



# TAX PRACTITIONER EVENT

19 SEPTEMBER 2018

12:30 Registration and refreshments

13:00 Welcome / Introduction

– Mr Martin Barnard

13:10

- Ayanda Takela - Ionised
- What's been in the News
- What's new on the Ethics front
- What's new on the Tax /SARS front
- Open discussion
- Stakeholder Meeting Agenda

15:30 Close

AGENDA FOR  
THE DAY

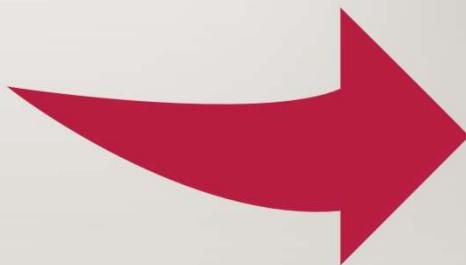
## THOUGHT FOR THE DAY

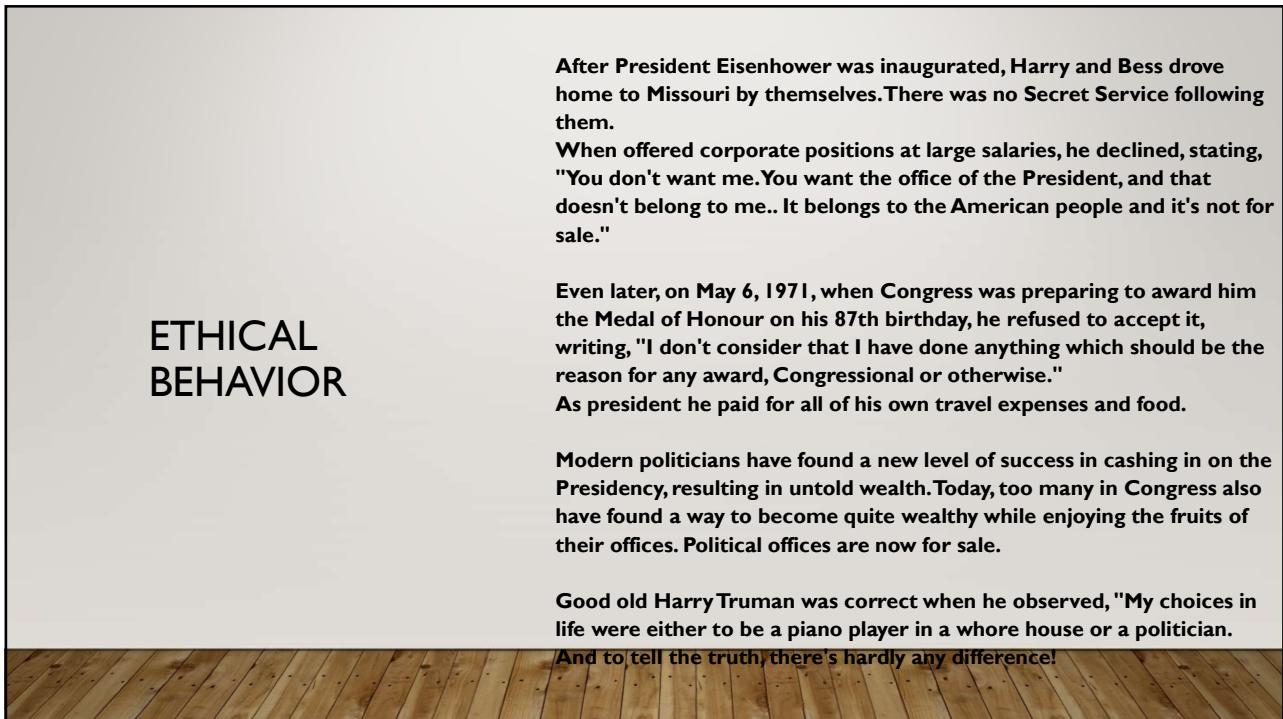
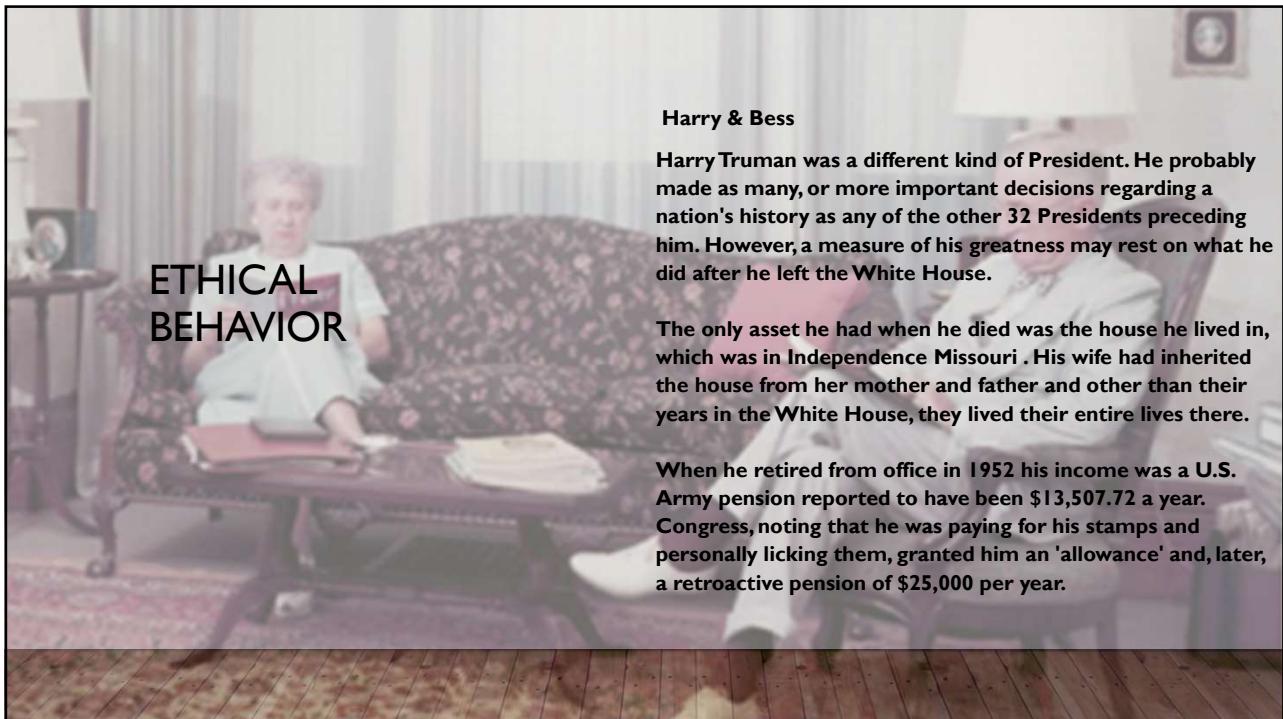
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LETS SKIP UNTIL  
WE GET TO  
ETHICS SECTION

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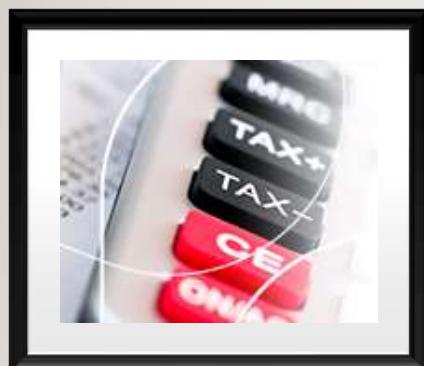
SECONDHAND PC'S  
AVAILABLE SOON –  
DELL LATITUDE I5 4G  
OR 8G RAM 500G HD

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INCL BAG, CHARGER  
AND SVGA  
CONNECTOR

FUTURE EVENTS

## TAX PRACTITIONER EVENT



24 October  
2018

West  
Rand

# AYANDA TAKELA

SARS E-FILING SUPPORT CONSULTANT  
[AYANDAT@SARSEFILING.CO.ZA](mailto:AYANDAT@SARSEFILING.CO.ZA)



## WHAT IS IN THE NEWS?

Coming soon to a Pick n Pay near you!



