Synopsis

Tax today

October 2019

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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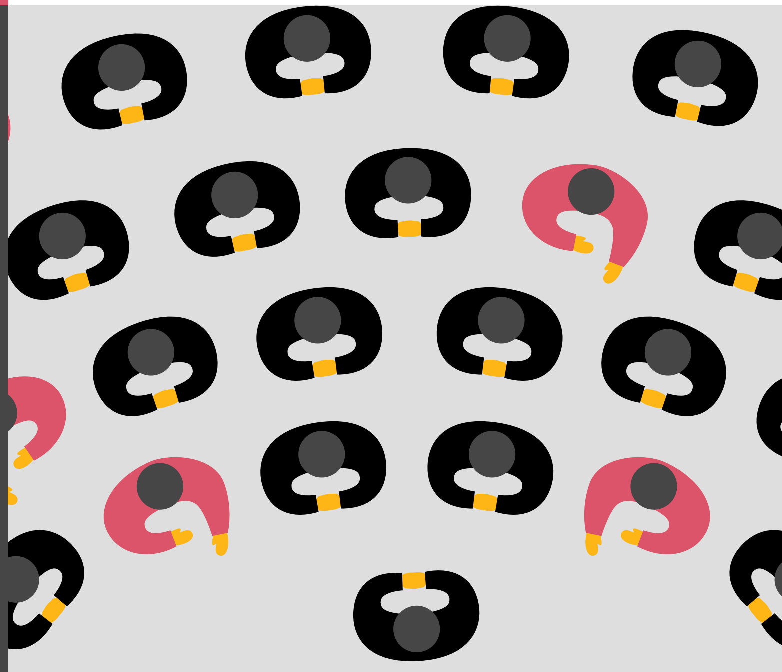

Inventory accounting practices and taxation

In recent years a degree of tension has developed in the taxation of companies relating to the valuation of inventories. Companies are obliged to conform with the requirements of IFRS in reporting the value of inventories at the lower of cost or net realisable value. Section 22 of the Income Tax Act ('the Act') is in many respects similar to IAS2, requiring that trading stock held and not disposed of should be valued at cost (as determined under IAS2) less such amount by which the value may have diminished by reason of damage, deterioration, change of fashion or decrease in market value or for any other reason satisfactory to SARS.

The cause of the tension lies in the accounting interpretation of the term 'value' in IAS2. This is identified as the net cash flow that will arise from the disposal of the asset and takes into account not only costs incurred up to the date of valuation but also costs that will be incurred in order to make the sale. Section 22 of the Act requires consideration of circumstances in existence at the end of the year of assessment that indicate that the value of the trading stock has diminished.

A further common application in practice is the systematic use of proportional reduction in the value of inventory where the items in question have been identified as slow-moving. As an example, it may be determined that, where no units comprising a stock item have been sold in a 12-month period, the value of all the units should be reduced (written down) by a specified percentage. In many instances, the use of a rigid policy of this nature is not supported by credible evidence that the value has actually diminished and that the stock will not realise an amount at least equal to its cost if sold.

These factors weighed heavily in the decision of the Supreme Court of Appeal ('SCA') in the matter of *CSARS v Atlas Copco South Africa (Pty) Ltd* [2019] ZASCA 124 (27 September 2019).

In the Tax Court, Opperman J had held that, having regard to the business operations of Atlas Copco South Africa (Pty) Ltd ('Atlas Copco'), the value of trading stock as determined applying IAS2 should be accepted as representing the value of trading stock held and not disposed for purposes of section 22(1)(a) of the Act. In coming to her decision, Opperman J had placed reliance on a judgment that had been delivered in the Tax Court in the Eastern Cape which considered net realisable value as determined under IAS2 to represent the value of trading stock for purposes of section 22 of the Act.

SARS did not take this lying down and took the matter on appeal to the SCA.

Background

Atlas Copco is a subsidiary of a multinational company with headquarters in Sweden. It imports and distributes or leases equipment for use in the mining and related industries. The industry is highly competitive and the ability to service customers necessitates that a significant stock of products should be on hand to meet customer requests with minimum delay.

The accounting policies applied by Atlas Copco were dictated by its parent company's accounting manual, which all companies in the Atlas Copco group were required to apply. In the case of inventory that was identified as slow-moving, the directive was that the value should be reduced to 50% of cost if no items had been sold in the preceding 12 months and to zero if no items had been sold in a period of 24 months.

No inquiry was apparently made into the condition of the stock or the possibility of sale. If the circumstances that dictated a reduction existed, the reduction was applied. Tests carried out by the external auditor were designed to verify that the policy had been applied as directed. No inquiry had been directed to the appropriateness of the proportion by which the value was diminished.

Similar diminution in value was applied to items of stock which was considered excessive by reference to current sales volumes, demonstration stock, stock of a recently acquired operation and goods in transit. In most instances, the proportion by which the value was reduced was 50%.

