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# THE IMPACT OF DIGITALISATION ON TAX TRANSPARENCY

by

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# Abbreviations

| | |
|---|---|
| OECD | Organisation for Economic Co-operation and Development |
| SARS | South African Revenue Service |
| EU | European Union |
| TIEA | Tax Information Exchange Agreement |
| USA | United States of America |
| QI | Qualified Intermediary |
| UBS | United Bank of Switzerland |
| FACTA | Financial Accounts Tax Compliance Act |
| DTA | Double Tax Agreements |
| CSR | Common Reporting Standards |
| CBCR | Country-by-Country Reporting |
| BEPS | Base Erosion and Profit Shifting |
| CFC | Controlled Foreign Companies |
| VAT | Value-Added Tax |
| DTC | Davis Tax Committee |
| E-commerce | Electronic Commerce |
| B2B | Business to Business |
| B2C | Business to Consumer |
| NGO | Non-Governmental Organisation |
| PWC | PriceWaterhouseCoopers |
| BRICS | Brazil, Russia, India, China and South Africa |
| Income Tax Act | Income Tax Act No.58 of 1862 |
| TAA | Tax Administration Act, No.28 of 2011 |
| VAT Act | Value-Added Tax Act, No.89 of 1991 |
| JSE | Johannesburg Stock Exchange |
| IFRS | International Financial Reporting Standards |
| King III | King Code of Corporate Governance |

# Key Words

Tax Transparency

Digitalisation/Digital Economy

Tax/Taxation

Tax Policy

# CHAPTER 1

## Introduction and Overview

# 1 CHAPTER 1 – INTRODUCTION AND OVERVIEW

## 1.1 RATIONALE / MOTIVATION FOR THE RESEARCH

There is a long history of the Fundamental Principles of Taxation which have shaped the tax systems that exist all over the world today. Smith (1776) formulated his own four tax principles, which he referred to as maxims in his book: *An inquiry into the nature and causes of the Wealth of Nations*, which included the concepts of equity; fairness and certainty. These principles remain some of the key Fundamental Principles of Taxation considered by many when formulating the constructs for today's modern society (Du Preez, 2016:4). For example, the Organisation for Economic Co-operation and Development (OECD) considered these underlying principles in their broad taxation principles that should apply to electronic commerce (OECD, 1998:4).

As further work has been performed on the Fundamental Principles of Tax, other key criteria were identified and have been included by various scholars in their review of these principles (Du Preez, 2016:3-5). The Davis Tax Committee (DTC) (2016) and the Mirrlees Review (2011) also considered these principles when analysing the design requirements of a modern tax system in South Africa and the United Kingdom respectively. As noted, one of the key principles which has emerged over time is that of Tax Transparency (Du Preez, 2016:74-76). In recent years, due to evidence of aggressive tax structuring by companies and the erroneous publication of schemes intended to evade tax, Tax Transparency has become an internationally recognised area for tax policy development (Kyamulesire, 2017:4). One of the reasons for better Tax Transparency is the developments in technology as well as the introduction of digital economies to conduct everyday business. As technology amalgamates with the economy, there is a growth in the use of digital economies to do business – both locally and internationally (Juswanto & Sims, 2017).

Aggressive tax planning, whereby companies seek to minimise their total tax liability, and technology advancement have resulted in various tax authorities and economic forums commenting on Tax Transparency, in order to fully understand where the economic benefits of business arise, as well as reviewing the practical application thereof in a modern tax system (OECD, 2017:2). Additional laws and regulations, and global cooperation are some of the more recent changes seen to combat non-compliance of taxpayers and their tax obligations. The OECD has provided various action plans to assist countries in addressing the tax and economic issues which affect trade internationally. Included within these actions plans are recommendations for tax policies in order to reduce tax base erosion whereby companies shift their profits to a jurisdiction which has a lower tax rate instead of paying taxes where the economic benefit arose. Having a better understanding of each business will allow for fairer tax distribution and an improvement on tax compliance.

From a South African perspective, the DTC was formed in order to analyse the South African tax system and compare against the international tax practices, principles and recommendations (DTC, 2013). In providing recommendations, the DTC (2016:14) also needed to consider the key principles which needed to be considered when tax legislation and tax policy changes are made. These principles are therefore, a part of the design process which is the underlying foundation for their recommendation (DTC, 2016:14). In their final report, *Macro Analysis of the Tax System and Inclusive Growth in South Africa,* the DTC (2016:14) noted that the tax policy principles which are important when designing a tax system are efficiency, equity, simplicity, transparency and certainty as well as tax buoyancy. Furthermore, the DTC also noted that a balance of these principles has to be considered and that not all principles can be applied perfectly with each other and trade-offs have to be considered between them (DTC, 2016:14).

The current study aims to review the Fundamental Tax Principle: Tax Transparency including the history and characteristics as well as the reasoning behind this being a fundamental principle of a modern tax system. The study will include a review of how digital economies, technology changes and business operations have influenced the importance of Tax Transparency. Lastly, the study will focus on the current application within the South African tax system as well as general trends relating to this principle.

## 1.2 PROBLEM STATEMENT

As the world is becoming a global village and is entering a digitalised age (sometimes referred to as the 4th Industrial Revolution (Davis, 2016)), both corporate and individual taxpayers alike are using this opportunity to reduce their tax burden both legally and illegally. Examples of these schemes would be the tax structuring implemented by Amazon and Starbucks and the many individuals who were named in the 'Panama Papers' scandal (Kyamulesire, 2017:4). Schemes like these create a greater tax burden on the taxpayers who are paying their fair portion of taxes (Kyamulesire, 2017:4).

