadlines. They are now key advisors who help companies stay ahead of constantly changing tax rules and regulations across different countries. This includes:

- anticipating changes in tax residency rules,
- keeping up with evolving immigration requirements,
- managing payroll reporting across multiple jurisdictions, especially cross-border payrolls and shadow payroll requirements,
- guiding on income tax and social security coordination under bilateral or multilateral agreements, and
- addressing permanent establishment (PE) risks that can be triggered by remote or mobile employees.

All of these areas—ranging from compensation structures and benefits to relocation support and assignment terms—carry significant tax, legal and reputational implications for both employers and employees. Getting any of these wrong can lead to financial penalties, employee dissatisfaction, or even reputational damage. As such, tax practitioners involved in global mobility are increasingly expected to go beyond traditional compliance roles. They must anticipate regulatory shifts from tax laws and reporting requirements to treaties and immigration rules across jurisdictions.

In short, they are seen as risk managers and policy interpreters, not just administrators.

Navigating the space between policy and practice

Today, one of the most critical responsibilities of global mobility professionals is bridging the gap between what tax law says and how it applies in the real world. Many laws were not designed for the modern mobile workforce—hybrid roles, digital nomads and remote cross-border teams are putting stress on outdated tax residency rules and triggering unexpected liabilities.

"As the role of the global mobility tax practitioner has evolved, so too has the need to balance competing priorities"

Tax practitioners are the ones helping companies translate these grey areas into actionable policies and sustainable mobility strategies. They assess individual risk, coordinate with payroll and legal teams and advise leadership on how to stay compliant without hindering business agility.

This is especially crucial in developing countries, where the race to attract foreign talent and investment is often undercut by concerns about tax fairness and revenue loss. By encouraging ethical tax practices, mobility tax professionals can support efforts to correct global fiscal imbalances and foster more equitable outcomes.

Striking a balance

As the role of the global mobility tax practitioner has evolved, so too has the need to balance competing priorities. With tax authorities around the world stepping up their scrutiny and actively seeking new sources of revenue, the pressure on global mobility tax practitioners is intensifying. Governments are becoming more sophisticated in tracking cross-border employee movements, enforcing reporting obligations and identifying non-compliance. In this environment, tax professionals must carefully navigate the delicate balance between helping clients manage and reduce their mobility-related costs, such as through efficient structuring of compensation, benefits and tax equalisation, and ensuring full compliance with increasingly complex and aggressive tax regulations.

Striking this balance requires a deep understanding of both local and international tax laws, as well as the ability to design mobility programs that are cost-effective but still transparent and defensible under audit. It is no longer just about minimising tax liabilities; it is about doing so responsibly, ethically and in a way that aligns with both the client's business goals and the evolving expectations of tax authorities.

Supporting equitable and transparent mobility

Tax professionals in global mobility also play a vital role in promoting equitable tax outcomes. They help ensure that tax is paid where economic value is created and where employees live and/or work. In doing so, they support broader government goals of revenue fairness and sustainable fiscal policy.

By promoting transparency, discouraging aggressive tax planning and advocating fair treatment for employers, employees and tax authorities alike, tax professionals play a vital role in reinforcing trust in the global tax system. In doing so, they help build a more sustainable model of international mobility—one that balances business growth with fiscal responsibility.

Conclusion

As the global mobility landscape continues to evolve, so too does the responsibility of those who guide it. Tax practitioners are no longer just compliance experts; they are strategic advisors, ethical gatekeepers and interpreters of a constantly changing regulatory landscape.

Their role in translating regulatory ambiguity into clear, fair and transparent guidance is critical—not just for business compliance, but for shaping a more equitable global tax system.

45minutes CPD

NAVIGATING TAX PRACTITIONER COMPLIANCE AND ETHICS: A MASTERCLASS

▸ **ADRIAN MODIKWE-LUDICK,** Acting Head of Legal and Ethical Compliance at SAIT

In the demanding field of tax practice, professionals must consistently align with the highest order of legal, ethical standards and regulatory compliance requirements.

Through entrenching professionalism and managing expectations, practitioners can enhance business integrity and also successfully mitigate risks and avoid pitfalls. Notwithstanding, the constant changes in regulations and economic conditions present a formidable set of challenges.

Additionally, practitioners find themselves in a complex environment characterised by issues around tax debt, the intricate process of filing accurate returns and the pervasive sense of treading water amidst an unkind economic climate.

These factors collectively contribute to broader problems relating to non-compliance and fiscal imbalance. Understanding the chemistry between ethical duties and practical compliance while navigating an ever-changing professional and regulatory environment are crucial for all professionals aiming to future-proof their careers, practices and remain resilient.

The juggling act

Professionalism extends beyond expertise; it encompasses how tax practitioners present themselves to clients and peers. It also extends to upholding proper rules of engagement with their home Recognised Controlling Bodies (i.e. SAIT). Wherever two individuals are engaged in a commercial/legal relationship, managing expectations is crucial. In the context of tax professionals, this relates to observing all standard tenets of client management and due care. Clear communication about potential outcomes and timelines builds trust and avoids misunderstandings. It is demonstrably key to ensure that clients understand the realistic timelines and processes associated with South African Revenue Service (SARS) requirements and general tax procedures affecting your practice internally and as influenced by external factors and applicable legal standards.

Strategic safety

In tax practice, minimising risk involves a proactive approach to compliance with domestic laws and ethical standards. Common risks include financial discrepancies, fraud and misreporting. Practitioners should foster a culture of transparency and regular audits to support accuracy in filings and adherence to both SARS regulations and the ethical standards set by the South African Institute of Taxation.