The amount by which the value of stock had been reduced was R30 million in 2008 and R33 million in 2009.

The judgment

Ponnan JA, delivering the judgment in which all five Justices of Appeal concurred, commenced by noting that the judgment of Eksteen J, on which reliance had been placed by Opperman J in the Tax Court, had been overturned on appeal (*CSARS v Volkswagen South Africa (Pty) Ltd* [2018] ZASCA 116).

The SCA had established in *CSARS v Volkswagen South Africa (Pty) Ltd* (above, at paragraph 54) that:

> 'SARS may only grant a just and reasonable allowance in respect of a diminution in value of trading stock under section 22(1)(*a*), in two circumstances. The first is where some event has occurred in the tax year in question causing the value of the trading stock to diminish. The second is where it is known with reasonable certainty that an event will occur in the following tax year that will cause the value of the trading stock to diminish. . . . Both scenarios are consistent with the basic proposition that the assessment of income tax relates to events that have already occurred rather than events that may occur in the future.'

In effect, the Court had to be satisfied that events that had occurred prior to the end of the tax year had caused a diminution in the value of the trading stock or that a future event which will occur in a following year with reasonable certainty will cause the value of the trading stock to diminish.

The *Volkswagen* judgment had pointed out that IAS2 and section 22 of the Act demonstrated similarities but that the elements that related to the determination of value were not identical. This difference in approach was summarised at paragraph [10](d):

> 'The Act's provisions do not necessarily accord with current accounting principles. Thus, whether NRV reflects a diminution of value of trading stock for the purposes of s 22(1)(*a*) depends, not on its acceptance as part of GAAP, but on its conformity to the requirements for such a diminution in value as determined on a proper interpretation of that section.'

The evidence adduced by Atlas Copco in the Tax Court was evaluated to determine whether it established on a balance of probability that the value of the stock had diminished by reference to past events or predictable future events.

The judgment then dealt with the evidence in relation to the adjustments for the various classifications of inventory whose value had been reduced. In cross-examination the principal witness for Atlas Copco conceded that the determination of value was not based on whether a diminution in value had arisen in fact, but on the prescription in the group financial manual. Ponnan JA commented (at paragraph [13]):

> 'That, as it turns out, is simply a time-based approach, which is not entirely consonant with the requirements of s 22(1)(*a*) of the Act.'

At paragraph [14], Ponnan JA felt that the evidence of Atlas Copco's auditor should not have been accepted by the Tax Court. After remarking that her evidence 'did little to advance the taxpayer's case', he stated:

> 'If anything, [her] evidence serves to fortify the view that the taxpayer's employment of a fixed and rigid company policy was arbitrary and did not present the most reliable evidence available at the time in respect of any diminution in value.'

The function of the auditor had effectively been to confirm that the group policy was consistently applied rather than to establish whether there had been diminution in the value of the stock. At paragraph [16], the judgment records that the auditor had considered certain lines that had been sold below cost and how these had been treated for accounting purposes:

> 'In this regard, she only identified three product lines that had been sold below cost and on average those products were sold at approximately 24 to 26% less than their cost. The true factual position is thus a far cry from the application of a fixed 50 or 100% write off in terms of the group policy. This historical evidence ought to have featured in the determination of whether or not there was any diminution in value of the trading stock as contemplated by s 22(1) of the Act. But it did not. Instead, the taxpayer chose the application of a fixed percentage based policy grounded on an aging analysis.'

The judgment continued with an analysis of evidence by Atlas Copco's principal witness in relation to adjustments made in respect of other categories identified, such as demonstration stock, standard cost adjustments and goods in transit and found that in no instance was satisfactory evidence provided to SARS to establish that the stock obsolescence provision that had been raised fell within the scope of section 22(1)(*a*) of the Act.

In concluding, the judgment did not advocate that the only basis for a diminution should be by individual examination of each unit. At paragraph [22] Ponnan JA noted:

> 'SARS never contended that the taxpayer had to assess each individual item of stock. On the contrary, as SARS accepted, the practice of sampling in these situations is a well-recognised method of dealing with the challenges of high volume trading stock. But, that is not what the taxpayer did in this instance.'

The judgment of the Tax Court was set aside and amounts of R30 million and R33 million were included in taxable income for 2008 and 2009.

The takeaway

The judgment sends out a strong message that the valuation of stock applying IAS2 may expose companies to additional tax, particularly in regard to the methods by which net realisable value is determined. Where the practices involve a systematic application of diminution by a factor based on stock aging, there is a significant risk that the value of inventory and therefore taxable income may be understated in the company's return of income.

Companies would be well advised to consider the manner in which stock should be valued for income tax purposes and ensure that, where they make adjustments, they have clear evidence of the circumstances giving rise to the adjustment.

