

Your vision is our ambition.

The Budget Analysis

Paul Gering
Chairman, PKF SA,
Tax Committee

DISCLAIMER

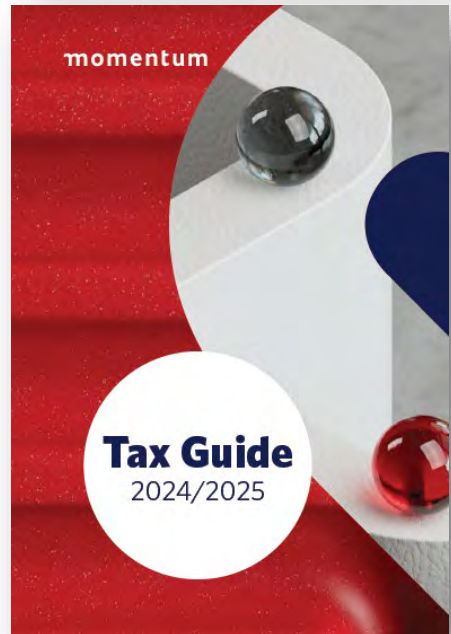
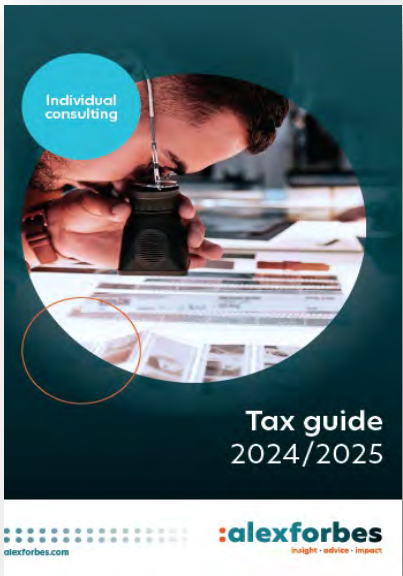
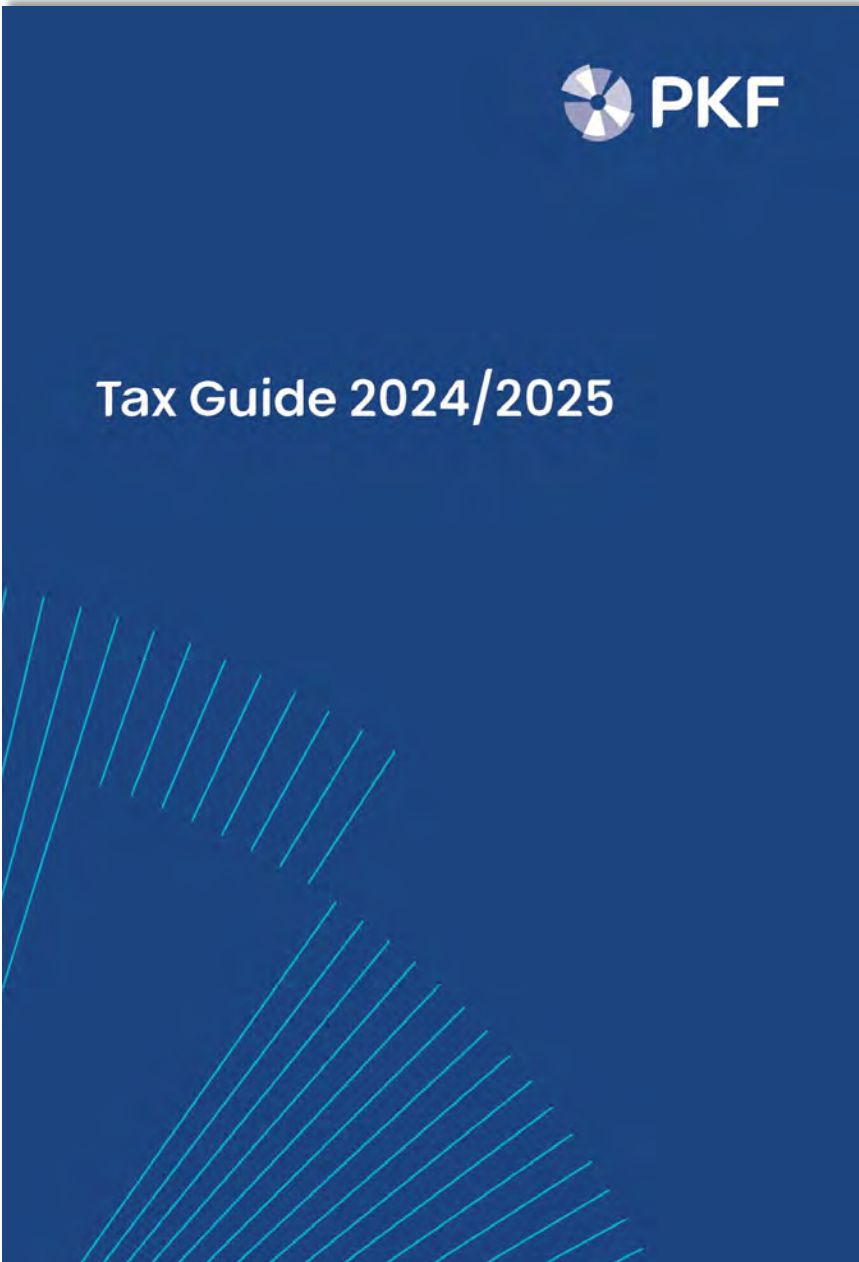
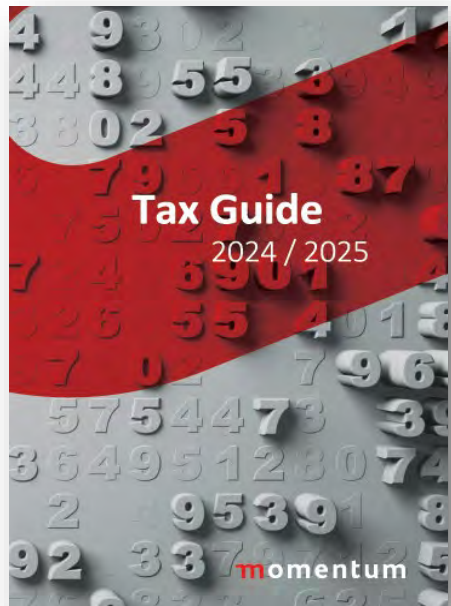
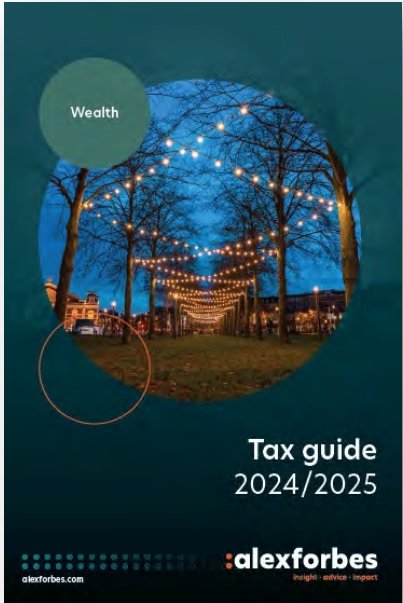
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I note that this is a presentation for information purposes and does not constitute formal advice.

Advice can, however, be given in any of the PKF offices for the requisite fee.

PKF cannot be held liable for any losses suffered as a result of reliance upon information discussed at this presentation.

To the extent that you may still think you have a claim, it is limited to twice the fee for the attendance of the webinar.



THE AGENDA

30 NEW FIRMS JOINED THE GLOBAL FAMILY LAST YEAR

01 Presentation

Paul Gering : Tax Director, PKF Durban

02 Live Questions and Answers

Delecia Venter : PKF Port Elizabeth

Deon van Zyl : PKF Port Elizabeth

Kubashni Moodley : PKF Durban

Mohammed Mayet : PKF Octagon

Monique Carvalho : PKF Octagon

Simone Esch : PKF Cape Town

2024 SONA



Solutions Only Need Action

“This SoNA takes place in the 30th year of our democracy.”

“This is the beginning of a new era. We have moved from an era of pessimism, division, limited opportunities, turmoil and conflict. We are starting a new era of hope, reconciliation and nation building.”

“Billions of rands that were meant to meet the needs of ordinary South Africans were stolen. Confidence in our country was badly eroded. Public institutions were severely weakened.”

“We recall with great anguish the events of July 2021, when individuals loyal to their own interests sought to provoke a popular insurrection, leading to a tragic loss of life and widespread destruction.”

“Millions of young people aged 15 to 24 years are currently **not in employment, education or training**”.