For risk mitigation, tax practitioners must:

- Regularly update their knowledge of regulations and adopt a meticulous check-and-balance system; this includes compliance with obligations towards maintaining Continued Professional Development (as a statutory requirement for retention of registration as a tax practitioner in South Africa).
- Use secure channels for communication to prevent breaches of confidentiality and client data within your care. The relevant privacy laws within the South African jurisdiction are based on eight principles relating to the processing of personal information. A practitioner who engages the personal information of a client is required to comply with the principles and requirements of the Protection of Personal Information Act, 2013 (POPIA). In this context, breaches of personal data could potentially bring severe reputational damage and/or pecuniary and criminal sanctions.
- Develop a robust deadline and client portfolio management system to ensure the timely completion of work undertaken, including the filing of returns.
- Conduct peer reviews within your organisation, enhancing quality control and professional accountability. This is critical in larger firms with a larger client base and higher volumes of work. It is important to remember that a registered professional remains accountable in their personal and professional capacity for the conduct of their employees. We address the importance of Professional Indemnity insurance later.
- Ask for help. Collaboration and networking within the industry can lead to shared insights and resources, enabling practitioners to stay ahead of challenges. Participation in professional associations and forums provides opportunities for learning and exchange, fostering a sense of community that can be invaluable in turbulent times.

Treading carefully: Limitation and management of liability and risk

Liability management is fundamental to maintaining professional integrity and financial security. Any client relationship must be governed by a detailed letter of engagement which sets out all expectations and scope of work. Often, in client engagements, we discuss what we are able and willing to do for the client. It is equally important to draw a line in the sand in terms of what we are not willing and able to do for our clients. This goes to further entrenching client expectation management which necessarily mitigates risk as a crucial element of limitation of liability.

Practitioners must:

- Carefully draft and review contracts (engagement letters), ensuring they include clear terms and conditions;
- Limit liability through specific mandates and variation clauses for additional work; and
- Educate personnel about potential misconduct and negligence that could increase liability. This also includes being clear on the consequences of misconduct and negligence.

"Professionalism extends beyond expertise; it encompasses how tax practitioners present themselves to clients and peers"

Of course, despite our best efforts, mistakes do happen. Thus, in order to mitigate potential adverse effects on a practitioner's reputation and maintain access to professional indemnity insurance, the above limitations must be fully understood, expanded upon based on the organisation's specific needs and managed effectively. There are no 'one-size fits all' solutions to compliance; solutions, safeguards, protocols and compliance policies will always be bespoke.

Mastering the art of ethical compliance

Ethical behaviour is non-negotiable in tax practice and is not as surgically clean a concept of application as we may think. Ethics is tough business in the tax practitioner environment but with sound ethics as your guide, you cannot go too far wrong. These are the bare necessities of ethics in your practice:

- Honesty and integrity in all communications and disclosures.
- Objectivity. Often, familiar clients tend to test the boundaries. This is not always an easy dynamic to navigate but with professionalism and objectivity as your rudder and sails, a tax practitioner can protect themselves from potentially engaging in unethical or illegal conduct.
- Maintaining client confidentiality and making appropriate disclosures only within the legal framework.
- Avoiding conflicts of interest and adhering to the agreed contractual mandate.

Compliance with SAIT and SARS standards is not just about following rules; it is about conscientiously embedding ethics into every action.

Guardians of trust: Professional indemnity insurance

Tax practitioners shoulder significant responsibilities within the revenue collection system. Their vital role is essential for effective fiscal management and compliance which extends to positioning the revenue collector towards best results in each reporting and revenue collection cycle. They are also responsible for safeguarding the public trust and confidence in the revenue collection system. Often, when trouble comes knocking, there are few to provide the necessary support and guidance to our tax practitioners.

Professional indemnity (PI) insurance is crucial for tax practitioners, safeguarding them against potential claims of negligence, errors or omissions. With the complexity of tax regulations, even minor mistakes can lead to significant financial repercussions. This insurance not only protects practitioners' financial assets but also enhances their credibility, demonstrating a commitment to accountability and professionalism. In a field where trust is paramount, having coverage reassures clients and allows practitioners to operate confidently, knowing they are protected against inadvertent missteps in their advisory and filing services.

The claims conundrum: Consequences of a rocky history

It is important to have PI Insurance, but it is equally important to avoid the types of situations that may require calling it in. An adverse claims history can severely affect a member's ability to obtain or maintain PI insurance. It goes without saying that the potential for reputational damage is a risk. Increased premiums and reduced coverage are

NAVIGATING TAX PRACTITIONER COMPLIANCE AND ETHICS

"Remaining adaptable and informed will enable tax practitioners to not only survive but thrive in this demanding environment, ensuring their role as indispensable advocates for fiscal responsibility and compliance"

common repercussions. Therefore, maintaining a clean claims record through stringent risk management practices is vital.

Tackling liability trends and pitfalls in practice

To address prevalent liability trends and pitfalls, such as personnel misconduct and missing deadlines, practitioners must:

- Implement comprehensive training programmes that emphasise ethical practices;
- Establish each member's responsibility within the organisation, strengthening individual accountability; and
- Employ technology solutions that enhance reliability and efficiency in handling tax-related tasks, such as automated deadline reminders and secure document storage.

Tax practitioner compliance

Adhering to SARS and SAIT compliance standards is a legal requirement for tax practitioners who wish to retain their membership with a controlling body and remain registered as a professional with SARS. Compliance includes:

- Timely and accurate tax return submissions;
- Proper record-keeping and transparent reporting practices;
- Participation in continuous professional development (CPD) to remain abreast of changing tax laws and standards;

- Maintenance of a Criminal-free status; and
- Maintenance of personal and business Tax Compliance.

Upholding integrity and fortifying a practitioner's standing and accessibility to necessary professional resources is crucial. Ethics and compliance form the backbone of South African tax practice. Tax practitioners must embrace ethical principles and fulfil their compliance obligations annually to safeguard their practices, enhance client trust and maintain insurability. Ultimately, by doing the right thing consistently, practitioners elevate the integrity and efficacy of the tax profession across South Africa.

Debt dilemmas

Tax debt remains a persistent issue affecting both individuals and businesses; it directly impacts the workload and focus of tax practitioners. Clients struggling under the weight of tax debt often turn to their practitioners for solutions, increasing the pressure on professionals to deliver effective strategies. However, the complexity of tax codes, frequent legislative changes and economic pressures complicate these efforts.

Tax practitioners must stay informed about the latest developments in tax relief programs and debt resolution mechanisms. As trusted advisors, they should guide clients through options such as instalment agreements, offers in compromise and penalty abatements.