## ANC's Godongwana to approach state capture commission after banks' testimony

2018-09-18 20:03

Tshidi Madia

**news24**

Chairperson of the ANC's subcommittee on economic transformation Enoch Godongwana says he will approach the commission of inquiry into state capture to give his side of the story about meetings the political party held with some of South Africa's big banks after they stopped doing business with Gupta-owned businesses.

"I just want to give my side to the commission," Godongwana told News24 on the sidelines of trade union federation Cosatu's 13th congress on Tuesday.

He, along with ANC national chairperson [Gwede Mantashe](#), who was then secretary general, and deputy secretary general [Jessie Duarte](#), met with Standard Bank and Absa while FNB declined an



## Hlaudi Motsoeneng's R1.1m Bosasa bailout

06:00 16/09/2018 ■ Kyle Cowan

**City Press**

Former SABC boss Hlaudi Motsoeneng turned to corruption-accused company Bosasa when he needed cash to pay his lawyers after he was axed from the public broadcaster last year.

Motsoeneng, once the SABC's chief operating officer, racked up a R1.1 million legal bill in his failed defence of a disciplinary hearing last year, and new evidence shows [Bosasa may have picked up the tab](#).

The latest revelations over Bosasa's alleged largesse involving senior public servants and politicians are contained in a sworn affidavit by [Petrus Venter](#), an [auditor](#) employed by a company contracted by Bosasa.

Venter, a former SA Revenue Service (Sars) official, works for a small accounting and audit firm, [D'Arcy-Herrman & Co](#). He read, but did not respond to, text messages sent on Friday seeking comment.

Last year, Motsoeneng was charged with bringing the SABC into disrepute and bringing irreparable harm to it following comments at a press briefing in April.

He was ultimately shown the door, but: **racked up legal costs totalling R22m** by March this year while litigating numerous issues in 15 different cases.

This amount is likely to increase as some cases are still not complete.

Motsoeneng's **highest legal bill was R5.3m**, accrued during a **fight with the DA over former public protector Thuli Madonsela's 2014 report** that found that he had lied about having a matric certificate.

The SABC has now notified the DA that it cannot pay the R1.7m costs order the party was awarded by the court.

Motsoeneng also drove a decision to introduce a **90% local content mandate** that reportedly **cost the SABC more than R200m in lost advertising revenue**.

In August last year, the then **interim SABC board announced it would take Motsoeneng to court to recoup some of the funds**. It is trying to access his R11.5m **pension payout**, but Motsoeneng is fighting the move.

News24 understands that the SABC's insurance that previously covered Motsoeneng's legal costs lapsed when he was fired.

As the creditors came knocking, **Motsoeneng allegedly entered into a loan agreement with Bosasa, now named African Global Operations**.

Motsoeneng and Bosasa refused to comment on the payment or be drawn into questions over the alleged loan agreement this week.

## The silent taxodus

Sep 12 2018 17:43 Solly Moeng



Something in me wants to reach out and give a hug to our well-meaning and indefatigable Finance Minister, Nhlanhla Nene, each time I hear him repeat to an audience of the converted that there is a looming possibility of government failing yet again to reach its tax revenue collection targets at the end of the current financial year. He said this again at a tax conference attended by people who knew what he was talking about.

Tax specialists and observers of the socio-political and economic developments in the country are **not expected to be surprised by the possibility of a shortfall in tax collection**. The people Mr Nene should be targeting with his messages – in case he's not – are those responsible for the conflicting and, often, emotion-driven pre-electoral rhetoric that is keeping not only investors at bay, but also making increasing numbers of citizens, who are also tax payers, leave the country.

In his recent address Nene cited, in random order, the technical recession, the weakening rand, persisting problems at SARS, an economy that is growing too slowly, increased taxes, including VAT, and the fall in GDP. He then moved closer to the real issue when he said this, "some taxpayers are taking it upon themselves to pay as little tax as possible. Such behaviour not only negatively affects collection ... (but) creates more social discontent."

He should have added that there are also worrying reports of increased numbers of tax payers quietly packing their affairs, gathering their families, and leaving the country. They do this out of fear of what is said to be coming: growing racism, particularly targeted at white citizens, feared confiscation of private property, and general economic exclusion for young Whites.



Solly Moeng (SUPPLIED)

### RELATED ARTICLES

- [Nene: recession a risk for tax revenues](#)
- [Kingon talks tough on illicit trade, revenue collection](#)
- [Bain says it may have been 'used' for political agenda at SARS](#)
- [SOLLY MOENG: Don't let Vytjie stand alone](#)

### Connecting the dots

There remains a direct link between the stubborn poor tax morale on one hand and, on the other hand, the conduct of people in power and the messages they send out; this applies to both intended and unintended messages. Tax payers are no fools; high earning wealth and property owners even less so.

So, when Minister Nene warns that "...such behaviour (tax payers taking it upon themselves to pay as little tax as possible, or absconding) not only negatively effects collection, it creates more social discontent", he also needs to honestly interrogate the climate that makes tax payers behave in the manner he describes. Our politicians cannot have it both ways.

Nene's unpacking of the possible ramifications of continued poor tax morale and the erosion of South Africa's tax base is absolutely on point. And it can be unpacked further. When people no longer have confidence that the taxes they pay are used to fund legitimate government programmes – as many see paying tax as their way of giving back - they will actively seek ways to pay as little as possible or not to pay at all. Why, I've heard some ask, would people willingly hand-over their hard earned money to a government run by unethical people who either steal the money, do not themselves pay tax – as it was alleged of former President Zuma – or actively help people said to be in the criminal underworld, some of whom are alleged cigarette smugglers, avoid paying their dues?

So, if nothing changes; and the threatening, racist, political rhetoric is allowed to continue, uncertainty grows as to whether people's property will continue to be protected by the laws of the country, some feel that this country no longer wants them and that there will be no room for their children here; everything that Nene fears will become reality.

Government will fail to reach its revenue collection targets and the funding of government grants, free tertiary education, and the delivery of services - basic or not basic – to the people of South Africa will become constrained. If any of this happens, the social discontent that Nene alludes to will dominate our newspaper headlines and TV screens. Violent protests will multiply, so will xenophobic attacks when scapegoats are sought and found in poor, hardworking foreign immigrants, especially ones emanating from the rest of the continent.

### Watch the rhetoric

The confusing messages being sent out about the ANC's push for land expropriation without compensation, irrespective of the outcomes of the long and expensive public consultation processes – and in the absence of a clear program detailing exactly how that will be done, when the process will start, who will be targeted and who will benefit, and on what basis – do not bode well for a government intent to throw in an economic stimulus package aimed at attracting investors and normalising economic activity in a climate of a technical recession and toxic political warmongering.

The ANC and government must ask themselves, given the deteriorating economic climate in the country, is this the right time to continue threatening both investor confidence and eroding the tax base when the country's need for economic and political stability is so pressing?

Who will be blamed when, come the end of the financial year, tax collection targets would not have been met? The usual minority suspects, apartheid yet again, incompetence, or ill-advised and misguided political rhetoric?

One thing should remain clear to those who will care to listen; South Africa will not regain economic stability and growth when politicians and government continue sending messages whose impact will only erode the country's tax base.

It will take a whole lot more than Chinese loans that seem generous on the surface – but whose terms and conditions remain classified – to get South Africa out of the path of the looming economic maelstrom.

*\*Solly Moeng is brand reputation management adviser and CEO of strategic corporate communications consultancy Don Valley Reputation Managers. Views expressed are his own.*

## OTHER NEWS?



### SARS has 300,000 companies in its crosshairs

Staff Writer 16 September 2018



The South African Revenue Service aims to penalise as many as 300,000 companies for failing to submit corporate income tax returns, the City Press reported.

