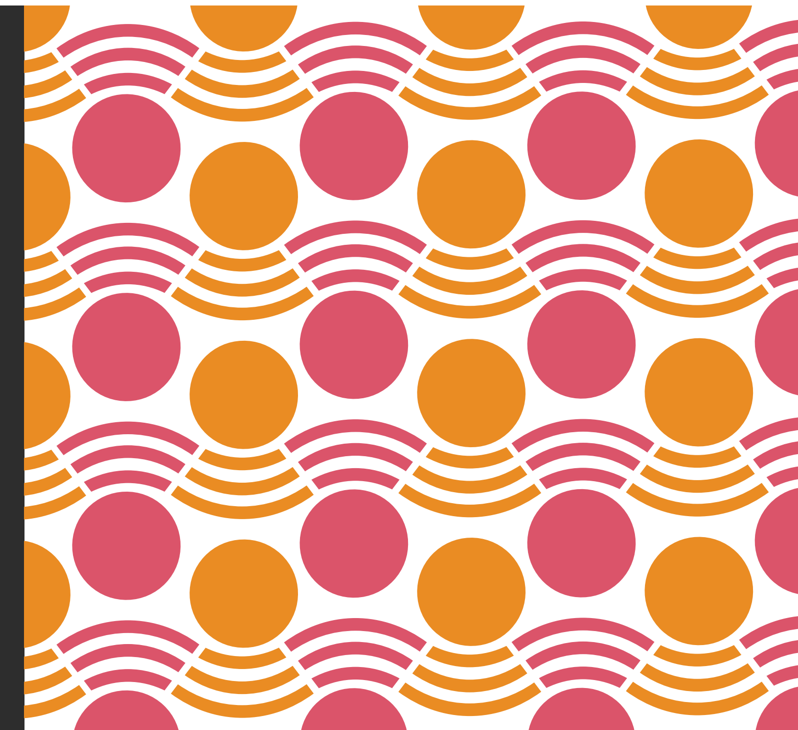
Disputing estimated assessments

Income tax is determined by reference to years of assessment

The responsible taxpayer through a new lens of transparency

SARS Watch



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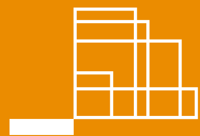

A monthly journal, published by PwC South Africa, that gives informed commentary on current developments in the tax arena, both locally and internationally.

Through analysis of and comment on new laws and judicial decisions of interest, Synopsis helps executives to identify developments and trends in tax law and revenue practice that may affect their business.

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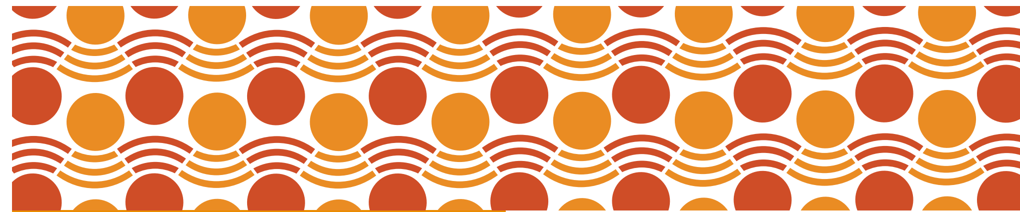
Disputing estimated assessments



In cases where insufficient information has been provided or information is alleged to be unavailable, SARS is empowered to make an estimated assessment to determine the liability of a taxpayer to income tax. This begs the question of the right of the taxpayer to challenge an assessment based on an estimate.

In the case of *Africa Cash & Carry (Pty) Ltd v Commissioner for the South African Revenue Service* [2019] ZASCA 148 (21 November 2019), SARS conducted an investigation into Africa Cash & Carry (Pty) Ltd ('ACC') to determine whether it had understated its revenue in the years 2003 to 2009.

The origin of the investigation was that ACC had certain shareholders who were also shareholders in another cash and carry enterprise in which SARS had identified the manual suppression of sales using a function in its point of sales system. The point of sales system used by ACC was similar to that in the other enterprise and SARS considered it appropriate to investigate whether a similar suppression of sales had occurred in ACC.

The investigation of the annual financial statements reflected a negative gross profit margin, which was offset by rebates and discounts from suppliers, resulting in a trading profit. The SARS investigator requested relevant documentation but, on calling at ACC's premises was provided with 'hopelessly inadequate' information. She therefore sought a search and seizure warrant and on the following day a vast quantity of documents and computer equipment were seized, packed, sealed and removed from ACC's premises.

Representatives of ACC were invited to be present when the seals on all seized items were broken to verify the contents in the sealed packages but did not attend. The investigator's uncontested evidence is that the records that were seized were 'incomplete and inadequate'. The only available data from the computer records covered a seven-month period. ACC averred that the information for other periods was on hard drives seized by SARS. The investigator testified that no such data had been seized by SARS.

The investigator identified that, while the sale proceeds may be suppressed, movement of stock could still be identified and determined that the most appropriate basis to estimate the income actually derived by ACC was to identify the stock and purchases records, which could not be manipulated, and to apply a gross margin to the stock sold. Using the seven months of data and information from management accounts and other available information, the investigator reconstructed the sales for the seven-month period and identified a variance of R38 million. After adding the variance to sales and deducting the movement of stock, a gross profit was identified which amounted to 3.6% of sales. The methodology was verified by a professional firm of accountants.

The margin of 3.6% was used to extrapolate the sales for the years 2003 to 2009, and unrecorded income was determined. The undeclared income was assessed to income tax and VAT and assessments were issued including interest and penalties.

ACC objected to the assessments on the basis that it had not underdeclared its income, that SARS's methodology was incorrect and that the assessments were time-barred.

SARS disallowed the objection and ACC took the issue on appeal to the Tax Court. In preparing for trial, the SARS investigator conceded that she had made three errors in her calculations and that the understatement of income that she had determined for the seven-month period should have been R28 million and not R38 million, upon which the assessments had been based, resulting in a gross profit percentage of 2.04%. The amounts of tax understated were accordingly redetermined in light of the lower GP percentage.

SARS gave notice that it did not intend to amend the assessments prior to the hearing of the appeal but that it would make application to the Court that the assessments be altered to give effect to the redetermined understated income and sales.

The understatement of R28 million appears to have been accepted by the expert witnesses called by ACC. These witnesses, however, disputed the methodology applied in determining the additional income to be assessed. No explanation was advanced for the understatement of R28 million.

The Tax Court examined the methodology applied by the SARS investigator and considered the submissions of the expert witnesses called by ACC. It concluded that the methodology applied by the investigator was reasonable and should be preferred to any other suggested methodology. Accordingly, it dismissed the appeal and gave judgment in favour of SARS in the reduced amounts as redetermined.

ACC appealed against the Tax Court decision directly to the Supreme Court of Appeal (SCA).

ACC's argument

The first argument related to SARS's failure to withdraw the assessments and replace them with reduced assessments. ACC argued that SARS could not defend an assessment while contending for a materially different assessment.

The second followed on, in that it was argued that the Tax Court had assumed the responsibility of SARS in substantially altering the assessments and had acted beyond its powers.

The third submission was that SARS had failed to establish the reasonableness of the assessments that had been revised by the Tax Court.

The judgment

In a lengthy judgment, Koen AJA considered the submissions in detail.

In relation to the first argument, SARS argued that it had conceded the appeal in part and that the notice that it intended to rely on the gross profit percentage of 2.04% was a concession as contemplated in the rules for the resolution of disputes issued in terms of the Tax Administration Act ('TAA'). Koen AJA was unpersuaded by this submission but stated that whether or not there was a concession, the entire issue could be disposed of by determining whether the Tax court was empowered to alter the assessment.

Section 129(2)(*b*) of the TAA grants power to the tax court to order that the assessment be altered. The Tax Court's statement in its judgment was approved (at paragraphs [46] – [47] of the judgment of Koen AJA):

> '[46] The tax court held that:
>
> 'Subsection (b) envisages that when an assessment is ordered to "be altered", the assessment is changed or modified in identified respects but the assessment is not completely transmuted or transmogrified into an entirely new entity comprising new DNA. Subsection (c) envisages that the assessment is referred back to the creator thereof, SARS, for a further process of investigation so as to test the subject matter and arrive at a further result.'
>
> That is a correct interpretation of s 129(2)(b). It also emphasizes the distinction between instances where a tax court may "alter" an assessment, and those instances where it needs to refer an assessment back to SARS "for further examination and assessment".
>
> [47] That a tax court in principle has this power to alter an assessment, cannot be doubted …'

The precedents relied upon by ACC in support of its submissions were distinguishable. Koen AJA found that in those cases, the circumstances required to make an assessment were unclear and the matters had been referred back to SARS so that clarification could be obtained in order to produce a new assessment. In the appeal of ACC, Koen AJA observed, at paragraph [48]:

> '… [In] the present matter there is no further evidence requiring further investigation and assessment. All the facts, investigations and assessments underlying the calculation of the tax liability based on the gross profit percentage of 2,04 had been disclosed timeously to the taxpayer, was placed before the tax court, and the tax court was in a position where it could grant the order it did.'