Building strong relationships with SARS and SAIT can facilitate negotiations and improve outcomes for clients (i.e. SAIT offers a technical support service through which SARS and tax-related queries can be ventilated or escalated directly through SARS channels for expedited and fuller support/resolution). Additionally, practitioners should equip clients with financial literacy tools, empowering them to manage their finances more effectively and prevent future debt accumulation.

Mastering the complexity of tax returns

Filing tax returns accurately and efficiently is another core responsibility of tax practitioners. The demand for meticulous attention to detail is heightened by the intricate web of regulations and requirements that must be navigated. As the government introduces new tax legislation, practitioners must continuously update their knowledge and adapt their processes to ensure compliance.

Investing in technological solutions can significantly enhance the efficiency and accuracy of return preparation. Regular training and professional development programmes are essential to maintaining a high level of expertise in your practice. Practitioners should also foster transparent communication with clients, ensuring they understand their obligations and the importance of providing complete and accurate information.

Economics: Weathering the storm and staying afloat

The prevailing economic climate adds an additional layer of difficulty for tax practitioners. Economic downturns lead to reduced business revenues, increased unemployment and higher client default rates. Practitioners may experience a decreased demand for services, which, coupled with the burden of unpaid fees, creates a sense of treading water. This is also compounded by overheads such as membership fees for professional bodies and lease payments on office space and software.

In such times, adaptability is crucial. Most SAIT tax practitioners straddle various disciplines within the tax profession. Diversifying service offerings to include financial planning, advisory services or bookkeeping can open new revenue streams. With the new supplementing designations offered by SAIT for Accounting Officers and Compilers, members will no longer need to hold multiple, costly memberships with various controlling bodies in order to render the broader scope of their service offerings.

Of course, the harsh economic climate affects clients as well; this has a direct impact on tax practitioners' professional fees. Offering flexible payment plans or tiered services can make professional assistance accessible to a broader range of clients. Building a robust online presence and utilising digital marketing can also attract clients outside traditional geographic boundaries, further bolstering business resilience.

Breaking the cycle of fiscal imbalance

Fiscal imbalance is a significant concern both at the national level and for individual practitioners managing their practices. The key to addressing this issue lies in strategic planning and effective resource management. Tax practitioners should conduct comprehensive business assessments to identify inefficiencies and areas for improvement, while implementing proper financial controls and budgeting processes can help maintain fiscal discipline.

When the dust settles: A reflection on the journey

Amid these challenges, maintaining compliance with regulatory and ethical standards is paramount. Tax practitioners must adhere strictly to ethical guidelines, ensuring all client interactions and business practices meet professional standards.

Ultimately, building and maintaining trust with clients is the cornerstone of a successful tax practice. Transparent communication, integrity and a commitment to client welfare must underpin all engagements. By empowering clients with knowledge and tools, practitioners can help them navigate their tax obligations more effectively, fostering long-term relationships built on trust and value.

In the face of challenges related to tax debt, return complexities, an unforgiving economic climate and fiscal imbalance, tax practitioners must adopt innovative strategies and maintain an unwavering commitment to ethics and compliance. Leveraging technology, expanding service offerings and fostering community, practitioners can enhance their resilience and continue to provide invaluable support to their clients.

Remaining adaptable and informed will enable tax practitioners to not only survive but thrive in this demanding environment, ensuring their role as indispensable advocates for fiscal responsibility and compliance.

Upholding compliance standards takes dedication and continual effort. Yet, the rewards—*a respected practice, satisfied clients and a stable professional future*— provide compelling reasons to prioritise ethics and compliance in every aspect of work.

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15minutes CPD

WHY POST-CLEARANCE AUDITS ARE RESHAPING THE CUSTOMS COMPLIANCE LANDSCAPE

DR RODRICK VAN ROOYEN, Customs and International Trade Advisor

The article highlights post-clearance audits (PCAs) as a crucial tool for ensuring compliance with customs regulations amid increasing global trade. It discusses the objectives of PCAs, which include verifying the accuracy of customs declarations related to the value, origin and classification of goods, as well as ensuring adherence to specific import/export controls. Additionally, it describes several types of audits and their preventive and deterrent effects, emphasizing the importance of planning visits based on perceived revenue risks and maintaining a fair audit process.

Introduction

From a trader's perspective, understanding PCAs is essential for successfully navigating the complexities of international trade. PCAs can significantly impact how traders operate, as these audits ensure that customs declarations are accurate and compliant with regulations. It is vital for traders to embrace the PCA process, as it can help avoid potential penalties and maintain a positive relationship with customs authorities.

Understanding the impact of PCAs on traders

PCAs are designed to assess compliance with customs regulations. The objectives include verifying whether traders have accurately declared the value, origin and classification of their goods. This means that traders need to be diligent in their reporting and ensure that all customs declarations are precise and complete. Errors or omissions can lead to significant consequences, including fines or increased scrutiny from customs.

Types of audits and their relevance

Traders should be aware of the several types of audits that customs authorities may conduct:

- Comprehensive Audit (Systems-Based Audit): This audit examines a trader's internal control systems and procedures. Traders should ensure their internal processes are well-documented and efficient, as customs may review how they manage their records and compliance efforts.

- Focused/Theme-Based Audit (Issue-Based Audit): These audits target specific customs issues such as valuation or classification. Traders should stay informed about common issues that may arise in their sector and proactively address them to avoid complications during audits.

- Post-Importation Transaction-Based Audit (TBA): Conducted after goods have been cleared, these audits focus on specific transactions. Traders should be prepared to provide documentation and evidence for transactions that may be flagged for review.

Preparing for PCA visits

To effectively prepare for PCAs, traders should adopt several best practices:

- Maintain accurate and organised records: Traders must keep comprehensive and accurate records of all transactions, invoices and customs declarations. A well-organised filing system can facilitate quick retrieval of information during audits.

- Understand compliance requirements: Traders should familiarise themselves with the regulations that govern their imports and exports. This knowledge will help prevent under-declaring liabilities and ensure all necessary documentation is in order.

- Implement strong internal controls: Establishing robust internal control systems can help manage compliance risks effectively. Regular audits of internal processes can identify potential issues before customs conducts its review.