“We will not stop until every person responsible for corruption is held to account. We will not stop until all stolen money has been recovered”.

“We are on track to resolve the most important constraints on economic growth by stabilising our energy supply and fixing our logistics system”.

UNFORTUNATELY THE GREATEST COMEDY SHOW EVEN WITHOUT THE EFF

THE COST OF LOADSHEDDING

8 February 2024 (Stage 3)

"The worst is behind us and the end of loadshedding is finally within reach".

10 February 2024 (Stage 6)

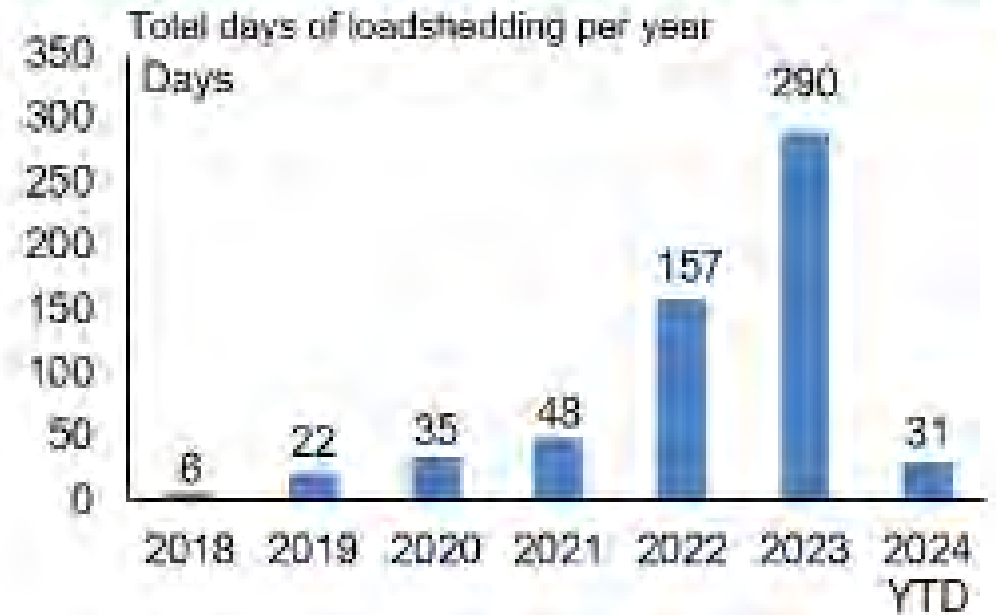
THEN STAGE 6

July 2023 - *"We can put loadshedding behind us by the end of December 2023".*

February 2024 - *"Stage 6 loadshedding clear sabotage."*

"Loadshedding Costs Jobs".

South Africa - loadshedding by year



Source: The Outlier and Eskom Se Push

HOW CAN RETAILERS AND MANUFACTURERS OPERATE WITH 11 HOURS LOADSHEDDING IN A 24 HOUR DAY?

President Cyril Ramaphosa
at SoNA

Fikile Mbalula
(Secretary General of the ANC)

Julius Malema
(Leader of the EFF)



SOME COMMENTS OF THE PRESIDENT, COURTESY OF THE GENERAL PUBLIC ON TWITTER

	Start of President Ramaphosa (2018)	Now
Unemployment	36,3%	41,2%
GDP per capita	\$6 680	\$6 190
	Start of Democracy (1994)	Now
Grant dependency	2,5 million	27,3 million
		44% of population
Growth Rate	4,5%	0,3%

A STORMY YEAR AHEAD

Phala Phala

SARS and the 'fake' Dollar Declaration



Russia / Ukraine



Municipal Coalition



Newly elected Joburg Mayor Thapelo Amad

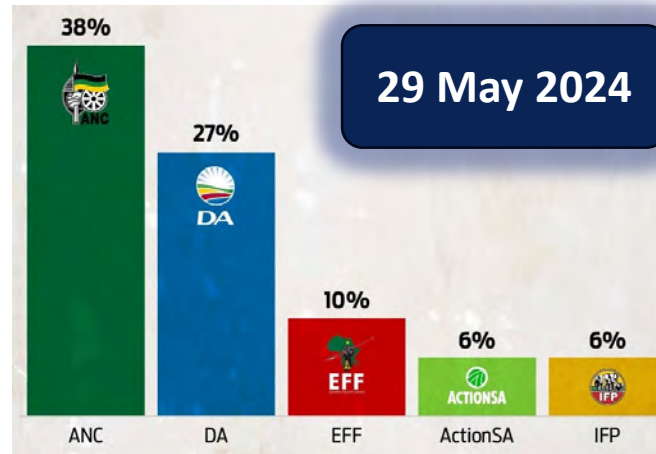


Mpho Phalatse Former Joburg Mayor

Houthi Shipping Route



National Election 2024



Rating Agencies



2019

THE IMPORTANCE OF THE RIGHT TO VOTE

27 Countries have compulsory voting



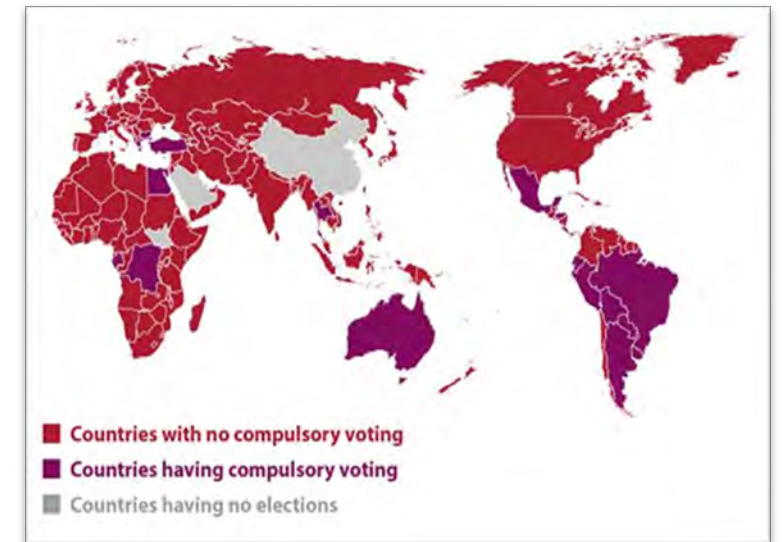
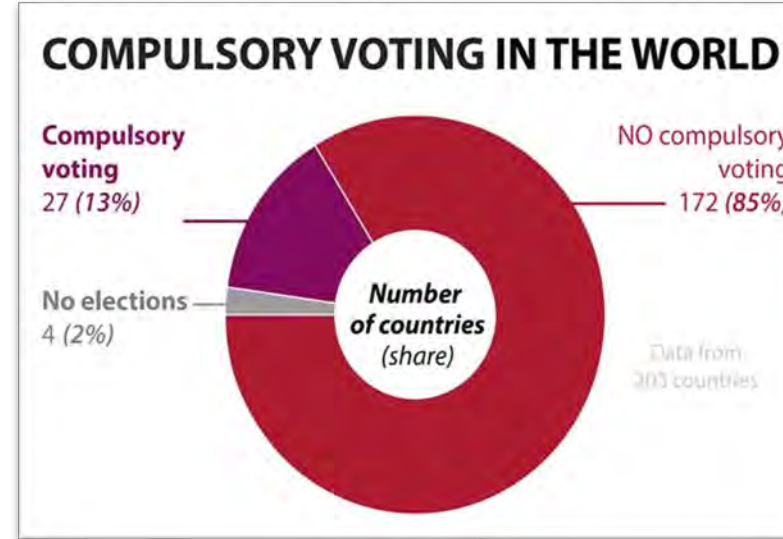
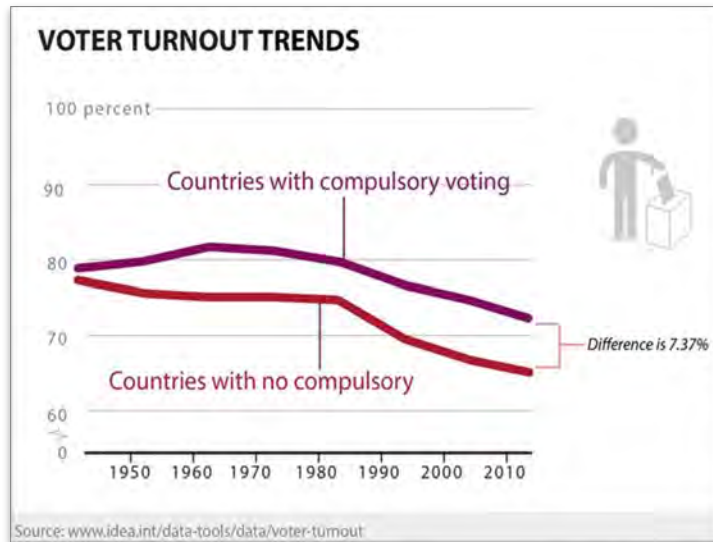
Argentina and Australia impose a fine



In Cyprus, it is a Criminal Offence which could result in one month in jail and a fine



In Thailand, citizens that do not comply with voting regulations will lose their rights to vote in future elections.