SARS has missed its tax collection target already this year, while at the recent Nugent commission of inquiry into governance and administration at the tax body heard from National Treasury that the April VAT hike to 15%, which has put pressure on both consumers and producers, was partly blamed on the SARS's inability to collect taxes under commissioner Tom Moyane.

"We are at a stage now where we are relatively comfortable, based on the work we have been doing with the Companies and Intellectual Property Commission, that our register is in good nick and we can start imposing penalties," acting SARS chief officer for business and individual tax, Fabian Murray, told City Press.

"The system development has been taking place and it will go live on December 7. We have done the numbers – we understand exactly who the corporates are that we will issue with penalties."

It said that approximately 500,000 new companies were registered yearly, and "the vast majority yield nothing", citing acting Sars commissioner Mark Kingon.

## **S.Africa: The High Court considers the power of SARS to issue reduced assessments**

Posted on September 12, 2018.

In *Rampersadh and Another v Commissioner of the South African Revenue Service and Others*(5493/2017 [2018] ZAKZPHC 36 (27 August 2018)), the KwaZulu-Natal Division of the High Court had to consider the provisions of s93 of the TAA, where the applicant taxpayers (Taxpayers) lodged a review application. Specifically, the Taxpayers requested the High Court to review SARS's decision not to issue reduced assessments in terms of s93(1)(d) of the TAA.

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## **RECENT COURT CASE**

The High Court then moved on to s93. In terms of s93 of the TAA, SARS may only issue a reduced assessment under the following five circumstances:

- Where the taxpayer successfully disputed the assessment under Chapter 9 of the TAA (s93(1)(a));
- Where it is necessary to give effect to a settlement under Part F of Chapter 9 of the TAA (s93(1)(b));
- Where it is necessary to give effect to a judgment pursuant to an appeal under Part E of Chapter 9 of the TAA and there is no right of further appeal (s93(1)(c));
- If SARS is satisfied that there is a readily apparent undisputed error in the assessment by SARS or the taxpayer in a return (s93(1)(d)); or
- A senior SARS official is satisfied that an assessment was based on the failure to submit a return or submission of an incorrect return by a third party under s26 or by an employer under a tax Act; or the assessment was based on a processing error by SARS; or an assessment was based on a return fraudulently submitted by a person not authorised by the taxpayer (s93(1)(e)).

## TAX SEASON TIPS

## TAX TIPS

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To avoid data mismatches which may delay refunds or require bank verification at a branch, ensure that your bank account details with your employer (per your IRP5) and those on SARS eFiling match, or a data mismatch will arise when your employer submits its EMP501 to SARS. Further, when you change your banking details on your RAV01, delete the old bank account before loading a new bank account.

### Tax practitioner regulation.

The tax practitioner annual regulatory and audit process will start soon. Ensure you are familiar with the **CPD and other requirements.**

## TAX PRACTITIONER REQUIREMENTS AND REGISTRATION PROCESS

### 1. Background

Section 240 of the Tax Administration Act, 2011 (the TAA), requires every natural person who:

- provides advice to another person with respect to the application of a tax Act; or
- completes or assists in completing a return;

to register with or fall under the jurisdiction of an 'recognised controlling body' (RCB), as referred to in section 240A of the Tax Administration Act, 2011 (the TAA), by the later of 31 July 2013 or 21 business days after the date on which that person, for the first time, becomes liable to register. Such person must also register with SARS as a tax practitioner within 21 business days after becoming liable to register. Certain exceptions do apply as set out in section 240 of the TAA.

The TAA, defines certain bodies to be recognised controlling bodies (RCBs). They are:

- the Independent Regulatory Board for Auditors (IRBA);
- a Law Society established in terms of Chapter 3 of the Attorneys Act, 1979;
- the General Council of the Bar of SA, a Bar Council and a Society of Advocates referred to in Section 7 of the Admission of Advocates Act, 1964;
- a statutory body that the Minister is satisfied is similar to the statutory bodies listed above.

The Act further stipulates that the Commissioner may recognise a controlling body, if the body:

- Maintains relevant and effective:
  - minimum qualifications and experience requirements;
  - continuing professional education requirements;
  - codes of ethics and conduct; and
  - disciplinary codes and procedures.
- is approved in terms of section 30B of the Income Tax Act, 1962, for purposes of Section 10 (1)(d)(iv) of that Act; and
- has at least 1 000 members when applying for registration or reasonable prospects of having 1 000 members within a year of applying.

## 2. Requirements for registration

In order to qualify for registration as a tax practitioner AND to maintain this registration on an ongoing basis, ALL of the following requirements must be met:

1. The person must belong to or fall under the jurisdiction of an RCB; and

*All SAICA members (CA(SA) & AGA(SA)) would qualify in respect of this aspect. However, these members are required to request SAICA to submit their details to SARS for registration purposes (see below).*

2. The person must have the minimum qualifications and experience set by the relevant RCB; and

*SAICA members will also comply with this requirement due to the SAICA entry requirements.*

3. The person must not have been removed from any other controlling body, within the last five years, as a result of serious misconduct; and

4. The person must not have criminal convictions in respect of the offences described in section 240(3) of the Tax Administration Act during the last five years, that is:

- theft, fraud, forgery or uttering a forged document, perjury or an offence under the Prevention and Combating of Corrupt Activities Act, 2014; or

- any offence involving dishonesty,

for which such person has been sentenced to two years in prison without the option of a fine or a fine exceeding the amount prescribed in the Adjustment of Fines Act, 1991; and

*SAICA verifies this on an annual basis as part of the annual tax practitioner declaration and audit process.*

5. The person must not have been convicted of a serious tax offence within the last five years; and

A serious tax offence is defined as a tax offence for which a person may be liable on conviction to imprisonment for a period exceeding two years, without the option of a fine; or to a fine exceeding the equivalent fine under the Adjustment of Fines Act 101 of 1991, currently R120 000.

6. The registering member must be compliant with SAICA's code of ethics; and

*This may include the person being substantively compliant with all his or her personal tax affairs as at the date of registration for new practitioners or renewal of membership for previously registered practitioners.*

7. The person must participate and comply with the continuous professional development requirements as set by the RCB.

*In terms of the SAICA CPD policy, 120 hours CPD must be attained in a rolling 3 year period, of which 60 hours must be verifiable and with a minimum of 20 hours in any specific year.*

The SARS requirement for tax practitioners applies from date of registration (that is, apportionment applies). In terms of these requirements, tax practitioner members must attain an annual equivalent of **at least 15 hours tax specific CPD for each year or part of the year, 60% (9 hours) of which is verifiable**. This requirement for tax-specific CPD is documented in the [SAICA CPD policy](#).

For further detail on what constitutes verifiable and non-verifiable CPD, refer to the SAICA CPD policy.

Note that SAICA verifies this on an annual basis as part of the annual tax practitioner declaration and audit process.

**Deregistration of Tax Practitioners for Tax Non-Compliance – What are the Practical Implications?**

As part of the tax practitioner regulatory regime, Recognised Controlling Bodies (RCB) agreed to support the South African Revenue Services (SARS) by assisting with tax compliance by incorporating tax compliance as an ethical conduct matter, though this requirement was not applicable to statutory RCB's such as the Independent Regulatory Board for Auditors (IRBA) and the Law Society.

However, it soon became clear that not only was this an unequal requirement, it also became burdensome as RCBs have to, through their members, request manual tax compliance information just to report back to SARS the information obtained from them.

To address some of these concerns, SARS as the primary regulator of the tax practitioner regime, proposed to take over this function and formalise it in law to also apply to all tax practitioners. This proposal was then actioned through inserting the proposed new section 240(3)(d) of the Tax Administration Act, 2011 (the TAA) in the Taxation Laws Amendment Bill 2018.

