Tax Budget Analysis

Paul Gering

Chairman, PKF SA, Tax Committee

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2023/2024
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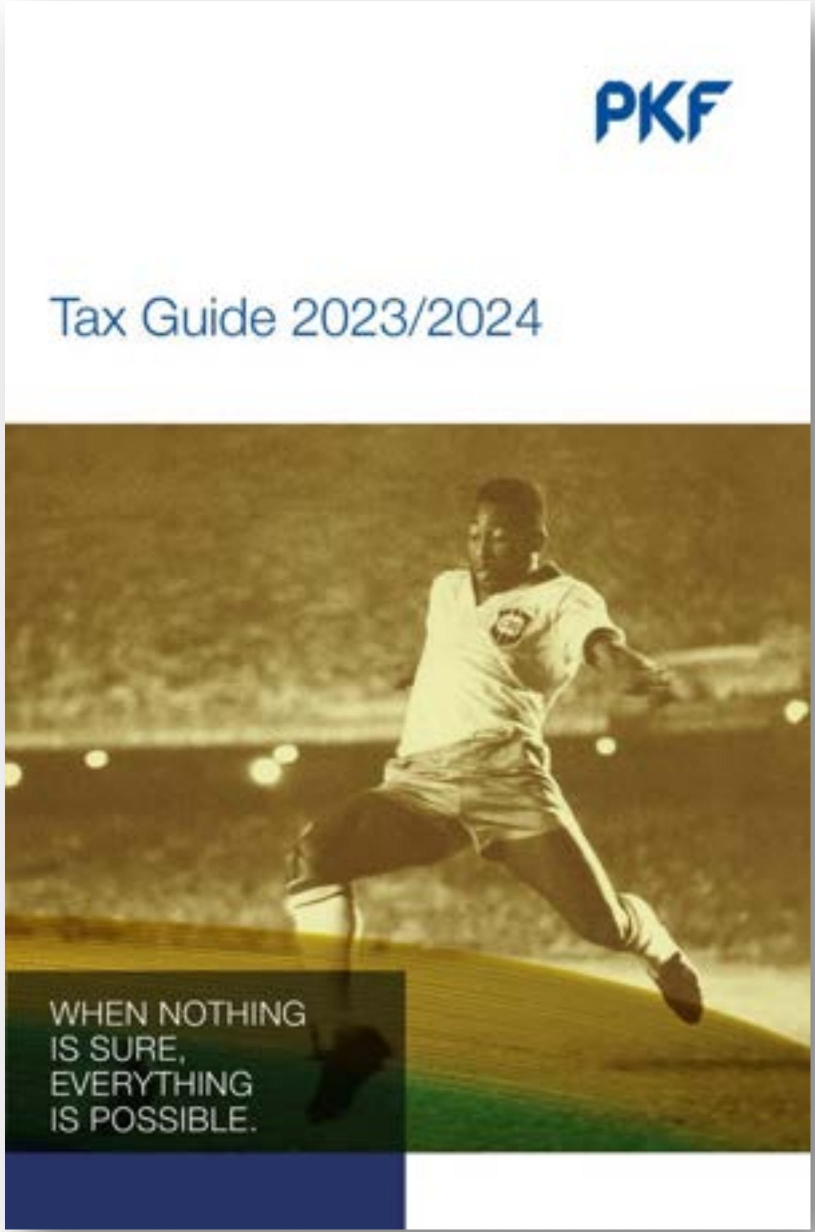
2023/2024 TAX GUIDE


PKF
Tax Guide 2023/2024
WHEN NOTHING
IS SURE,
EVERYTHING
IS POSSIBLE.


TAX GUIDE
2023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LIBERTY
Tax Guide.
2023 - 2024

THE AGENDA

01 Presentation

Paul Gering : Tax Director, PKF Durban

02 Live Questions and Answers

Deon van Zyl	: Tax Director, PKF Port Elizabeth
Mohammed Mayet	: Tax Director, PKF Octagon
Kubashni Moodley	: Tax Director, PKF Durban
Ziyaad Moosa	: Tax Director, PKF Octagon
Alexa Muller	: Tax Specialist, PKF Cape Town

2023 SONA

“For we are a nation defined not by the oceans and rivers that form the boundaries of our land.

We are not defined by the minerals under our earth or the spectacular landscape above it.
We are not even defined by the languages we speak or the songs we sing or the work we do.

We are, at our most essential, a nation defined by hope and resilience.

It was hope that sustained our struggle for freedom, and it is hope that swells our sails as we steer our country out of turbulent waters to calmer seas.

Even in these trying times, it is hope that sustains us and fuels our determination to overcome even the greatest of difficulties.”

President Ramaposa

2023 SONA

"The people of South Africa want action, they want solutions and they want government to work for them."

President Ramaposa

ROOFTOP SOLAR

15 years ago – a simple Municipal Regulation – all new buildings must include solar panels and at the very least solar geysers was all that was needed to help go green and save the grid.

Finally – SONA promises a plan for a tax incentive to encourage roof top solar.