DEMOCRACY IN ACTION

65 ELECTIONS TAKING PLACE IN 2024

The Americas (9)



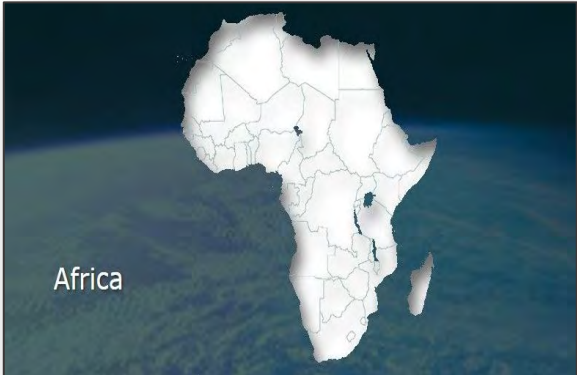
Asia (14)



Europe (22)



Africa (16)



Oceania (4)



YOUR VOTE DOES MAKE A DIFFERENCE

- LARGEST PARTY - I did not register
- SECOND LARGEST PARTY - I registered but I did not vote

Who will the third largest party be in 2024?



Wednesday,
29 May 2024
Election

South African Registered Voters

86% of over 50's
62% of 30 – 39
37% of 20 – 29
22% of 18 – 19

Even in the USA only 51% of the population voted - Florida: a difference of **537** votes determined who won on the States.

A portrait of Finance Minister Enoch Godongwana, a middle-aged Black man with glasses, a goatee, and a mustache, wearing a dark suit, white shirt, and patterned tie. He is smiling slightly. The background is a blue and white graphic with the South African coat of arms and the text 'National Treasury' repeated.

**FINANCE MINISTER
ENOCH GODONGWANA**

**MID-TERM
BUDGET SPEECH**

2023

MEDIUM TERM POLICY STATEMENT 2023

“Debt is spiraling out of control. Government spending has exceeded revenue since the 2008 global financial crisis.”

“We now expect gross Government debt to reach 77% of GDP by 2025/2026. This is higher than the level we forecast in February.

“Over the next three years, debt service costs as a share of revenue will increase from 1.7% in 2023/2024 to 22.1% in 2026/2027.”

“The cost, or interest of this debt, for the next year alone, amounts to around R385,9 billion.”

*“Over the MTEF, interest costs amount to R1.3 trillion. **This is more than we spend on police, education or health.**”*

*“We recognize that alongside these measures, our most effective way of funding government is through an efficient tax administration and by broadening the tax base. **SARS will continue its focus on enforcing compliance in areas such as debt collection, fraud prevention, curbing illicit trade, voluntary disclosures, and encouraging honest taxpayers to comply voluntarily. Every rand of revenue collected is R1.00 less which we have to borrow.**”*

**TAX COLLECTIONS DOWN
R56 BILLION**

NATIONAL HEALTH INSURANCE MEDIUM TERM BUDGET 2021

“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”.

Bill passed both houses 6 December 2023

No clear funding model presented



SoNA 2024

*WHERE IS
MY PEN...*

“The National Health Insurance (NHI), will provide free health care at the point of care for all South Africans, whether in public or private facilities.

We plan to incrementally implement the NHI, dealing with issues like health systems financing, the health workforce, medical products, vaccines and technologies, and health information systems.”



BUILD UP TO THE BUDGET – ELECTION YEAR – R15 BILLION NEEDED TO FUND REVISED DEBT SERVICE COSTS



The cost of the medical rebate

Rebate = R24 billion
Additional expenses = R7.5 billion

Can we afford the income grants and can we afford not to provide them either?

Temporary grant becoming permanent

Are tax increases inevitable?

1% VAT = R24 billion

Any relief for small businesses with increasing interest and load shedding costs?

Do we need to expand the environmental taxes to bring climate change effects under control?

01 January 2025

The annual wealth tax question?

Or

Change to Estate Duty

Fitch confirms BB rating outlook stable as of 19 January 2024

2024 BUDGET

No
Inflation Rebate
Increase

Top Marginal
Rate 45%

No
Medical Tax
Credit-Inflation
Increase



Trusts 45%

Minor change in
subsistence
allowance

Travel allowance
tables not
updated

2024 BUDGET

Company Tax

**Dividend Tax
20%**

**Estate Duty &
Donations Tax**



Transfer Duty

VAT 15%

**No change to
CGT**

2024 BUDGET

**No increases to
General Fuel Levy
Saving 4 billion**

**Carbon Fuel Levy
11 cents for petrol
14 cents for diesel**

**Sin Taxes
Above inflation**



**Tax Free Savings
R36 000**

**No Small
Business
Relief**

**Plastic Bag Tax
32 cents per bag
01 April 2024**

EXCISE ON VAPING

SARS NEEDS TO RECOVER TAX FROM THE ILLICIT TRADE

“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

SARS TO INSTALL CCTV IN TOBACCO
MANUFACTURERS' WAREHOUSES TO ENSURE
DUTY IS PAID.

PROSECUTIONS IN ILLICIT INDUSTRY HAS
RESULTED IN 4 BILLION IN GOLD/TOBACCO.

MR. MINISTER

You started your speech with the following quote:

“A crude distinction between economics and politics would be that economics is concerned with expanding the pie while politics is about distributing it”.

You have done nothing to expand the pie and there is no more to distribute.

The offer of an incentive to manufacture electric cars in South Africa with 150% allowance on new investment does not count to increasing the pie.

THE WHEELS OF JUSTICE TURN SLOWLY



Budget 2023 – February 2023

The Taxation Laws Amendment 2023

The Tax Administration Laws Amendment Act 2023

Medium Term Budget – October 2023

Effective date of 2023 Amendments – December 2023

Budget 2024

ROOFTOP SOLAR

The home rebate



7 Days to go to install and bring into use No extension by Parliament

15 years ago – a simple Municipal Regulation could have provided for 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.

THE 2023/2024 TAX REBATE

Rebate = 25% of cost capped at R15 000.
Effective 01 March 2023 to 29 February 2024.

SONA – We have more than doubled rooftop solar capacity in the past year

SARS Draft Guide issued 26 January 2024 confirms each spouse paying can claim the rebate

HOME SOLAR REBATE

Solar Panels	R70 000.00
Installation Costs	R5 000.00
Battery, Inverter, Energy Meter	R35 000.00
Rewiring and LOC	R10 000.00
	R120 000.00
VAT	R18 000.00
TOTAL COST	R138 000.00

	PAID BY 1 SPOUSE		PAID BY BOTH SPOUSES	
	MR./MRS.	MR.	MRS.	
Panel	R70 000.00	R35 000.00	R35 000.00	
VAT	R10 500.00	R5 250.00	R5 250.00	
	R80 500.00	R40 250.00	R40 250.00	
Rebate: 25%	R20 150.00	R10 062.00	R10 062.00	
Limited to	R15 000.00	R10 062.00	R10 062.00	
REBATE CLAIMED	R15 000.00	R20 124.00		



R5 124.00 EXTRA CREDIT FOR COSTS SPLIT BETWEEN SPOUSES

BUSINESS SOLAR POWER

ACT NOW!

NO EXTENSION BY PARLIAMENT

THE BUSINESS DEDUCTION

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

Greater than 1 megawatt 50/30/20. 

SPECIAL EXTENDED TAX RELIEF

No limitation on generation capacity = 125% deduction:

- Brought into use for the first time between 01 March 2023 and **28 February 2025**.



**BUSINESSES NEED TO STABILISE THEIR
ELECTRICITY SUPPLY WITH
LOADSHEDDING BECOMING THE NORM**

TWO-POT SYSTEM

**NEW HEARINGS
12 MARCH 2024**

**ACTUALLY
DELAYED TO
1 SEPTEMBER
2024**

An attempt to maximise retirement savings and minimise early withdrawals.

$\frac{1}{3}$ rd for accessible saving (savings pot).

$\frac{2}{3}$ ^{rds} for retirement (retirement pot – purchase annuity at retirement).

Savings pot withdrawals are fully taxable – minimum R2 000 per withdrawal.