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Tax policy developments

Incorporating treaty concepts into domestic legislation: Associated enterprises and transfer pricing

Introduction

Among the amendments proposed in this year's Taxation Laws Amendment Bill ('the TLAB, 2019') is an amendment to section 31 of the Income Tax Act, 1962 (Act No. 58 of 1962) ('the Act'), South Africa's transfer pricing provision.

The proposed amendment introduces the concept of 'associated enterprise' into section 31 of the Act and expands the scope of the transfer pricing rules to include transactions between persons that are 'associated enterprises' as described in the OECD Model Tax Convention ('the MTC').

The proposal has generally not been well received by taxpayers and gives rise to a number of significant issues.

Background

Broadly, the purpose of transfer pricing rules is to protect against reductions in South African taxable income as a result of the manipulation of the terms of transactions (including prices) between parties who are residents of different countries but who are in some way related (or 'connected') to each other.

Generally, in South Africa, the rules apply where a South African-resident taxpayer enters into a transaction with a 'connected person' who is not a South African resident and any term or condition of that transaction (1) is different from what it would have been had the parties been independent persons dealing with each other at arm's length; and (2) results or will result in a tax benefit being derived by any of the parties to the transaction.

Once the rules are triggered, the taxable income or tax payable by the party that derives the tax benefit must be calculated as if the transaction had been entered into on the terms and conditions that would have existed had the parties been independent persons dealing with each other at arm's length.

South Africa's transfer pricing rules were initially introduced in 1995. Since their introduction, a number of amendments have been made to them so that they align with international standards. Such standards include, for example, the arm's length principle, which is the internationally recognised standard for the allocation of profits resulting from transactions between related parties.

Currently, South Africa's transfer pricing rules reference (and rely on) the definition of 'connected person' in section 1 to determine whether the rules should apply. Thus, the rules will apply only if the parties to the relevant transaction are 'connected persons' (as defined in section 1) in relation to each other.

The proposal

In explaining the proposed amendments to section 31, the draft Explanatory Memorandum to the TLAB, 2019, states the following under the heading 'Reasons for Change':

'Both the OECD and UN use the concept of "associated enterprises" when applying the arm's length principle … On the other hand, South Africa still uses the concept of "connected persons" when applying the arm's length principle. The fact that South Africa does not have or use the concept of associated enterprises when applying the arm's length principle presents a challenge in application of the transfer pricing rules in respect of transactions between "associated enterprises" that are not regarded [as] connected persons.'

Article 9(1) of the OECD Model Tax Convention provides as follows:

'Where:

a. *an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or*

b. *the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,*

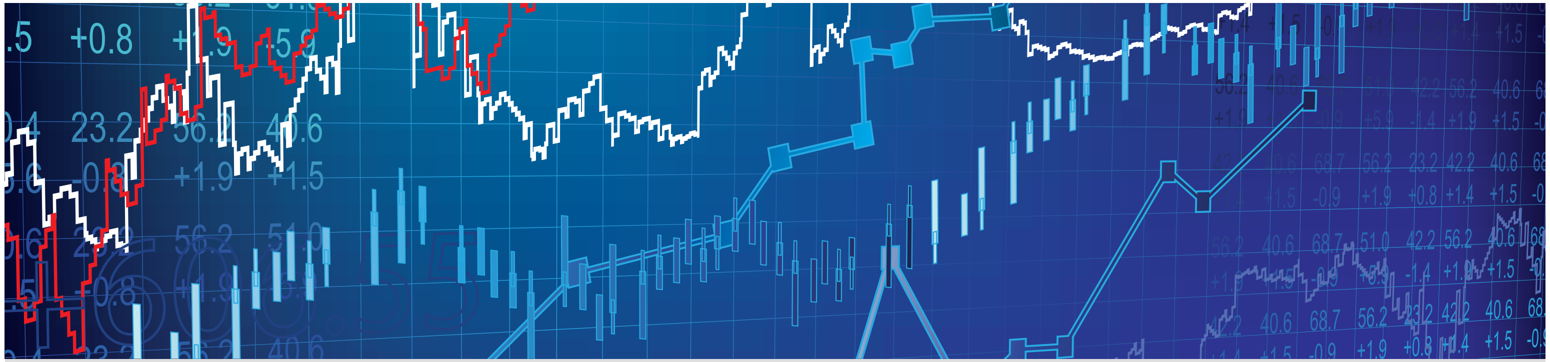
and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.'

It would seem that the fiscus is concerned with situations in which the relationship between entities is such that they are not ‘connected persons’ as defined in section 1 of the Act, but where there is, nevertheless, a relationship between them that enables the manipulation of the terms and conditions of transactions between them. From discussions at recent public workshops held by the National Treasury on the Draft TLAB, it appears that the primary concern of the fiscus is with situations in which entities (mainly companies) fall under common management and/or control but, for some reason, are not ‘connected persons’ as defined.