A STORMY YEAR AHEAD

Phala Phala

National Shutdown

Municipal Coalition

Newly elected Joburg Mayor
Thapelo Amad

Mpho Phalatse

Warships

South Africa

China

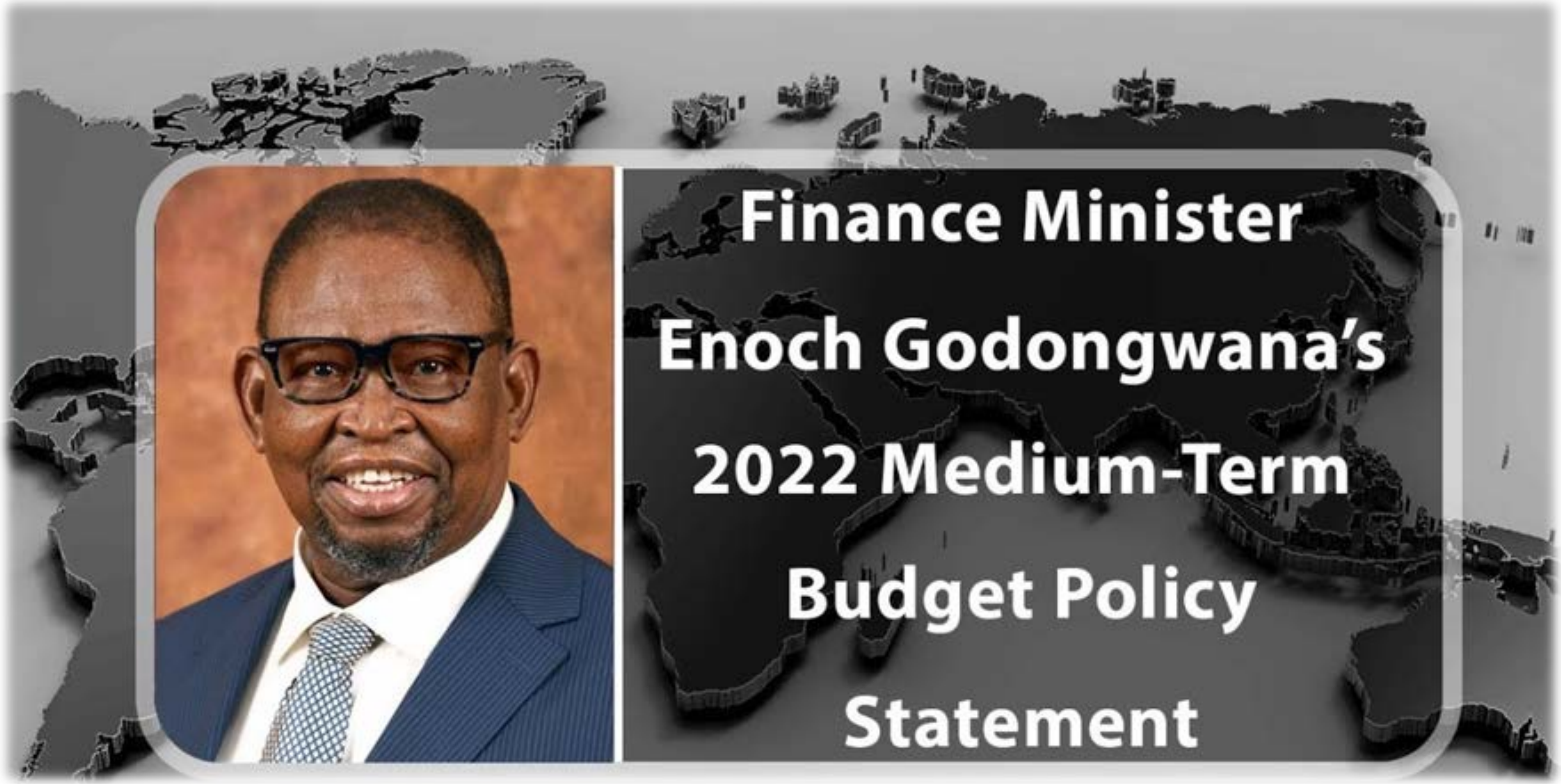
Russia

National Election 2024

Rating Agencies

WE MUST NOT FORGET OUR PAST: 23 FEBRUARY

23 February 1962	Helen Suzman condemned the Immorality Act, saying it is turning policemen into "peeping toms".
23 February 1943	Fietas a Western Suburb of Johannesburg was renamed Pageview – Forced removals - like District Six – People moved to Lenasia and Soweto.
23 February 1998	Former President P W Botha appeared in Court on contempt of Court charge for not appearing before the TRC.


Finance Minister
Enoch Godongwana's
2022 Medium-Term
Budget Policy
Statement

MEDIUM TERM BUDGET 2022

R billion	2023/24	2024/25	2025/26
	Medium-term estimates		
Learning and culture	**455.6**	**473.4**	**496.5**
Basic education	308.4	314.1	329.4
Post-school education and training	135.4	147.8	155.3
Health	**256.1**	**267.5**	**279.4**
Peace and security	**226.4**	**235.4**	**246.5**
Community development	**258.7**	**274.9**	**291.7**
Economic development	**237.6**	**262.4**	**280.8**
General public services	**73.1**	**74.8**	**78.0**
Social development	**370.9**	**350.2**	**340.3**
Debt-service costs	**332.2**	**352.9**	**380.7**

MEDIUM TERM BUDGET 2021

National Health Insurance

A limited costing of the national health insurance policy proposal has previously shown that it would require about R40 billion per year in additional funding in the first five years, and perhaps considerably more over time. At present, however, there is insufficient capacity in the health sector to work substantively on national health insurance. The national health insurance indirect grant has been underspent, the National Health Insurance Fund has not yet been established and the National Health Insurance Bill still needs to be passed by Parliament. It is therefore unlikely that national health insurance will be a significant cost pressure in the medium term.

MEDIUM TERM BUDGET 2021

- What will happen to the Eskom debt?
- Can we afford the income grants and can we afford not to provide them either?
- Are tax increases inevitable?
- Any relief for small businesses with increasing interest and load shedding costs?
- Do we need to enhance the environmental taxes to bring climate change effects under control?
- And the annual wealth tax question?

2023 BUDGET

Medical Tax Credit –Inflation Increase

Trusts 45%

No Increase in CGT

No Solidarity Vaccine Tax

Top Marginal Rate 45%

Inflation Rebate Increase

2023 BUDGET

Company Tax

Dividend Tax 20%

Estate Duty & Donations Tax

Transfer Duty

VAT 15%

2023 BUDGET

Carbon Levy
Fuel Levy
27 cents

Sin Taxes

Tax Free Savings
R36 000

Limited Small
Business
Relief

THE WHEELS OF JUSTICE TURN SLOWLY

- Budget 2022
- The Taxation Laws Amendment 2022
- The Tax Administration Laws Amendment Act 2022
- Medium Term Budget
- Effective date of 2022 Amendments
- Budget 2023

TWO POT SYSTEM

- An attempt to maximise retirement savings and minimise early withdrawals.
- ⅓ rd for accessible saving.
- $^{2}/_{3}$ rds for retirement.
- Saving withdrawals are fully taxable.

DELAYED TO 01 MARCH 2024

EXTENSION OF SUNSET CLAUSE

2021 AMENDMENTS

- Leadership Allowance extended from
  01 April 2022 to 01 April 2024

- Urban Development extended from
  31 March 2021 to 31 March 2023

2022 AMENDMENTS

- Research and Development estimated from
  01 October 2022 to 01 January 2024

- Possible extension in 2023 budget process.

CORPORATE TAX RATE

The tax rate in respect of any year of assessment ending on or after **01 April 2022** is **28%**

The 2022 Amendment

The tax rate in respect of any year of assessment ending on or after **31 March 2023 is 27%.**

February 2023	:	28%
March 2023	:	27%
April 2023	:	27%

LIMITATION OF ASSESSED LOSS

For years of assessment ending on or after 31 March 2023.