To alter a decision, the tax court must apply the principles of natural justice. This is plainly stated in paragraph [52] of the judgment:

> 'The powers of the tax court and its functions are unique. It places itself in the shoes of the functionary and re-evaluates the facts and circumstances of the subject matter on which the assessments were based. By its very nature an estimated assessment is subject to change based on an evaluation of the evidence and any information that becomes available. What is important is that the methodology used and the assumptions on the strength of which the estimated estimates were made should remain the same, otherwise the conclusions reached by the tax court might not be procedurally fair. The tax court must place itself in the shoes of the functionary to determine whether the methodology followed and the assumptions on which the estimated assessment are based, are reasonable and produce a reasonable result.'

In relation to principles of natural justice Koen AJA held that ACC had been informed of the error and of SARS's intention to rely on the lower gross profit percentage and had received the amended calculations. Its counsel had prepared for trial and had cross-examined SARS's witnesses extensively on the basis that the gross profit percentage was 2.04%. ACC had not been ambushed in the circumstances.

Summarising at paragraph [57], Koen AJA continued:

> 'A tax court does not have inherent jurisdiction. However, if the evidence before it does not sustain the amount determined in an estimated assessment of a taxpayer's liability, or it determines that the amount in the estimated assessment is unreasonable then, subject to constitutional principles and compliance with the audi alteram partem principle, and fairness, provided that the basis for taxation is not now entirely different, and provided the court has all the information it requires to decide the matter before it, a tax court can alter an assessment, rather than "refer the assessment back to SARS".'

Based on the conclusion at paragraph [60] that:

> 'If the taxpayer's rights to a fair trial are not impaired in any way, then a tax court would be perfectly entitled, and indeed legally obliged, to invoke and exercise its powers in terms of s 129(2)(*b*) of the Act.'

It was held that the Tax Court did indeed have the power to alter the assessment.

As to reasonableness of the estimate, the provisions of section 102(2) place the burden of proving that the assessment is unreasonable on SARS.

In identifying what is reasonable, Koen AJA stated at paragraph [67]:

> '… reasonableness requires that a balance must be struck between a range of competing considerations in the context of a particular case. The principal enquiry is whether SARS struck a balance fairly and reasonably open to it on the facts before it, or readily available to it. If the choice of the gross profit percentage method is one that reasonably could be applied, then a court will not interfere with that decision. What is required for a decision to be justifiable, is that it should be "a rational decision taken lawfully and directed to a proper purpose".'

There followed a detailed examination of objections to the methodology applied by SARS and the submissions of ACC's expert witnesses and SARS's witnesses. Ultimately, it was determined that the only information likely to be reliable was the cost of sales reflected in the annual financial statements. That, being so, it was reasonable for SARS to base its estimates on the cost of sales in the absence of other more reliable information. If ACC disputed the information, then it was ACC's duty to adduce evidence to the contrary.

The outcome of the examination of ACC's objections to SARS's methodology and recommendation that other methodologies would have been more appropriate are summarised at paragraph [128]:

> 'The onus is on SARS to show that the methodology used was reasonable. That required no more than satisfying the tax court that an acceptable methodology, recognised as an acceptable methodology in the accounting discipline, was used and that there were cogent reasons for doing so. The taxpayer's approach of simply picking away at SARS's methodology in the absence of factual evidence in rebuttal to sustain the criticism levelled does not, even at the level of an evidentiary onus, demonstrate that the use of the gross profit percentage method was irrational, or not rationally justified, and that the decision to use the gross profit percentage method, was unreasonable.'

It was therefore held that SARS's determinations were reasonable and that the assessments, as altered by the Tax Court, be confirmed.

The takeaway

A factor that played heavily in this appeal was the absence of evidence in rebuttal of SARS's determination. Far from producing evidence to establish what the actual understatements were, ACC confined itself to attacking the basis for the determination, relying, as it did, on information in its annual financial statements which it had admitted was flawed.

If a taxpayer is assessed on the basis of an estimation, then it is critical that the evidence used for the estimate should be examined in detail and that the assumptions relied upon by SARS should be questioned. In so doing, the taxpayer should be prepared to adduce factual evidence to establish the case in rebuttal of SARS's estimate. It will never emerge whether SARS overestimated or underestimated the actual income, as virtually no relevant evidence in this regard was introduced by ACC.

The adoption of a passive approach that SARS must prove its case without placing reliance on concrete grounds to support contentions raised in rebuttal is a recipe for disaster.

From a procedural perspective, the judgment clarified two pertinent issues:

- The first related to the power of the tax court to alter an assessment, where a clear distinction was drawn between circumstances in which the assessment should be referred back to the Commissioner and those in which alteration may be effected. In short, alteration is permissible if the court has all the facts at its disposal to enable it to make an assessment.
- Secondly, in considering whether an estimated assessment is reasonable, the court must apply principles of natural justice and ensure that the taxpayer's rights to a fair trial are not impaired.

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Income tax is determined by reference to years of assessment

It may arise from time to time that a taxpayer has omitted to claim a deduction to which he, she or it may have been entitled in a particular year of assessment. When the error is identified, there is a temptation to include the previously omitted claim as a deduction in the year of assessment in which the error is identified. After all, the argument goes, it is only timing, and the taxpayer was entitled to claim the deduction, so where is the harm?

The folly of this approach was recently exposed in a decision in the Tax Court, sitting in Johannesburg (Tax Case 14434, judgment given on 28 June 2019).

Facts

The taxpayer, a company, had acquired a commercial property in 2001. The property had been let and rental income derived from the letting. In the years 2007 to 2012, the taxpayer effected improvements to the property, which fell within the ambit of section 13*quin* of the Income Tax Act ('the Act'), in respect of which the taxpayer was entitled to claim an allowance based upon the cost of the improvements.

Apparently, the taxpayer had not been apprised of its right to claim the allowances by its former accountants, and, following a change in its accountants in the 2014 year of assessment, it was made aware that it had not claimed allowances to which it was entitled in the years 2007 to 2013 and was advised that it should claim the accumulated allowances together with the current year allowance in its return of income for the 2014 year of assessment.

Following submission of the return of income and issue of an original assessment, SARS issued an additional assessment in which it allowed as a deduction only the 2014 section 13*quin* allowance and disallowed the allowance claimed in respect of the earlier years.

Aggrieved at the assessment and at the interest that had been imposed in respect of the additional tax payable, the taxpayer had objected to the additional assessment. After SARS had disallowed the objection, the taxpayer took the issue on appeal to the Tax Court.

The arguments

For the taxpayer, it was argued that, correctly interpreted, section 13*quin*(3) of the Act allows for the deduction in a subsequent year of the building allowance that the taxpayer was entitled to claim in an earlier year, provided that the allowance had not been claimed in that earlier year.

Counsel for SARS countered that the wording of section 13*quin*(3) was clear and that the allowances could only be claimed in respect of the year of assessment to which a return related.

The law

Section 13*quin* of the Act permits a taxpayer to claim a deduction equal to 5% of the cost of improvements to a building owned by the taxpayer if the building or improvement is wholly or mainly used in the year of assessment for the purpose of producing income other than from the letting of residential accommodation.

Section 13(3) is reproduced below:

> '(3) Where any building or improvement in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accrual of which were not included in the income of such taxpayer during such year or any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accrual of such trade had been included in the income of such taxpayer.'

The judgment

The issues were dispensed with in paragraph [12] of the judgment. This commenced with a statement of the issue:

> 'In the present case, I understand the crisp issue to be whether subsection 3 of section 13quin correctly interpreted allows for the deduction of the building allowance to which a taxpayer was entitled to in the previous year of assessment in a subsequent year of assessment as long as it was not claimed in that previous year.'

Twala J then rejected the taxpayer's contentions and held:

> 'The provisions of subsection 3 are clear and plain and need not be interpreted any further than the words used in the provision itself. It is clear that if the receipts and accruals were not included in the income of the taxpayer during the previous year of assessment, any deduction which could have been allowed in terms of section 13quin during that year shall be deemed to have been allowed in that year. I therefore hold he view that it would distorting the meaning of the deemed provisions subsection 3 of section 13quin to interpret it otherwise.'