The draft Explanatory Memorandum to the TLAB, 2019, therefore states the following under the heading ‘Proposal’:

‘In order to address this anomaly, it is proposed that changes be made in section 31 of the Act so that the scope of the transfer pricing rules be extended to also include transactions between persons that are not connected persons, but that are “associated enterprises” as described in Article 9(1) of the MTC on Income and on Capital of the OECD.’

While the draft TLAB, 2019, proposed an effective date for the proposed amendments of years of assessment commencing on or after 1 January 2019, the TLAB, 2019, proposes that the amendments be effective years of assessment commencing on or after 1 January 2021.



Concerns with the proposal

Whilst it is accepted that there may well be situations that are not adequately dealt with by the existing rules, it is inappropriate to import the concept of ‘associated enterprises’ into the South African Income Tax Act.

The term ‘associated enterprise’ is a concept and not a definition

Unlike terms such as *‘resident’* and *‘permanent establishment’*, the term *‘associated enterprise’* is not defined in the OECD MTC and would be better described as merely being a broad concept. In our view, the OECD MTC merely describes the concept using deliberately broad, vague and ill-defined language solely to avoid restricting or overriding domestic law definitions that trigger the application of transfer pricing rules (such as the definition of *‘connected person’* in the South African context). It is therefore submitted that the description of an *‘associated enterprise’* in the OECD MTC is certainly *not* intended to represent a standard or benchmark definition. Its incorporation into domestic law will therefore create significant uncertainty as to when the transfer pricing rules are applicable.

Article 9 of the OECD MTC serves only two purposes, namely (in paragraph 1) to permit transfer pricing adjustments (profit-increases) in a Contracting State, and (in paragraph 2) to permit corresponding adjustments in the *‘other State’*. It is therefore inappropriate to suggest that subparagraphs (a) and (b) of Article 9(1) are intended to create some form of ‘definition’. As suggested above, the purpose of these subparagraphs is simply to ensure that domestic definitions (such as South Africa’s definition of ‘connected person’) are not disturbed.

The OECD’s Commentary on Article 9 contains no discussion whatsoever on subparagraphs (a) and (b), and discusses only transfer pricing adjustments. Compare this with the OECD’s Commentaries on the definitions of, for example, *‘permanent establishment’* and ‘resident’. Even the OECD’s Transfer Pricing Guidelines make no attempt to discuss in any detail the meaning of the term *‘associated enterprise’*. This term does not appear anywhere in the OECD MTC, except as a descriptor/header for Article 9, and is not even used in the body of Article 9.

Critically, the fact that very broad and unrestricted language is used in subparagraphs (a) and (b) further confirms that *‘associated enterprise’* is not a ‘definition’. To adopt the concept (as a critical ‘definition’) into the South African Income Tax Act would, therefore, be inappropriate.

The statement in the EM that *‘both the OECD and UN use the concept of “associated enterprises” when applying the arm’s length principle’* is misleading. This creates the impression that the concept of *‘associated enterprise’* is a critical definition that triggers the application of transfer pricing provisions. In fact, the term is nothing more than a placeholder: the MTC in fact does not venture into defining what relationships would trigger the application of transfer pricing rules, but rather wants to ensure that such relationships are determined and defined in accordance with domestic law.

Further definitions, elaborations and clarifications are required

The wide and unrestricted language in Article 9(1) incorporates many terms and concepts that will make interpretation and application the subject of uncertainty and dispute. Not only will there be uncertainty as to when section 31 applies as a substantive matter, but there will also be a consequential impact on documentation compliance. This may be illustrated by the following:

Participation

In the context of the phrase *'participates in … capital'* there is no reference to a threshold percentage. It is not clear whether this means that owning just one share in a company will result in that company being *'associated'*. It seems inappropriate that if a 20% shareholding is held in a company and one single other shareholder holds 80% of the shares in that company (with the result that the 20% shareholder does not have any real influence) that the 20% shareholder and the company will be *'associated'*.

Similarly, in the context of the phrase *'the same persons participate … in the management [or] control …'*, it seems inappropriate that unrelated companies be 'associated' merely because they share a single non-executive director.

There are a myriad of other anomalous examples that would arise as a result of the unlimited application of Article 9.

Control

The concept of *'control'* is undefined. It is not clear whether this would be *de facto* control by human decision-makers (akin to the concept of *'effective management'*) or whether it would include *de jure* control such as shareholding, voting rights and authority to appoint directors.

Management

Equally, the concept of *'management'* is undefined and unclear. It is not clear whether this is intended to cover senior-level managers (e.g. directors) or mid/lower-level managers, or both.

Enterprise

The concept of *'enterprise'* is foreign to South African income tax law. The extent of the overlap of the concept with the definition of 'person' is unclear and uncertain. An example of the problems this could present is that section 31 relies heavily on the definition of 'resident', which is defined in section 1. In order to be a 'resident' as defined, one needs to be a 'person', and the definition of 'resident' in section 1 does not contemplate an 'enterprise'.