27. Section 240 of the Tax Administration Act, 2011, is hereby amended by —

- a) the deletion in subsection (3) of the word “or” at the end of paragraph (b);
- b) the deletion in subsection (3) of the full stop and the addition of the phrase “; or” at the end of paragraph (c);
- c) the addition in subsection (3) of the following paragraph:

*“(d) during the preceding period of six months has repetitively or for a continuous period of at least three months not been tax compliant to the extent referred to in sections 256(3)(a) and (b) and has failed to remedy such non-compliance within the period specified in a notice by SARS.”*

This amendment will become effective on the date of promulgation, which SAICA estimates to be about December 2018.

SAICA has recently engaged with SARS on the proposal subsequent to our submissions to National Treasury and the Standing Committee on Finance as to concerns on the operational effect of this provision and ensuring that there are sufficient checks and balances in place to protect the tax practitioner, where relevant. In clarifying how this provision is envisaged to operate, it was explained in principle as follows by SARS:

If a tax practitioner is tax non-compliant for 3 months consecutively (e.g. tax return outstanding for 3 months) in a 6 months' period or repetitively (i.e. assuming more than once), you will receive a compliance notice from SARS to rectify. If the tax practitioner does not rectify in time, the tax practitioner will be deregistered or refused registration. The person

will then only be able to reregister after correcting the compliance and will only qualify to apply for reregistration after a period of 6 months has elapsed since the date of non-compliance was rectified and no other incidences of non-compliance occurred in that period. Essentially, SARS state that the "punitive sanction" is not only the deregistration but also preventing the person being registered for an additional 6 months, which in their view will better prevent repetitive non-compliance.

This is quite a serious extension to just being tax non-compliant and SARS compelling compliance. It should also be noted that normal financial sanctions would still apply over and above such non-compliance. SAICA has expressed its concerns as to the operational and legal impact of essentially closing down a tax practice for 6 months or effectively permanently, for a mere 3 months' non-compliance or "repetitive cases" within 6 months (e.g. late PIT return and late VAT return). In this regard, SAICA is still concerned that the sanction is disproportionate and does not fit the transgression and harm to the fiscus.

Furthermore, the actual impact of this is not just with tax practitioners, but their clients as well, especially as it relates to tax compliance services. Should a tax practitioner be deregistered, all his or her clients on SARS Efilng would have to be transferred to another tax practitioner to complete the compliance work before due dates as no extensions will automatically apply to them in this scenario and they would have to apply to SARS individually under the exceptional circumstance exclusion (section 218), after the fact. It is also unclear at this stage if these taxpayers will even receive a notification from SARS on the happening of the deregistration event.

SAICA will continue to engage all the relevant stakeholders on our concerns on the practicalities of this proposal, however tax practitioner members are forewarned to ensure that all their personal tax affairs are up to date by December 2018 and to ensure that they have sufficient internal controls in their practices to ensure that their own tax compliance is continually monitored and kept in compliance with the law. Should there be any changes to the proposed amendment, this will be communicated to members.

## SAICA FEEDBACK SUMMARY 6 SEPTEMBER 2018

### **GENERAL**

SAICA attends various discussions and meetings on behalf of members with National Treasury ("NT"), South African Revenue Service ("SARS") and other stakeholders (internal and external). These meetings represent an opportunity for them to obtain further information on any tax matter from the public and discussions and views expressed do not represent policy or decisions. Furthermore, these discussions do not represent an undertaking by SARS, NT or other stakeholders, but merely statements of their understanding or how they perceive or anticipate a particular matter to be addressed.

The below Feedback Summary should be seen in the above context as merely attempts to inform SAICA members of the discussions and of any proposals that were made during such discussions.

**SARS/RCB WORKSHOP**  
**27 - 28 AUGUST 2018**

Based on ongoing engagement between SAICA and SARS, earlier this year, SARS agreed to host a two-day workshop with all recognised controlling bodies (RCBs) to discuss strategic matters specific to RCBs. The workshop was well attended by representatives from various RCBs who provided input to challenges raised.

Some of the issues discussed are as set out below:

1. Tax practitioner regulatory model and other tax practitioner related issues

Discussions were held regarding the effectiveness of the current tax practitioner regulatory model. Discussion points include the following:

- Concerns were raised regarding the inequity with respect to the annual regulatory and reporting requirements for statutory bodies (currently the IRBA, the Law Society and the Council of the Bar) and their members, as opposed to those requirements applicable to the other professional bodies and their members, that had to apply and were granted recognised controlling body (RCB) status;
- Feedback was requested in respect of the reports previously submitted to SARS and the Minister of Finance. In this regard, SARS is also awaiting results of disciplinary action taken against non-compliant tax practitioner members of the relevant RCBs to test the effectiveness of procedures currently carried out;

- Proposals regarding how the current model could be redesigned (via legislative changes) to address concerns raised vs the alternative of an independent regulator, instead of the current co-regulation model, were discussed. It was agreed that RCBs would engage with their respective member bodies to determine the preferred regulatory model. SAICA will circulate a member survey in this regard and we encourage all tax practitioner members to participate in such survey;
- Sustainability of the tax profession through value add for tax practitioners needs to be considered as a quid pro quo for the onerous regulatory model. Members will be engaged in this regard to ensure that we communicate to SARS the types of benefits one would appreciate in exchange for the onerous requirements to be maintained by tax practitioners. However, SARS questioned whether tax practitioners were also agreeable to taking on additional risk and liability in effecting these services;
- Review of the tax practitioner appointment system and whether this needs to be reconsidered based on experience with the system over the last 6 months to a year. SARS also provided statistics to show that cancelled and missed bookings contributed significantly to the delay;
- Concerns were raised regarding the fact that whilst registered tax practitioners had to comply with many requirements, there seem to be a large number of unregistered individuals who are still providing tax services for a fee. SARS noted that they are exploring means of identifying such individuals who will be dealt with appropriately. SARS also noted that RCB's and tax practitioners also have a role to play in addressing this and should assist in educating the public but also reporting transgressors;

- Appropriate treatment of tax practitioner members against whom complaints by SARS are referred for action to RCBs. Timelines and reporting procedures are to be considered and agreed upon by SARS and RCBs, bearing in mind RCBs' current disciplinary processes;
- The practical implications of implementing the proposed amendment to deregister tax practitioners for tax non-compliance, was discussed. Please refer to the Tax Alert shared under Important Notices for more details in this regard.

## 2. Effective SARS communication to tax professionals and taxpayers

It was noted that there has been an improvement in communication over the last few months. However, there are still improvements to be made and there have been specific concerns as to whether the communication is timely, especially with respect to changes in tax returns or systems.

Concerns were also expressed as to inclusivity – that is, instead of just communicating with a specific industry, communication needs to be shared with the RCB's to determine

whether taxpayers and tax practitioners may also be affected where there are industry specific challenges.

SARS acknowledged that improvements are ongoing and agreed that in addition to notifying RCBs of upcoming changes with more lead time they will also allow more testing by a closed group of users. This will be done in such a manner so as to allow sufficient time for amendments to be considered and implemented if deficiencies are identified in the testing process.

SARS have acknowledged that there are some inconsistencies in their processes and/or operations across the different regions and SARS Executives have committed to personally visit the various regions with a view to understanding the operations and ensure consistency throughout.

RCBs committed to communicating issues timeously to SARS, together with examples (where relevant) to validate system related issues. We encourage members to assist us in this process by alerting SAICA of any operational issues, together with specific examples in this regard.

SAICA raised concerns regarding the effectiveness of the current centralised escalation model/processes. SARS agreed to consider the proposal to decentralise the process which would allow RCBs direct access to various divisions within SARS as opposed to escalating all matters to one central point at a Head Office level. It was also agreed that, within the next quarter, terms of reference be drafted to guide the engagement between SARS and RCBs, with specific recourse in the event that matters are not addressed timely as per agreed timelines.