HIGHER OF

R1 million
or
80% of the taxable income before the assessed loss

Prior Year Assessed Loss – brought forward	3 000 000
Taxable Income - March 2023	2 000 000
Utilised Portion – (80% of R2 million)	(1 600 000)
Remaining Taxable Income	400 000
Tax @ 27%	108 000
Assessed Loss – carried forward to 2024	**1 400 000**

REMINDER – OTHER LIMITATIONS TO ASSESSED LOSSES

- Individual on top marginal rate.
- Suspect trade 3 out of 5 years:
  - Renting residential property
  - Crypto
- 6 out of 10 years Rule for suspect trade.
- Farming / horse racing:
  - 3 out of 5 year; AND
  - Facts and circumstances

CURTAIL EXCESSIVE CORPORATE INTEREST DEDUCTION

- For years of assessment ending on or after 31 March 2023.
- Restrict net interest deduction paid to non-residents to 30% of EBITDA. (Previously 40%) - Section 23M
- Multinationals profit shifting and artificial interest. Section 31 – Transfer Pricing.
- Originally this was effective 01 January 2021 but delayed due to Covid.

EXCISE ON VAPING

“The initial proposal as announced in the 2022 Budget was to implement the excise duty from 01 January 2023, However, in the 2022 draft TLAB a consideration was made to have a later implementation date of 01 June 2023 to provide SARS and taxpayers sufficient time for the administration of the system. SARS will develop the administration rules and conduct stakeholder/taxpayer engagements.”

“Illicit trade is a concern for Government, both in terms of undermining public health and revenue collections. Therefore. Efforts will be made to ensure that administration of the system is strengthened to address the problem as and when it occurs. However, there can never be a full proof system since some of the illicit trade is influenced by acts of criminality.”

National Treasury Response to Parliament

LIFESTYLE AUDITS

SARS conducts audits on high net worth taxpayers to identify undisclosed income.

Bank Deposits

SARS reviews all deposits in Bank accounts over a period and reconciles to taxable income and seeks to tax differences:

- Disputes over capital amounts
- Disputes over loan advances

Net worth at year end	900
Net worth at beginning of year	100
Funds used to increase wealth	(800)
Private expenditure	(120)
Less taxable income	520
Questionable amount	(400)

Example of correspondence from SARS:

Taxpayer:
Ref.:

1. **Salary - Non-taxable-exempt S10(1)(o)(ii)**

   a) Kindly advise under what circumstances was Mr ABC doing work outside the country for this company of which he is a director?

2. **Comparison of Gross Income per ITR12's to SARS banking information**

There appears to be differences noted between the Total Gross Income Per ITR12's and the Credits noted per the banking information from SARS for the 2017 to 2019 tax years. Kindly provide detailed reasons as to the differences

Banking Institution	Type of account	Account No.	2017	2018	2019	2020
			Credits	Credits	Credits	Credits
Investec	Current	[redacted]	17 013 661	6 486 244	3 781 487	2 150 974
Investec	Fixed Deposit	[redacted]	8 866 776	5 731	320	342
Investec	Savings	[redacted]				10 112 558
Investec	Savings	[redacted]				10 126 217
Investec Securities (Pty) Limited	Savings	[redacted]			20 015 826	1 087
Nedbank Ltd	Credit Card	[redacted]	2	3		
TOTALS		[redacted]	25 880 439	6 491 978	23 797 633	22 391 178
		[redacted]				
TOTAL GROSS INCOME PER ITR12's		[redacted]	20 232 587	1 863 749	1 840 901	
		[redacted]				
Differences		[redacted]	-5 647 852	-4 628 229	-21 956 732	

PRETORIA EAST JUDGMENT - SCA

SARS is issuing estimated assessments and is not always considering the Judgment in this case:

> *“**As best as can be discerned, Ms Victor’s approach was that if she did not understand something she was free to raise an additional assessment and leave it to the taxpayer to prove in due course at the hearing before the Tax Court that she was wrong. Her approach was fallacious.** The raising of an additional assessment must be based on proper grounds for believing that, in the case of VAT, there has been an under declaration of supplies and hence of output tax, or an unjustified deduction of input tax. In the case of income tax it must be based on proper grounds for believing that there is undeclared income or a claim for a deduction or allowance that is unjustified. It is only in this way that SARS can engage the taxpayer in an administratively fair manner, as it is obliged to do. It is also the only basis upon which it can, as it must, provide grounds for raising the assessment to which the taxpayer must then respond by demonstrating that the assessment is wrong. This erroneous approach led to an inability on Ms Victor’s part to explain the basis for some of the additional assessments and an inability in some instances to produce the source of some of the figures she had used in making the assessments. In addition, as a matter of routine, all the additional assessments raised by her were subject to penalties at the maximum rate of 200 per cent, absent any explanation as to why the taxpayer’s conduct was said to be dishonest or directed at the evasion of tax.”*

COMMON REPORTING STANDARD

The common reporting standard is a process which allows for financial account information to be obtained from financial institutions and automatically exchanged with other tax jurisdictions on an annual basis. The financial institutions required to report include banks, brokers, asset managers, private equity funds and long-term insurers.

The information in respect of reportable accounts include the person's particulars such as name, address, tax reference number, place of birth and account number, as well as financial information such as account balances and income from interest, dividends, certain insurance products and proceeds from the sale of financial assets. Reportable accounts include accounts held by individuals, entities (including trusts, partnerships and foundations) and passive entities.

SOUTH AFRICA HAS RECEIVED AND MADE EXCHANGES WITH 77 COUNTRIES

TRANSFER PRICING FOR YEARS OF ASSESSMENT COMMENCING ON OR AFTER 01 October 2016

- Cross border transactions
- Connected parties
- R100 million
- Specific transactions exceed R5 million

TRANSFER PRICING DOCUMENTS REQUIRED

Country by Country Reporting = GROUP TURNOVER > R10 billion

DATABASE comparable to be updated at least every 3 years or if significant change in group

ALSO IMPACTS ON CUSTOMS DUTY DECLARATIONS

PROPERTY DEVELOPERS VAT CLAW-BACK

DEVELOPER

- NOT ABLE TO SELL UNITS
  - NOT ABLE TO SELL UNITS
  - NOT ABLE TO SELL UNITS
  - VAT CONSEQUENCES

ANNEXURE C : POSSIBLE UPCOMING ATTRACTIONS

- Sunset for tax incentives.
- Broaden tax base due to reduction in corporate tax rate.