With the ease of both global tax structuring and the use of digitalisation, it is a necessity that this is taken into consideration when assessing the current Fundamental Principles of Tax with a viewpoint of which principles will become more crucial in the future. As convoluted structures are designed with the intent to avoid one's tax burden, this study intends to investigate the impact of Tax Transparency as a Fundamental Principle of Tax on a modern tax system.

## 1.3 RESEARCH QUESTION

The research question that this study will answer, is:
How was the development and application of Tax Transparency as a Fundamental Principle of Taxation is influenced by digitalisation and technological advancements?

## 1.4 RESEARCH OBJECTIVES

The following research objectives will guide this study:

- To explore and analyse the history and development of Tax Transparency.
- To understand the impact of digitalisation and modern technology on this principle.
- To analyse the current application of this Fundamental Principle of Taxation by comparing the current South African legislation to the recommendations provided by the OECD and the DTC.

## 1.5 STRUCTURE OF MINI-DISSERTATION

**Chapter 1: Introduction**

Chapter 1 provides an introduction and summarised background into the current research. This chapter will provide a rationale for the study and what the study aims to achieve.

**Chapter 2: Method for conducting the systematic review**

Chapter 2 provides a summary of what an extended literature review entails and briefly summarises the research design and research methodology. The key words, limitations and sources are also highlighted in this chapter.

**Chapter 3: Introduction to Tax Transparency as a Fundamental Principle of Taxation**

Chapter 3 provides an introduction into the Fundamental Principles of Taxation and how Tax Transparency forms part of these principles. An understanding of what the Fundamental Principles of Taxation are, and the factors which contribute to why Tax Transparency forms part of them, is discussed.

**Chapter 4: Digitalisation, taxes and the impact on Tax Transparency today**

Chapter 4 provides an extended review of the available literature of digital economies and their effect on taxation and Tax Transparency. Specifically, this chapter will address whether there is a need for greater Tax Transparency and how Tax Transparency is affected by digital economies. The current situation in South Africa is considered in order to assess how Tax Transparency is applied.

**Chapter 5: Conclusion and analysis**

Chapter 5 provides a summary of the findings and conclusions reached in each chapter. The chapter explains the contribution and limitations of the current study. Additional research which can be performed in the future is also noted.

# CHAPTER 2

## Method for Conducting the Systematic Review

# 2 CHAPTER 2 - METHOD FOR CONDUCTING THE SYSTEMATIC REVIEW

## 2.1 INTRODUCTION

The current study is performed by conducting a systematic review of the available literature. Saunders, Lewis and Thornhill (2016:74) noted that the purpose behind a literature review is not to provide a summary of all written research on a particular topic, but rather to find the most appropriate and noteworthy information which will assist in answering your research question. By critically analysing the material, new findings and theories should arise if the analysis is performed effectively (Saunders *et al.,* 2016:74). To perform a systematic review, one needs to provide the details on the method of analysis which is going to be performed. Chapter 2 provides a background into the research methodology and design which will be applied when completing the systematic review.

## 2.2 RESEARCH DESIGN ELEMENTS

### 2.2.1 Philosophical stance

When research is performed, the researcher's values and beliefs can have an impact on the reasoning for the research as well as the way the research is performed (Saunders *et al.,* 2016:101). This is influenced by the researcher's personal view on the knowledge obtained and the way it is established (Saunders *et al.,* 2016:122-126). A philosophical stance ranges from being completely independent of the researcher and those involved to being significantly influenced by the researcher's personal outlooks and those of the subjects. The stance taken by the researcher will ultimately affect the way the research is performed and the conclusions made.

Saunders *et al.* (2016:135) noted that a pragmatist is a person who finds that the research question is the best determinant of what research philosophy should be applied as the question will influence which is the best philosophy when conducting the research. The philosophical stance taken in performing the research for this study is pragmatism.

### 2.2.2 Nature of the study

The research question will influence the nature of the study being performed. Saunders *et al.* (2016:162-164) explain that research can be exploratory, descriptive or a combination of both. The combination method is known as an explanatory or causal study (Saunders *et al.,* 2016:162-164). An exploratory study is where something new is discovered through gaining further insight into an area, whilst a descriptive study is to increase and deepen the understanding of an area (Saunders *et al.,* 2016:162-164).

In order to identify the nature of the study, the work which is performed needs to be considered. The study will explain what Tax Transparency is, summarising the current research on digital economies and its effect on the importance of Tax Transparency as well as describing how this has affected the South African tax system. Based on the work which will be performed, the study is more akin to being descriptive in nature.

### 2.2.3 Method of reasoning

Further to the nature of the study, consideration is given to whether the research performed is an inductive, deductive or abductive method of reasoning. Inductive reasoning is where the data is analysed and theory appears based on the data analysis performed (Saunders *et al.,* 2016:144-149). Deductive reasoning is where a theory is tested against the data in order to determine whether the theory is tested so as to conclude on the hypothesis (Saunders *et al.,* 2016:144-149). Abductive reasoning is a combination of both deductive and inductive methods in a single study where the inductive approach is used to firstly identify a theory and then deductive methods are used to test whether the hypothesis created is true. (Saunders *et al.,* 2016:148)

The method of reasoning applied in this study will be an inductive reasoning approach. The reason being that data is collected and then analysed to see if a theory, which relates to the research question, emerges.