Below are examples covering tariff, valuation and origin:

Internal Control for Tariff Classification	
Implement a robust classification process, including regular training for employees responsible for classification. Maintain an updated product catalog and seek professional advice on complex classifications.	
Control Test Design	
Review of Documentation:	Examine the trader's documentation related to classification, such as policies, procedures, and guidelines. Ensure that they are comprehensive, up-to-date, and accessible to employees responsible for classification.
Verification of Classifications:	Randomly select a sample of products from the trader's catalog and tariff library. Thoroughly compare the classifications assigned by the trader with the relevant tariff codes and regulations. Verify the accuracy and consistency of the classifications.
Error Identification:	Identify any errors, discrepancies, or gaps in the classification process. This can involve checking if the assigned classifications match the actual product characteristics and any special requirements or exceptions, Evaluate the trader's ability to handle complex classifications correctly.
Training Assessment:	Evaluate the trader's training program for employees responsible for classification. Review the training materials, training frequency, and effectiveness of the program. Interview employees to assess their knowledge and understanding of classification rules and procedures.
Professional Advice Evaluation:	Assess the trader's engagement with external professionals or consultants for complex classifications. Verify the qualifications and expertise of these professionals, and review the advice provided. Determine if the trader is effectively seeking and implementing professional advice when needed.
Corrective Actions:	Provide feedback and recommendations based on the findings from the control test. If any errors or deficiencies are identified, suggest corrective actions to address them. These may include additional training, updating policies and procedures, or seeking more reliable professional advice.

Internal Control for Customs Valuation	
Establish clear procedures for determining the customs value, including proper documentation and reliance on recognised valuation methods. Regularly review and update valuation policies based on changes in relevant customs regulations.	
Control Test Design	
Review of Documentation:	Examine the trader's documentation related to customs valuation, including invoices, contracts, and supporting documents. Ensure that all required documents are properly maintained and accessible.
Verify Compliance with Valuation Methods:	Assess whether the trader follows recognized valuation methods, such as the transaction value method, when determining the customs value. Compare the valuation methods used by the trader with those specified in relevant customs regulations.
Evaluate Review and Update Procedures:	Assess the trader's procedures for regularly reviewing and updating valuation policies in response to changes in relevant customs regulations. Check if there is a documented process for identifying and incorporating regulatory changes into the valuation policies.
Simple Analysis:	Select a sample of customs declarations and perform an analysis to determine if the customs value calculation aligns with the declared value and applicable valuation methods.

Interview Employees:	Interview relevant employees involved in the customs valuation process to assess their knowledge and understanding of the procedures and valuation methods. Inquire about any challenges they face and their awareness of the importance of proper documentation and compliance with recognized valuation methods.
External Consultant Assessment:	Evaluate the trader's engagement with external professionals or consultants for complex valuation issues. Review their qualifications and expertise and assess the advice provided to ensure it aligns with recognized valuation methods and regulations.

Internal Control for the Origin of Goods	
Develop a comprehensive system to determine the correct origin of goods. Maintain accurate records of raw materials used, manufacturing processes, and supporting documentation to validate claims of preferential treatment under free trade agreements.	
Control Test Design	
Review Policies and Procedures:	Examine the organisation's policies and procedures related to customs origin determination; Verify that the policies align with relevant laws, regulations, and free trade agreements; Assess the clarity and comprehensiveness of the policies and procedures.
Record-Keeping Practices:	Evaluate the accuracy and completeness of record-keeping practices related to the origin determination process; inspect records of raw materials used, manufacturing processes employed, and supporting documents required for preferential treatment claims; Check for proper documentation retention and accessibility.
Origin Determination Process:	Analyze the methodology employed to determine the origin of goods; Review the criteria utilized, such as substantial transformation or value-added requirements; Validate that the process is consistently applied and documented for all goods.
Testing Controls and Validating Claims:	Select a sample of goods claiming preferential treatment under free trade agreements; assess whether the controls in place effectively validate the claims made; Examine supporting documents to ensure they substantiate the claims and meet regulatory requirements.
Error and Deficiency Analysis:	Summarize any errors, deficiencies, or areas of improvement identified during the test, Determine the root causes of these issues and their potential impact on compliance; Propose corrective actions to address the identified weaknesses.
Recommendations:	Update policies and procedures to address any gaps or inconsistencies; Strengthen record-keeping practices, ensuring accurate and accessible documentation; Implement additional validation checks to enhance the reliability of preferential treatment claims; Provide appropriate training to staff involved in customs origin determination; periodically review and update the control test design to adapt to changing regulations.

- Conduct internal audit reviews: Leading up to a PCA visit, traders should perform internal assessments to ensure that all documentation is accurate and complete. This initiative-taking approach can help identify and resolve discrepancies before customs arrives at the trader's premises.
- Engage with customs authorities: Building a positive relationship with customs officials can foster cooperation and improve communication. Traders should be transparent about their operations and seek guidance on compliance matters.

The preventive and deterrent effects of PCAs

The expectation of a PCA visit can have both preventive and deterrent effects on traders. The preventive effect refers to how the anticipation of an audit encourages traders to maintain accurate records and adhere to compliance regulations. The deterrent effect means that the awareness of potential audits makes traders less likely to evade customs requirements, knowing that they could face scrutiny.