ESTATE DUTY / DONATIONS TAX

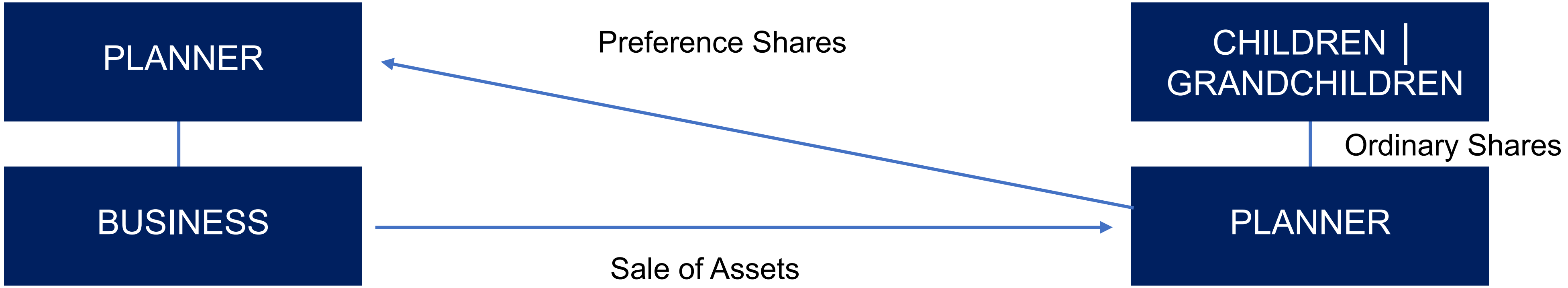
POSSIBLE CHANGES FROM DAVIS TAX COMMITTEE:

The Inter-Spouse Bequest

The Katz Commission recommended that bequests in favour of surviving spouses remain exempt from estate duty in spite of there being no intellectual justification for the retention of the exemption and it being potentially in breach of the provisions of the Constitution. The recommendation was made entirely on “pragmatic grounds.”

The DTC suggests that the simple justification for an exemption based on *“pragmatic grounds”* is entirely insufficient. No amount of refinement to the definition of spouse within the Income Tax Act can cater for the diverse circumstances and challenges facing South African families today. Thus, ***it is recommended that the principle of inter-spouse exemptions and roll-overs should be either withdrawn completely, or subjected to a specified limit.***

ESTATE PLANNING WITHOUT TRUSTS



- Assets sold to company on loan account;

  or

- Assets sold to company in exchange for preference shares.
- Control through preference shares but no control for estate duty and estate frozen.

DOES NOT QUALIFY FOR ASSET FOR SHARE RELIEF

CEASING TAX RESIDENCY

TAX RESIDENCY	Cease tax residency
RESERVE BANK RESIDENCY	Formal emigration
CITIZENSHIP	SARB and SARS break all ties – Home Affairs

REMUNERATION - OFFSHORE

Period exceeding 183 days

Continuous period of 60 days

Services rendered outside Republic

01 March 2020 →

Limited to R1,25 million exemption

CEASING TO BE A TAX RESIDENT

- Deemed disposal of assets the day before ceasing residence
- Sale at market value of world wide assets – fixed property in South Africa excluded
- Capital gain consequences on ceasing to be ordinarily resident or tax residence

DOUBLE TAX AGREEMENTS AND TAX RESIDENCY

In the context of residency specifically, the definition of *'resident'* as contained in Section 1 of the Income Tax Act contains the following provision:

"but does not include any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation: Provided that where any person that is a resident ceases to be a resident during a year of assessment, that person must be regarded as not being a resident from the day on which that person ceases to be a resident."

DTA TIE BREAKER

MAURITIUS DTA

Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:

a) the individual shall be **deemed to be a resident** of the State in which a **permanent home** is available to the individual, if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the **individual's personal and economic relations are closer (centre of vital interests)**;

b) if the State in which the centre of vital interests is situated cannot be determined, or if the individual does not have a permanent home available to that person in either State the individual, shall be deemed to be a resident of the State in which the individual has an **habitual abode**;

c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident of the State of which the individual is a **national**;

d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

 **Portugal and**  **UAE have similar wording.**

SARS: NOTICE OF NON-RESIDENT TAX STATUS

SARS
South African Revenue Service

Update Tax Residency Status to Non-Resident

NOTICE OF NON-RESIDENT TAX STATUS

Enquiries should be addressed to SARS

Contact Details:

Contact Centre Tel: 0800 00 7277
SARS website: www.sars.gov.za

Details

Taxpayer Reference No.: Always quote this reference number when contacting SARS

Case No.:

Issue Date: 2022-01-13

Dear Taxpayer

NOTICE OF NON-RESIDENT TAX STATUS

The South African Revenue Service (SARS) confirms that the following taxpayer is a non-resident:

Date from which the taxpayer became a Non-Resident: 2013-02-28

Kindly notify SARS of any change to your status or any registered particulars within 21 business days of such change.

Sincerely

ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SARS: REQUEST FOR RELEVANT SUPORTING DOCUMENTS

SARS
South African Revenue Service

Update Tax Residency Status to Non-Resident

REQUEST FOR RELEVANT SUPPORTING DOCUMENTS

Enquiries should be addressed to SARS

Contact Details:

Contact Centre Tel: 0800 00 7277
SARS website: www.sars.gov.za

Details

Taxpayer Reference No.:

Always quote this reference number when contacting SARS

Case No.:

Issue Date: 2022-01-14

Dear Taxpayer

REQUEST FOR RELEVANT SUPPORTING DOCUMENTS

This is to acknowledge your request to update your tax residency status to non-resident. In order for SARS to verify your change in status, please submit the following relevant supporting documents:

Standard requirements

- The signed declaration indicating the basis on which you qualify (you can download the form from the SARS website, www.sars.gov.za)
- A letter of motivation setting out the facts and circumstances in detail to support the disclosure that you have ceased to be a tax resident.
- A copy of your passport/travel diary.

property is being used for)

- Details of any business interest (e.g. investment and employment) that you may still have in South Africa.
- Details of your family. Indicate whether any family members are in South Africa and the reason thereof.
- Details of your social interests (e.g. gym contract, recreational clubs and societies) and location of your personal belongings.
- Details of any return visits to South Africa, the frequency thereof and the reason for undertaking such visits.