From a tax practitioner perspective, SARS specifically agreed to communicate changes via the Tax Practitioner Connect newsletter more frequently and ad hoc alerts will be distributed by SARS where relevant.

### 3. SARS Stakeholder engagements

All parties agreed that there needs to be alignment and consistency in SARS/RCB engagements nationally, with regional offices taking responsibility to escalate matters to a Head Office level where resolution cannot be reached regionally.

It was agreed that between SARS and the RCBs, agreement will be reached as to which limited SARS regions and venues will host the engagements and RCBs will nominate specific representatives to attend these to ensure that issues raised at these meetings are representative of all members concerns in a specific region and not to a particular tax practitioner/firm. Concerns were also raised that not all RCB's are participating in the various RCB/SARS engagements and that RCB's should fully commit to participate.

Concerns were raised regarding the fact that some high priority items that have been on the agenda for the SARS National Stakeholder meetings have remained unresolved for

the past 3 – 5 years, SARS acknowledged that these issues need to be resolved as a matter of urgency and have committed to implementing internal SLAs with the various divisions within SARS to ensure that matters escalated are prioritised appropriately and dealt with timeously.

4. Training SARS officials and SARS training the public

There was acknowledgement that there are staff capacity issues and skills gaps to be addressed, within SARS. SARS advised that they have implemented a skills gap analysis program to identify training needs and where necessary, there are training interventions that take place. However, SARS is open to suggestions in this regard.

RCBs agreed to engage, as a collective, in order to identify training needs and propose solutions to address concerns around training and expertise of SARS staff.

Regarding training of taxpayers and tax practitioners, SARS advised that training is available and is communicated via the SARS website. The Tax Practitioner Unit advised that it will be rolling out further training for tax practitioners specifically and that this would be communicated accordingly

ETHICS NEWS?

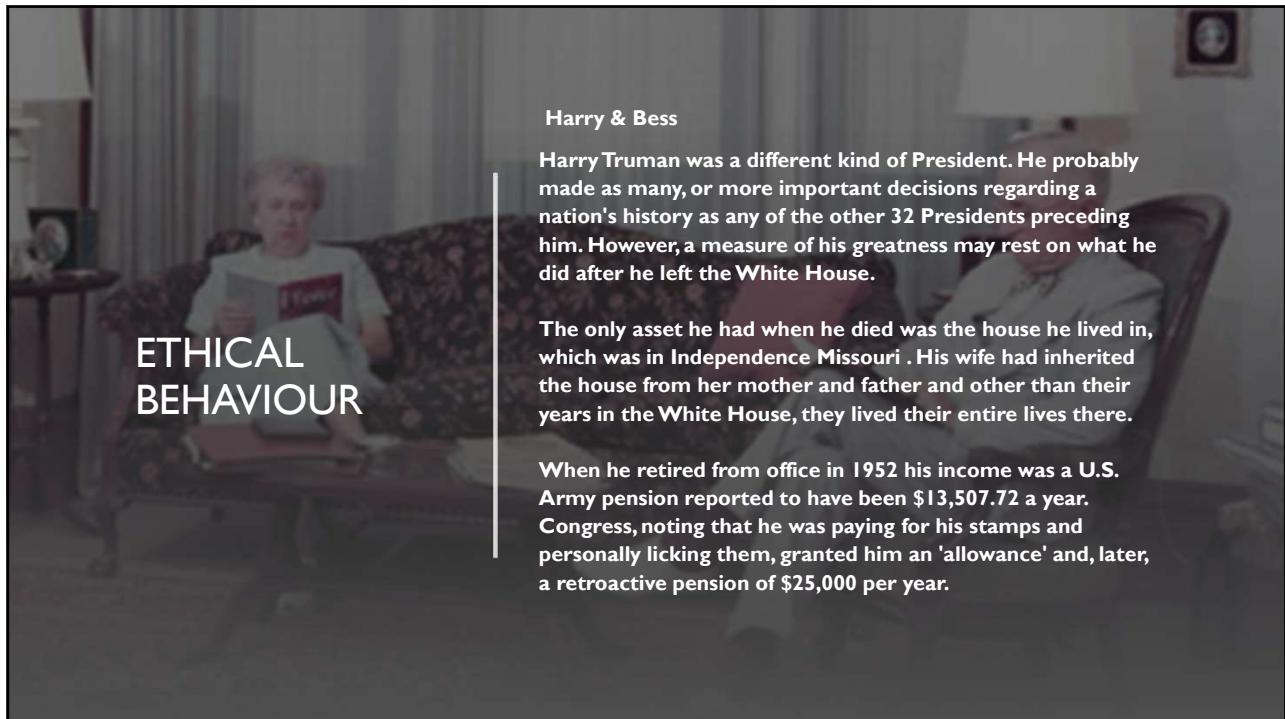


# CORPORATE GOVERNANCE



B SQUARE FINANCIAL

# THE Business to Business BUSINESS



**ETHICAL BEHAVIOUR**

**Harry & Bess**

**Harry Truman was a different kind of President. He probably made as many, or more important decisions regarding a nation's history as any of the other 32 Presidents preceding him. However, a measure of his greatness may rest on what he did after he left the White House.**

**The only asset he had when he died was the house he lived in, which was in Independence Missouri. His wife had inherited the house from her mother and father and other than their years in the White House, they lived their entire lives there.**

**When he retired from office in 1952 his income was a U.S. Army pension reported to have been \$13,507.72 a year. Congress, noting that he was paying for his stamps and personally licking them, granted him an 'allowance' and, later, a retroactive pension of \$25,000 per year.**

**ETHICAL BEHAVIOUR**

**After President Eisenhower was inaugurated, Harry and Bess drove home to Missouri by themselves. There was no Secret Service following them.**

**When offered corporate positions at large salaries, he declined, stating, "You don't want me. You want the office of the President, and that doesn't belong to me.. It belongs to the American people and it's not for sale."**

**Even later, on May 6, 1971, when Congress was preparing to award him the Medal of Honour on his 87th birthday, he refused to accept it, writing, "I don't consider that I have done anything which should be the reason for any award, Congressional or otherwise."**

**As president he paid for all of his own travel expenses and food.**

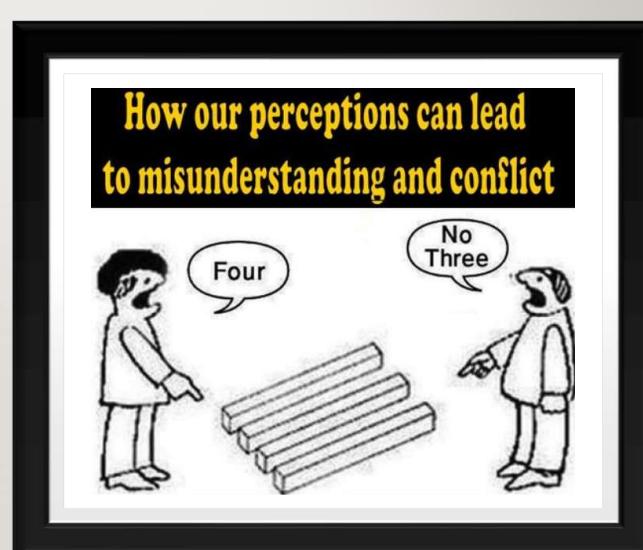
**Modern politicians have found a new level of success in cashing in on the Presidency, resulting in untold wealth. Today, too many in Congress also have found a way to become quite wealthy while enjoying the fruits of their offices. Political offices are now for sale.**

**Good old Harry Truman was correct when he observed, "My choices in life were either to be a piano player in a whore house or a politician. And to tell the truth, there's hardly any difference!"**



## ETHICAL BEHAVIOUR

## PERCEPTIONS



## DO WE KNOW WHERE YOU ARE GOING?

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## REPUTATIONAL RISK

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### The fragility of reputation

"It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently"