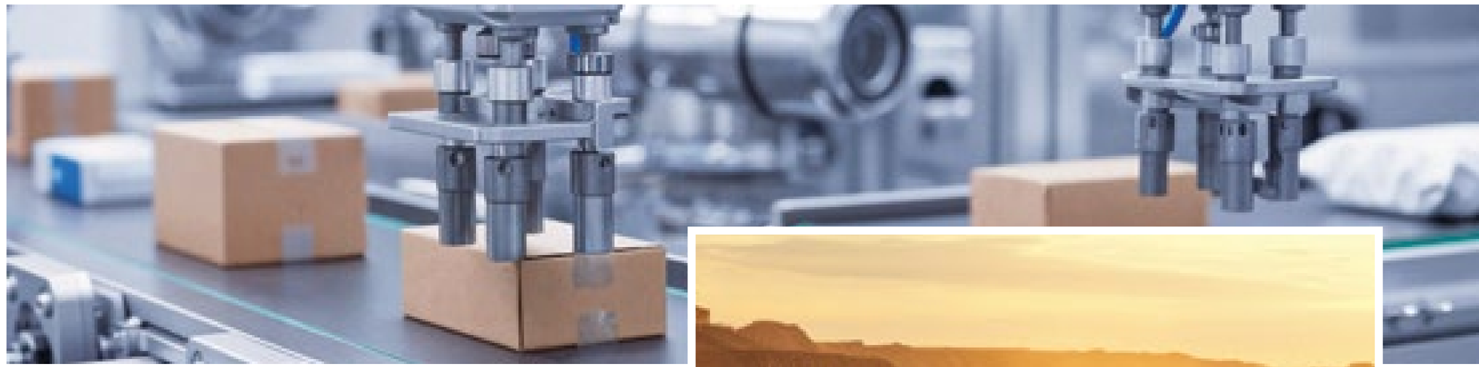
Conclusion

PCAs are an essential aspect of customs compliance that traders cannot afford to overlook. By understanding the objectives and types of audits, preparing adequately and fostering a strong relationship with customs authorities, traders can navigate the complexities of the PCA process more effectively. Embracing PCAs not only helps ensure compliance but also builds trust between traders and customs, facilitating smoother operations in the global marketplace. By adopting a proactive approach, traders can protect their interests and contribute to a more efficient trading environment.

ANCHORING FISCAL REFORM:

The role of mining and manufacturing in a sustainable tax future

BRONWYN E NYAKANE, Group Tax Specialist at Siyanda Resources



Anchoring fiscal reform in South Africa is a topic that is relevant and significant, considering the country's ongoing issues of slow economic growth, escalating public debt, high unemployment and growing social spending demands.

Slow economic growth limits tax revenue by limiting business activity, job creation and household income. At the same time, high unemployment, especially among the youth, puts additional pressure on the government through increased social grant payouts and other government support. Escalating public debt raises the cost of borrowing, diverting resources toward debt servicing rather than productive investment. In addition, growing demands for social spending, driven by inequality, poverty and service delivery, further strain public funds. Together, these dynamics contribute to a persistent fiscal imbalance, where government spending regularly exceeds revenue, threatening long-term fiscal sustainability.

Growing fiscal imbalance

Fiscal imbalance arises when government revenues and expenditures are out of alignment—particularly when the level of fiscal support provided to various sectors (through spending, subsidies or tax incentives) is not matched by their contributions to the economy in terms of tax revenue, employment, exports and growth.

South Africa is experiencing a growing fiscal imbalance. In the context of the mining, manufacturing and investment sectors, this imbalance often reflects misaligned government support, sector underperformance or inefficient policy frameworks—all of which impact public finances and broader economic outcomes.

Mining

Despite its significant contributions to exports and tax revenues, the mining sector imposes notable fiscal burdens. The government often shoulders the cost of environmental rehabilitation, defaults by insolvent companies and social support in mining towns—expenses not reliably offset by sustainable industry revenues. Moreover, windfall profits from commodity booms tend to be undertaxed and mineral royalties frequently fall short of fully compensating for the depletion of national resources—often remaining underutilised at the community level. Illegal miners or 'zama zamas' exacerbate this burden. In 2024 alone, these activities cost the government approximately R60 billion in lost tax and royalty revenue, according to the Minister of Mineral Resources and Energy (The African Miner). Lower estimates, such as 21 billion per year, are also cited in broader analyses of revenue losses resulting from abandoned shafts and smuggling (Mining Focus SA). Additionally, windfall profits from commodity price spikes are often undertaxed and mineral royalties frequently fall short of compensating for the depletion of national resources. Frequently, these royalties are underutilised at the community level, undermining the intended redistributive and developmental effects.

Manufacturing

While the sector benefits from significant public support, such as the Automotive Production and Development Programme, the overall impact on employment and competitiveness remains limited. Certain subsectors, like automotive, receive disproportionately high support, whereas others, such as textiles and furniture, are often underfunded. Government investment in industrial zones frequently lacks sustained implementation, resulting in underutilised or idle infrastructure. Despite various incentives, a large share of manufactured goods continues to be imported, weakening the potential for domestic job creation and tax generation. Overall, while public spending on manufacturing is substantial, the fiscal return is constrained by shallow industrial capacity, limited innovation and external market pressures.

Investment

Many publicly funded projects, particularly in infrastructure, are plagued by delays, cost overruns and governance challenges, including corruption. The public sector frequently carries the full financial burden of these initiatives, often missing opportunities to leverage private-sector partnerships. Uncertainty in key policy areas, such as land reform and energy, undermines investor confidence, deterring private capital and increasing reliance on public funding. Additionally, high levels of government borrowing can drive up interest rates, crowding out private investment and slowing economic growth. When public borrowing is paired with low capital productivity, it places strain on the fiscus without delivering sufficient economic returns.

How the mining, manufacturing, and investment sectors in South Africa are helping address the country's fiscal imbalance

Mining Sector

The mining industry is a key contributor to government revenue through taxes and royalties, playing a vital role in public resource mobilisation. As a major employer, it also drives infrastructure development, especially in rural areas. The sector enhances foreign exchange earnings and boosts exports, helping to stabilise the rand and strengthen macroeconomic resilience. Mining companies invest in critical infrastructure, including renewable energy (solar, wind), water systems and energy generation, thereby improving service delivery and reducing fiscal pressure on the state. The industry also works closely with the government on strategic reforms in areas such as energy, logistics, crime and corruption, aiming to unlock growth and strengthen sector governance.

Manufacturing Sector

Manufacturing is a major contributor to government revenue and employment, while also playing a critical role in adding value to South Africa's mineral and agricultural outputs. The sector promotes innovation, skills development and it is a key driver of non-commodity exports. Recent regulatory reforms, such as the new Public Procurement Act and strengthened B-BBEE requirements, are stimulating investment in local manufacturing, resulting in broader tax contributions and job creation (PwC South Africa). Additionally, manufacturers are increasingly integrating tax governance into their supply chains, enhancing transparency, managing risk more effectively and improving cash flow efficiency—all of which support more consistent and efficient revenue collection (PwC South Africa).