### 2.2.4 Time horizon

The timeframe over which a study takes place is known as the time horizon of the study. There are two separate time horizons, namely longitudinal and cross-sectional. A longitudinal study is one where the study is performed over a period of time. Saunders *et al.* (2016:200) noted that a longitudinal study is indicating what occurs over a period of time similar to that of a diary. Cross sectional studies are analysing a phenomenon at a particular point in time (Saunders *et al.* 2016:200-201).

Digitalisation, and how it will affect the tax policy, is a growing and shifting field which could completely change its effect on Tax Transparency based on the newer products or methods which are developed. Based on this, the study is a cross-sectional study as it is providing the information on Tax Transparency as it stands at the point in time the study is conducted. Future research could result in a different answer based on the changes in digital economies and tax policies that could occur between this study and the next.

### 2.2.5 Unit of analysis

The unit of analysis is the underlying who or what that is being studied (Harris, 2018). For example, the unit of analysis can be individuals, companies, organisations, groups, principles and policies (Harris, 2018).

As the research that is being performed is specifically related to principles and policies within modern tax systems and not to a specific group of taxpayers, such as corporate or individual taxpayers, the unit of analysis in this study will be organisations, specifically government organisations as they are usually responsible for determining the tax policies and legislations which are applied in each individual country. There will also be an element of principles as a unit of analysis as the Tax Transparency history and development is also specifically considered.

### 2.2.6 Nature of the data

Data can be either qualitative or quantitative in nature. Saunders *et al.* (2016:165) noted that there are some distinct differences between qualitative and quantitative data. They found quantitative data to be more standardised numerical which could be represented as diagrams and usually have a statistical approach. They noted that qualitative is more likely based on words rather than numbers, the data was usually not standardised and the use of conceptualisation was applied in order to draw conclusions from the data (Saunders *et al.* 2016:165).

The nature of the data is the determinant of the type of research which will be performed. As the data which will be reviewed is literature that is already available, the study will be qualitative in nature. The data which will be used in this study will be secondary data as this is a systematic review of the data. Therefore, there is no primary information as all the data used is taken from journals and other sources who have previously performed research in order to come to a conclusion on their subject matter studied. These are analysed in order to draw conclusions to our research problem noted.

## 2.3 SYSTEMATIC REVIEW

The current study is performed by conducting a systematic review of the available literature. Saunders *et al.* (2016:74) noted that the purpose behind a literature review is not to provide a summary of all written research on a particular topic, but rather to find the most appropriate and noteworthy information which will assist in answering your research question. By critically analysing the material, new findings and theories should arise if the analysis is performed effectively (Saunders *et al.,* 2016:74).

In order to understand why a systematic review is an appropriate method to conduct research on this topic at hand, consideration needs to be given to exactly what a systematic review entailed. In their glossary, Saunders *et al.* (2016:729) defined a systematic review to be:

> "*a process for reviewing the literature using a comprehensive pre-planned search strategy. There is a clear assessment for selection of articles to review, articles are assessed on the quality of research and findings, individual studies are synthesised using a clear framework and findings are presented in a balanced, impartial and comprehensive manner.*"

A systematic review is an expanded literature review of the information relating to a particular topic and body of information. The purpose of the systematic review is to conclude on a research question. In this proposal, the research question is how digitalisation and technology advancements increased the development, application and impact on Tax Transparency as a Fundamental Principle of Taxation. In pursuit of answering this research question, two research objectives were documented.

The first research objective is: To understand the development and history of Tax Transparency as a Fundamental Principle of Tax. This would normally be completed through researching and synthesizing the available information on this topic that provides the historical development of this principle as documented by those who have previously considered it. Additionally, consideration needs to be given on how digitalisation has affected the importance of Tax Transparency in a modern tax system. Several studies have been performed on digital economies and tax. Therefore, a systematic review of the published literature in respect of both the history of Tax Transparency and taxing digital economies would be an appropriate research method as data on this subject matter has been previously documented. The research performed is intended to shed light on how Tax Transparency is affected by the changes in digital economies and changes to tax thereon.

The second objective is: To compare the current South African legislation to what is recommended by the OECD. The OECD is an organisation which gives commentary and guidance on government policies, including that of taxation, with consideration to a global economy (OECD, 2019b). The OECD has clearly documented its recommendations for a fair tax system, which includes a review of Tax Transparency and recommendations on how to achieve this. The DTC has reviewed these recommendations and provided feedback, aimed at the South Africa tax system, in various articles to the Minister of Finance (DTC, 2016). Therefore, a systematic review process can be relied upon to collect the data relating to both the OECD recommendation as well as the DTC's review in light of South Africa's current legislation. This aim of this research is to shed light on Tax Transparency from a South African tax system perspective.

Based on the three research objectives as well as the reasoning provided on how the research was conducted a systematic review is deemed an appropriate method in order to answer the research question.

## 2.4 IDENTIFICATION AND RECORDING OF ACADEMIC LITERATURE

### 2.4.1 Databases and sources

The study performed is qualitative in nature and, as such, will rely on the use of secondary data in order to conclude on the question at hand. Secondary data on Tax Transparency and digitalisation, and how these concepts effect tax policy, was sourced. The sources are derived from articles, journals, reports and dissertations. In order to gain access to this information, a search on Google Scholar was performed using the identified key terms, discussed in point 2.4.3, to find sources relating to the subject matter. Additionally, UPSpace was used for dissertations on the subject matter as well as the EBSCOhost database which was used to find journals or articles which were not available directly from Google Scholar.