'Participates directly or indirectly in the management, control or capital of an enterprise'

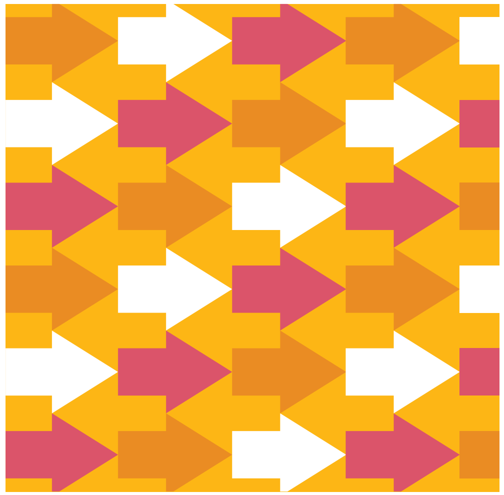
The composite phrase *'participates directly or indirectly in the management, control or capital of an enterprise'* simply exacerbates (exponentially) the vagueness of the individual components of the phrase. The phrase has no autonomous international meaning and, as noted above, even the OECD makes no attempt to expand or clarify its intended interpretation and application. In our view, it would not only be inappropriate but also irresponsible to introduce a concept into our tax law that is so fraught with vagueness and uncertainty.

Where to from here?

Following the public consultation process on the draft TLAB, 2019, which included the submission of written comments from the public on the proposed amendment, as well as public workshops held in Pretoria in early September 2019, the National Treasury and SARS released a draft Response Document, which was presented to the Joint Committees on Finance on 18 September 2019.

The Response Document notes the public comments on the Draft TLAB, 2019, and states the following:

'SARS will further provide guidance on the interpretation of the term "associated enterprise". In order to give SARS and taxpayers more time to consider the interpretation of the term "associated enterprise", it is proposed that the effected [sic] date of this provision be postponed by a year from 1 January 2020 to 1 January 2021.'



Conclusion

It remains to be seen whether the proposal to merely postpone the effective date of the proposed amendment by one year and for SARS to provide 'guidance' on the interpretation of the term *'associated enterprise'* will adequately address the concerns raised by taxpayers during the course of the public consultation process.

It is readily acknowledged that the existing scope of application of the transfer pricing provisions may be inadequate and that the definition of 'connected person' may need to be expanded to cover situations that are not currently covered.

However, it is submitted that merely providing 'guidance' (which, it appears, would take the form of an interpretation note and not legislation) on the interpretation of the term 'associated enterprises' would not only be inadequate in addressing the concerns outlined in this article, but could also give rise to further significant constitutional and practical issues relating to certainty. It would be inappropriate (and almost certainly constitutionally problematic) for the necessary elaboration (in the form of, for example, thresholds and further definitions) aimed at clarifying the intended expanded ambit of section 31 to be determined by way of an interpretation note (or a similar instrument) issued by SARS.

In our view, it would be far more appropriate to withdraw, entirely, the proposal to adopt the concept of *'associated enterprise'* as part of the definition of 'connected person', and to amend the definition of 'connected person' for the purposes of section 31 in order to address whatever the specific concerns of the fiscus are.

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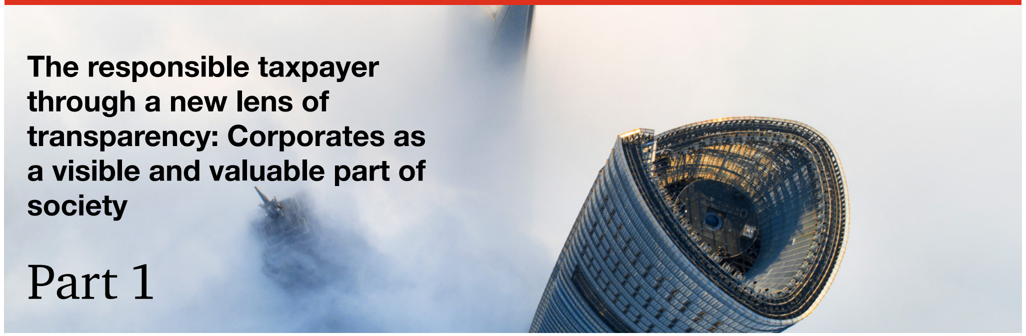
Article 10 in the Tax Director series

Change is happening – as responsible taxpayers, organisations need to level up to be fit for the future.