Investment Sector

The investment industry plays a crucial role in supporting public sector financing by mobilising capital for infrastructure, industrial development and enterprise growth. It also serves as a key indicator of economic confidence. Special Economic Zones (SEZs), such as Coega in the Eastern Cape and Atlantis in the Western Cape, attract investment in manufacturing, logistics and energy; help to create jobs; boost exports; and broaden the tax base. Institutions like the Public Investment Corporation (PIC) are partnering with international investors, such as the UAE's IRH (International Resources Holding), to fund vital projects in rail, ports, clean energy and logistics—critical infrastructure for economic productivity (Reuters). Additionally, South Africa has committed R1 billion to promote local electric vehicle, battery and clean manufacturing industries, with the aim of leveraging R30 billion in private investment, diversifying exports and enhancing tax revenue (Reuters).

While these sectors play a key role in addressing South Africa's fiscal imbalance by boosting revenue, easing pressure on public expenditure, enhancing productivity, and broadening the tax base, their impact is most effective when underpinned by strong collaboration and sound policy reform. However, this progress is not without challenges.

Some of the challenges faced by these sectors from a regulatory perspective

South Africa is experiencing a widening credibility gap in its tax and regulatory policies, particularly in sectors vital for growth and job creation. Increasingly, investors and businesses express concern over unpredictable tax shifts, delayed or ambiguous policy implementation and weak communication from authorities—all of which contribute to regulatory uncertainty and undermine confidence.

Some of the pressures and challenges in mining

Chronic load shedding disrupts production and raises costs; policy delays and shifting mining permits create investor uncertainty. Poor rail and port logistics hinder bulk exports. Frequent strikes impact key mines, while rising local and global pressures on emissions and land rehabilitation increase operational costs, compounded by deeper, lower-grade deposits.

Recurrent revisions to the Mining Charter have fuelled uncertainty regarding Black Economic Empowerment (BEE) obligations and related tax implications. Critics point to the lack of clarity around terms like 'effective ownership', complex guidelines for re empowerment and the government's broad discretion to alter requirements with limited consultation (Herbertsmithfreehills.com). This volatility undermines investor confidence and complicates long-term planning in the sector.

Some of the pressures and challenges in manufacturing

Load shedding disrupts production and damages equipment. Rising fuel, electricity and logistics costs, combined with cheap imports, weaken competitiveness. Decaying railways, ports and roads lead to supply chain inefficiencies, while skill shortages and unclear industrial policies slow development.

Some of the pressures and challenges in investment

Concerns about corruption, weak state institutions and inconsistent policy direction continue to undermine investor confidence. The Rand remains highly volatile, reacting sharply to global sentiment and domestic instability. Elevated public debt restricts fiscal flexibility and heightens sovereign risk, while high interest rates, aimed at containing inflation, increase borrowing costs and dampen investment appetite. Uncertainty surrounding property rights, land reform and potential wealth taxes further deters long-term investment. Meanwhile, rising global ESG (Environmental, Social and Governance) expectations place additional compliance pressure on local businesses, causing persistent fiscal strain.

Beyond compliance, broader institutional support is needed to create a credible and investment-friendly tax environment.

Anchoring fiscal reform through collaboration

Although South Africa is facing a growing fiscal imbalance, sectors such as mining, manufacturing and investment, hold significant potential to address some of its underlying drivers. Long-term fiscal stability will require active, inclusive policy reform engagement across all key stakeholders. A shared commitment to aligned interests and coordinated action is essential to building a strong, resilient economy. Particularly, government and industry must collaborate to design tax policies that are fair, predictable and conducive to growth. Such an approach will foster a stable, business-friendly environment that supports long-term private investment, job creation and sustainable tax revenue.

Key stakeholders include tax professionals, such as accountants and legal experts, industry representatives, government authorities and the South African Revenue Service (SARS). Each of these parties has a critical role to play in shaping effective and sustainable fiscal policy.

*Tax professional*s play a vital role in both promoting tax compliance and contributing to policy reform. Their technical expertise and practical experience offer valuable insights that help shape more equitable, efficient and sustainable tax systems. By supporting compliance, they help increase revenue collection, reducing the government's reliance on borrowing and enhancing its ability to fund essential public services and infrastructure. Their active involvement ultimately enables better revenue management, more effective public spending and a gradual reduction of fiscal imbalances.

Industry leaders offer critical insights into how tax policies impact investment, job creation and overall competitiveness. They play a key role in promoting fair tax practices and discouraging aggressive tax avoidance. By strengthening internal tax governance and ensuring timely, transparent reporting, they contribute to a more trustworthy tax environment. Additionally, their investments in business expansion, research and development, and local supply chains support sustainable economic growth and broaden the tax base.

Government relies on revenue from profitable, tax-compliant businesses to deliver public services and manage debt sustainably. By collaborating with industry leaders, it can promote tax policies that are transparent, stable, and progressive, closing loopholes without placing undue burden on compliant taxpayers. It is also important to avoid excessive or poorly targeted incentives. Streamlining and digitising compliance systems enhance both efficiency and trust. Beyond taxation, the government plays a key role in strengthening infrastructure, eliminating regulatory barriers and ensuring a stable energy supply to support economic growth.

SARS can enhance its enforcement capacity to curb tax evasion, broaden the tax base, and improve compliance, particularly among high-income earners and corporations, by strengthening digital systems and targeting non-compliance more effectively.

Conclusion

Ensuring policy certainty, especially in strategic sectors like mining and manufacturing, is critical to attracting long-term investment and driving economic growth. Achieving lasting fiscal sustainability depends on a collaborative and mutually reinforcing partnership between government and industry. Government must establish a stable, predictable policy environment that supports growth, while the private sector must act as a responsible partner, committed to tax compliance, investment, and inclusive development. This kind of collaboration reduces policy uncertainty, strengthens business confidence and improves compliance—laying the groundwork for a more resilient and sustainable economy

15minutes
CPD

FROM BUFFER TO BACKBONE:

Can retirement funds anchor fiscal stability without sacrificing member outcomes?