Contributions prior to 1 March 2024 = “vesting pot”. Vested pots remain taxable in terms of the lump sum tables.

10% capped at R30 000 as seed savings pot.

**NATIONAL TREASURY PROPOSED A
DELAY TO 1 MARCH 2025**

**PREVIOUSLY DELAYED TO
01 MARCH 2024**

NEW SECTION 11G – PRACTICE NOTE 31

For the purpose of determining taxable income:

Deduction of Interest

To the extent:

- Interest incurred is in the production of interest income; **and**
- Interest included in the income; and
- Is not incurred in the carrying on of a trade.

Year of assessment commencing on or after **1 January 2025**.

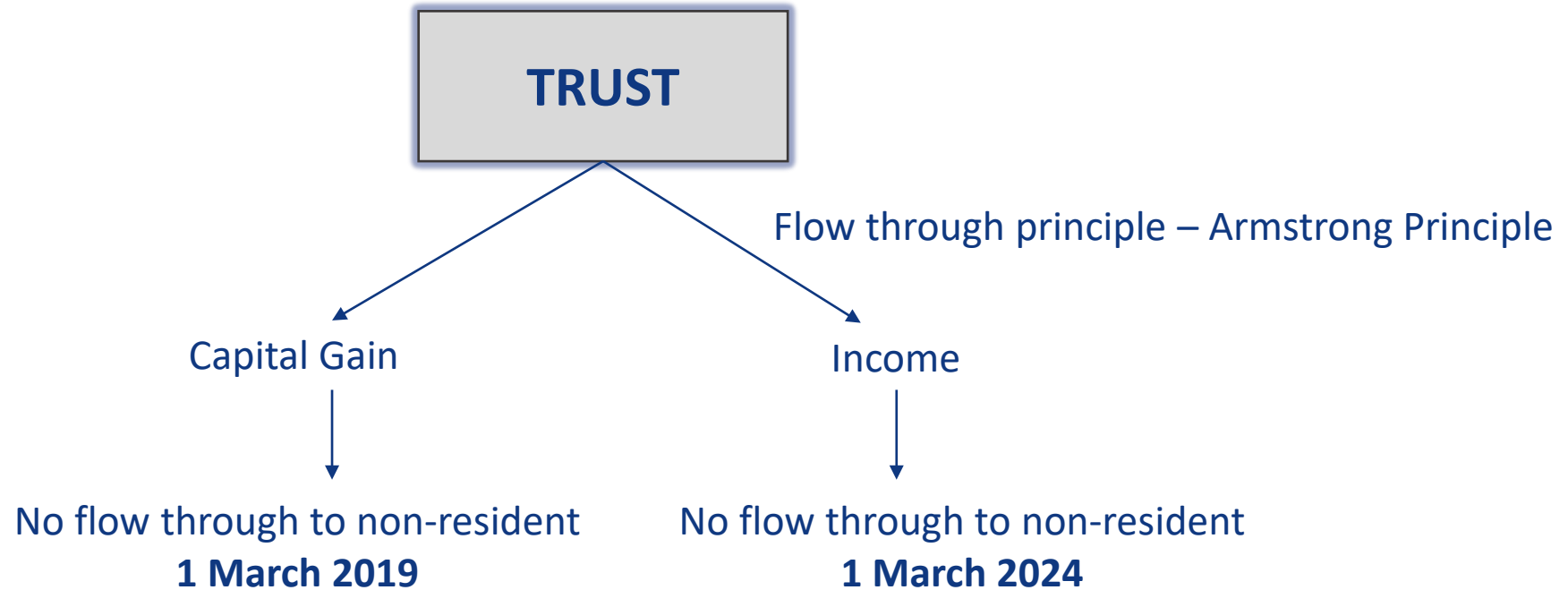
PRACTICE NOTE 31
SINCE 03 OCTOBER 1994

NOTICE TO WITHDRAW
15 NOVEMBER 2022

ORIGINALLY EFFECTIVE
01 MARCH 2023

STRONG OPPOSITION

SOUTH AFRICAN TRUST DISTRIBUTION TO NON-RESIDENT TAXPAYER



SO TRUSTEES NEED TO KNOW TAX RESIDENCE STATUS

SECTION 25 – TAXATION OF DECEASED ESTATES



date of death



Non-resident with South African assets

Interest income is exempt by virtue of non-residence tax status

Estate of the non-resident is a South African tax resident

Effective 01 March 2023 the Estate follows tax status of deceased

EMPLOYERS SUBJECT TO PAYE WITHHOLDING RULES

EVERY

22 December 2023

- (a) Employer that is a resident;
- (b) **Employer that is not a resident and conducts business through a permanent establishment in the Republic;** and
- (c) Representative employer.

REPRESENTATIVE EMPLOYER

- d) In the case of any employer who is non-resident in the Republic, any agent of such employer having authority to pay remuneration.

Broader than just a formal branch



ANNEXURE C : POSSIBLE UPCOMING ATTRACTIONS

- Connected person definition in relation to partnerships.
- Limiting interest deductions in reorganisations and acquisitions.
- Rebate for foreign taxes in respect of capital gains.
- VAT in the gambling industry – table games of chance.



ESTATE DUTY / DONATIONS TAX

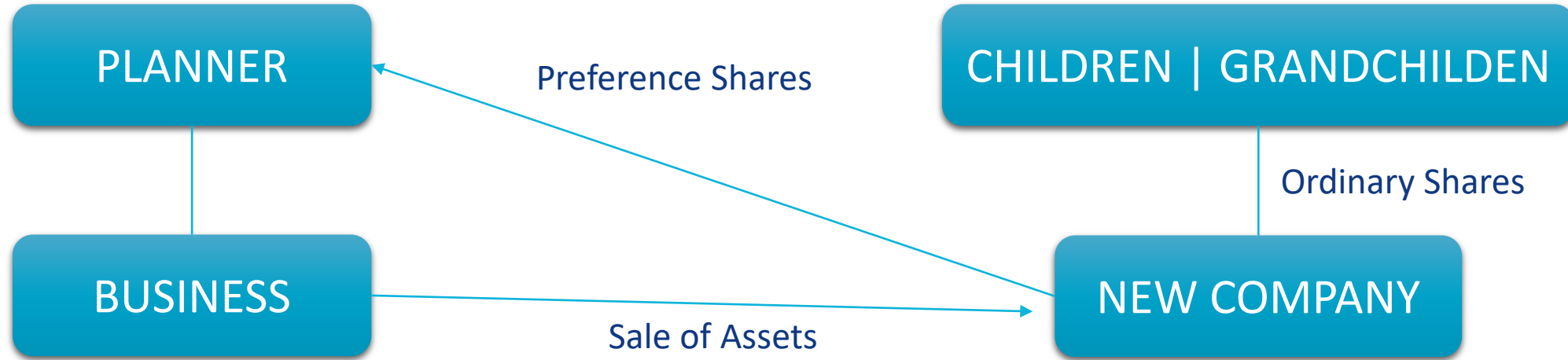
POSSIBLE CHANGES FROM DAVIS TAX COMMITTEE:

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 freezing of the estate.

**DOES NOT
QUALIFY FOR
ASSET FOR
SHARE RELIEF
UNDER
SECTION 42**

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%
February 2024	:	27%

Different Tax Rate Adjustment



LIMITATION OF ASSESSED LOSS

MAYBE SPECIAL RULES WHEN IN LIQUIDATION OR DEREGISTRATION



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

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 the differences, resulting in:

- Disputes over capital amounts; and/or
- 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
Funds Required	920
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		17 013 661	6 486 244	3 781 487	2 150 974
Investec	Fixed Deposit		8 866 776	5 731	320	342
Investec	Savings					10 112 558
Investec	Savings					10 126 217
Investec Securities (Pty) Limited	Savings				20 015 826	1 087
Nedbank Ltd	Credit Card		2	3		
TOTALS			25 880 439	6 491 978	23 797 633	22 391 178
TOTAL GROSS INCOME PER ITR12's			20 232 587	1 863 749	1 840 901	
Differences			-5 647 852	-4 628 229	-21 956 732	

COMMON REPORTING STANDARD

**AN AMNESTY WILL HELP
BUT THE CALL WILL FALL ON
DEAF EARS.**

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.

**BEPS PILLAR TWO MULTINATIONALS
ERROS 750 MILLION TURNOVER
15% TAX**

**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

ALSO IMPACTS ON CUSTOMS DUTY
DECLARATIONS

THE LEADING CASE ON ROYALTIES WILL
PROBABLY BE THE
"PLEASE CALL ME"
CASE WHERE SCA RULES
5% to 7¹/₂% ROYALTY

TRANSFER PRICING DOCUMENTS REQUIRED

Country by Country Reporting = GROUP TURNOVER > R10 billion

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

ADVANCED PRICING
AGREEMENTS
22 DECEMBER 2023
BUT NO PRACTICE
IMPLEMENTATION
PROCEDURES

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.