After analysing the principles of interpretation to be applied, Twala J continued at paragraph [14]:

> 'I am unable to disagree with counsel for the respondent that the provisions of section 13quin should be construed in the context of the other provisions of the Act. The appellant has failed to demonstrate that the provisions of subsection 3 are ambiguous and capable of a different meaning than that ascribed to it. There is no cogent reason why the provision of subsection 3 should be interpreted differently from the ordinary meaning of the words use in the provision and to look at in the context of the whole Act.'

The judgment then identified the meaning of 'year of assessment' as identifying the year of assessment of a company to be the financial year of that company.

The relevance of the year of assessment was further stressed (at paragraph [15]) by quoting from a judgment in the Supreme Court of Appeal (*New Adventure Shelf 122 (Pty) Ltd v CSARS* 2017 (5) SA 94 (SCA) at paras 18-20), in which the following *dictum* was cited with approval:

> '… [As] was stated by Botha JA in *Caltex Oil (SA) Ltd v Secretary for Inland Revenue* 1975 (1) SA 665 (A) at 677H678A: ". . . .events which may have an effect upon a taxpayer's liability to normal tax are relevant only in determining his tax liability in respect of the fiscal year in which they occur, and cannot be relied upon to re-determine such liability in respect of a fiscal year in the past."'

The effect of the judgment referred to was summarised at paragraph [17] of the judgment of Twala J:

> 'I understand the above authority to mean that tax is an annual event and the year of assessment as the period in respect of which a tax is chargeable. In the light of the appellant's failure to claim the building allowances in the 2007 to 2012 years of assessment, the provisions of section 13quin(3) deem the allowance having been claimed and allowed as a deduction for the past years of assessment. I find myself unable to disagree with counsel for the respondent that the appellant is precluded from claiming the deduction of the building allowances for the period 2007 to 2012.'

Judgment was therefore given in favour of SARS and the taxpayer was entitled only to the deduction in respect of the cost of the buildings to the extent permitted in respect of the 2014 year of assessment.

The takeaway

Where a taxpayer has omitted information relating to a deduction or allowance in a return and wishes to claim a deduction to correct the omission, the failure may not be remedied by claiming the deduction or allowance retrospectively in a subsequent return of income.

The Tax Administration Act permits the issue of a reduced assessment if the taxpayer can point to an undisputed inadvertent error in a return. Provided that the error is brought to the attention of SARS within three years after the issue of the original assessment for that year of assessment, SARS may issue a reduced assessment.

The judgment rightly determines that only events relevant to the year of assessment to which the return relates may be taken into account in determining the taxable income for that year of assessment.

That said, section 13*quin* does not specify the year with effect from which the allowance may be claimed. It simply limits the deduction to 5% of the cost and specifies that the aggregate of all deductions may not exceed that cost. So, while SARS may have won the battle, it will not have won the war, as the cost will ultimately be allowed as deductions over the ensuing years.

On a technical note, section 13*quin*(3) did not have any actual relevance to the issue. It applies to buildings that have been used in earlier years but where the income derived by the taxpayer is not taxable (for instance, an exempt body). In such circumstances the allowances that may have been claimed during the period that the taxpayer was not taxable are deemed to have been allowed in those years and effectively are forfeited.

In the present matter, it appears that the taxpayer had derived taxable income during the earlier years of assessment.

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The responsible taxpayer through a new lens of transparency

Working towards a common purpose Part 2

In the October 2019 edition of Synopsis we brought out our first article looking at the responsible taxpayer through a new lens of transparency. We considered how organisations could consider becoming a more visible part of society, with senior executives and governing bodies explaining to investors how their companies' global tax strategies align with their sustainability commitments.

In this article we explore further how organisations and their stakeholders can work towards a common purpose and build trust through enhanced transparency. Trust is crucial to productive relationships with stakeholders. We demonstrate the value of integrating a tax transparency communication strategy and reporting on sustainability and economic impact, to responsibly demonstrate value creation for all stakeholders on a sustainable basis.

A cohesive front

Companies are urged to place sustainability at the heart of their operations as a key driver for competitiveness. This includes sustainable value chain approaches, transparency in communications and reporting, as well as inclusive economic growth and improvement.[1] Stakeholders increasingly want to understand an organisation's long-term value-creation plans through credible, standardised information. Many organisations are responding by incorporating environmental, social and governance information in their messaging. However, the organisations are only just beginning to consider their messaging on the positive contribution to society they make through the taxes they pay.

Stakeholders compare organisations based on their contribution to public revenue. However, the type of information that is considered important may differ from one stakeholder to the next. In bringing transparency, it is therefore key to determine whom to be transparent to and for what purpose. Who are your stakeholders and what do they want to know? What are you required to disclose and what additional information would be useful to help build trust?

Companies that are getting their tax messaging right have identified material tax-related communications and embedded these into their long-term value-creation story. Since their role as a responsible taxpayer will impact their present and future business model, their tax messaging is incorporated into their organisation's responsibility efforts. It is aligned with their company's strategy and purpose statement and presented as a cohesive front.

It is important that the board identify where the company is on the spectrum of tax transparency-related communications and tax stakeholder engagement. Is it a front runner with cohesive identification, integration and communication of its tax transparency strategy? Is it in the middle tier – strong on understanding the level of information required, but weak on communication? Or is it in the initial stage, with little or no consideration for communications around tax issues?

1 ICC Business Charter for Sustainable Development 2015

Stakeholder communication is in part about the company's public disclosure. Companies can use their sustainability and integrated reports or their website to talk about their tax transparency agenda. However, passive public disclosure is not enough. Standalone reports offer useful information but may go unnoticed. By integrating tax transparency into everyday corporate messaging and stakeholder engagement, and by showing how it is entrenched in the company strategy as a whole, companies can really demonstrate their commitment to values and build trust in societies in which they operate.

How a company's impact measurements go beyond compliance, leading to better developent outcomes

Communities

Improving community relations through informed and effective communication

Partnerships
Leveraging resourcesnto optimise impact wiith new stakeholders

Employees

Attracting and retaining employees and improving their loyalty and enthusiasm to increase productivity

Risk management

Anticipating changing societal conditions and needs

Governments and regulators
Improving relations to protect operating licences and creating platforms for discussion

New business opportunities
Innovating product, service and supply chain, and exploring new markets

Market share

Engaging broadly to build brand and consumer loyalty

International business is complex, shaped by globalisation and rapid socio-economic and political change. A deeper understanding of how global individual companies and sectors is required, in the search for more inclusive business solutions and better alignment between solutions and business strategies. Ultimately, long-term measures can be used to target sustainable profitability.

Source: PwC Analysis based on WBCSD, Measuring impact beyond the bottom line

Tax transparency – an integral part of an organisation's sustainable development commitments

As demonstrated in the PwC SDG Reporting Challenge 2018, environmental and social responsibility will play an increasingly important role in the future of all organisations. Acting responsibly is no longer a choice. It is a business imperative that will impact how companies power their operations, source raw materials, innovate new products and protect their supply chains against extreme weather and natural disasters. It will affect the wellbeing of their employees and their decision about whom to work for.

Perhaps most importantly, companies' approach to how they run and build their business will be judged by a new generation of consumers who expect sustainable and ethical behaviour. There is an increasing global awareness of the importance of efficient tax systems and the role taxes play in promoting sustainable and inclusive economic growth.

> Effective taxation is essential to promote a more inclusive and sustainable growth. It is fundamental to making globalisation work for all. It is crucial for achieving the Sustainable Development Goals.[2]

2 Ángel Gurría – Secretary-General of the OECD.