▶ **ANNIKA RUST,** Master Tax Practitioner and Chartered Accountant (CA(SA))

Portraying the role of the proverbial middleman and custodian of copious amounts of members' and pensioners' taxes, which feed into the Fiscus each year, retirement funds are crucial to the tax collection process, the livelihood of pensioners and members, as well as economic growth.

Economic growth is achieved through the investments by retirement funds, among other assets, in equities, bonds, property and infrastructure development projects that assist in creating employment and, in turn, alleviate poverty.

Infrastructure investments

Regulation 28 of the Pension Funds Act has recently been explicitly amended to enable and reference longer-term infrastructure investment by retirement funds by increasing the limits in which funds may invest. The amendment has introduced a definition of infrastructure and sets an overall limit of 45% for exposure in infrastructure investment. The amendment further facilitates the investment in infrastructure and economic development by splitting the limit between hedge funds and private equity, with the allocation to private equity being increased to 15%.

South Africa's infrastructure leaves much to be desired and with retirement funds having the resources to contribute to its development, the government is increasingly looking to private sources of funding. In the 21 May 2025 National Budget speech, the government's strategy to support infrastructure development through alternative investment arrangements such as investments by financial institutions, including pension funds, was reiterated. This will be achieved through government's initiative to issue its first infrastructure bond in 2025/2026, which will allow pension funds and other financial institutions to invest in government's infrastructure plans. With these amendments and initiatives, one can conclude that it reflects the government's intent for retirement funds to increase infrastructure investment, the lack thereof being received under the current fiscal policy.

A more explicit approach by the government to increase private funding for infrastructure development is the matter of prescribed assets. Prescribed assets, where the government mandates the percentage that retirement funds are required to invest in predetermined investments, have resurfaced during 2024. Implementing a regulation to force retirement funds to invest in development projects that are not deemed viable from their perspective will place significant strain on the mandate afforded to retirement fund trustees in terms of foregoing investments that will provide far better returns for their members and pensioners. Time will tell if this initiative materialises, as one can assume that much resistance will be received from the retirement fund industry.

> ***"There is an inherent obligation on retirement funds to be able to withstand external pressures and maintain adequate resources to meet their obligations"***

However, the investment decisions of a fund as described in its investment policy statement, remain in the hands of the retirement fund trustees, albeit limited to the provisions of Regulation 28.

Two-pot retirement system

Another recent initiative by Treasury with the objective to increase individuals' spending, was the implementation of the much-critiqued two-pot system. Regardless of the fact that this system cultivates an acceptance of increased spending, which can be argued to be funnelled back into businesses to promote growth, it has a direct impact on the performance of investments. Retirement funds are forced to have more liquid funds available to accommodate withdrawal requests, which are usually accompanied by lower returns.

The South African Reserve Bank's June 2025 Quarterly Bulletin incorporates an analysis of the economic impact of the two-pot retirement system since its implementation on 1 September 2024. Despite the fact that the two-pot system yielded an additional R12.9 billion in tax revenue by March 2025, it also resulted in an increase in withdrawals of more than R22 billion. Further effects of the two-pot system are increased administrative costs for retirement funds and a substantial decrease in net income of R22.8 billion from the second quarter to the fourth quarter of 2024. Therefore, it is clear that the two-pot system did not have a beneficial impact on retirement funds. The Reserve Bank stated that the ongoing increase in pension withdrawals and administration costs in terms of managing the separate 'pots', as well as ensuring regulatory compliance, could continue to impact retirement funds' net income in the foreseeable future.

Resilience of retirement funds

An increase in regulatory compliance, restrictions on investment choices, decreases in net income, compounded with volatile economic markets, place substantial pressure on retirement funds to be resilient.

There is an inherent obligation on retirement funds to be able to withstand external pressures and maintain adequate resources to meet their obligations. The livelihood of pensioners depends on the ability of retirement funds to adapt to change, while still being successful in their objective of providing benefits and pensions to their members and pensioners.

Resilience of retirement funds entails adapting to change, whether it be regulatory amendments, environmental instability or technological advancements. Depending on the fund, it might necessitate a reform of a fund's investment policy or level of cash on hand. External forces have compelled funds to revolutionise its administration over the years to have the ability to take care of its members and pensioners as they have a fiduciary duty to do so.

Conclusion

The central duty of a retirement fund is to pay benefits and annuities to its members and pensioners; this is the purpose for which retirement funds have been established. Even though we find ourselves in a developing fiscal environment, it is not the responsibility of retirement funds to aid the current fiscal policy. Retirement funds may contribute to the government's initiative to promote economic growth through infrastructure investment; however, that decision needs to remain at their discretion and not be compelled to do so in terms of regulation.

The promotion of economic stability and growth remains the responsibility of the government; funds should not carry the extra burden of taking on the responsibility to promote economic stability, given the already rigorous environment in which they find themselves.

Even though retirement fund investments support economic growth, funds have a fiduciary duty to their members and pensioners to maximise returns through responsible investing. In other words, notwithstanding the fact that retirement funds contribute to economic stability, it should not be to the detriment of the individuals who rely on their benefits and annuity payments for survival.

15minutes CPD

DEBT, EQUITY AND THE TAX TIGHTROPE:

Where are we now?

AZWINNDINI MANENZHE, Cross-Border Tax & Fiduciary Advisor at Investec

South African corporates are navigating an ever-changing tax environment, especially when it comes to financing their operations.

Historically, the rationale was simple: interest on borrowings could be deducted if it were used in the production of income (under section 24J of the Income Tax Act 58 of 1962), creating a powerful tax shield and boosting returns to shareholders.

However, the landscape has changed dramatically, driven by rising interest rates, heightened scrutiny from the South African Revenue Service (SARS) on interest deductions and global efforts to combat base erosion and profit shifting (BEPS).

An example of the changes imposed by SARS is the introduction of sections 23M and 23N, which impose caps on interest deductions in intra-group and acquisition scenarios. New global changes include the Organisation of Economic Cooperation and Development's (OECD) requirements imposed through its BEPS initiatives that need to be adhered to when considering the deduction of interest. The ever-changing landscape now demands careful documentation, arm's-length pricing and demonstrable substance in corporate financing.