The OECD provides recommendations on tax policies and have specifically commented on the challenges with regards to the digital economy (OECD, 2015). The reports on the digital economy were accessed directly from their website. As the DTC comments directly on the tax policy in South Africa, taking into account the OECD's recommendations, their reports on South Africa's tax system and macroeconomics were also considered and downloaded directly from the DTC website (DTC, 2016). Other sources which were considered were that of the big four audit firms, namely PriceWaterhouseCoopers (PwC), Ernst & Young, KPMG and Deliotte & Touche, as they are well-versed in the tax challenges and contributors to tax policy commentary. Any reputable legal firms' publications would also be considered appropriate. Furthermore, where clarity was required on the South African legislation or further practical application within the South African context, the South African Revenue Service (SARS) website and documentation was used in order to extracted this information.

### 2.4.2 Inclusion & exclusion criteria

As the change to digital economies was quick in nature, the journal articles included were limited to the last 10 years (i.e. 2009-2019), as these documents are likely to have the most current view on digital changes and the effects of these on Tax Transparency. Other documentation, such as guides from SARS or the OECD recommendations, will be limited to time this frame unless a key document was published prior to it and contributes to the history of the item under review.

Where possible, reliance is placed on published documentation in order to have reputable sources of information which will be analysed. Any website, besides those of reputable organisations such as the OECD and SARS, will be excluded.

The articles, journals, electronic books and dissertations are limited to those which were available electronically from the University of Pretoria's Library and from EBSCOhost at the time this research was performed. Additionally, only articles which were available in English were considered for use.

### 2.4.3 Keywords

As the question under review relates to Tax Transparency and how it has been affected by digitalisation, the keywords, on pages 12 and 13 were used to search for data. These keywords were typed into Google Scholar both individually and in combination in order to obtain the most relevant information with regards to the research question. Articles with a relevant name were identified and downloaded, if a PDF link was available. Where a PDF link was not available, the title was searched for using the EBSCOhost database. If the search resulted in available material, it was downloaded and included as part of the subject material to be considered in answering the research problem. The following keywords, and the reasoning as to why they were included, is provided below:

“Tax Transparency”

Tax Transparency is the fundamental principle being investigated and therefore the starting point of the research. Understanding Tax Transparency is vital when evaluating the influence of digitalisation and technological advancements.

A definition of Tax Transparency is considered for this dissertation and is discussed in Chapter 3.

“Digitalisation” / “Digital economy”

As digitalisation is an influencing factor under consideration, it forms part of the keywords when looking for sources of information.

The Merriam-Webster Dictionary (nd(a)) online provides a definition of “digitalisation” as a system of turning something into digital form. As there is no defined definition for the “digital economy” it is constructed for the purposes of this study and can be found in Chapter 4.

“Tax” / “Taxation”

The purpose of the study is to research the influences on Tax Transparency as a Fundamental Principle of Taxation. Therefore, the key underlying subject is tax/taxation itself, therefore, the research should relate to this in particular.

The Collins Dictionary (nd(f)) online defines taxation to be *“the system by which a government takes money from people and spends it on things such as education, health, and defense.”* Taxation for the purpose of this study, is defined in Chapter 3.

“Tax policy”

As digitalisation and its effect on taxes is considered, consideration also needs to be given to the tax policies put in place in order to assist with tax on digital economies and the changes in tax policy due to these developments.

The Collins Dictionary (nd(e)) online defines policy as *“a set of ideas or plans that is used as a basis for making decisions, especially in politics, economics, or business.”* In the case of tax policy, the defined plans are promulgated into the law of a jurisdiction, in this case specifically South African tax legislation.

### 2.4.4 Method for analysis

As discussed, the review that will be performed is a systematic literature review of the current information available relating to Tax Transparency as well as digital economies and their effect on this Fundamental Principle of Taxation. Additionally, the South African legislation and Tax Transparency is also considered. The research performed is qualitative in nature.

# CHAPTER 3

# Tax Transparency as a Fundamental Principle of Taxation

## 3 CHAPTER 3 – INTRODUCTION TO TAX TRANSPARENCY AS A FUNDAMENTAL PRINCIPLE OF TAXATION

### 3.1 INTRODUCTION

The main purpose of this study is to assess the impact of digitalisation on Tax Transparency in its role as a Fundamental Principle of Taxation. In order to appropriately assess the digital enhancements effects on Tax Transparency, an understanding of Tax Transparency is required.

Firstly, a background and definition of what Fundamental Principle of Taxation is will be provided. Secondly, an understanding of Tax Transparency is constructed and the history of Tax Transparency as a fundamental principle considered in this chapter. Lastly, Tax Transparency as a Fundamental Principle of Taxation is discussed.

### 3.2 FUNDAMENTAL PRINCIPLE OF TAXATION

#### 3.2.1 Introduction

In order to understand why Tax Transparency forms part of the Fundamental Principles of Taxation, one firstly needs a clear understanding of what a fundamental principle is. A detailed study on the Fundamental Principles of Taxation was performed by Du Preez (2016) where a fundamental principle was defined. The historical literature on Fundamental Principles of Taxation was considered and experts were consulted in order to construct the Fundamental Principles of Taxation.