Warren Buffett  
CEO Berkshire Hathaway



IF YOU  
DON'T KNOW WHERE  
YOU'RE GOING  
ANY ROAD  
WILL GET YOU  
THERE

THE ROLE AND FUNCTION OF THE  
BOARD LIE AT THE HEART OF  
CORPORATE GOVERNANCE

CORPORATE  
GOVERNANCE

## CORPORATE GOVERNANCE

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*“To set aside one’s prejudices, one’s present needs, and one’s own self interest in making a decision as a director for a company is an intellectual exercise that takes constant practice. In short, intellectual honesty is a journey and not a destination.”*

Mervyn King

## CORPORATE GOVERNANCE

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*“Good corporate governance is about ‘intellectual honesty’ and not just sticking to rules and regulations, capital flowed towards companies that practised this type of good governance.”*

**MERVYN KING**

## CORPORATE GOVERNANCE

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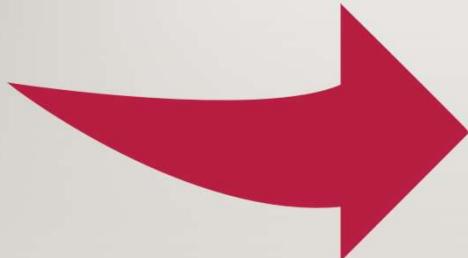
Good corporate governance with an appropriate balance between conformance and performance is the only response to the difficult and demanding business environment in which organisations now operate.



## CORPORATE GOVERNANCE

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WHERE DO WE TAKE OUT GUIDANCE /  
INSTRUCTIONS FROM?



## COMPANIES ACT, NO 71 OF 2008.

The Companies Act, No 71 of 2008 sets out the duties, responsibilities and personal liability of directors, prescribed officers and committee.

## WHERE DOES KING FIT IN?

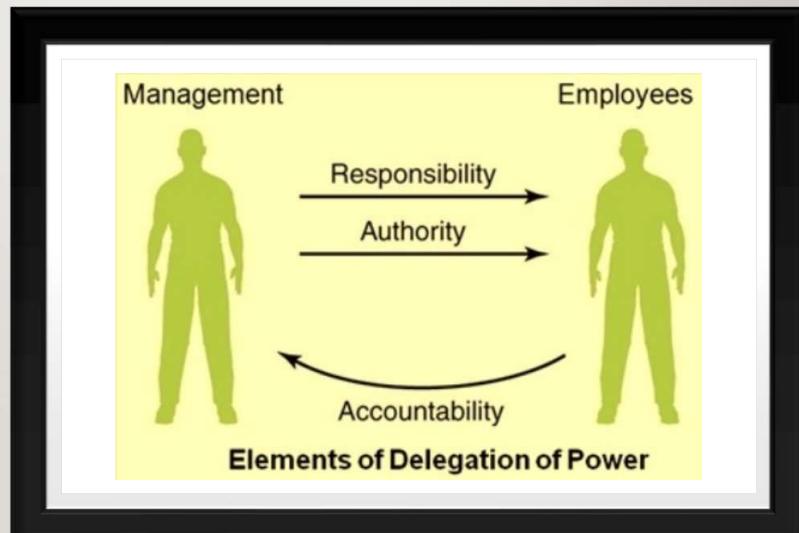
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The King reports were commissioned by The Institute of Directors in Southern Africa (IoDSA) owns the copyright of the King Report on Corporate Governance and the King Code of Corporate Governance.

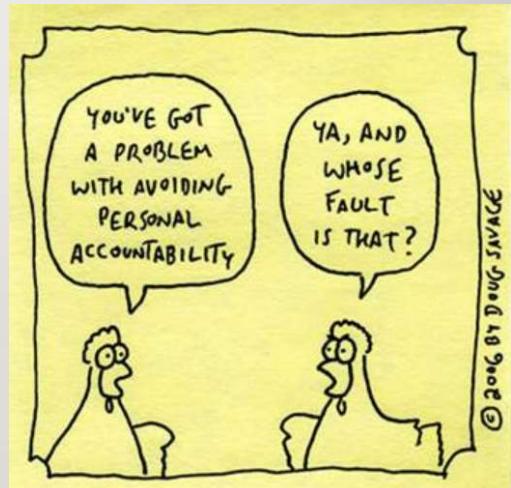
Three reports were issued in 1994 (King I), 2002 (King II), and 2009 (King III) and a fourth revision (King IV) in 2016. The Compliance with the King Reports is a requirement for companies listed on the Johannesburg Stock Exchange. The King Report on Corporate Governance has been cited as "the most effective summary of the best international practices in corporate governance".



YOU CAN  
DELEGATE THE  
DUTY BUT NOT  
THE  
RESPONSIBILITY



ULTIMATELY  
THE BOARD IS  
RESPONSIBLE



**DIRECTORS DUTIES, RULES  
AND RESPONSIBILITIES**

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**SUMMARY OF  
DIRECTORS DUTIES**

## DUTIES

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**Duty of proper purpose**



**Duty of good faith**



**Duty of care ,skill and diligence**

Co records  
Accounting records  
Appoint auditor  
Independent reviewer  
Prepare annual financial statements  
Prepare a directors report

## DUTIES

- Duty of care ,skill and diligence - cont
  - Get directors remuneration approved
  - Disclose directors remuneration
  - File annual return
  - Compliance
  - Not trade recklessly and insolvent conditions
  - Appoint audit committee
  - Appoint company secretary
  - Appoint social and ethics committee

**DUTIES**

- Duty to act intra virus
  - Comply with co act in relation to diff co's
    - Min number shareholders
    - Min number directors
    - Audit and Independent review requirements
    - Financial reporting standards
  - Duty of complying with co's Memorandum of Incorporation
  - Duty of ensuring shareholders can exercise voting powers and rights
  - Duty of ensuring co meet solvency / liquidity tests

**DUTIES**

- Duty of acting as a board
  - Duty to call /convene shareholder meetings
  - Duty to call board meeting

## **WHAT ARE THE RULES OF DIRECTOR DUTIES?**

### **RULE I**

- Ignorance no excuse or defence
- Transgressors could find to be personally liable to co, shareholders, investors , creditors and public
- In some cases even face criminal sanctions

**WHAT ARE  
THE RULES  
OF  
DIRECTOR  
DUTIES?**

## WHAT ARE THE RULES OF DIRECTOR DUTIES?

### RULE 2

- Duties delegated to managerial staff, must be satisfied they are suitably experienced, honest and reliable
- Director who breaches these duties may be sued for recovery of its property or damages

## WHAT ARE THE RULES OF DIRECTOR DUTIES?

### RULE 3

- When co and personal interests conflict, those of company takes preference

## WHAT ARE THE RULES OF DIRECTOR DUTIES?

### RULE 4

- Directors have a positive obligation to promote and protect the interests of the company
- If these duties are breached, may face civil actions brought by co, shareholders or in certain circumstances, those doing business with the company.

## WHAT ARE DIRECTORS' DUTIES AND RESPONSIBILITIES?

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MONITOR FINANCIAL  
STATEMENTS AND  
PERFORMANCE  
INDICATORS

## I. DUTY TO BE INFORMED

### 2. DUTY TO COMMUNICATE TO SHAREHOLDERS AND STAKEHOLDERS

- Evaluate existence of transparency and communication forums, reports and documentation within framework of confidentiality

### 3. DUTY OF TIME MANAGEMENT

1

Attendance at director meetings and sending sufficient time and effort necessary to carry out duties

2

Responsible to insist that board papers and information are provided in a timely manner

### 4. DUTY OF CARE DILIGENCE AND SKILL

- Responsibility of implementing the principals of good business governance
- Responsibility of adhering to proper decision making processes

## 4. DUTY OF CARE DILIGENCE AND SKILL - CONT

- Responsibility of assessing operational performance of the business;
  - Strategic issues
  - Structural issues
  - Systems checks and balances, risk man issues
  - Objective goals budgets
  - Results of performance, reporting

## 5. DUTY TO KEEP PACE WITH CORPORATE DEVELOPMENT

- Responsibility to invest in personal corporate development, use appropriate committees and to take professional advice if in doubt

## BOARDS OF HIGH-PERFORMING ORGANISATIONS USUALLY:

- understand the board's role in governance
- discharge their legal duties
- ensure accountability to shareholders
- understand stakeholder expectations
- structure an effective board
- effectively use board committees to enhance governance
- build a talented management team
- champion a productive and ethical culture
- make informed decisions
- actively contribute to strategy, and closely monitor strategic effectiveness
- ensure a disciplined approach to risk governance
- receive independent assurance
- actively engage externally on current and emerging issues relevant to their organisation and the political, social, and economic environment in which it operates.