This article illustrates the complexity of interest deductibility, touches on the modern statutory and transfer pricing environment, and provides suggested considerations for corporates seeking tax-efficient funding structures in a post-debt-bias era.

Understanding debt vs equity financing

Debt financing involves borrowing money, typically through loans, which must be repaid with interest. This form of financing does not require giving up any ownership of the company, allowing the borrower to retain full control. The interest paid on debt could be tax-deductible (if the funds are utilised in its business operations in the production of income), providing a potential reduction in taxable income. However, debt financing imposes a repayment obligation, which can restrict a company's operations and cash flow, especially if revenue is unpredictable.

Equity financing, on the other hand, involves selling a portion of the company's shares in exchange for capital. This does not require repayment, thus avoiding additional financial burdens on the company. Equity investors such as angel investors or venture capitalists, often bring valuable expertise, resources and guidance. However, equity financing dilutes ownership, requiring the sharing of profits and consultation with investors on major business decisions.

Practical Insights

Imagine a company seeking R100 for expansion. It can either borrow R100 as debt or issue 100 shares at R1 each. With debt financing, the company benefits from tax-deductible interest, potentially reducing its taxable income. The lender has no control over business operations and once the loan is repaid, the relationship ends. However, the company must manage regular interest payments, which can be challenging during periods of low revenue.

On the other hand, if the company opts for equity financing, it avoids the repayment obligation and gains access to investor expertise and resources. The issuance of 100 shares means investors own a portion of the company, sharing in profits and having a say in significant decisions. This approach can be particularly beneficial for new or risky businesses that traditional lenders might avoid. However, it involves relinquishing some control and sharing future profits with investors.

The historical debt predisposition

Debt has long been the preferred funding choice for most South African corporates due to the tax-deductible nature of interest. Section 24J of the Income Tax Act provides the statutory framework, allowing interest deductions when incurred in the production of income and during trade. It employs a 'yield-to-maturity' approach, spreading interest accruals over the life of the instrument and defining the borrower as the 'issuer'. The definition of 'instrument' is broad, encompassing loans, bonds, finance leases and certain preference shares.

The deductibility of interest hinges on the purpose of borrowing. South African case law emphasises the need for a clear link between borrowing and income generation. In *CIR v Genn & Co (Pty) Ltd* 1955 (3) SA 293 (A), the court examined whether the expenditure was genuinely incurred to produce income. Similarly, *Sub-Nigel Ltd v CIR* 1948 (4) SA 580 (A) reinforced the importance of the taxpayer's subjective intention in borrowing. SARS' Practice Note 31 echoes these principles, allowing deductions where borrowed funds generate taxable income, even if not strictly within a defined trade.

It is important to note that SARS is set to replace Practice Note 31 with section 11G of the Income Tax Act 58 of 1962, which will define the criteria for the deductibility of interest expenses; this change is scheduled to take effect on 1 January 2026.

A seasoned practitioner will recognise the intricacy here. It is not enough to show that borrowed funds were expended; the connection to income production must be demonstrable and direct. This often requires clear audit trails and board resolutions reflecting the commercial purpose of the borrowing.

From advantage to scrutiny

The comfort once associated with debt funding has diminished due to tighter interest limitation rules. Section 23M disallows or defers interest deductions, where the creditor holds a controlling relationship with the borrower or is part of the same corporate group. The 2023 amendments expanded its reach, including back-to-back loans and applying a fixed 30% of adjusted taxable income as the ceiling for deductible interest.

Section 23N complements section 23M, focusing on acquisition and reorganisation transactions. It prevents excessive interest deductions where the economic substance does not justify immediate tax relief. Together, these sections mark a shift from permissive debt planning to active restriction, demanding proof of necessity and justification in borrowing.

Our transfer pricing regime, contained in section 31, addresses financial transactions. SARS requires taxpayers to conduct debt capacity testing, justify the commercial rationale for each borrowing and maintain contemporaneous documentation. In practice, this means that every intercompany loan is not just a funding decision; it is a potential transfer pricing exposure carrying the risk of primary adjustments, secondary tax effects, as well as interest and understatement penalties under section 223 of the Tax Administration Act.

For tax practitioners, this underscores that transfer pricing risk is no longer confined to pricing intangibles or services. Financial arrangements now sit squarely under the microscope.

The Global Intersection

Overlaying these domestic provisions is a global architecture that insists on economic substance. The OECD's BEPS Action 2 seeks to eliminate hybrid mismatches—scenarios where interest is deductible in one jurisdiction but exempt in another. Action 4, more directly relevant to debt structuring, recommends fixed-ratio interest limitation rules and debt capacity analyses to prevent base erosion through excessive interest deductions.

It is important to consider the global intersection when evaluating these frameworks, as they not only shape domestic tax policies but also influence multinational corporate strategies. Companies must navigate a complex web of regulations that vary across jurisdictions.

Furthermore, the emphasis on economic substance reflects a broader shift towards transparency and accountability. This transition necessitates that businesses reassess their operational structures and financing arrangements to align with both local and global standards.

Lessons for corporate South Africa

Several lessons emerge for South African corporates seeking growth while managing tax risk:

- The era of relying on debt as a tax shield is over. Excessive leverage carries financial and regulatory risks under sections 23M and 23N.
- Substance and documentation are non-negotiable. SARS and global regulators expect evidence of purpose, commercial rationale and arm's-length pricing.
- Global developments such as OECD Pillar Two, will reduce benefits of shifting debt and profits to low-tax jurisdictions.
- Strategic optionality is a virtue. Cleaner, equity-driven balance sheets preserve the ability to introduce tax-efficient debt when conditions are favourable.

Conclusion

South African corporates are now navigating a precarious tax landscape. The intricacies of interest deductibility are influenced by sections 23M and 23N, the transfer pricing regulations outlined in section 31 and the OECD's BEPS framework. In this evolving environment, effective tax planning requires not only clear substance but also strategic foresight and meticulous documentation. The era of relying on automatic debt advantages has come to an end; we have entered a new phase where thoughtfully structured and defensible capital arrangements are essential.

DEBT, EQUITY AND THE TAX TIGHTROPE

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