The starting point of understanding what would be included in the Fundamental Principle of Taxation is to understand what the phrase actually means. The terms “Fundamental”; “Principle” and “Taxation” are defined below. The combined meaning is considered, and a working definition is determined for this study.

### 3.2.2 Defining “Fundamental”

The first term to be considered is “Fundamental”. The Collins Dictionary (nd(c)) online stated that “*you use fundamental to describe things, activities, and principles that are very important or essential. They affect the basic nature of other things or are the most important element upon which other things depend.”* Merriam-Webster (nd(c)) online dictionary stated that “Fundamental” was defined as *“serving as a basis, supporting existence or determining essential structure or function”* or *“of central importance”*. Thus, the dictionary definitions indicate that “Fundamental” is the central or core idea. Therefore, for something to be considered “Fundamental”, it would need to be a core or essential part of what that is.

### 3.2.3 Defining “Principle”

Secondly, an understanding of what a “Principle” is needs to be constructed. The Collins Dictionary (nd(d)) online states that *“a principle is a general belief that you have about the way you should behave, which influences your behaviour”.* Merriam-Webster (nd(d)) online dictionary similarly stated that a “Principle” is *“a comprehensive and fundamental law, doctrine, or assumption”*. Accordingly, both the dictionary definitions indicate that a “Principle” is a belief or policy which affects the behaviour followed.

Du Preez (2016:33) similarly defined a “Principle” in her study to be *“a general truth that forms the foundation of the field of study that can be accessed through a chain of reasoning”*. This is considered with the defined term “Fundamental”.

### 3.2.4 Defining "Fundamental Principle"

When combining the above definitions, "Fundamental Principle" can be defined as a core belief which should be followed for any type of discipline. Du Preez (2016:31-34) also considered these definitions and formulated a definition for a "Fundamental Principle". The definition that was constructed and considered for a "Fundamental Principle" is:

> "a general truth, constructed through a chain of reasoning, that forms the most important part of the foundation of a unique field of study from which theories and applied practices can be derived and verified in accordance with the current knowledge available to humanity" (Du Preez 2016:34).

The above definition is a carefully considered and fleshed out definition, taking into account philosophical considerations when defining this term (Du Preez, 2016:30-39). This makes the definition a good point of departure when considering how Tax Transparency fits into the Fundamental Principles of Taxation. In order to understand this definition, the need exists to further understand "Taxation" itself.

### 3.2.5 Defining "Taxation"

Whilst there is a common understanding of what "Taxation" is, this study considers the definition of 'tax' in order to clearly understand the discipline being considered. The Collins Dictionary (nd(f)) online defines "Taxation" to be *"the system by which a government takes money from people and spends it on things such as education, health, and defense."* Merriam-Webster (nd(e); nd(f)) online dictionary defines "Taxation" as the "the action of taxing" and "tax" as *"a charge usually of money imposed by authority on persons or property for public purposes"*.

Both these definitions indicate that "Taxation" is the collection of money with the intent to use the money for public services which are provided by the government. Ultimately, the purpose of taxation is to provide public services for the communities which are deemed to be of importance.

### 3.2.6 A working definition of the "Fundamental Principles of Taxation"

Taking into account the individual and separate definitions of the terms, "Fundamental Principles of Taxation" can be defined as for the purpose of this study. "Fundamental Principles of Taxation" are foundational beliefs which impact "Taxation" as a discipline based on the information currently available to humanity. The "Fundamental Principles of Taxation" will also be altered as the world changes due to the moving nature of the knowledge of humanity (Du Preez, 2016:30-39).

This definition is measured against "Tax Transparency" in order to see if this is one of the "Fundamental Principles of Taxation" today. "Tax Transparency" is discussed in point 3.3 below, in order to understand what this element is trying to achieve and whether this is a Fundamental Principle of modern Taxation.

## 3.3 WHAT IS TAX TRANSPARENCY?

### 3.3.1 Dictionary definition

"Taxation" was defined above as the collection of money with the intent to use it for public services which are provided by the government. "Transparency" is defined in the Collins dictionary (nd (g)) online as "*a process, situation, or statement in its quality of being easily understood or recognized, for example because there are no secrets connected with it, or because it is expressed in a clear way.*" "Transparency" is where information is free flowing and there is no hidden information. Whilst fully free flowing "transparent" is idyllic in nature, in this study the need or want for "Transparency" is being increased or decreased due to the greater technologies available these days.

If the definition of "Tax/Taxation" is combined with "Transparency", a dictionary-based definition of "Tax Transparency" can be created. "Tax Transparency" would be where there is easy, open and clear visibility between what the tax laws are requiring and being applied and what taxpayers disclose and provide is honest and forthcoming information with regard to their tax liability, both locally and abroad.

Many professionals have considered "Tax Transparency" and the changing demand for it in a modern tax system. This definition constructed should be considered with the literature already addressing this emerging area of tax and the definition, inclusions and considerations are discussed in point 3.3.2 below.

### 3.3.2 Tax Transparency according to research

As the world is changing, so is the amount of information available on individuals. Companies, such as Facebook and Google, are able to use the data provided to them through the use of their programs to profile their clientele. This has led to individuals demanding for further transparency on what information about them is retained and how this information is used (Owens, 2014:509). Transparency is being demanded in all spheres of modern life, including from a tax perspective. Tax Transparency is focused on having a clear and open exchange of information between taxpayers and tax authorities (Owens, 2014:509). The DTC (2016:14) also considered factors when creating tax policy and noted that tax procedures and rules must be transparent and consistently applied. This indicates that Tax Transparency is not transparent only on the part of the taxpayer, with regard to their information provided to the tax authorities, but also on the part of tax authorities and Governments when setting and applying legislation.