Qualifying basis 2: Cease by way of the physical presence test

Qualifying basis 3: Cease due to application of Double Tax Agreement (DTA)

- A certificate of tax residence from the foreign revenue authority or a letter from the authority that indicates your status as a tax resident in that country.

Please submit the relevant supporting documents via eFiling or the SARS website, using the Online Query System (www.sars.gov.za, click Contact us, Submit supporting documents) within 21 business days from the date of this letter. Should you not adhere to this, we will reject your request and you will be required to resubmit a new request to SARS

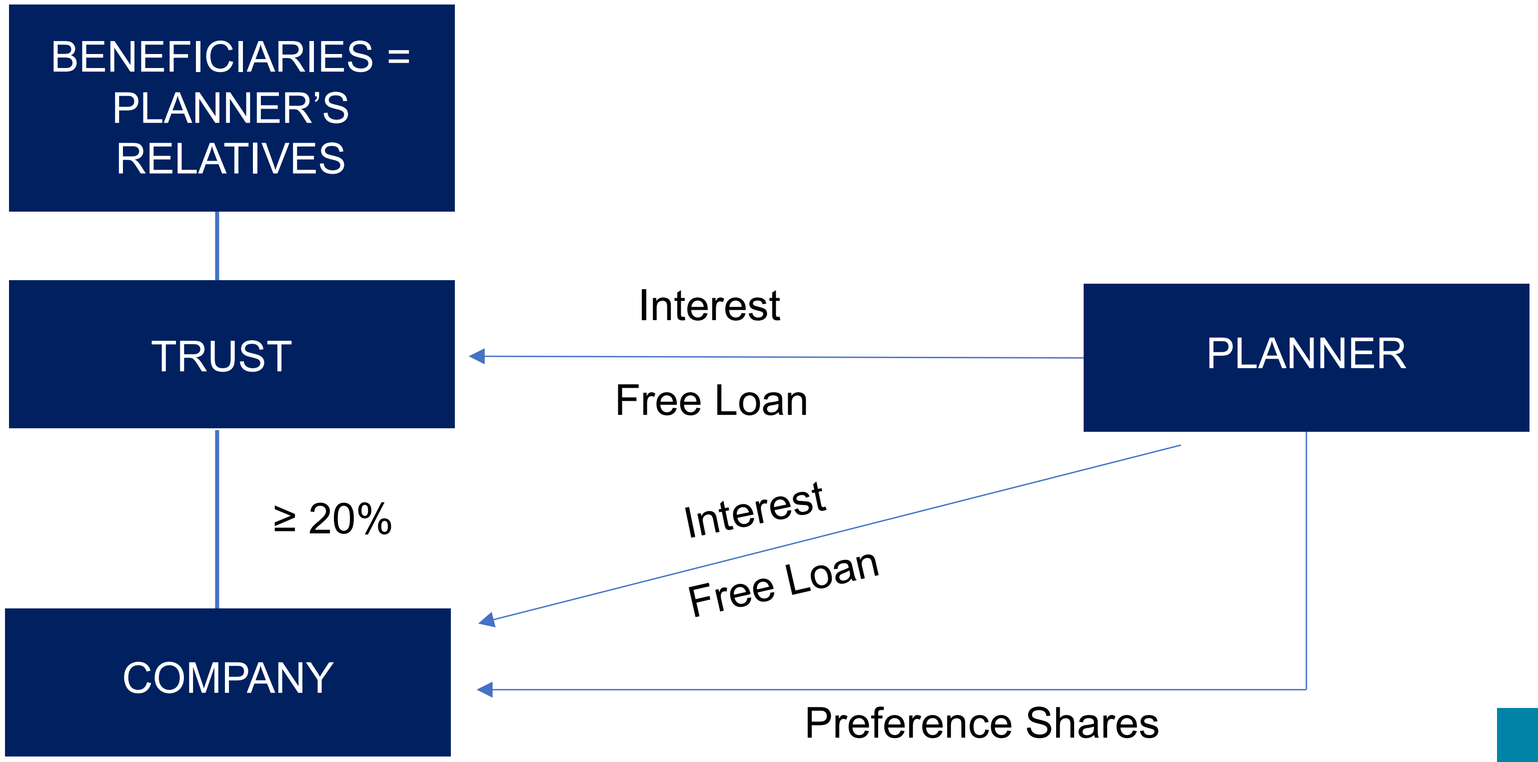
Sincerely

ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

REVISION OF SOME BIG ISSUES

1. Section 7C
2. Trust Administration
3. Foreign Trust distributions
4. Doubtful debts

SECTION 7C

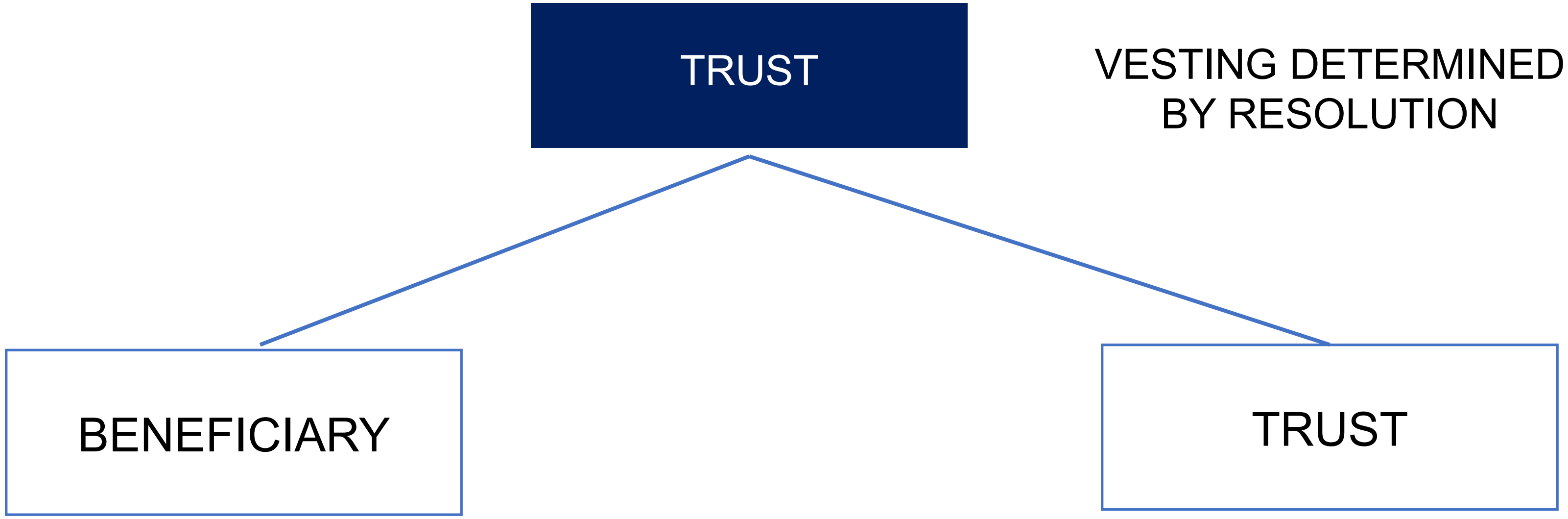


AND NEW ANTI-AVOIDANCE RULE PROPOSED ON LOANS TRANSFERRED BETWEEN TRUSTS

THE COST OF SECTION 7C

LOAN	2 500 000.00	
Interest 01 March 2022 to 31 March 2022 (31/365 days) at 5,00%		10 616,44
Interest 01 April 2022 to 31 May 2022 (61/365 days) at 5,25%		21 934,93
Interest 01 June 2022 to 31 July 2022 (61/365 days) at 5,75%		24 023,97
Interest 01 august 2022 to 30 September 2022 (61/365 days) at 6,50%		27 157,53
Interest 01 October 2022 to 30 November 2022 (61/265 days) at 7,25%		30 291,10
Interest 01 December 2022 to 31 January 2023 (62/362 days) at 8,00%		33 972,60
Interest 01 February 2023 to 28 February 2023 (28/365 days) at 8,25%		15 821,92
Deemed Donation		**163 818,49**
Less annual exemption		100 000.00
Net deemed donation at 28 February 2023		**63 818,49**
Donations Tax at 20% (due 31 March 2023)		12 763,70

VESTING IN DISCRETIONARY TRUSTS



VESTING DETERMINED BY RESOLUTION

If the income is distributed in the tax year it is taxed in beneficiary but if not it is taxed in the Trust.

Proof of date of vesting

ENACTMENT OF KEY ANTI-MONEY LAUNDERING AND COMBATING OF TERROR FINANCING LAW

Media Statement

The Trust Property Control Act, 1988 and the Companies Act, 2008, to lay the basis for South Africa to develop a comprehensive mechanism to bring transparency to the beneficial ownership of corporate vehicles such as trusts and companies. This is a significant step in strengthening the ability of investigators and other authorities to pierce the corporate veil and determine who the natural persons that deal with financial and other institutions at arm’s length through trusts and companies are. These measures will boost the ability of the authorities to fight against crime and corruption perpetrated by criminal syndicates. The majority of these amendments will commence on 1 April 2023;