## KING IV REPORT

If one was asked to summarise King IV™ in one word, 'transparency' would come to mind. King IV™ builds on its predecessors' positioning of sound corporate governance as an essential element of good corporate citizenship. Good corporate governance requires an acknowledgement that an organisation doesn't operate in a vacuum, but is an integral part of society and therefore has accountability towards current and future stakeholders. With the introduction of an 'apply and explain' regime, King IV™ asks organisations to be transparent in the application of their corporate governance practices.

## KING IV REPORT

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King IV™ reinforces the notion that good corporate governance is a holistic and interrelated set of arrangements to be understood and implemented in an integrated manner – good governance is not a tick-box or compliance exercise. King IV™ asks for mindful application of the King IV Code™ and for its recommended practices to be interpreted and applied in a way that is appropriate for the organisation and the sector in which it operates. Mindful application harnesses the benefits of corporate governance in the interests of the organisation.

## SOURCES

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- KPMG – directors duties
- KING IV Report on Corporate Governance
- Companies Act 71 of 2008
- The Institute of Directors in Southern Africa (IoDSA) and the King Committee released the King IV Report on the 1st of November 2016.
- Corporate Governance a guide for Directors – Cliffe Dekker Hofmeyr
- A summary of the King IV Report on Corporate Governance™ for South Africa, 2016 – PWC
- King IV Report on Corporate Governance a comparison- PWC

# WHAT'S NEW AT SARS?

**Enhancements to the Income Tax Return for Trusts  
(ITR12T)**

During September 2018, the South African Revenue Service (SARS) will implement several changes to the Income Tax Return for Trusts (ITR12T) in respect of the year of assessment ending on 28 February 2018.

The changes are being implemented as part of SARS's ongoing efforts to promote efficiency and compliance.

If you saved or submitted your 2018 ITR12T prior to the implementation of the latest changes, none of the new fields will be presented for completion.

The contents of the return are fully customisable, based on answers to certain questions presented to you for completion.

### Some important changes to the ITR12T

- The Trust Type will be pre-populated on the ITR12T. If the Trust Type is Special Trust Type A or B, validation questions will be presented for response, and based on the answers provided, the Trust Type may change;
- Certain fields on the Income from Local Farming Operations (IT48) and Income from Local Partnership Farming Operations (IT48V) will be pre-populated, and certain fields will now auto-calculate;
- The Income from Local Farming Operations (IT48) and Income from Local Partnership Farming Operations (IT48V) will now cater for negative currency to be captured;
- The Trustee will be able to select one or both of the options Vested and Discretionary, if this is applicable to the Trust;

- A new question pertaining to Imputed Income from Controlled Foreign Companies has been added to the ITR12T wizard. If this is applicable to the Trust, the ITR12T form will display a new container to be completed; and
- The following fields have been added to the IT12T and ITA34T:
  - Reduction in Debts (s19).
  - Cash contributions to a Rehabilitation Trust Fund (s37A).
  - Amounts in respect of certain (tainted) intellectual property (s23I).

#### Supporting documentation and additional information

The following documents (at a minimum) are needed in order to complete the Income Tax Return for Trusts (ITR12T) on eFiling:

- Financial statements and/or administration accounts
- All certificates and documents relating to income and deductions
- Proof of any tax credits claimed
- Particulars of assets and liabilities
- Details of persons/beneficiaries to whom income, capital and/or assets were distributed/vested.

Please note that for ITR12T submitted at a SARS branch, all relevant supporting documents must be provided.

Remember to keep all supporting documents for five years. SARS may request the documents if verification is required.

Where applicable, the following schedules which are available on the SARS [www.sars.gov.za](http://www.sars.gov.za), website, must be completed, as you will be required to upload these in respect of your ITR12T submission:

- Where the Trust was engaged in mining or mining operations, as defined in Section 1 of the Income Tax Act: Mining Schedules A and B.

- Where the Trust, together with any connected person in relation to the Trust, holds at least 10% of the participation rights in any controlled foreign company (CFC): IT10 schedule (in respect of each CFC).

To upload the supporting documents via eFiling, click on "Upload supporting documents" once you are ready to submit your return.

#### Maintaining registered particulars of the trust

- Before completing the ITR12T return, the Trust's particulars will have to be maintained.
- Make sure that the contact, address, banking and trustee details are correct by updating, where required, on the Registration, Amendments and Verification Form (RAV01). The RAV01 can be verified and updated by:
  - Clicking on "Maintain Registered Particulars" on eFiling. SARS may request you to come into a branch to verify any changes to the banking details which may have been effected via eFiling;

#### How to submit the ITR12T

You can submit the ITR12T via the following channels:

- eFiling: Taxpayers who have not yet registered for eFiling are encouraged to do so, as this will enable them to complete and submit the return online in a secure environment.
- SARS branch: If you are representing a trust with ten or fewer beneficiaries, you have the option to have the ITR12T return captured by an agent at the branch. Please print the return and complete all the required fields prior to

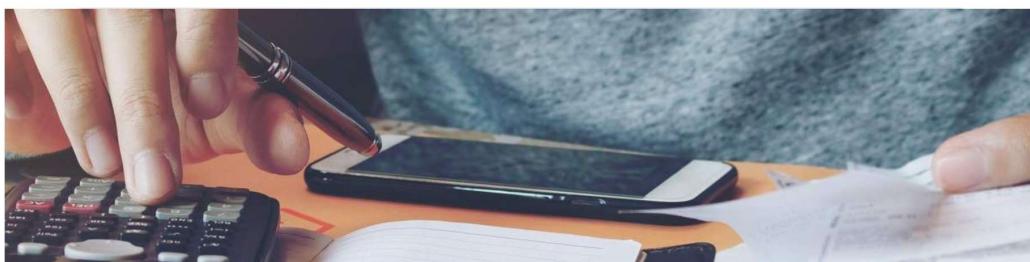
visiting the branch. You can download the ITR12T return from the SARS website [www.sars.gov.za](http://www.sars.gov.za). **SARS branches will no longer print the ITR12T.**

**Please note that manually completed and posted ITR12Ts are no longer accepted by SARS.**

For more information, please visit the Trust page on the SARS website [www.sars.gov.za](http://www.sars.gov.za), where you will find guides which will help you to complete and submit your return, or contact the SARS Contact Centre on 0800 00 7277.

**THE SOUTH AFRICAN REVENUE SERVICE**

**04 September 2018**



Death and taxes: Situs explained

In the tax world, one of the worst words you will hear is 'situs'.

It is commonly known that on death, the tax levied in South Africa is called estate duty. But, if you hold assets abroad, from a tax perspective, situs comes into play.

Situs is Latin for 'position' or 'site'. The situs of an asset is generally the place where an asset is located for legal purposes. For example, the situs of immovable property is the place or country where the property is situated, or in the case of a company, where incorporated or where the share register is maintained.

However, not so commonly known is that on death, both the UK and the US also levy an estate duty on certain situs assets.

On death, South African residents are liable for estate duty based on their worldwide assets. Estate duty is currently levied at a rate of 20% in the case of an estate less than R30 million, and at a rate of 25% on the value above R30 million.