Stand up and speak

Given the decline in optimism about global economic growth, the 2019 PwC Annual Global CEO Survey indicates that CEOs are less anxious about broad existential threats like climate change and terrorism and are more concerned about the factors that impact the ease of doing business in the markets where they operate, and those that impact their overall confidence and willingness to invest and/or take risk. CEOs in Africa recognise the opportunity to build their own brands, but as social, political and economic events hit the boardroom, they also recognise the need to step forward to make a meaningful contribution and rebuild business confidence for the long term. Businesses cannot succeed in isolation, and one of the critical steps that we have identified that a business can undertake together with government and civil society is to 'Stand up and speak'. Businesses and governments need to communicate clearly and often to one another and to the public the intended outcome of their actions, as they have an essential role to play in building and fostering trust in society and CEOs should embrace the responsibilities and opportunities this brings.[1]

1 PwC – The Africa Business Agenda 2019

Corporates are evaluated through a new lens and it is clear that 'business cannot succeed in a society that fails'. This implies that business success is not possible if the societies in which businesses are situated are not functioning. Successful business leaders recognise the need to focus on sustained value creation. Now more than ever, this requires a broader view of growth than just increased output and short-term financial returns, as significant mega-trends are putting the resilience, sustainability and impact of organisations' strategies and business models to the test. Corporates are a visible part of society and as such have a responsibility to contribute to it.[2]

According to Forbes,[3] if a business is genuinely transparent and open about its commitment to behaving responsibly, and making information accessible, this significantly affects stakeholders' behaviour, as business has a strong and positive role to play in society. The purpose of a company extends beyond creating value for shareholders. It includes the company's role in society, and the contribution it makes to the economy and to the lives of employees, customers and communities where it is located.

Establishing transparency, being responsive and providing vital information enables corporates to promote themselves as a trusted brand. This means taking steps to go further than regular communication to stakeholders. It also requires corporates to reconsider whether their corporate reporting is effective, as it is fundamental to building trust through transparency and accountability.

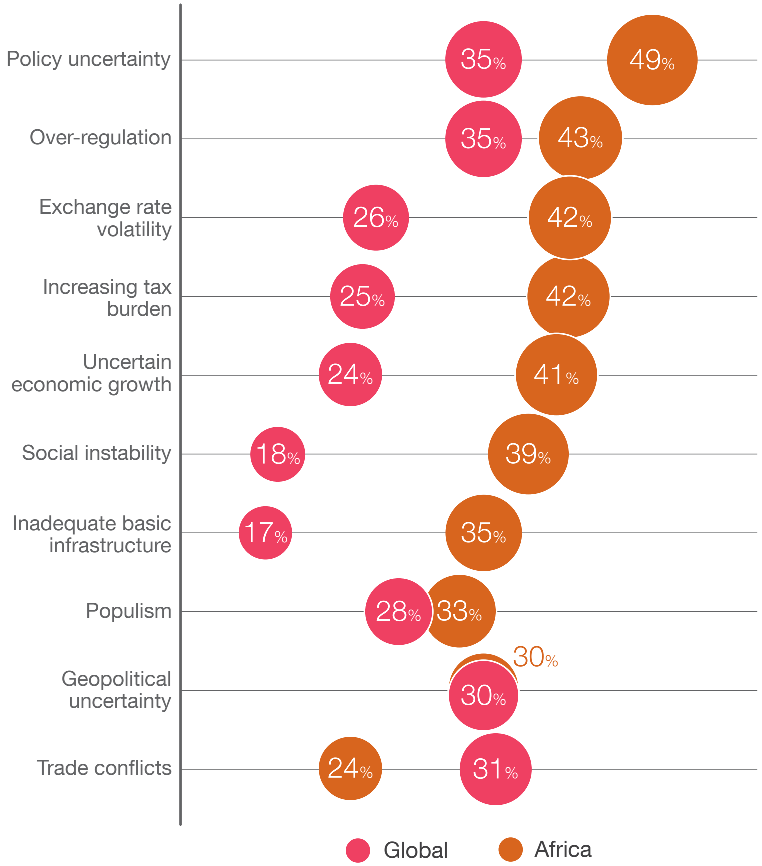
As Judge Professor Mervyn King noted in his address to the International Integrated Reporting Council,[4] good corporate citizenry demands that a board should develop a strategy on how the company will enhance the positive impacts on the three critical dimensions of sustainable development, namely the economy, society and the environment, and also eradicate or ameliorate the negative impacts on them. In this way, the company will be creating holistic value for society. Boards have to think in a sustained way about how they demonstrate being good corporate citizens; they also

2 Mammatt, J (2016) Better performance through understanding risks and impacts
3 Lin, U., Eisingerich, A. (2018) 'Can You Handle the Truth? How Transparent Companies Become Role Models to Consumerism', www.forbes.com
4 http://integratedreporting.org/news/2018-address-by-judge-professor-mervyn-king-chairman-of-the-council-iirc/

need to recognise that they can no longer operate on the basis of attempting to maximise profit while having a negative impact on society and the environment, even if this is within the bounds of the law. That is poor corporate citizenry and committing wrongs against humanity.