Capital gains in Trusts are trapped.

New changes to income distributions from Trusts.

Possible changes to minimise tax risk of allowances when ceasing residency



SARS: NOTICE OF NON-RESIDENT TAX STATUS


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 SUPPORTING DOCUMENTS



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.

Specific requirements

In addition to the aforementioned information, also supply the following as applicable.

Qualifying basis 1: Cease to be ordinarily resident:

- The type of visa on which you have gone to the foreign country.
- Where you have already taken up permanent residence in the foreign country, submit proof thereof.
- A certificate of tax residence from the foreign revenue authority or a letter from the authority that indicates that you are regarded as a tax resident in that country (if available).
- Details of any property that you may still have available in South Africa (Indicate the purpose that such 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:

- Only the standard requirements must be supplied.

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



REMUNERATION - OFFSHORE

DAYS TEST

Periods exceeding 183 full days;

Continuous period of 60 days; and

Services rendered outside Republic.

From 01 March 2020 to present.

Limited to R1,25 million exemption.

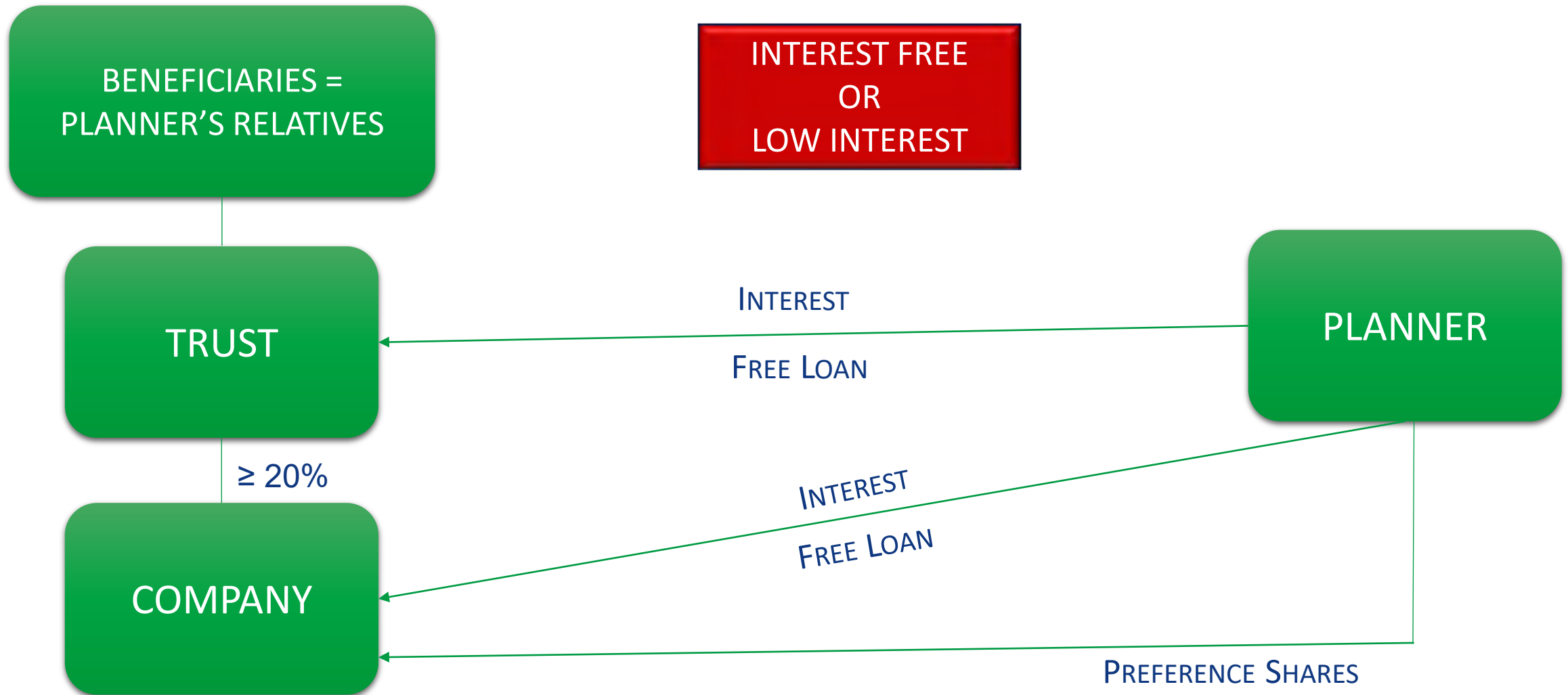


REVISION OF SOME BIG ISSUES

1. Section 7C
2. Trust Administration
3. Foreign Trust distributions
4. Doubtful Debts
5. Property Developers – VAT claw-back



SECTION 7C – LOAN FROM CONNECTED PERSON



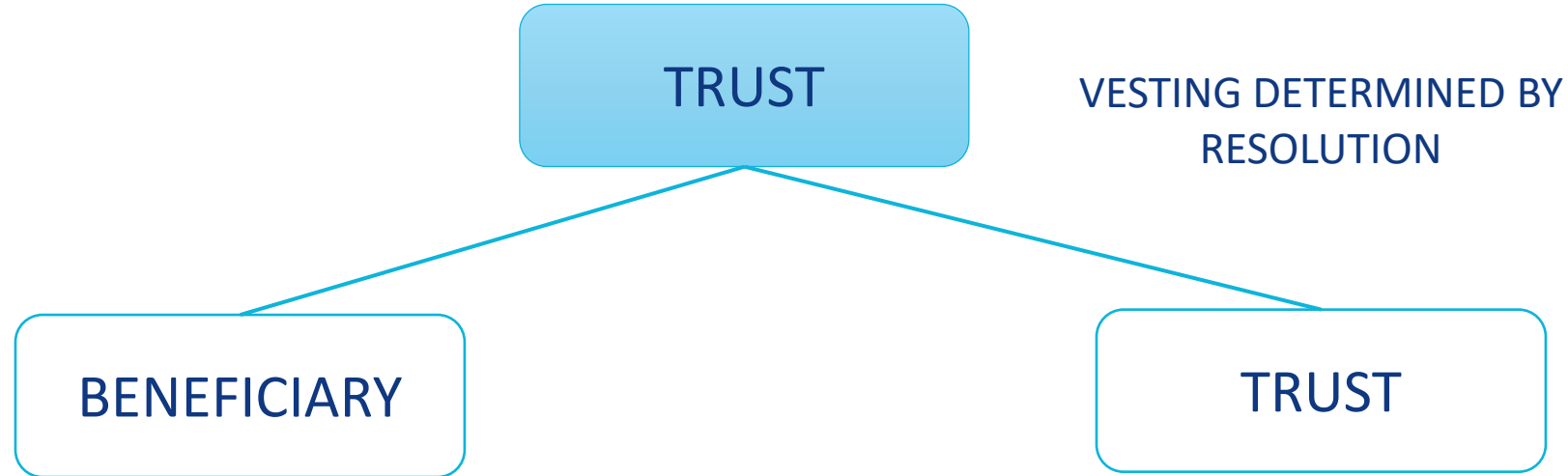
THE COST OF SECTION 7C

WHAT IF THE LOAN WAS DENOMINATED IN FOREIGN CURRENCY?