Companies that align themselves with the Sustainability Development Goals (SDGs) and can communicate clearly how their business assists governments to achieve the SDGs are likely able to gain trust from consumers, consolidate a strong licence to operate and differentiate themselves from competitors.[3] The growth of socially responsible activism is driving a rethink of an organisation's responsibilities and values. This requires increasing coordination between legal, risk, economic, sustainability, finance, tax and investor relations teams. For leading companies, 'organisation responsibility' is simply about how their business adds value, now and in the future, for shareholders, but also for other stakeholders, including employees, customers, government and the wider community.[4]

Mistrust exists between the society and tax world, which leads to a repressive, secretive and onerous environment. Expectations are high for tax leaders of the future. They will need to focus on developing skills in areas that traditionally were not deemed important for tax. Skills such as the ability to build relationships, whether it is with governments, NGOs, academia, investors, consumers, clients, government agencies, regulators, the press, campaign groups, policy makers and revenue authorities, to influence decisions in which the participants share a common interest relating to tax. By participating in an inclusive discussion, demonstrating mutual transparency, a better understanding of taxpayer businesses and risk profile, all stakeholders can contribute to responsible global tax behaviour and a 'trust-based truth' tax environment in African countries.[5]

Taxes and payments to governments are a key mechanism through which organisations contribute to the economies of the countries in which they operate. If they seek to minimise the amount of taxes they pay, this can impinge upon governments' ability to finance vital public infrastructure and services, especially in developing countries. Greater disclosure of tax payments will allow for a more informed public debate, creating an environment for better policy development and investment decisions. At the same time, improved transparency can promote trust and credibility in the tax system by discouraging organisations from engaging in aggressive tax-avoidance practices.[6] Unless there are fewer stories about tax avoidance and greater transparency of how most organisations manage their tax risk, then the political incentive for change is not going to go away.[7] Transparency always seems to pay off, regardless of how it is perceived on the social responsibility scale. True organisation transparency isn't just a 'nice to have' anymore, it's essential. Increased transparency will give those organisations that embrace it an advantage, not only as effective suppliers or wealth creators, but also as positive contributors to society.[8]

3 https://www.wbcsd.org
4 Organisation responsibility and paying tax. Thomas Scheiwiller and Susan Symons, PricewaterhouseCoopers.
5 Placing behavioral insights at the centre of taxation: Building a 'trust based truth' tax environment in African countries Kuralay Baisalbayeva, Eelco van der Enden, J.B. Hillman and Michael Roytman, ATRN working paper 19, September 2017.
6 GRI draft Standard on Tax and Payments to Governments.
7 The GP surgery: Transparency is on the rise – but nobody has told the public. International tax review.
8 Can You Handle The Truth? How Transparent Companies Become Role Models to Consumers Yuting Lin and Professor Andreas B. Eisingerich.

Strengthening global partnerships and cooperation is essential for achieving the SDGs. Corporates and governments are encouraged to engage and develop partnerships to achieve these common goals. They also need to work on strengthening domestic resource mobilisation.[9] While governments have the ultimate responsibility to determine policy at domestic level, collaborative and meaningful action by business is fundamental to achieving the SDGs.

Stakeholder engagement in Africa

Economic overview

Economic growth in Sub-Saharan Africa remains below the estimated population growth. Public debt levels and financing costs are two fundamental challenges that impact sustainable economic growth and social development in Africa. Another challenge in Africa is the relative size of some informal (shadow) economies. The International Labour Organisation (ILO) estimates that the average size of the informal economy in Sub-Saharan Africa as a percentage of Gross Domestic Product (GDP) is 41%.[10]

According to a recent study undertaken by the International Monetary Fund (IMF), the size of informal economies ranges from below 30% in South Africa to more than 50% in Nigeria, Tanzania and Zimbabwe.[11] Although there are many benefits to an informal economy (such as employment and cheaper consumer goods for lower income groups), there is a substantial loss to the fiscus in terms of taxes.

9 https://sustainabledevelopment.un.org/sdg17
10 Quartz Africa, Don't underestimate the power of Africa's informal sector in a global economy, January 2016, https://qz.com/africa/599483/dont-underestimate-the- power-of-africas-informal-sector-in-a-global-economy/
11 IMF Working Paper, Shadow economies around the world, January 2018 (WP/18/17).

The positive impact of the private sector and formal taxpayers in African countries should be acknowledged and communicated in a transparent manner. In many African countries there is a perception that large multinational companies take advantage of natural and human resources without sufficiently compensating the communities in which they operate. For this reason, multinational companies across various sectors are beginning to investigate the broader impact they have on African countries. A holistic impact generally consists of a socio-economic and environmental impact assessment. More recently multinational companies are also focusing on the total tax contribution they have in the African countries where they operate. This includes their direct, indirect and induced tax contribution to government revenue. This information can be used in various stakeholder engagements and interactions with regulators.

Regulatory overview

The efficient regulation of taxation that causes the least amount of distortion on economic growth is an ongoing debate and one that is gaining prominence. Jurisdictions are increasingly evaluating the regulatory framework pertaining to the levying and administration of taxes to ensure that sufficient revenue is collected in a fair manner while ensuring that the tax rules do not impose an undue regulatory burden on taxpayers and do not have any negative unintended consequences.[12] When a tax system is inefficient, the time it takes to comply with tax rules is relatively high and the amount of revenue collected is relatively low. A burdensome and overly complex tax system adds to businesses' costs and may discourage investment, especially in low-margin industries.[13] According to a recent OECD study, 'both investment and the productivity of that investment are lower in countries where the regulatory burden is greater'.[14]

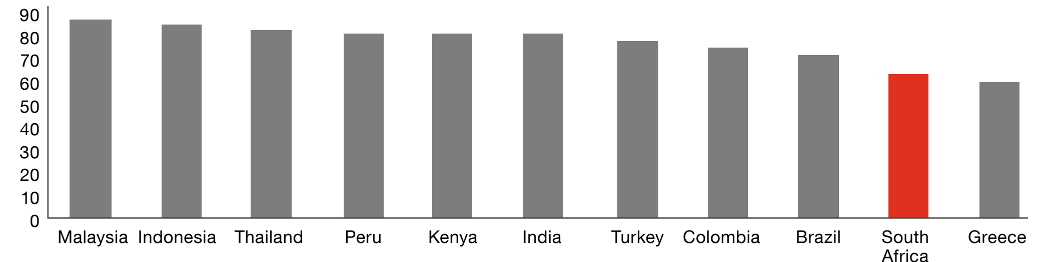
In broad terms, an inefficient tax framework presents the following potentially negative outcomes:[15]

- High regulatory uncertainty and risk, making it hard for organisations to make long-term decisions involving investment and
- Distorting competition by increasing the cost of organisations to enter or exit the market

It is also important to ensure that the tax burden imposed on a country is not too high by keeping the size of the state in check and ensuring fiscal discipline.[16] Some other policy options for efficient tax regulation include broadening the tax base by ensuring that new organisations can enter the market, simplifying tax structures to increase the ability of new organisations to compete and improving tax administration at all levels.[17]

According to the Heritage Foundation's 2019 Index of Economic Freedom, the tax burden score for South Africa is 62.10, meaning that from a tax burden perspective, South Africa is less free and more burdensome than comparable countries.

Tax burden index out of 100 indicates least burdensome

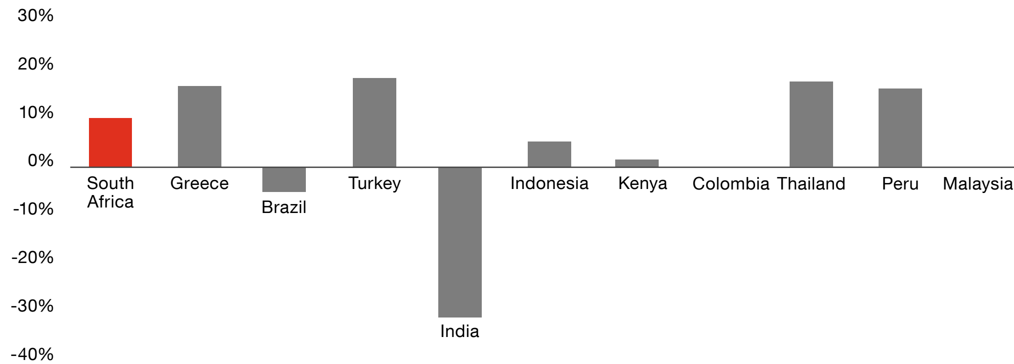


Source: Heritage Foundation 2019 Index of Economic Freedom, PwC analysis

12 OECD work on taxation report, 2018/19.
13 OECD Policy Framework for Investment: A review of good practices, 2006.
14 Mareuse, O. (2011). Fostering Long-term Investment and Economic Growth. OECD Journal: Financial Market Trends, 2011(1), 83-86.
15 World Development Report, 2005.
16 Ibid at 110.
17 Ibid.

According to the OECD, South Africa's Marginal Effective Tax Rate is 9%, meaning that taxation increases the cost of capital post investment by 9%.

Marginal effective tax rate



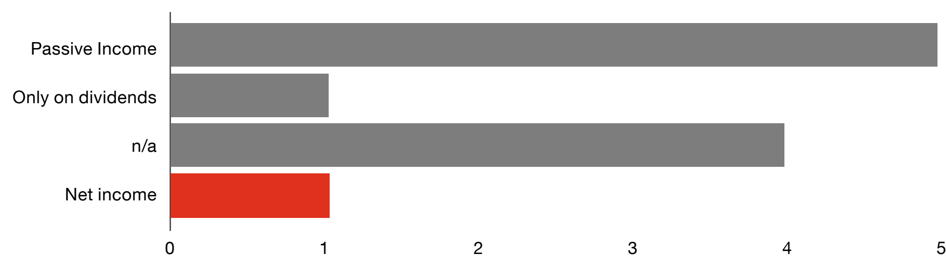
Source: OCED Corporate Income Tax statistics, PwC analysis

Although this is not particularly bad, it can be better – especially given the need in South Africa for a climate more conducive to investment.