MORE ADMINISTRATION COSTS

SARS NOTICE – 14 FEBRUARY 2023

In order to comply with Financial Action Task Force requirements, SARS aims to record all beneficial owners of newly registered Trusts.

DISTRIBUTIONS FROM FOREIGN TRUSTS

DISTRIBUTION TO RESIDENT BENEFICIARY

Remember distribution only in next tax year

Less than 10% investment dividend partially exempt

FOREIGN TRUST

10% - 50% Investment remains exempt.

$>$ 50%

FOREIGN COMPANY

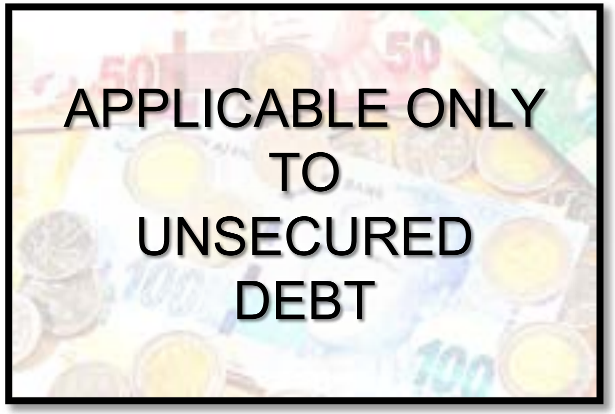
DOUBTFUL DEBT

For Taxpayers Applying IFRS 9

- 40% of the IFRS 9 loss allowance relating to impairment that is measured at an amount equal to the lifetime expected credit loss
- 40% of amounts of bad debts that have been written off for accounting purposes but do not meet the requirements for a tax deduction
- 25% of the difference between the IFRS 9 loss allowances relating to impairment and the IFRS 9 loss allowance in respect of which 40% tax allowance is determined to be allowed as a deduction

For Taxpayers Not Applying IFRS 9

- 40% of the face value of debts that are at least 120 days past due date
- 25% of the face value of debts that are between 60 days and 120 days past due date



A ruling can be obtained from SARS for a higher percentage not exceeding 85% based on specific criteria.

Prior years allowance must be added back in the current year.

TAX CASES

TAX COURT – WESTERN CAPEIT 45842

- Case highlights the issue of the revocation of suspension at each stage of the dispute.
- Partial disallowance of objection to the suspension was revoked purportedly on the basis that the dispute had been resolved.

> *"Section 164(4) of the TAA expressly provides that a payment suspension is only revoked with immediate effect where (a) no objection is lodged; (b) an objection is disallowed and no appeal is lodged; or (c) an appeal to the tax board or court is unsuccessful and no further appeal is noted. Given that SARS had partially disallowed the objection(s) on 22 February 2021, the period in which the taxpayer had to file its notice(s) of appeal had not even expired, and accordingly SARS was not permitted to rely on s 164(4)(b) of the TAA."*

- Taxpayer successful in objection but still tax clearance dispute.

OFFICE OF TAX OMBUD SYSTEMIC ISSUES DELAY IN PAYING REFUNDS

OBJECTION:	Clear time lines for SARS to provide outcome of objection Rule 9(1) – **60 days.**
REVISED ASSESSMENTS:	No time line – only undertaking to do so withing – **45 days.**

OFFICE OF THE TAX OMBUD *Ensuring fairness*

LEAVES TAXPAYER IN NO MAN'S LAND

HIGH COURT – WESTERN CAPE
LANCE DICKSON CONSTRUCTION CC
WRONG BASIS OF USP

Behaviour selected - reasonable care not taken.