LOAN	R2 500 000.00	RANDS
Interest 01 March 2023 to 31 March 2023 (31/366 days) at 8,25%		17 469.26
Interest 01 April 2023 to 31 May 2023 (61/366 days) at 8,75%		36 458.33
Interest 01 June 2023 to 29 February 2024 (274/366 days) at 9,25%		173 121.58
Deemed Donation		227 049.17
Less annual exemption		100 000.00
Net deemed donation at 29 February 2024		127 049.17
Donations Tax at 20% (due 31 March 2024)		25 409.83
Last year on sum loan only		12 763,70

VESTING IN DISCRETIONARY TRUSTS

SECTION 7
SECTION 7C
SECTION 25

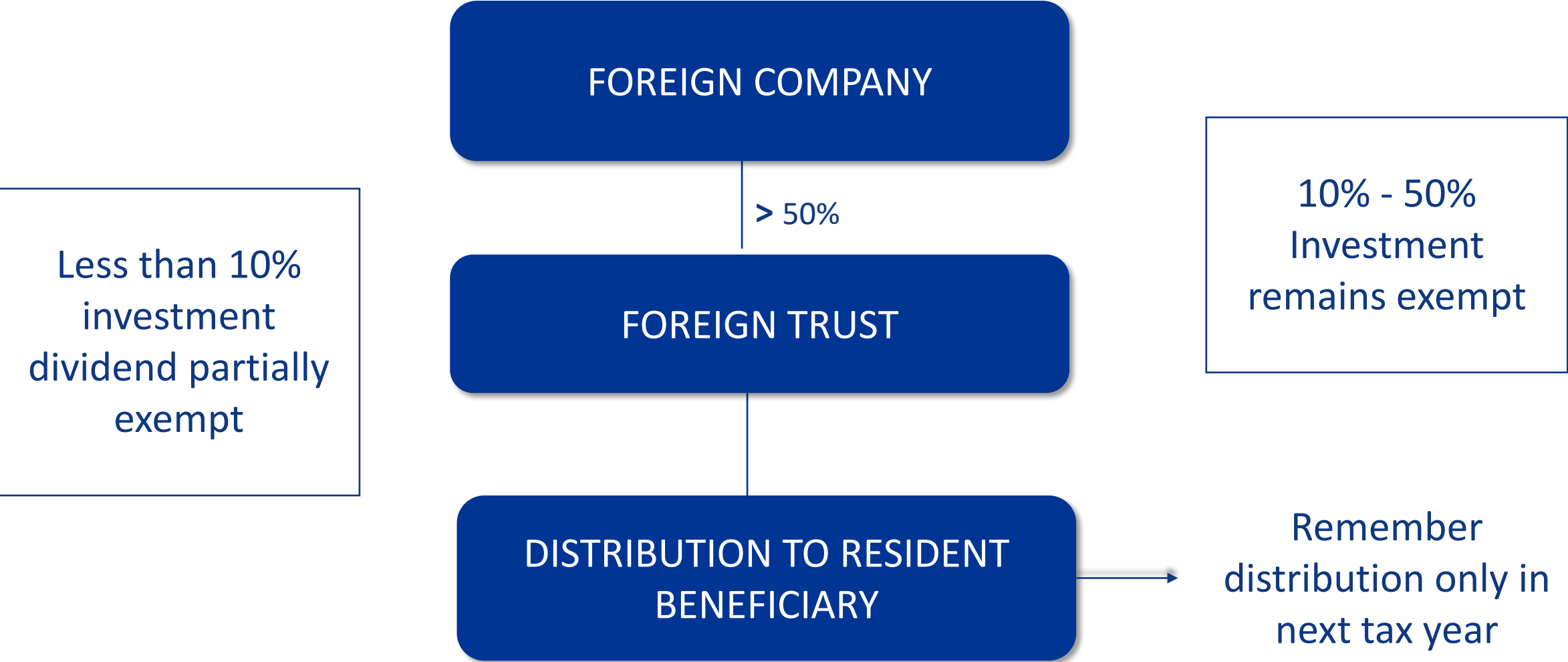


If the income is distributed in the tax year it is taxed in the hands of the beneficiary, but if not it is taxed in the Trust.

NB: Proof of date of vesting

THIRD PARTY
DISCLOSURE OF
DISTRIBUTIONS BY 30
SEPTEMBER 2024

DISTRIBUTIONS FROM FOREIGN TRUSTS



DOUBTFUL DEBT ALLOWANCE

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; and

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; and

25% of the face value of debts that are between 60 days and 120 days past due date.

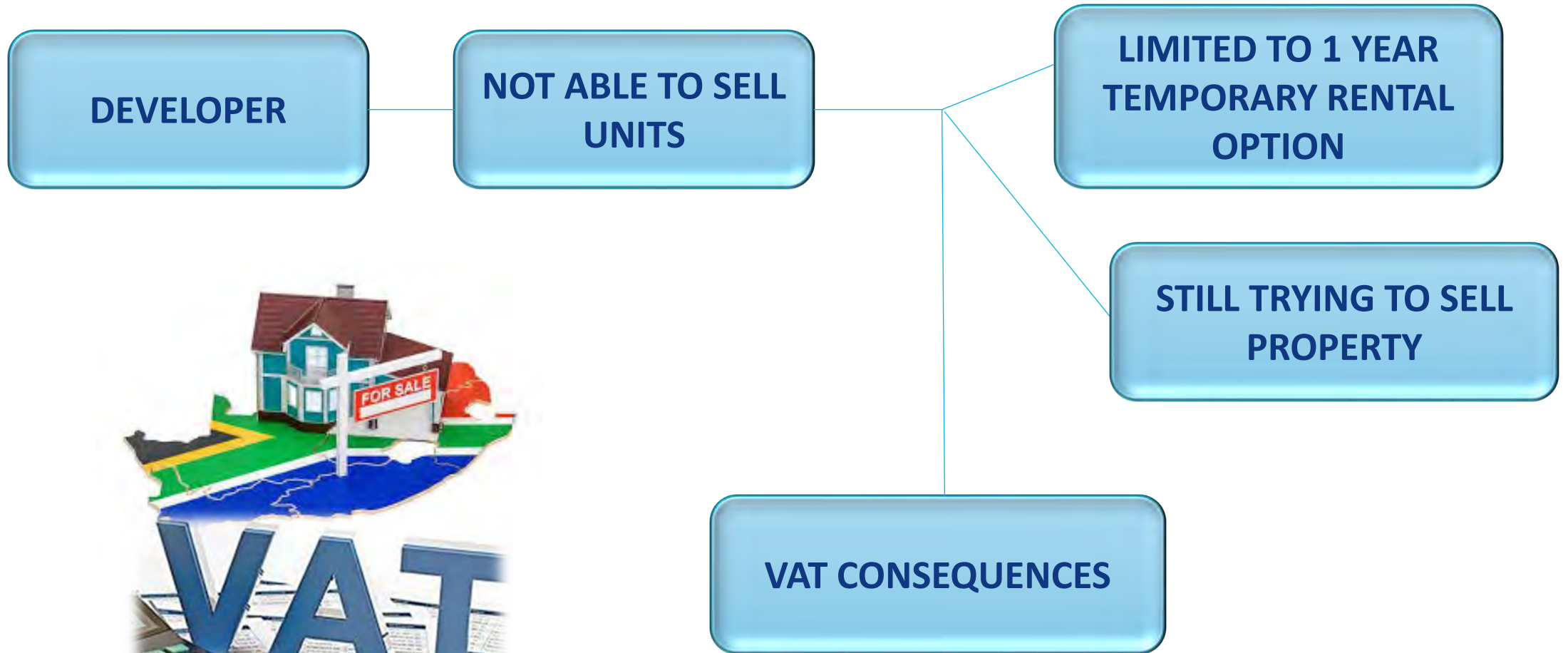
**APPLICABLE ONLY TO
UNSECURED DEBT**

THE VAT DEBATE

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.

PROPERTY DEVELOPERS VAT CLAW-BACK



TAX CASES



OFFICE OF TAX OMBUD SYSTEMIC ISSUE – REVISED ASSESSMENT

THIS HAS BEEN
HIGHLIGHTED TO SARS AS
LOW HANGING FRUIT TO
FIX

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 within – **45 days.**

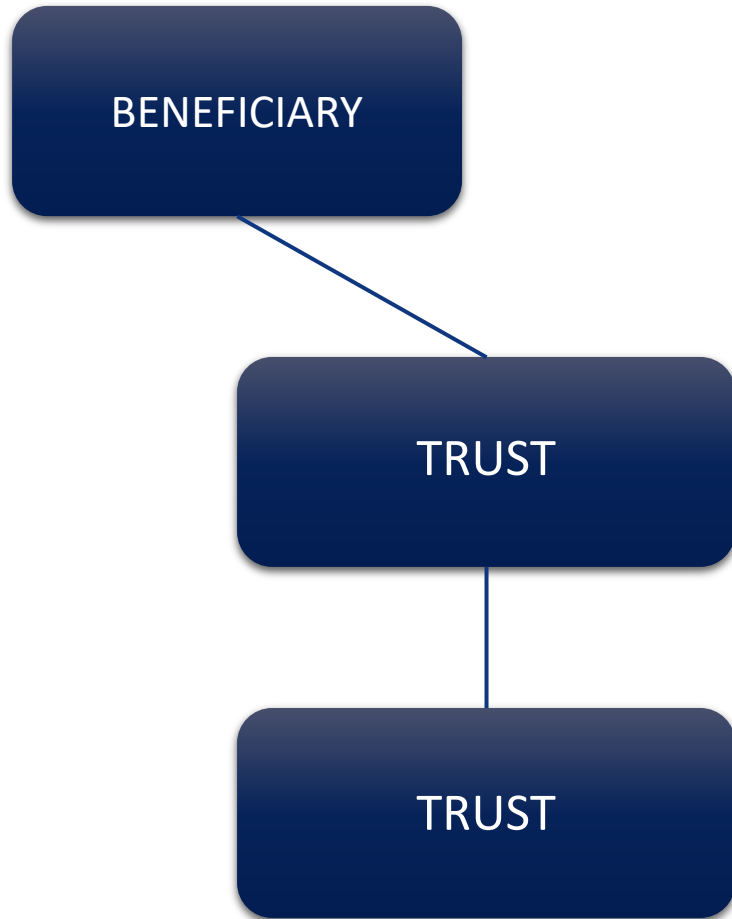


OFFICE OF THE
TAX OMBUD
Ensuring fairness



LEAVES THE TAXPAYER IN NO MAN'S LAND

THISTLE CASE



Was the 2021 Amendment necessary or just a red herring?