Integrating tax

In the 2019 PwC CEO survey it was noted that CEOs in Africa are particularly concerned about the regulatory and fiscal environment.



Source: PwC, Annual Global CEO Survey, 2019

One of the reasons is that even if a corporate is operating within the law, public perception of its tax policies could erode trust.[5] Although media articles and reports from NGOs do not necessarily indicate any wrong or illegal practice on the part of the taxpayer, the impact on a company's reputation can be significant. Taxation plays a fundamental role in effectively raising and allocating domestic resources for governments to deliver essential public services and achieve broader development goals.

Politicians, citizens and the media are increasingly linking tax and corporate responsibility to the extent that it has become essential not only for governing bodies but also for corporate sustainability officers to understand their business's tax decisions and how these decisions impact the company's financial results and stakeholders. So when corporates are evaluated through a new lens, senior executives and governing bodies should be able to explain to investors how their company's global tax strategies align with their sustainability commitments.

The C-suite, as well as investor relation and finance teams, need to be aware that there is a growing public perception that multinational companies are not paying their fair share of taxes, especially in developing countries. For this reason, it is imperative to establish and maintain a formalised approach and strategy to tax transparency and communication that defines key messages, consistent messaging and participants, roles, channels, format and frequency.

The King IV Report on Corporate Governance (King IV) has brought substance to the requirements of being a responsible taxpayer in South Africa. It views aggressive tax strategies as unacceptable. King IV applies to listed companies in South Africa and requires of their governing boards to demonstrate corporate citizenship by being responsible taxpayers. Considerations should include inter alia responsible tax policies, and King IV suggests disclosure on e.g. a board's tax strategy and tax governance structure. King IV also suggests that the organisation's board and audit committee should be responsible for a tax strategy and policy that are compliant but also congruent with corporate citizenship and wider stakeholder considerations and take account of reputational repercussions.

The OECD Observer published an article by PwC[6] in which it was stated that being a responsible taxpayer and corporate citizen means a corporate is able to demonstrate how its business adds value, now and in the future, for shareholders, but also for other stakeholders, including employees, customers, government and the wider community. Paying tax is clearly part of the economic dimension, and how companies contribute to the creation of prosperity and to stability. Taxes provide essential public revenues for

5 Andy Ruggles, Mark Schofield, and Michael Shehab (2017) 'The Marriage of Tax and Strategy', Strategy & Business, Issue 89
6 http://oecdobserver.org/news/archivestory.php/aid/3132/Corporate_responsibility_and_paying_tax.html

governments to meet economic and social objectives. Other aspects of the economic dimension include creating jobs and employment and generating business for suppliers.

There is no doubt that disclosures around tax strategies, tax governance and tax risk management and open and honest information on the economic contributions in each jurisdiction will become increasingly important going forward, as companies look to build trust in their tax affairs.

We are also seeing a significant move towards requirements for transparency of a taxpayer's position on tax, tax strategy, tax numbers, key performance numbers, and economic contributions (taxes and other regulatory levies payable to the government, investment in infrastructure, employment opportunities and social upliftment) per jurisdiction. Explanations of internal governance processes are recognised as evidence of tax oversight at board or audit committee level.

The opportunity for change: Creating strategic value and being future ready

The world is changing, and the role of the tax function is changing. Scrutiny over tax positions taken will only increase.

Are you comfortable that:

- There is clarity in your business on how tax fits into its approach and strategy on corporate responsibility?
- Your business is ready to take up the challenge of greater tax transparency and how better to communicate its tax affairs?
- Internal stakeholders understand that corporate decisions around taxation are financially material and therefore relevant for creating long-term value?
- Data related to your business's position on tax, tax strategy, tax numbers, key performance numbers, and economic contributions (taxes and other regulatory levies payable to the government, investment in infrastructure, employment opportunities and social upliftment) per jurisdiction is not just accessible for disclosure but relevant and understandable?
- Your business has a clearly defined tax stakeholder engagement plan to build stronger relationships and effectively communicate tax-related information to governments, regulators, investors, and the public?
- Key performance indicators and management reports relating to the tax transparency issue are in place?

In order to address the changing tax world our aim is to enable our clients to be future aware and future ready. In this process you will be able to create value through tax transparency, as it:

- demonstrates responsible citizenry, builds trust, enhances reputation
- improves your relationship with revenue authorities
- helps investors understand the effect of taxes on the bottom line
- pre-empts media scrutiny
- helps stakeholders better understand the benefits provided by business
- demonstrates the link between tax and economic development
- indicates accountability.

We suggest that companies should develop a strategic response: Transparency to whom and for what purpose? Who are your stakeholders and what do they want to know? What are you required to disclose? What additional information would be useful to help with that understanding?

We're not suggesting that companies should disclose more, but a strategic response will identify where additional disclosures are needed, can create value and can be helpful in the turbulent tax landscape of today.