Among other areas of South Africa's tax system that are considered problematic is its Controlled Foreign Company (CFC) tax regime. Compared to structurally similar countries, South Africa is the only one that levies CFC tax on net income.

Other countries restrict CFC application to passive income or specific aspects, such as dividends.

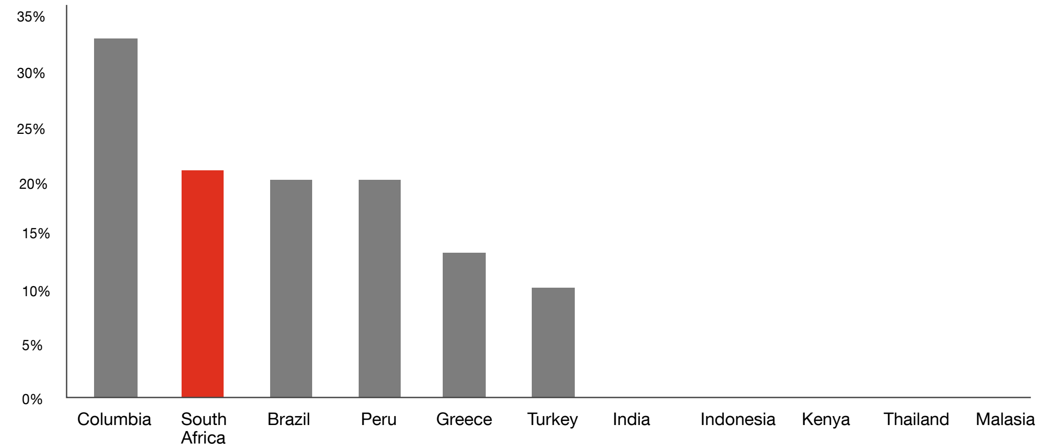
Number of countries levying CFC on different aspects of income



Source: PwC research and calculations

South Africa also has a relatively high 'high-tax exemption', meaning that multinationals must consider more jurisdictions when calculating CFC-related tax obligations.

High-tax exemption (%)



Source: PwC research and calculations

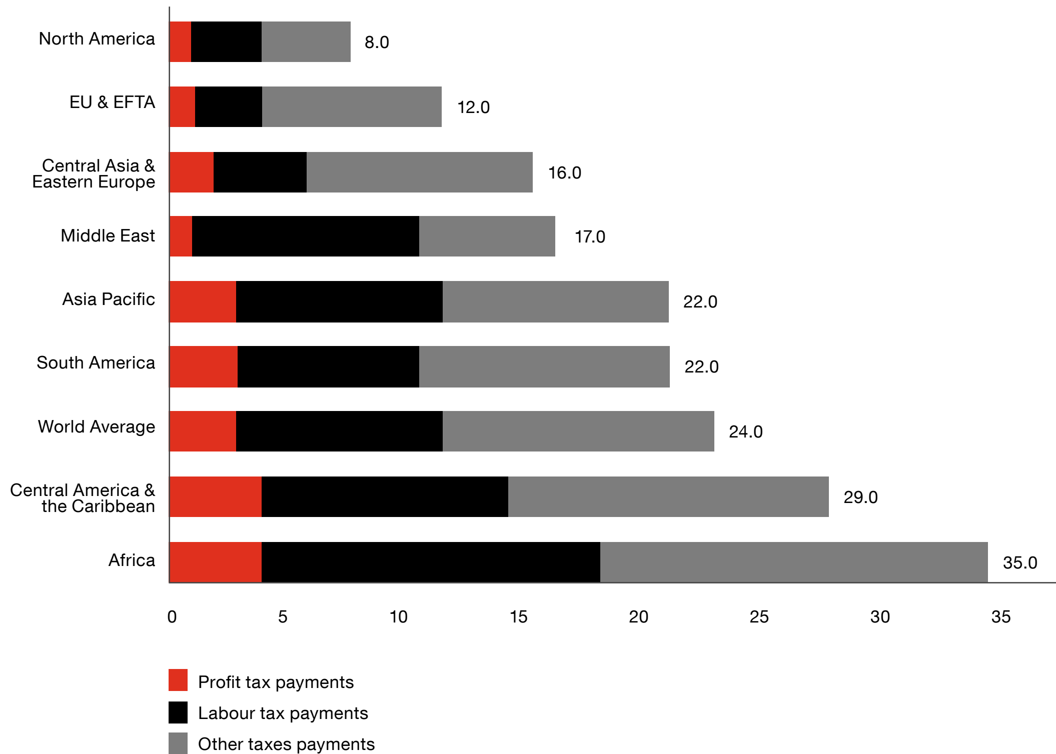
Unduly onerous CFC rules have the added disadvantage that they impede South African multinational companies' ability to compete internationally. The additional administrative burden means that fewer resources are available to invest in efficiency gains, to grow, and to create jobs.

Paying taxes in Africa

According to the Paying Taxes survey conducted annually by PwC and the World Bank, which measures the ease of paying taxes in over 198 economies, Africa as a region has by far the highest number of tax payments and contributions to make, reaching a total of 36 payments per year for a medium-sized business. This is far greater than the world average of 24 payments. The other regions vary between eight payments (North America) and 29 (Central America and the Caribbean). As shown in the graph below, companies doing business in Africa face a particularly high compliance burden.

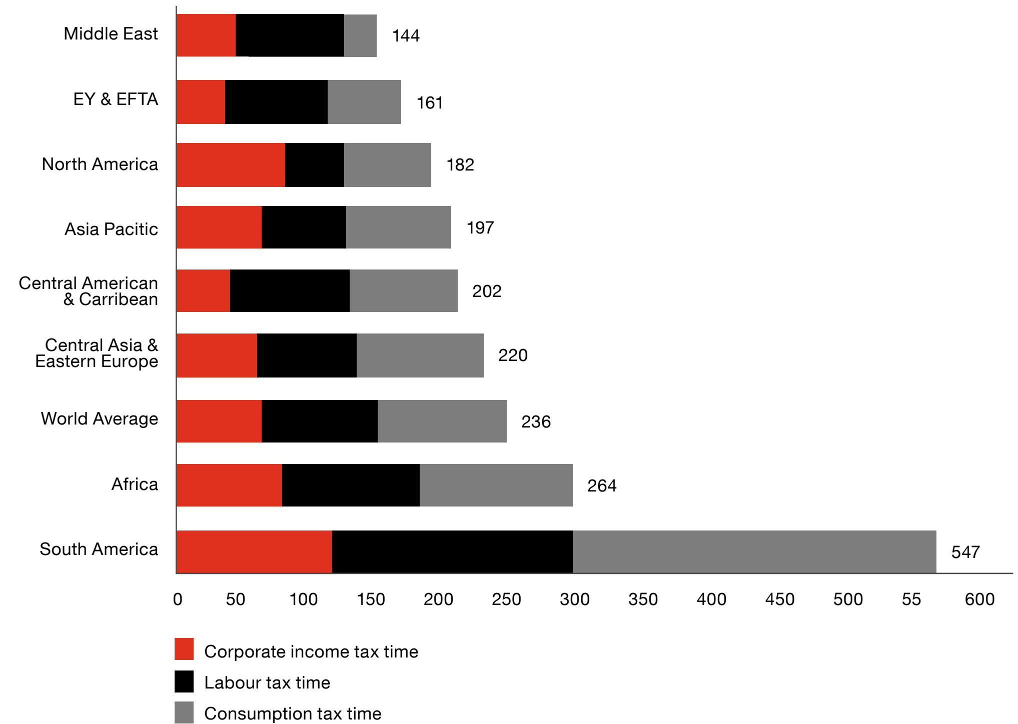
The 'number of payments' indicator further illustrates that in Africa there are more 'tax types' than in other regions, which indicates a very high compliance burden. Having various tax types adds to the complexity of the tax system without necessarily bringing in more revenue.

Number of payments 2017



The effect of the high 'number of payments' indicator can also be seen in the 'time to comply' indicator. The average time it takes for a medium-sized company in Africa to pay its taxes and fulfil its compliance duties is 284 hours. This is higher than the world average of 236 hours, an average that includes South America, which is an outlier. The 'number of payments' and 'time to comply' indicator paints a picture of strain when it comes to paying taxes. Business and government should address these challenges together, to create an environment that is conducive to the growth of businesses, and to the government collecting revenue and in turn growing the economy.