Probably should have selected - no reasonable grounds for tax position.

“When pressed under cross-examination, the witness fell about but eventually accepted that she had chosen the wrong behavioural category …”

“The witness then rather brazenly went on to suggest to counsel for the taxpayer that his client should be happy with the lesser penalty because its conduct had been unreasonable either way.”

TAX COURT – CAPE TOWN
IT 45710
NEW GROUNDS OF APPEAL

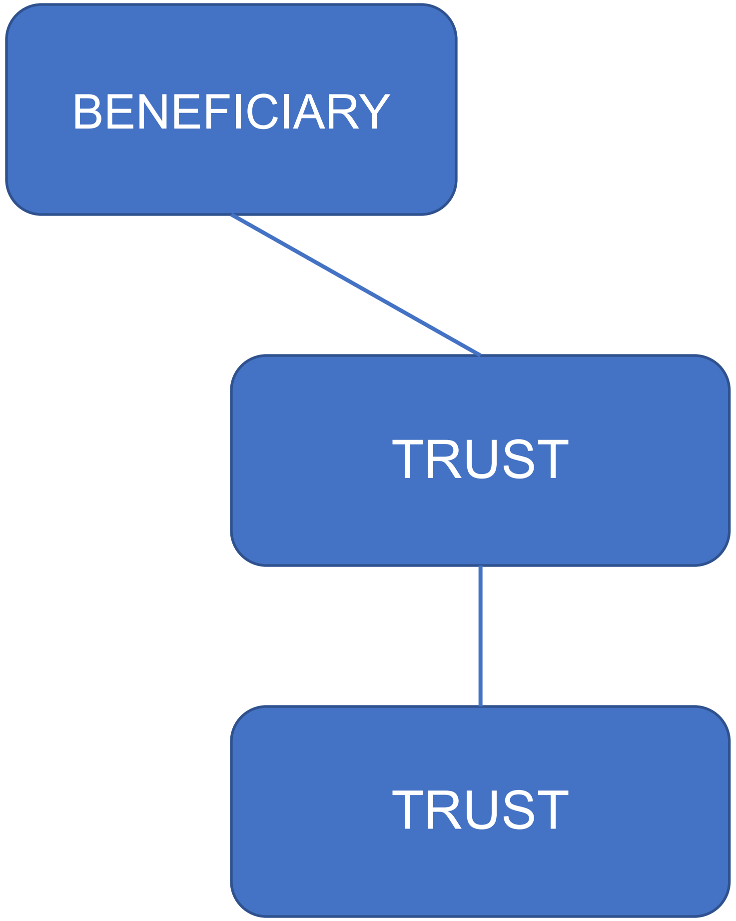
- Tax Audit
- Findings
- Revised Assessment
- Request for Reasons
- Reasons
- Objection → THE ALL IMPORTANT DOCUMENT
- Disallowance
- Appeal
- Rule 31 – SARS' Grounds of Assessment
- Rule 32 – Taxpayer's Grounds of Appeal

Initial objection to the disallowance of profit distribution in terms of Section11(a).

Then tried to charge this to gross income did not argue.

New ground not allowed.

THISTLE CASE



"In my view, the Legislature, when enacting the January 2021 amendment sought to cure what in its eyes was the mischief of being unable to trap capital gains where the Commissioner seeks now to place them. The Legislature, in the 2021 amendment seems impliedly to recognize that absent the recent amendment the capital gains flow rather than become trapped."

Court A Quo

Paragraph 80 (2) of the Schedule, properly interpreted and applied, requires that the capital gains accrued upon the disposal of assets by the Tier 1 Trusts are to be taxed in the hands of the Thistle Trust and not its beneficiaries to whom it distributed those gains. In the circumstances, SARS was correct to raise the additional assessment for the relevant tax periods.

SCA Judgment

CAPITAL GAIN

BATTLEGROUND OF INADVERTENENT BONA FIDE ERROR

“SARS initially adopted the position that, in the light of the legal opinion, it should be concluded that the Thistle Trust had consciously and deliberately adopted the position it took when it elected to distribute the amounts of the capital gains as it did. However, during the argument before us, counsel for SARS conceded, correctly, that the understatement by the Thistle Trust was a bona fide and inadvertent error as it had believed that s 25B was applicable to its case. Though the Thistle Trust erred, it did so in good faith and acted unintentionally. In the circumstances, it was conceded that SARS was not entitled to levy the understatement penalty.”

SUPREME COURT OF APPEAL
CORONATION CASE 1269/2021

CONTROLLED FOREIGN COMPANY
FOREIGN BUSINESS ESTABLISHMENTS

Taxpayer was a controlled foreign company and the only issue was whether it was a foreign business establishment.

This looked not only at the complexity of Section 9D but the very complex sub proviso’s.

> “*The essential operations of the business must be conducted within the jurisdiction in respect of which exemption is sought. While there are undoubtedly many functions which a company may choose to legitimately outsource, it cannot outsource its primary business. To enjoy the same tax levels as its foreign rivals, thereby making it internationally competitive, the primary operations of that company must take place in the same foreign jurisdiction.*”

THE USP ARGUMENT

SARS imposed 10% understatement penalty as Court hold *bona fide* inadvertent error.

> *"There is nothing to gainsay CIMSA's evidence that it prepared and submitted all its tax returns under the guidance of PricewaterhouseCoopers, and that Ernst & Young were the external auditors of CGFM. Nor is there anything to suggest that CIMSA's tax returns were not submitted in the bona fide belief that CGFM may be eligible for a s 9D exemption. The fact that this Court has now found that this course is not open to it, does not in any manner reflect on the bona fides of CIMSA, any more than it reflects on the bona fides of any losing party in litigation. Insofar as the tax opinion is concerned, it was not incumbent on CIMSA to disclose a tax opinion that it had obtained, any more than it would be on any other party which litigates on the basis of a procured legal opinion.*
>
> ***In Commissioner for the South African Revenue Service v The Thistle Trust, an argument was presented on behalf of SARS that the taxpayer in that matter had consciously and deliberately adopted a certain position when it elected to distribute the capital gains. This Court held that it was correctly conceded that the understatement was a bona fide error and that SARS was not entitled to impose the understatement levy."***

A FEW REMINDERS

- Capital Gain Base Cost
- Home Study – COVID question
- Solar Power deduction
- Provisional Tax