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SARS Watch

SARS Watch 26 September 2019 – 25 October 2019

Legislation		
25 October	Amendment to Part 1 of Schedule No. 1 by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10, 1101.00.20, 1101.00.30 and 1101.00.90 to increase the rate of customs duty on wheat and wheaten flour from 66.47/kg and 99.71c/kg to 100.86c/kg and 151.29c/kg respectively, in terms of the existing variable tariff formula – Minute 09/2019	Notice R. 1383 published in Government Gazette No. 42789 with an implementation date of 25 October 2019.
18 October	Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99, to increase the rate of customs duty on sugar from 401.79c/kg to 476.61c/kg in terms of the existing variable tariff formula – Minute M08/2019	Notice R. 1346 published in Government Gazette No. 42773 with an implementation date of 18 October 2019.
18 October	Amendment to Part 2 of Schedule No. 4, by the insertion of rebate items 460.05/2712.10.20/01.08; 460.07/3916.90.90/01.08; 460.15/72.17/01.04; 460.16/8544.70/01.06 and 460.18/9001.10/01.06, in order to provide for a rebate on certain input material used in the manufacture of optical fibre cables and optical ground wire cables – ITAC Report 603	Notice R. 1347 published in Government Gazette No. 42773 with an implementation date of 18 October 2019.
11 October	Draft rule amendment – Insertion of draft rules in terms of Section 58A – Anti-forestalling rules	Comments must be submitted to SARS by Friday 1 November 2019.
4 October	Amendment to Part 1 of Schedule No. 2 by the deletion of various anti-dumping items under item 215.02 and insertion of new anti-dumping items under item 215.02 in order to amend the applicable tariff headings liable to anti-dumping duty for wire ropes and cables – Minute 05/2019	Notice R. 1289 published in Government Gazette No. 42740 with an implementation date of 4 October 2019.
2 October	Draft rule amendment notice to amend rules under section 110 – Tobacco product counters	Comments must be submitted to SARS by Monday, 4 November 2019.
30 September	Draft rule amendment notice to amend item 200.08 of the Schedules to the rules – Places where container depots may be established	Comments must be submitted to SARS by Tuesday, 15 October 2019.
27 September	Amendment to Part 1 of Schedule No. 2 by the substitution of anti-dumping items 04.05/2004.10.2/03.07 and 204.05/2004.10.2/04.07 to amend the name of the producer/exporter Pinguin Lutosa Foods B.V to Lutosa – Minute 04/2019	Notice R. 1261 published in Government Gazette No. 42726 with an implementation date of 27 September 2019.
Case law		
According to judgment date		
27 September	*CSARS v Atlas Copco South Africa (Pty) Ltd* (834/2018) [2019] ZASCA 124	Valuation of stock at year end in terms of section 22(1)(*a*) of the Income Tax Act 58 of 1962.
Interpretation note		
11 October	IN 99 (Issue 2) – Unclaimed benefits	This Note explains the treatment of lump sum benefits classified as unclaimed benefits that accrued to members (both before and from 1 March 2009) for income tax purposes.
7 October	Draft Interpretation Note 16 (Issue 3) – Exemption from income tax: Foreign employment income	Comments must be submitted to SARS by Friday, 13 December 2019.

Rulings		
23 October	BCR 069 – Employee share ownership plan	This ruling determines the income tax consequences for the applicant, employer companies, employees of the employer companies and the trusts through which employee share schemes will be implemented.
3 October	BPR 330 – Distributions of dividends and other amounts from a trust to beneficiaries on termination of their employment	This ruling determines the tax consequences of the distributions of dividends and other amounts on the termination of employment of trust beneficiaries.
27 September	BPR 329 – Tax consequences of intra-group restructuring and subsequent sale of assets to third party	This ruling determines the tax consequences of an internal restructuring involving an intra-group transaction followed by a sale of assets to a third party.
Guides and forms		
22 October	Frequently asked questions: Foreign employment income exemption	The frequently asked questions (FAQs) in this document have been compiled based on questions that employees, employers and the public at large have about the implications of the amendment to section 10(1)(o)(ii) of the Income Tax Act 1962.
1 October	Guide on the determination of medical tax credits (Issue 10)	This guide provides general guidelines regarding the medical scheme fees tax credit and additional medical expenses tax credit for income tax purposes.
Other publications		
11 October	Tax Alert: Guidance issued on exemption for foreign earned income	This alert discusses the SARS guidance in relation to s10(1)(o)(ii) of the Income Tax Act, which contains the exemption available to South African residents in respect of remuneration earned by them from services rendered outside South Africa.
9 October	OECD Secretary-General Tax Report to G20 Finance Ministers – October 2019	This report by the OECD Secretary-General provides an overview of the progress made by the OECD/G20 Inclusive Framework on BEPS in addressing the tax challenges of digitalisation and a brief update on the work on tax transparency.

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