Time to comply 2017



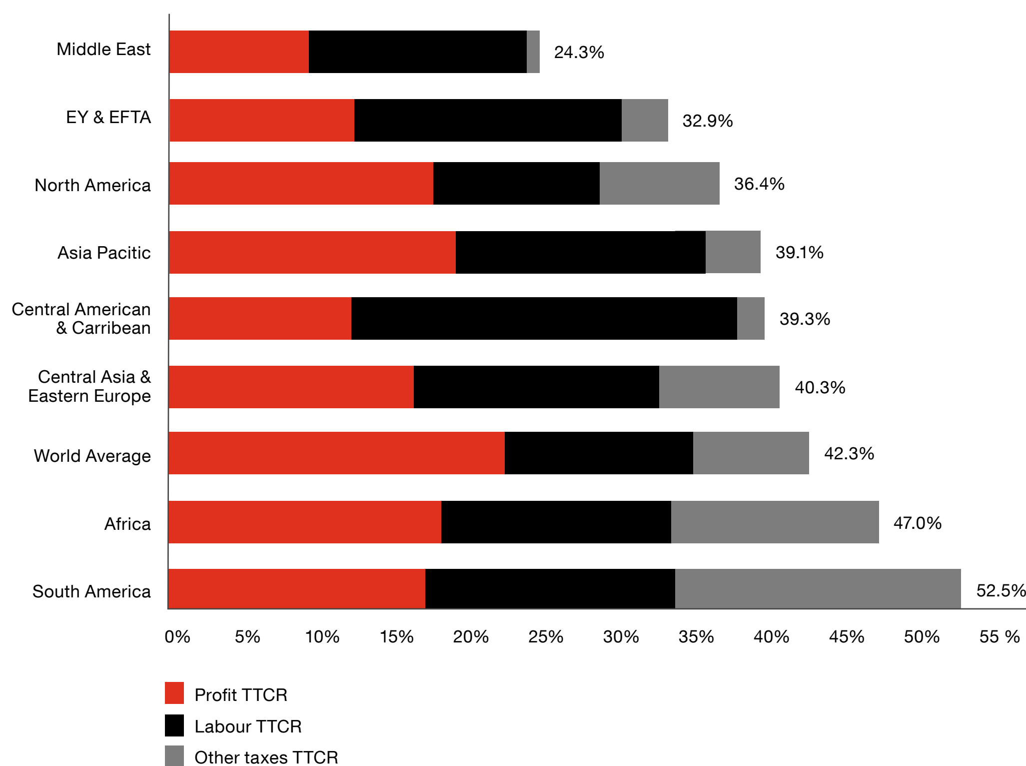
The high 'number of payments' is perhaps also indicative of developing countries with a small tax base that are in dire need of additional revenue to sustain their people.

However, in a region where economic growth is desperately needed, raising taxes alone will not be enough, if an effective tax administration system is not in place.[18] Effective and transparent tax systems will assist in mobilising domestic taxation and unlocking opportunities to engage in world trade.

They are therefore also a key development goal for the United Nations.

The high 'number of payments' presents a challenge when doing business in Africa, and companies would need to have a strong and capable tax team to ensure that they are compliant with all the necessary payments.

Total Tax & Contribution Rate 2017



18 Africa's tax system: A survey. [Online]. www.oecdobserver.org

Africa has the second-highest total tax and contribution rate ('TTCR'), which is the percentage of taxes borne. The following taxes are included in this measurement: profit taxes, social contributions, mandatory labour contributions, property taxes, turnover taxes and other taxes (e.g. such as municipal fees and vehicle taxes). It excludes taxes that are collected by the company on behalf of the revenue authority.

Africa's TTCR sits at 47%. The world average is 40.3%. A high TTCR compounded by a high number of tax payments may affect larger taxpayers' financial ability to invest, while tax complexity and uncertainty may also affect future investment incentives and ease of doing business in the region.

The role of stakeholder engagement

In Sub-Saharan Africa, where there is an over-reliance on volatile natural resources as a source of revenue, governments are increasingly looking at tax as a stable revenue source.[19] Given the low tax-to-GDP ratio in most African countries, governments have seen this as an untapped revenue source that can contribute to much- needed government spending on public services and infrastructure.

Raising more taxes may sound like a good solution, but how does this affect business and what is the impact on the attitude of investors and the economy? In the *2018 PwC CEO Survey* it was noted that the increasing tax burden is the second-biggest threat for corporate entities operating in Africa, confirming the fact that Africa's tax landscape is not inviting to investors and is a point of concern for businesses. On top of the existing concerns, companies in developing economies should also consider how technology disruption will affect their tax collections, according to the *PwC Paying Taxes 2018* report.

Governments often increase taxes to reach revenue-raising goals; however, this is more often than not a short-term approach and the long-term effect is often detrimental to the economy. An example is Kenya, where more taxes were introduced, only to see a decline in the tax-to-GDP ratio.[20]

Countries which are focused on increasing tax collection often target specific industries that are deemed to be more lucrative than others and easy to tax. An example of this is the telecommunications industry, which governments often seek to impose additional taxes on. While it may bring revenue gains in the short run, higher communication costs can negatively affect the productivity of numerous businesses, burden households, and hamper growth of the economy as a whole in the long run. Adebe Selasi, the IMF's top official for Africa, cautions that taxes must not be introduced in a way that stifles innovation and curtails activity in the sector, and that striking a balance is very important.[21]

19 Africa turns to tax reform. [Online]. www.accaglobal.com
20 New and emerging taxes in Africa and beyond. [Online]. www.roedl.com.
21 Tax byte: Africans fear trend of levies and data, services. [Online] www.ewn.co.za

Where more taxes are introduced in countries where the number of payments and the total tax contribution rate is already high, there is a danger that it could have a negative impact on the economy. Governments should try to avoid taxing people into poverty and rather focus on encouraging a stable economic environment.[22]

Organisations' tax practices are of interest to various stakeholders. Stakeholder engagement in a region that will seek to improve its tax-to-GDP ratio is key to building trust and achieving more effective policy decisions. On the other hand, governments need to understand how policy decisions affect stakeholders and different parts of society.

Furthermore, society needs to understand the impact that businesses have on the economy and how they are contributing to the financial security and development of the country. In a world where the ethics of companies are being scrutinised, society needs to be engaged so that it can understand and be assured that business profits are not being shifted to other jurisdictions.

Besides raising tax rates or introducing additional taxes, further strategies can assist in raising revenue. Firstly, simplifying the tax system and making it easier to comply with can translate into revenue gains. A successful tax system is easy to understand and easy to administer. Secondly, improving the perception of the tax system as fair and proportionate can also enhance compliance and translate into revenue gains. It can also break down barriers for business to move from the informal to the formal sector, which would in turn broaden the tax base. Tax administration systems that are too complex, not transparent or deemed unfair are less likely to be adhered to, especially in countries where basic needs (such as water and roads) are not sufficiently fulfilled.

According to the Global Reporting Initiative, the approach an organisation takes to engaging with stakeholders has the potential to influence its reputation and position of trust. This includes how the organisation engages with tax authorities in the development of tax systems, legislation, and administration. Stakeholder engagement can enable the organisation to understand evolving expectations in relation to tax and payments to governments. It can give the organisation insight into potential future regulatory changes and enable the organisation to better manage its financial and reputational risks.

Stakeholder engagement with the revenue authorities and specifically those who establish tax policy would be key to building trust and to forming part of policy-making decisions that could assist in making tax administration systems simple and transparent and add value to raising revenue and contributing to the economy.

Corporates can take a proactive approach to stakeholder engagement that goes beyond a meeting with the minister of finance and other policymakers of a country. This includes proactively demonstrating transparency in their tax affairs, understanding and communicating their impact on wider society, and becoming part of the policy debate.[23]

22 The highest income tax rates in the world – including South Africa. [online] www.cbn.co.za
23 What companies hoping to influence tax policy in Africa need to know. [Online] www.moneyweb.co.za

Case study: Tax stakeholder engagement in the telecommunication sector

The challenge:

Mobile is the main gateway to the internet for consumers in many parts of the world today, particularly in developing countries. According to the IMF,[24] governments have conflicting objectives regarding the tax treatment of the telecoms sector. On the one hand, they know that telecom services are an important input into productivity and growth. They therefore want telecom companies to provide services as widely and cheaply as possible and to rapidly introduce new technologies. On the other hand, governments also regard telecoms as a good source of tax revenue, given their formal sector status and large and growing turnover. They are among the most important taxpayers in many low- and middle-income countries.

The GSMA noted that in Sub-Saharan Africa, the mobile ecosystem contributed an estimated 7.7% to the region's GDP and supported 3.5 million jobs in 2016.[25] The positive contribution of telecoms to the economy is well recognised. However, the tax treatment of the sector is not always aligned with best-practice principles. In 2015 telecoms paid on average 35% of their revenue in the form of taxes, regulatory fees and other charges in Sub-Saharan African countries. Tax worsens the business environment and reduces operators' ability to invest in network and coverage. Taxation levied on mobile, especially over and above standard rates, exacerbates affordability and coverage barriers for the underserved.