CAPITAL GAINS TAX

BASE COST		
Cost of Land	2010	3 000 000
Building of House	2011-2012	4 000 000
Swimming Pool	2014	50 000
Granny Flat	2017	100 000
Solar	2019	180 000
BASE COST		**7 330 000**

HOW CAN YOU PROVE THOSE COSTS

HOME STUDY - EMPLOYEES

PKF

CAUTION:
CGT HIGHER ON DISPOSAL

- The study is regularly and exclusively used for the purpose of trade and is specifically equipped for such purpose and duties are mainly performed in the home study

- Ratio of floor area of study to floor area of home

SUBJECT TO AUDIT

MAINLY MORE THAN 50%

ANNEXURE C REVIEW

EXCLUSIVELY ONLY

SOLAR POWER - DEDUCTION

- Photovoltaic solar energy not exceeding 1 megawatt for years of assessment on or after 01 January 2016 → 100%

- Greater than 1 megawatt 50/30/20

BUSINESS NEEDS TO STABILISE THEIR ELECTRICITY SUPPLY WITH LOAD SHEDDING BECOMING THE NORMAL

PROVISIONAL TAX

Beware – use care – in estimates.

Only the brave do an estimate to reduce taxable income if less than R1 million.

"Para 20(2) – Where the Commissioner is satisfied that the amount of any estimate referred to in subparagraph (1) was seriously calculated with the due regard to the factors having a bearing thereon and was not deliberately or negligently understated, or if the Commissioner is partly so satisfied, the Commissioner may in his or her discretion remit the penalty or a part thereof."

Beware if no previous assessment.

A LITTLE BIT OF PLANNING

SECTION 18A – DONATIONS
SARS NOTICE | November 2022
effective 01 March 2023

Section 18A receipts must include:

- Donor nature of person (natural person, company, trust, etc.);
- Donor identification type and country of issue (in case of a natural person);
- Identification or registration number of the donor;
- Tax reference number of the donor (if available);
- Contact number of the donor;
- Electronic mail address of the donor;
- A unique receipt number; and
- Trading name of the donor (if difference from the registered name).

First step in third party pre-population of tax returns.

Beware some organisations are issuing receipts when they are not approved.

PRACTICE NOTE 31 | 03 October 1994

INTERESTED DEDUCTION AGAINST INTEREST RECEIVED

SARS NOTICE TO WITHDRAW ISSUE ON
15 NOVEMBER 2022
EFFECTIVE
01 MARCH 2023

THE PROFESSION IS OPPOSING THIS CHANGE.

PKF

BEWARE THE CONSEQUENCES OF UNEMPLOYMENT

- 40%
  ~~29%~~ of economically active are unemployed
- 50% youth unemployment rate
- This is the threat of social instability

  - 125 000 taxpayers pay
  - 27% of tax burden
  - Try treat them nicely too.

EMPLOYMENT TAX INCENTIVE

- The idea is to encourage discussions to employ additional staff to grant the unemployed an opportunity and this is part funded by tax concessions to the employer

Remuneration	4 000	
Company tax relief	1 080	
Employment Tax incentive	1 500	
Actual cost	**1 420**	**Per month**

- Fixed terms contract of 1 year in accordance with the basic conditions of employment.

BEWARE OF THE SCHEME INVOLVING A TRAINING INSTITUTION AS THIS HAS BEEN CLOSED FROM 01 MARCH 2021

BURSARIES AND SCHOLARSHIPS

- Bursaries to relatives of employees if:

	2024	2023	2022
Remuneration	600 000	600 000	600 000
Bursary – Higher Education	60 000	60 000	60 000
– Basic Education	20 000	20 000	20 000

- Positive for BEE points
- Positive for staff morale
- Necessary for the country's development

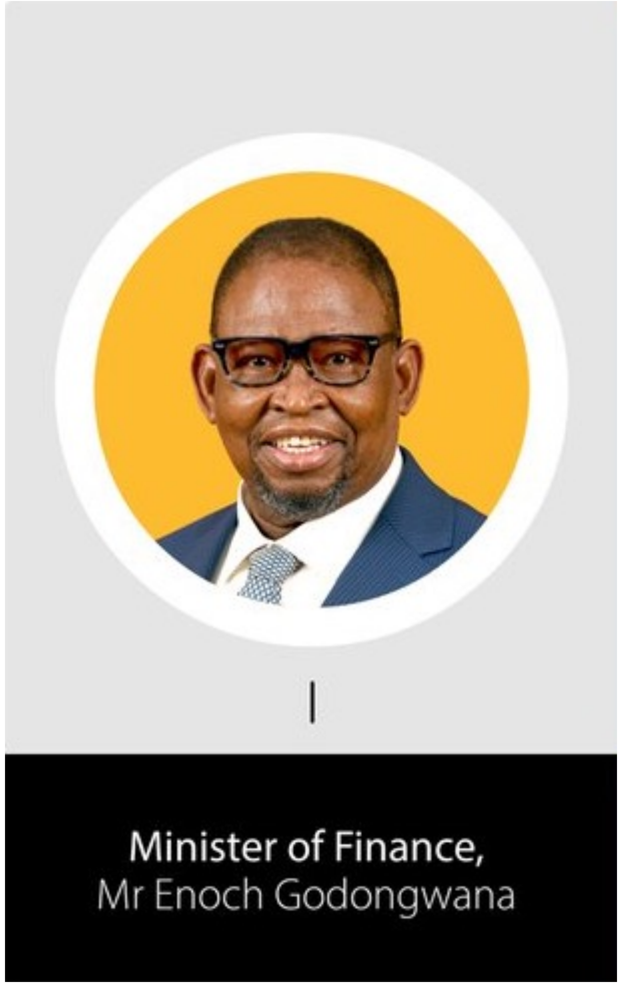
TAX FREE INVESTMENT

- Only natural persons
- R36 000 in aggregate during any year of assessment
- R500 000 in aggregate over lifetime
- Income and capital gain exempt from tax
- **Care must be taken with the limits**

When you say those were the *“good old days”* be careful what you wish for.

	Company Tax Rate	Top marginal Rates	STC / Dividend Tax
1984 – 1991	50%	50%	N/A
1994	40%	43%	15%
1995	35%	43	25%

SUMMARY



- No radical tax changes.

“We remain adamant that fiscal prudence is the best way forward.”

- Goal of a primary surplus on the main budget in 2024/2025.

“We owe a lot of people a lot of money!”

Thank you

FOR LISTENING!