Besides the increased need for Tax Transparency between tax authorities and taxpayers, the demand for Tax Transparency from other stakeholders is also becoming more apparent (Owens, 2015:33). There is a greater response to transparency about what well-known multinationals and high net worth individuals are contributing to the fiscus (Owens, 2014:509). Previously, taxpayers engaged with the tax authorities on their tax affairs and were limited to that relationship unless some form of litigation due to a dispute made that public knowledge (Owens, 2015:33). This relationship between a taxpayer and tax authorities is being disrupted by public demands (Owens, 2015:33). Panayi (2018:74-75) considers the growth and need for good tax governance and names both transparency and accountability as key parts of the definition of good tax governance.

The OECD is the body who makes suggestions and performs research in order to assist with a multi-country solution to trade, policies and taxation (OECD, 2017:2). The OECD itself was formed when the OECD convention, as signed by the United States of America (USA) and Canada with what was the Organisation for European Cooperation, came into effect on 30 September 1961 (OECD, 2019c). Subsequently, many other countries have joined the OECD from various continents around the world and now have a total of 36 member countries at the time of drafting this dissertation, with Colombia joining imminently (OECD, 2019d). South Africa is not a member country of the OECD however, South Africa is a key partner country of the OECD and thus, participates in policy discussions, surveys and statistics (OECD, 2019d). In the OECD's 2017 Report on Tax Transparency, the executive summary noted that Tax Transparency is at the centre of global efforts to address the issues with regards to tax avoidance and tax evasion by taxpayers (OECD, 2017:2). The OECD is able to do this due to their system of surveillance through peer review (Eccleston, 2011:247). Tax Transparency assists governments around the world with tax compliance of taxpayers and efficiency in executing this compliance (OECD, 2017:2). With the modern tools available, the OECD assists with narrowing the tax gap created by tax avoidance and evasion and also assists with the collection of revenue for multiple jurisdictions as well as the allocation of tax burden where there is uncertainty (OECD, 2017:2).

Based on what is discussed in point 3.3.2, it is clear that Tax Transparency has many facets which need to be considered.

## 3.4 A BRIEF HISTORY OF TAX TRANSPARENCY

In order to assess how the $4^{th}$ Industrial Revolution of a digital economy is impacting Tax Transparency one has to consider how Tax Transparency has emerged and developed over time.

### 3.4.1 Before global tax - pre-1980's

During the period pre-1980, there was little interdependence between countries economically which resulted in minimal cross-border tax concerns. Some of the contributing factors to the low volumes of transactions included mistrust amongst countries; few multinational entities; lack of the technology for real time global connectivity; lack of cross-border financial systems and a lack of international collaboration within the field of taxation

(Barreix, Roca & Velayos, 2016:3). Thus, there were very few taxpayers, corporations or governments who engaged in international investments and activities.

### 3.4.2 First attempts at global tax considerations – European Union

In the 1980's, many countries, which now form part of the European Union (EU), were seeking to form a single market among the member states with the intention to have free movement amongst people, goods, services and capital (Gerard, 2015:4). However, one of the risks associated with creating a single market included distorted movement of capital and savings in order to benefit from the reduced tax rates which other member states might have (Gerard, 2015:4-5). Two possible solutions to this problem were selected, namely: withholding of tax levied at the source of the income for foreign investors or the exchange of information amongst member states (Gerard, 2015:4-5). The first attempt at preventing erosion of each country's tax base was proposed by the EU Commissioner at the time, Christiane Scrivener. His proposal was withholding tax of 15% of all interest and dividends on EU residents who had investments in different EU member states to their resident state or national country (Barreix *et al.*, 2016:3-4; Gerard, 2015:5). However, Scrivener's proposal failed when it was proposed to the EU member states, leaving the EU with no solution to the tax problem from movement of income and capital (Gerard, 2015:5).

Mario Monti was also a member of the EU in the role of the Commissioner for Internal Market, Financial Services and Financial Integration, Customs and Taxation. Monti also attempted at getting tax co-operation between EU member states by requesting a decision by each member state between withholding tax levied at the source, similar to what was suggested by Christiane Scrivener, or the organised exchange of information between the member states. This proposal too, was rejected (Gerard, 2015:5).

It wasn't until the 2000's that the EU managed to reach an agreement, being the EU Directive on Savings Income Taxation, which came into effect in 2005 (Gerard, 2015:5; Barreix *et al.*, 2016:3-4).

### 3.4.3 Introduction of multi-national tax regulations

In order to properly address the movement of income and capital between countries, resulting in a reduction of each country's tax base, and the use of tax havens, the Ministers of the EU Council requested the OECD to investigate harmful tax competition in 1996. In the OECD's report, released in 1998, they provided details of harmful tax practices noted in their review as well as recommendations (OECD, 1998:3-12; Barreix *et al.*, 2016:3-4).

Following the OECD's report on harmful tax practices, the OECD approached six jurisdictions, which were known to be tax havens, in order to assist in determining a standard for transparency and information exchange. This group became known as the Global Forum Working Group on Effective Exchange of Information and originally included Mauritius, Bermuda, Cayman Islands, Cyprus, Malta and San Marino. This group was expanded to include further jurisdictions which had been labelled as tax havens. The group developed the 2002 Model for Tax Information Exchange Agreement (TIEA) which included the exchange of information to be on a request basis (Meinzer, 2017:6-7; Woodward, 2016:108-110).