Some examples[26] of governments supplementing revenue or profit taxes with separate levies on voice airtime, SMS and mobile money in 2018 include Ivory Coast imposing a 0.5% tax on transfers via mobile money services. Kenya increased its tax on mobile money transfer fees from 10 to 12%. Benin introduced a tax of five CFA francs ($0.01) per megabyte consumed on social media usage. Zambia has proposed a daily levy on consumers who use the internet to make phone calls. In Uganda, a tax on mobile money transactions and a daily levy on social media usage, with apps and websites blocked until a user pays the fee, was introduced. In the case of Uganda, the social media tax proved to be detrimental to both its internet and mobile money sectors.

In the three months following the introduction of the levy in July 2018, there was a noted decline in the number of internet users, total revenue collected, as well as mobile money transactions.

24 IMF Working Paper: Taxing Telecommunications in Developing Countries 2017.
25 GSMA The Mobile Economy: Sub-Saharan Africa 2017.
26 Reuters: Tax byte: Africans fear trend towards levies on data, services 2018.

The role of stakeholder engagement

For the telecom industry, stakeholder engagement on the impact of industry-specific taxes is proving to be a priority. Such engagement is conducted through industry forums, public participation and high-level dialogue with key policymakers. To enable such engagements, relevant and impactful information is required. Some organisations perform economic impact assessments to reveal the importance of their operations in the growing economies in which they operate. This type of assessment estimates the holistic impact of their business across the value chain and how it contributes to economic growth, job creation, tax revenue and poverty alleviation. It enables the organisation to understand its economic and social footprint across the countries in which it operates and to engage with stakeholders, potential investors, the various governments and regulators. This type of data also proves to be beneficial when compiling its corporate messaging in integrated and sustainability reports.

Case study: Tax stakeholder engagement in the mining industry

The challenge

It is interesting to note that the *PwC Global Mine Publication 2018* identifies 'regulation' and 'public perception' as part of the top 10 risks experienced in the industry. Both these risks have a strong relation to how a company governs its tax positions, builds relationships based on trust and transparency with tax stakeholders and mitigates potential reputational tax risk.

Mining companies frequently come under scrutiny for their tax positions, and certain governments in Africa may use tax to get the industry to the negotiating table, to re-balance the share of economic resources from operations by claiming under-declaration of revenue or export duties. While these claims are considered unsubstantiated, attention must be given to the trend these developments represent and how companies engage with governments in the future in the areas of taxes, royalties and the overall sharing of economic benefits.

The role of stakeholder engagement

An economic impact assessment was performed by a mining company in Tanzania to determine its local operation's contribution to the Tanzanian economy. This impact assessment quantified its own operations and the economic activity it supports in the wider economy via operational activities and employment. In addition, the direct, indirect and induced contribution of taxes was analysed, enabling management to further engage with stakeholders in their understanding of the economic value that the organisation brings to society and the community in which it operates.

The bottom line: Change is required to focus economies on their original purpose – to deliver social progress

Although these case studies demonstrate the value of tax stakeholder engagement in specific industries, the application is relevant in any industry where there is a need for collaboration to build trust and work together towards sustainable development that takes into account social and environmental needs. Some organisations may want to engage to demonstrate the impact of the industry-specific tax burden, others may gain benefit from engagement to support their messaging as responsible corporate citizens, to contribute to their reputation as responsible taxpayers or to increase their social credentials.

It is essential for an organisation to develop a clearly defined stakeholder engagement plan on tax. In addition, in order to ensure that the various role-players within a business are aligned around the need to be more transparent about a company's approach to tax, it is critical that those involved seek internal alignment with, and ensure the support of, all relevant functions involved in managing or communicating tax within the organisation. This will include, but may not be limited to, the tax department, investor relations, legal, sustainability or corporate responsibility, media communications, and the finance functions. In addition, the organisation's risk and audit committee, executive committee and board need to be aligned with the decision to publish detailed information on a company's tax position, particularly when this is done at a country-by-country level. Collaboration between the departments mentioned above will be critical in ensuring that the narrative developed is clear, credible, provides useful context and clarifications, and offers specific insight into the organisation's approach to tax. Organisations need to align their external communication on tax principles with their overall business vision and mission, values and principles on corporate social responsibility and sustainability objectives.[27]

The bottom line is that responsible and tax-transparent companies are key to rebuilding social trust and addressing growing expectations from the public and policymakers alike. Economies – and the businesses operating within them – must evolve to better deliver for society so that society can better deliver for people. A common purpose is needed to realign business, economies and society.

Each business must define, deliver on and constantly update an explicit purpose that governs all its decisions and informs its corporate culture. This purpose must be clear on the social need that the organisation fulfils as well as its financial objectives and outcomes. In defining its purpose, an organisation needs to clarify and be able to communicate its contribution to society.

27 A Blueprint for Responsible and Transparent Tax Behaviour, PwC and CSR Europe. (If you are interested in a further discussion on tax transparency, tax as a sustainability matter and stakeholder engagement please click here.)

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SARS Watch

SARS Watch 26 October 2019 – 29 November 2019

Legislation

22 November	Explanatory memorandum to the amendments to Schedules No. 1, 4, 5 and 6 of the Customs and Excise Act No. 91 of 1964, to implement changes to the rates of customs duties in terms of the Economic Partnership Agreement between the European Union and the Southern African Development Community EPA States for 2020 and other miscellaneous amendment.	The draft amendment of the Schedules to the Customs and Excise Act, 1964, Act No. 91 will be implemented with effect from 1 January 2020.
22 November	Amendment to General Note G to Schedule No. 1, to insert the abbreviation and symbol 'CO2e' to mean CO2 equivalent as well as amend note G. 47 to read as ton/tonne in the abbreviation to align with the wording in the Carbon Tax Act.	Notice R. 1515 published in Government Gazette 42850 with an effective date of 1 January 2020.
22 November	Amendment to Additional Notes to Chapter 11 by the substitution of Note 1(a) and Note 1(b) in Chapter 11 of section II to Part 1 of Schedule No. 1 as a consequence to the statement issued by the President of South Africa on 29 May 2019 regarding the merging of Government Departments.	Notice R. 1517 published in Government Gazette 42850 with an effective date of 1 January 2020.
22 November	Amendment to Part 1 of Schedule No. 1, to implement changes to the rates of customs duties in terms of the Economic Partnership Agreement between the European Union and the Southern African Development Community EPA States for 2020 and other miscellaneous amendments.	Notice R.1514 published in Government Gazette 42850 with a n effective date of 1 January 2020.
22 November	Amendment to Part 1 of Schedule No. 1, in terms of technical and other miscellaneous amendments.	Notice R. 1516 published in Government Gazette 42850 with an effective date of 1 January 2020.
22 November	Amendment to Note 5 in Schedule No. 4, in order to substitute the reference to form DA 331 to form TC-01, which refers to a traveller card used at ports of entry to declare personal and household effects.	Notice R. 1518 published in Government Gazette 42850 with an effective date of 1 January 2020.
22 November	Amendment to Part 1 of Schedule No. 4, by the substitution of item 409.00 as a consequence of the statement issued by the President of South Africa on 29 May 2019 regarding the merging of Government departments, resulting in the Department of Agriculture, Forestry and Fisheries changing to the Department of Agriculture, Land Reform and Rural Development.	Notice R. 1519 was published in Government Gazette 42850 with an effective date of 1 January 2020.
22 November	*Amendment to Part 2 of Schedule No. 4, by the substitution of various items as a consequence of the statement issued by the President of South Africa on 29 May 2019 regarding the merging of Government departments, resulting in the Department of Agriculture, Forestry and Fisheries changing to the Department of Agriculture, Land Reform and Rural Development.*	Notice R. 1522 published in Government Gazette 42850 with an effective date of 1 January 2020.
22 November	Amendment to Part 3 of Schedule No. 5, in order to delete refund items 537.00 and 537.02/87.00/01.02, as they were applicable to MIDP up to and including 31 December 2018. They have now become redundant.	Notice R. 1520 published in Government Gazette No. 42850 with an effective date of 1 January 2020.
22 November	Amendment to Part 3 Schedule No. 6, by the deletion of rebate items 672.01, 672.01/105.10/01.01 and 672.01/105.10/02.01, as they have become redundant.	Notice R.1521 published in Government Gazette No. 42850 with an effective date of 1 January 2020.
22 November	Amendment to Part 2B of Schedule No. 1, by the substitution of item 124.37.11, in order to exclude two-way radios from *ad valorem* excise duties.	Notice R. 1524 published in Government Gazette No. 42850 with retrospective effect from 1 April 2018.