“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

Heard in Constitutional Court on 08 February 2024

THE PRICKLY THISTLE FOR SARS

BATTLEGROUND OF INADVERTENT *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.**”*

Hopefully this will be confirmed by the Constitutional Court, or the *Bona Fide* Error amendment was actually useless on SARS' interpretation.

THE CROWN JEWELS OF THE CORONATION CASE

THE USP ARGUMENT

ACTUAL OPINION
NEVER DISCLOSED

SARS imposed a 10% understatement penalty but the Court held that there was a *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.**”*

Heard in Constitutional Court on 14 February 2024

TAX COURT: VAT 1788

BONA FIDE INADVERTENT ERROR

Finding of ITC 1890 confirmed in VAT 1788:

“It follows from the above that bona fide inadvertent error has to be an innocent misstatement by a taxpayer on his or her return resulting in an understatement while acting in good faith and without the intention to deceive.”

The evidence considered by the Court:

- VAT returns were completed by a different department;
- The returns were scrutinised by senior finance manager and internal auditor;
- Internal assurance was received from the internal audit division;
- No concerns were raised by the external auditor;
- And even though no formal tax Opinion was received;
- The error was found to be a *bona fide* inadvertent error.

LOOKING AT PROCESS
TO ASCERTAIN
REASONABLENESS

HENQUE 3935 ^t/_a CC PQ CLOTHING OUTLET (in business rescue) GAUTENG HIGH COURT

Is this a pre-business rescue tax liability?

- Original 2017 assessment issued 29 November 2017 – tax loss and refund
- Notice of Audit – 29 November 2017
- **Business rescue commenced 31 January 2018**
- Additional assessment 1 May 2018
- Taxable income of R16 793 724.00

The Namibian Supreme Court case of Esselman, a decision which Mohammed AJA concurred (South Africa's first Chief Justice of the Constitutional Court), was relied upon and which states:

"In my view, Section 5 merely established generally the liability to pay tax, but does not make tax payable before it has been assessed."

Income tax only becomes due and payable when the assessment or additional assessment is issued to the taxpayer.

2017 tax liability is not a pre-business rescue debt.

QUESTION: IF NOT PAYABLE BEFORE THEN WHY INTEREST?

DIROSHINI PATHER GAUTENG HIGH COURT

WHEN LOOKING TO COLLECT
FROM A THIRD PARTY – WHEN
DID THE TAX DEBT ARISE?



Mrs. Pather was paid R21.5 million possibly from a loan account of Mr. Pather in Impulse in 2017.

Mr. Pather, Impulse and Mr. Koko (from Eskom) were all intertwined and as a consequence, the company had a tax debt of R250 million in 2019.

Here SARS argued, based on the AMNEX case, that the tax liability arises at the end of the tax year even before an assessment.

Did the company have a tax debt at the time Mrs. Pather received the payment and can tax collection then follow the money?

CSARS v M GAUTENG HIGH COURT

WAS THIS A LOAN?

So, was this a loan?

Tax Court – found to be the loan (taxpayer wins with costs).

High Court – found to be income (SARS won).

- Limited success with regards to a cession of R2.3 million loan
- Balance of probabilities – not sufficient evidence that loans
- Prescription argument failed due to taxpayer not disclosing material facts
- Undisclosed deposits treated as income



TAX COURT – MEGAWATT PARK

THE POWER OF THE OPINION

SSN v SARS



What is a mining asset and does the mining right impact on the deductions claimed by the taxpayer?

SARS imposed 50% USP – No reasonable grounds for the tax position:

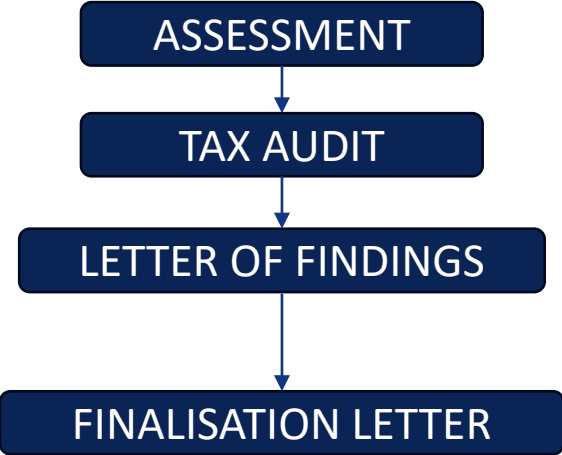
“Where the SSN taxpayer could claim deductions for expenses incurred outside the mining area or where it had no mining rights became a hotly contested issue in this case.”

“However, as it was reasonable for it to assume that the tax was deductible on the merits of its contentions, ...”

“The position taken by the taxpayer was supported by an Opinion obtained from an independent registered tax practitioner.”

THE DISPUTE PROCESS

NEW ADR PROCESS AT OBJECTION STAGE PROPOSED



30 DAYS

RIGHT TO RESPOND

80 DAYS **EXTENDED TIME**

OBJECTION

RIGHT TO REQUEST REASONS

SARS CAN REQUEST DOCUMENTS
DISALLOWANCE/PARTIAL DISALLOWANCE

30 DAYS

APPEAL

RIGHT TO ADR

20 DAYS

TAX BOARD / TAX COURT

GREY LISTINGS

- South Africa too slow to act.
- Still problems with the system.
- October 2021 – needed to add 67 actions.
- November 2023 – positive progress:-
 - 5 deficiencies
 - 11 efficiencies

WHO IS THE
ULTIMATE HUMAN
BENEFICIAL
OWNER?

TRUST MASTER
PORTAL

MORE DISCLOSURE
REQUIRED

CIPC BENEFICIAL
OWNERSHIP

ONE MORE YEAR OF SIGNIFICANT SCRUTINY

A FEW REMINDERS



- Capital Gain Base Cost
- Home Study – Times change but rules remain
- Provisional Tax

CAPITAL GAINS TAX

SPECIAL RETENTION OF DOCUMENTATION RULES

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 OFFICE - EMPLOYEES

**CAUTION:
CGT HIGHER ON DISPOSAL**

The office is regularly and exclusively used for the purpose of trade and is specifically equipped for such purpose.

Calculate the ratio of floor area of the office to the floor area of home.

SUBJECT TO AUDIT

**MAINLY
MORE THAN
50%**

**ANNEXURE C
REVIEW**

**EXCLUSIVELY
ONLY**



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.

**Careful with
submission after
provisional tax
form prepared**

A LITTLE BIT OF PLANNING



SECTION 18A – DONATIONS

SARS Notice – November 2022

Effective 01 March 2023

Section 18A receipts must include:

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

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

PBO risk of tax liability on all income if not approved by SARS Exemption Unit.

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

**Third party disclosure of Section 18A donors
31 May 2024.**

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



**Possible 10 000
N.U.M jobs
at risk
19 January 2024**

EMPLOYMENT TAX INCENTIVE

Special SARS Audit Focus

The idea is to encourage discussions to employ additional staff to grant the unemployed an opportunity and this is partly 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

**NEW PUNATIVE
MEASURERS
PROPOSED**

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:

	2025	2024	2023	2022
Remuneration	600 000	600 000	600 000	600 000
Bursary – Higher Education	60 000	60 000	60 000	60 000
– Basic Education	20 000	20 000	20 000	20 000

WHY NO
CHANGE TO
HELP THE
MISSING
MIDDLE?