At the same time as what the OECD was looking into harmful tax competition and practices and solutions to this problem, the EU themselves were also finding ways to address global tax issues and information exchange. Thus, in 1997 the EU introduced a Code of Conduct to avoid harmful tax competition. This was not a legally binding document but rather a commitment by member states not to introduce any further harmful tax competition policies as well as reconsider any of their harmful policies already in place (OECD, 2002:125).

Whilst the EU were looking into ways to reduce tax evasion through the use of multiple countries agreements, the USA was doing the same. On the 1st of January 2001, the USA launched the Qualified Intermediary (QI) regime to assist with the collection of revenue by the USA tax authority. The system required any financial institution designated as a QI to identify and withhold tax on foreign taxpayers who had USA source income and USA citizens were required to report USA source income to the USA tax authority. Whilst the tax authorities in the USA imposed audits in order to make sure the QI's reported correctly, there were loopholes for clients of QI's to take advantage of, which many did (Gerard, 2015:5-6).

In 2003, the EU Savings Directive was adopted, which was one of the first multinational programmes of “automatic” exchange of information (OECD, 2018).

In 2007, there was a dispute between the USA and Switzerland’s largest bank, United Bank of Switzerland (UBS), over USA citizen’s being able to open accounts with UBS off-shore and hide this money from the USA government for tax purposes (Heiberg, 2012:1686-1688). Whilst the USA government and UBS came to a settlement amount on interest, penalties, fines and restitution, of around $780 million, they further pursued the release of the names of USA citizens who had an account at UBS (Heiberg, 2012:1686-1688; Byrnes & Munro, 2017:9-11; Meinzer, 2017:8). In an unlikely turn of events, UBS agreed to release the names of around 4,450 USA citizens, determined by accounts which were the largest and most likely to be non-compliant through account abuse (Byrnes & Munro, 2017:9-11). UBS had previously argued that the release of this information would intervene with Swiss banking secrecy laws which stated it was illegal to disclose customers’ information (Heiberg, 2012:1686-1688).

The UBS scandal was a catalyst for the Financial Accounts Tax Compliance Act, referred to as FATCA. FATCA was signed into law by the USA government in March 2010 (Heiberg, 2012:1686-1688). The intention of introducing FATCA was to get foreign financial institutions to provide information to the USA tax authority on investments held by USA citizens abroad (Byrnes & Munro, 2017:3-5). FATCA was originally intended to be a unilateral initiative implemented by the USA which would place the reporting and administration function on foreign financial entities (Owens 2014:512). FATCA was a turning point in Tax Transparency (Owens 2014:512).

The USA Internal Revenue Service published a study, in 2012, whereby they endeavoured to determine the differences between taxes which were actually paid and taxes which were due by taxpayers. The report included looking at how much information third parties were required to report on, compared to the amounts of taxes lost due to the misreporting of income. What they discovered was that where there are substantial information reporting requirements, which provides high transparency and visibility of the income, the amounts misreported were between 1% - 8%. Where there was little to no transparency, due to limited or no reporting requirements, the amounts of income misreported was 56%. Meinzer notes that this high level of misreported income lost relates mostly to cross-border transactions and loss of taxation due to the minimal amount of information available (Meinzer, 2017:3).

In February 2012, the USA also agreed to make FATCA more co-operative, and signed inter-governmental agreements with France, Germany, the United Kingdom, Spain and Italy for reciprocal exchange of FATCA information (Gerard, 2015:6; OECD, 2018). Subsequently, Belgium, Czech Republic, Slovak Republic, Ireland, Netherlands, Romania and Poland have all followed suit and also signed the agreements (Gerard, 2015:6).

In 2009, following the financial crisis, the focus of the G20 and OECD was on getting jurisdictions on the "grey list" and "black list" to sign into TIEA's (Meinzer, 2017:8; Dietsch & Rixen; 2016:2; Woodward, 2016:108-110). OECD still had the 2002 Model for TIEA's as their recommended process which was criticised as being insufficient due to the upon request requirement (Meinzer, 2017:8; Woodward, 2016:108-110). Whilst originally defending their position on this matter, amidst the criticism, the OECD, and G20 partners, changed their view on automatic exchange of information which lead to the pilot of a multilateral exchange facility which was announced in May 2013 and by June 2013 a 20-page outline for the system had been prepared for the G8 summit in Lough Erne (Meinzer, 2017:9-11; Woodward, 2016:108-110). The structure and provisions under FATCA were taken into consideration by the OECD and have included it in their considerations in their development of common reporting standard which is supported by the automatic exchange of information (Owens 2014:512).

## 3.5 AGREEMENTS IN PLACE WHICH SUPPORT TAX TRANSPARENCY

Kyamulesire (2017:12-15) considered the exchange of information in her dissertation and, as part of her findings, she indicated the agreements which have been developed and implemented which support Tax Transparency. A summary of the agreements in place which support the exchange of information and Tax Transparency, is provided in points 3.5.1 to 3.5.3 below.

### 3.5.1 Double and multilateral tax agreements

One of the mechanisms many countries have used to gather further information is by entering into double tax agreements (DTA's) or information exchange agreements (Kyamulesire, 2017:12-16). DTA's assist with reducing situations where tax is levied by two jurisdictions, known as double taxation, by defining in the agreement who has the right to tax in various situations as well as by agreeing to the rate at which that income can be taxed (Kyamulesire, 2017:12-16; Wouters & Meuwissen, 2011:9-10). Another type of agreement which many countries have entered into, is the TIEA (Kyamulesire, 2017:12-16; Owens, 2014:511-513; Meinzer, 2017:6-7).