22 November	Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheading 8517.62.20, in order to exclude two-way radios from ad valorem excise duties.	Notice R. 1523 published in Government Gazette No. 42850 with retrospective effect from 1 April 2018.
15 November	Amendment to Part 5A of Schedule No. 1, by the substitution of fuel levy item 195.20.01, in order to rectify the rate of fuel levy on biodiesel from 170,5c/kg to 170,5c/li.	Notice R. 1489 published in Government Gazette No. 42840 with retrospective effect from 5 June 2019.
11 November	Memorandum on objects of the Tax Administration Laws Amendment Bill, 2019	The document deals with the proposed amendments in the Tax Administration Laws Amendment Bill, 2019.
30 October	Tax Administration Laws Amendment Bill [B19 – 2019]	This Tax Administration Laws Amendment Bill was introduced in the National Assembly by the Minister of Finance on 30 October 2019.
30 October	Taxation Laws Amendment Bill [B18 – 2019]	This Taxation Laws Amendment Bill was introduced in the National Assembly by the Minister of Finance on 30 October 2019.
31 October	Rates and Monetary Amounts of Revenue Laws Bill [B17-2019]	This Rates and monetary Amendment of Revenue Laws Bill was introduced in the National Assembly by the Minister of Finance on 30 October 2019.
28 October	Publication of explanatory summary of the Tax Administration Laws Amendment Bill, 2019.	Notice 1338 – Published in Government Gazette No. 42800 with an implementation date of 30 October 2019.
Case law		
In accordance with date of judgment		
21 November	Africa Cash & Carry (Pty) Ltd v CSARS (783/18) [2019] ZASCA 148	This matter is on appeal from the tax court and deals with a) whether SARS proved that the methods of assessment used were reasonable, b) whether the tax court ought to have remitted the assessment and c) s89*quat* interest.
15 November	VAT 2063	The appellant makes both taxable and exempt supplies for value-added tax purposes and is appealing against the refusal by SARS to grant it approval to apply the Transaction Count Based method of apportionment of its mixed-purpose input tax deductions.
15 November	IT 24614	Whether, for income tax purposes, the amount of R18 273 271.26 incurred by the taxpayer was of a capital or revenue nature and whether an understatement penalty of 50% should have been imposed by SARS against the taxpayer.
11 September	TAdm 0035/2019	The applicant seeks a default judgment against the Commissioner in terms of which the applicant's additional assessment is altered to nil.
10 September	CSARS v Chakala and Another (30964/2018) [2019] ZAGPPHC 489	SARS lodges an application for rescission of an order previously granted against it on an unopposed basis.
26 August	IT 4412	This is an appeal against the Commissioner's decision to disallow additional medical tax credits, relating to an alleged treatment of a disability.
6 August	IT13862 &VAT1374	Application for the Commissioner to amend its Statements of Grounds of Assessment.
17 July	Wingate-Pearse v CSARS (29208/15) [2019] ZAGPJHC 218; 2019 (6) SA 196 (GJ); [2019] 4 All SA 601 (GJ)	Applicant applies for relief under review proceedings and an interlocutory application in respect of alleged unlawful and unconstitutional conduct by SARS in raising additional income tax assessments.
9 July	IT 14255	Whether a wholly owned subsidiary of a municipality qualifies to be tax exempt by virtues of s10(1)(a) of the Income Tax Act.
11 June	Lifman and Another V CSARS and Others (22820/2016) [2019] ZAWCHC 67	Is the appellant entitled to a stay of execution process, which commenced pursuant to taxes raised following the late filing of VAT and income tax returns, and a section 50 enquiry under Part C, Chapter 5 of the Tax Administration Act 28 of 2011?
6 March	CSARS and Another v Naude (51712/2017) [2019] ZAGPPHC 55	SARS entitled to condonation under rule 27(1) of the Uniform Rules of Court for failure to lodge an answering affidavit which was lodged six days late.
21 October	Gold Kid Trading CC v CSARS (31842/2016; 40732/2017) [2018] ZAGp JHC 679	Is the applicant entitled to leave to appeal to the high court in respect of a matter pending before the tax court?
27 September	CSARS v Pieters and Others (1026/17) [2018] ZASCA 128	Employees' contracts were terminated in terms of section 38(9)(b) of the Insolvency Act 24 of 1936. Amounts paid to employees relating to salaries, leave and severances pay are not subject to PAYE in terms of par 2(1)(a) of the Fourth Schedule to the Income Tax Act No 58 of 1962.

27 August	Rampersadh and Another v CSARS and Others (5493/2017) [2018] ZAKZPHC 36	Whether applicants were disqualified from bringing an application for judicial review under the Promotion of Administrative Justice Act 3 of 2000 following the Commissioner thrice rejecting a request for reduced assessments under section 93(1)(d) of the Tax Administration Act No 28 of 2011.
28 June	BMW South Africa (Pty) Ltd v CSARS (A553/16) [2018] ZAGPPHC 780	Whether tax consulting services rendered to employees and paid for by employer constituted a taxable benefit for such employee.
25 April	Marshall and Others v CSARS (CCT208/17) [2018] ZACC 11; (2018)(7) BLR 830 (CC)	This is an application for leave to appeal against a Supreme Court of Appeal decision, regarding the proper interpretation of section s8(5_ and 11(2)(n) of the Value-add Tax Act.
21 May	Red Ant Security Relocation and Eviction Services (Pty) Ltd v CSARS (2999/18) ZAGPPHC	The appellant applied for an urgent interim interdict for relief in respect of withdrawal of tax compliance status by SARS.
28 March	CSARS v Danwet 202 (Pty) Ltd (399/2017) [2018] ZASCA 38; 2019 (5) SA 63(SCA)	This is an application for the condonation of the late filing of an appeal against an assessment.
27 February	L Taxpayer v CSARS (A124/2017) [2018] ZAWCH 23; [2018] 2 All SA 478 (WCC)	Was interest incurred in the production of income?
23 January	Ntayiya v South African Revenue Services (3613/16) [2018] ZAECMHC 1	Did the applicant comply with section 11(4) and (5) of the Tax Administration Act No 28 of 2011?
Rulings		
21 November	BPR 334: Waiver of loan claims by the settlor of a trust	This ruling determines the income tax and donations tax treatment of the waiver of loans owing to the settlor by a trust.
12 November	BPR 333: Venture capital company – investment farming operations	This ruling determines whether an operating company will be carrying on any impermissible trade in respect of immovable property as contemplated in par (1) of the definition in section 12J (1).
8 November	BPR 332: Unbundling and subsequent issue of listed shares by non-resident subsidiary of resident holding company	This ruling determines the tax consequences for income tax and securities transfer tax relating to the primary listing of the offshore assets, held in a subsidiary company of a multi-national group on a foreign stock exchange with a secondary listing on the JSE.
5 November	BGR 331: De-grouping charge	This BGR sets out the tax consequences where a transferee company in a proposed intra-group transaction was the transferor company in an earlier intra-group transaction.
Guides and Forms		
19 November9	Guide to taxation of special trusts (Issue 2)	This guide will assist those involved with special trusts and the taxations thereof, with a specific focus on income tax and CGT.
National Treasury		
11 November	Revised draft response document on the 2019 Tax Bills	Revised presentation to SCOF and SECoF on the draft response to the 2019 Tax Bills.
Other publications		
25 November	Tax Alert: Taxation Laws Amendment Bill, 2019: Further developments relating to amendments to provisions with preference shares.	This alert discusses the amendments considered by Parliament's Standing Committee on Finance on the TLAB, 2019 on Wednesday, 20 November 2019.
19 November	OECD: Revenue Statistics Africa: Key findings for South Africa.	The report provides revenue-related statistics on South Africa.
4 November	Tax Alert: Taxation Laws Amendment Bill, 2019: Significant and far-reaching amendment to provisions dealing with preference shares.	This alert discusses the proposed amendments to the anti-avoidance rules relating to preference shares and the effect of the proposed amendment to significantly expand the scope of these anti-avoidance rules, with the effect that dividends in respect of almost all preference shares will now be subject to these rules.
1 November	Tax Alert: Treatment of foreign reinsurance branches and withdrawal of the Risk Policy fund proposal.	This alert discusses proposals for the tax treatment of foreign reinsurers that conduct reinsurance business through a branch in South Africa as well as the withdrawn proposed amendments dealing with the refinement of the risk Policy definition relating to contracts of insurance.
1 November	Tax Alert: Short-term insurers and treatment of deferred revenue	This alert discusses the proposed amendments that provide clarity for short-term insurers on how to tax deferred revenue. The proposed amendments are retrospective, being effective for years of assessment ending on or after 1 July 2018.

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