Results:

Positive for BEE points

Positive for staff morale

Necessary for the country's development

TAX FREE INVESTMENT

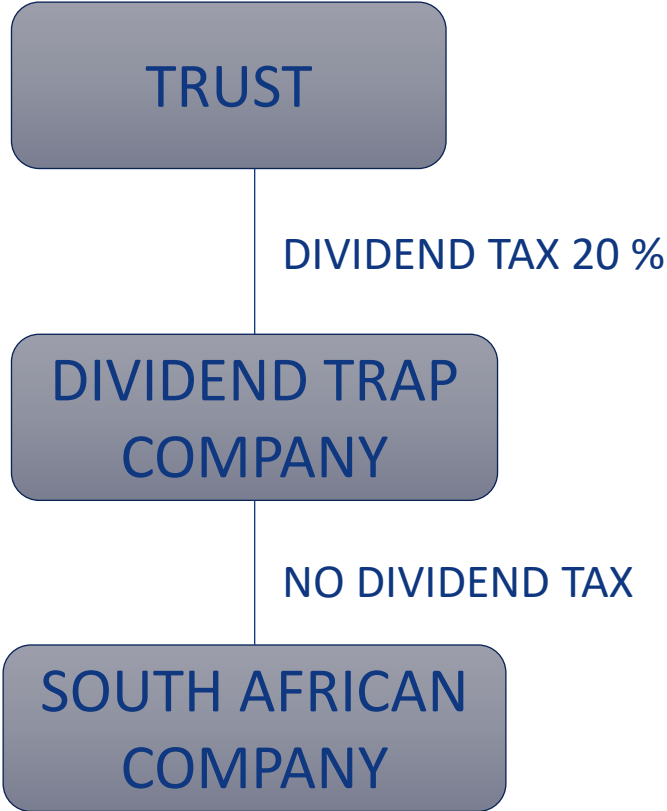
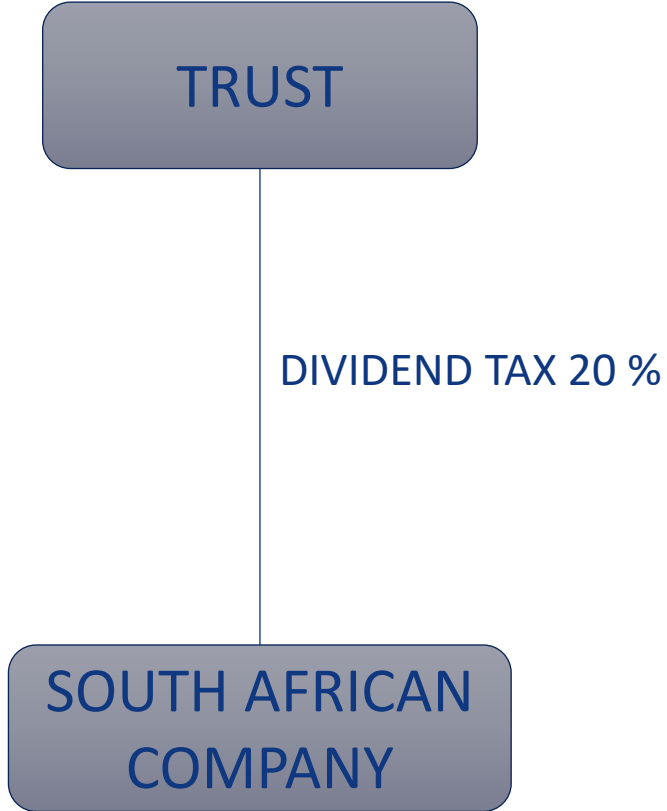
- Only natural persons
- R36 000 in aggregate during any year of assessment
- R500 000 in aggregate over lifetime
- Income and capital gain exempt from tax
- **Care must be taken with the limits**



**Review of
effectiveness**

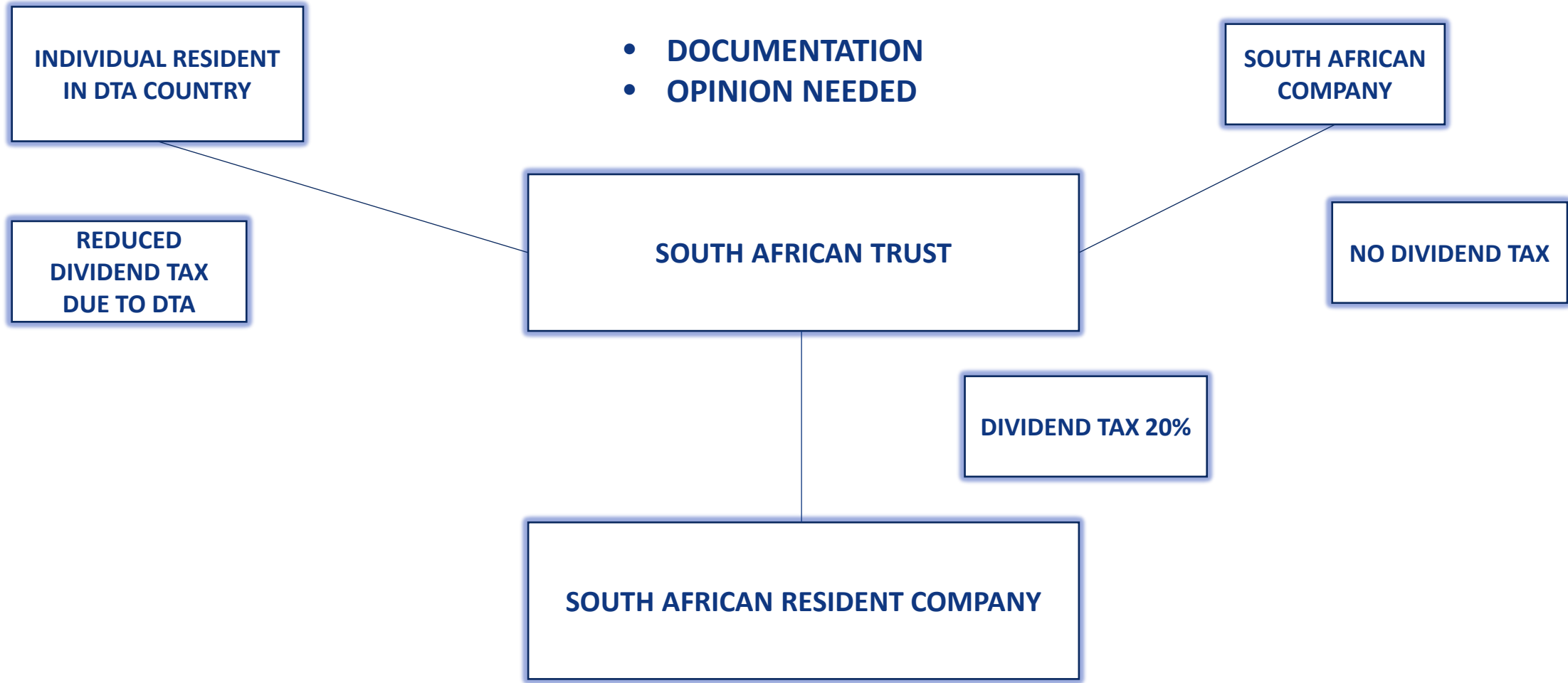
SECTION 42

TRUST AND DIVIDENDS TRAP COMPANIES



BINDING PRIVATE RULING 377

USE BENEFICIAL OWNERSHIP TO BEST ADVANTAGE



THE BIG MAC INDEX

RAND IMPROVED
DURING SPEECH

DON'T LOOSE HOPE ON THE
CURRENCY

The Big Mac Index was invented by The Economist in 1986 as a lighthearted guide to whether currencies are at their “correct” level. It is based on the theory of purchasing-power parity (PPP), the notion that in the long run exchange rates should move towards the rate that would equalise the prices of an identical basket of goods and services (in this case, a burger) in any two countries.

			BIG MAC Exchange Rate	Actual Exchange Rate
Big Mac	Durban	R51.90		
Big Mac	New York	\$5.23	\$1 = R9.92	\$ = R18.93
Big Mac	London	£4.99	£1 = R10.40 £1 = \$1.05	£1 = R23.91 £1 = \$1.26

MR. MINISTER ...



I wrote to you on behalf of PKF to:

- Protect the tax collected from State Capture and wasteful expenditure.
- Ensure that the Minister of Electricity instructs the municipalities to enforce solar geysers.
- Make use of chartered accountants to protect the public sector.
- Mr Minister – you have the power to do much more than raise taxes – you have the power to control the direction of the funds to projects that count – you have the power to fund the ministries that use the funds to the best advantage and to defund those ministries where the mandate is a luxury, or the mandate has been abused. And if you do not have the power to do so alone, you have the power to do so with others.

Mr. Minister, you were too focused on the election and you forgot about South Africans.

Thank you
FOR LISTENING!