However, not so commonly known is that on death, both the UK and the US also levy an estate duty on certain situs assets, ie certain assets that are physically situated within its jurisdiction. In the UK, this is known as inheritance tax and in the US it's called estate tax. Collectively, these are known as situs taxes. This is important to note if you have assets in either country.

In the UK, 40% situs tax will be levied on situs assets over the value of £325 000. Any amount falling below the £325 000 threshold is known as 'the nil rate band' and is free from situs tax. Each individual receives this £325 000 exemption. There will be no situs tax levied on any situs assets left to a surviving spouse. In addition to this, if the situs assets are left to the spouse, which results in the £325 000 exemption not being used, the exemption will roll over to the spouse. The spouse will then have a £650 000 exemption on his/her death.

In the US, the threshold for situs tax is dangerously low at only \$60 000. The top bracket for estate tax is 40% on US situs assets. In contrast to the UK, the US offers no spousal exemptions or rollovers unless the spouse is a US citizen.

So, on death, you will be in for 20% SA estate duty, as well as a potential 40% situs tax on your US and UK situs assets. You must be thinking "Is that not a double tax?" You are correct, but all is not lost.

It is important to ensure that the executor of your estate is aware of the situs applicable to your assets. To prevent double taxation, SA has entered into an estate duty agreement with both the UK and US, the terms of which allow the countries in which the situs assets are located to tax such assets.

South Africans will be able to claim a credit in SA for the situs taxes paid in the UK and US. However, the credits will be limited to a maximum of the 20% SA estate duty payable on the asset, even though you may have paid 40% in the US and UK. This essentially means that instead of paying 20% SA estate duty, you will pay 40% situs tax.

It is important to note that a credit is not automatically applied. It is your executor's responsibility to ensure the credit is claimed and applied. If this is not done, you may end up paying both 20% SA estate duty and 40% situs tax. The executor of your estate must be aware of the situs applicable to your assets. Failing to pay the necessary taxes may result in your executor becoming personally liable for the taxes as well as severe penalties for your executor and heirs.

Many people ask, "How will we know about the situs tax?"

Firstly, if an executor has not performed his/her duties and ensured the necessary taxes are paid, he/she may become personally liable for the situs taxes owing. Professional executors and estate administrators have therefore become the situs 'policemen' for HMRC and the IRS.

Secondly, global reporting and the automatic exchange of information means that the tax authorities most likely already know about the situs assets, which would have been reported under FATCA and the CRS.

## Tips for investing offshore in a situs-efficient way

To avoid incurring unnecessary taxes arising on death, South Africans investing offshore should always consult their tax practitioners and ensure that they understand international tax law, before making decisions.

Investing through an offshore trust or an offshore company may, in certain instances, mitigate situs exposure. However, this would require specialised structuring.

Investments through certain offshore unit trust portfolios, Exchange Traded Funds (ETFs) and insurance wrappers registered outside the relevant jurisdiction, may not attract situs tax, even if these hold underlying situs assets.

If you already invested in assets that could attract situs tax, you could consider selling these investments and investing into platforms that are not considered situs assets. However, you need to consider the capital gains and income tax consequences before doing so. If you do hold situs assets, and the value of these assets do not exceed the nil rate bands, there would be no situs tax.

The world continues to grow into a global network, as do the global tax laws applicable to your worldwide assets. It has become much smaller and more integrated. Failing to consider the tax implications carefully of where you invest could create unnecessary costs and expenses for you and your heirs.

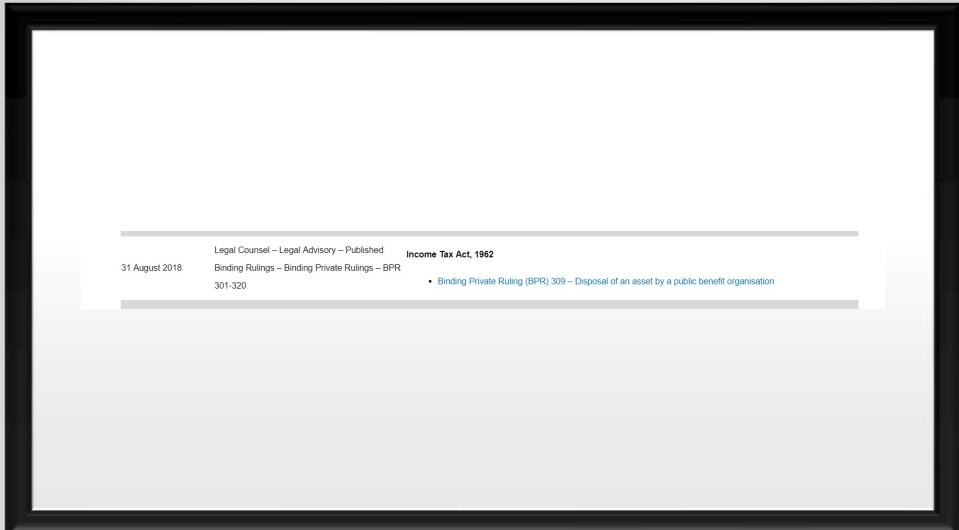
## S.Africa: Far-reaching proposed changes to the taxation of foreign trusts

Posted on August 30, 2018.

By ENSAfrica

The South African Draft Taxation Laws Amendment Bill, 2018 (the "Draft Bill"), which was published by the Minister of Finance on 16 July 2018, introduces many of the tax proposals announced in the 2018 Budget Review earlier this year.

Consistent with the general trend of combatting perceived areas of tax avoidance, among the tax changes contained in the Draft Bill are proposed amendments to the provisions in the Income Tax Act, 1962 (the "Act") dealing with foreign trusts that hold the majority of the shares in an underlying foreign company. The Explanatory Memorandum on the Draft Bill states that the proposed amendments are intended to close the loophole in the current tax legislation regarding the use of trusts to defer tax or recharacterise the nature of income.



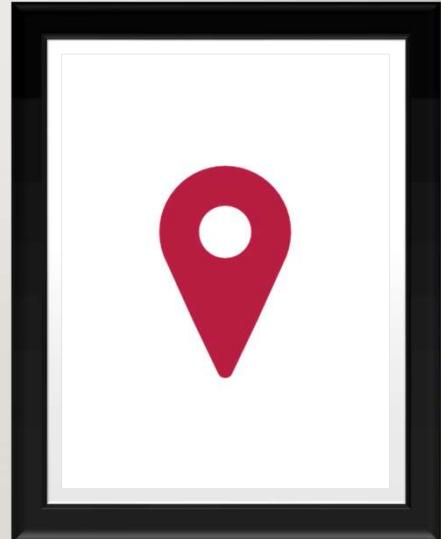
A computer monitor is mounted on a light-colored wall. It shows a list of legal documents. The first item is dated 24 August 2018, mentioning "Legal Counsel – Legal Advisory – Interpretation Notes" and a "Summary of all Interpretation Notes updated". The second item is also dated 24 August 2018, mentioning "Legal Counsel – Legal Advisory – Interpretation Notes – Numbers 41-60" and a link to "Interpretation Note 45 (Issue 3) – Deduction of security expenditure". The third item is dated 24 August 2018, mentioning "Legal Counsel – Archive – Interpretation Notes" and a link to "Interpretation Note 45 (Issue 2) – Deduction of security expenditure".



## WHERE TO FIND IT?

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[HTTP://WWW.SARS.GOV.ZA/PAGES/WHATS-  
NEW.ASPX](HTTP://WWW.SARS.GOV.ZA/PAGES/WHATS-NEW.ASPX)



OPEN DISCUSSION

## NEXT STAKEHOLDER AGENDA ITEMS

### QUESTIONS?

- 
- [www.bsquare-financial.co.za](http://www.bsquare-financial.co.za)
  - Martin : 083 634 0092
  - Suzette : 084 700 9776
  - info@b2square.co.za