Furthermore, the OECD created a multilateral co-operation agreement called the "Convention on Mutual Administrative Assistance in Tax Matters" which, in June 2019, had 129 jurisdictions which had signed into it (OECD, 2019d; Owens, 2014:511-513). South Africa signed the amended convention in 2011 and the agreement entered into force on 1 March 2014 (OECD, 2019d). This agreement intends to assist with the co-operation for various tax measures but includes information exchange and the recovery of foreign taxes claimed (OECD, 2019e).

### 3.5.2 Automatic exchange of information

The exchange of tax information generally involves a source country providing relevant tax information about a foreign taxpayer, who is transacting within that source country, to the foreign residence country (Panayi, 2018:79). The source of this information is regularly obtained from third parties, usually financial institutions as they administer payments, who have access to this information and are legally obliged to provide this information to the local tax authority for information exchange purposes (Panayi, 2018:79). Previously, this information exchange primarily occurred on request, however, with the emphasis put on international standards of Tax Transparency, automation and regular exchanges has become a priority (Panayi, 2018:80).

FATCA was introduced to provide further information on the source of assets and many countries have multilaterally agreed to share this information (Gerard, 2015:6; OECD, 2018).

The main purpose of FATCA is to gain an understanding of where assets are held to charge and disclose taxes correctly (Kyamulesire, 2017:12-16). Jurisdictions which have entered into an automatic exchange of information agreement will receive the information on their resident's financial accounts held in the other jurisdiction (OECD, 2019e). The information is pre-defined and is received at a pre-determined date without having to request the information from the other jurisdiction's tax authority (OECD, 2019e).

The information exchange is further supported by the Common Reporting Standards (CSR) that were approved by the OECD council on 15 July 2014 (OECD, 2019e). The CSR seeks to provide guidance on the exchange of information between tax authorities on an annual basis and requests that tax authorities retrieve the required information from the respective financial institutions.

### 3.5.3 Country-by-Country reporting

Another area where the OECD has assisted in getting a common procedure in place is with Country-by-Country reporting (CBCR) as a mechanism to confront Base Erosion and Profit Shifting (BEPS) (Kyamulesire, 2017:12-16). Action plan 13 of BEPS specifically addressed CBCR and provided a template which could be used by multinational entities to report their transactions in each jurisdiction on an annual basis (Kyamulesire, 2017:12-16; OECD, 2019d).

CBCR forms part of key transfer pricing documentation which assisted with enhancing the transparency for tax authorities by providing high-level transfer pricing information across borders (Panayi, 2018:81). CBCR is not a stand-alone item, but rather forms part of a three-tiered approach where a master file, local file and CBCR is compiled (Panayi, 2018:81). Currently, the OECD's approach to CBCR is that the information is not shared publicly, but is rather shared in confidence between tax authorities (Forstater, 2017:5).

## 3.6 CONCLUSION

The purpose of Chapter 3 was to give an understanding of Tax Transparency and how it fits into the Fundamental Principles of Taxation. Firstly, a definition of what the “Fundamental Principles of Taxation” means is discussed. A working definition for the purposes of this study is defined. Secondly, Tax Transparency is defined, taking into consideration what this term means in both a dictionary definition, as well as in terms of published literature on the topic.

Lastly, the history of Tax Transparency and its underlying development through history has been considered. The type of agreements, both previous and current, which have been used to support Tax Transparency have been noted and a short summary on some of the key current agreements in place today have been discussed.

Chapter 4 will draw from this chapter to discuss the changes to the digital economy as well as considering the impact this has on Tax Transparency as it is considered today.

# CHAPTER 4

## Digitalisation, Taxes and the Impact on Tax Transparency

# 4 CHAPTER 4: DIGITALISATION, TAXES AND THE IMPACT ON TAX TRANSPARENCY

## 4.1 INTRODUCTION

The world is changing at a rapid pace, with changes in technology as well as changes in the way that business is performed. Businesses are moving towards a digital way of working and policy makers need to keep up with this in order not to lose out on the tax revenue which is due to them (OECD, 2015:11-13). Multinational companies are taking advantage of this and are using tax planning to move their businesses to tax beneficiation jurisdiction in order to reduce their overall tax liability (OECD, 2015:11-13). The OECD, along with the G20, wanted to address this problem. In order to do this, in September 2013, they created the Task Force on the Digital Economy and they had a mandate to create a report detailing the options which could be used to address this problem (OECD, 2015:11-13). In September 2014, they released their interim report which was followed up with a final report in 2015 (OECD, 2015:11-13).

In this chapter, an understanding of what the “digital economy” is and a look into the commentary provided by the OECD on addressing this from a tax perspective was assessed. Other literature which addresses the way that the digital economy is influencing taxation as a field was also considered.

## 4.2 WHAT IS THE “DIGITAL ECONOMY”?

In order to comment on the effects that the “digital economy” is having on the field of taxation, consideration needs to be given to what is included within the “digital economy”.

To discuss the "digital economy", and its impact on Tax Transparency, there needs to be a clear understanding of what the "digital economy" is referring to and what it includes. Both the Collins Dictionary and Merriam-Webster Dictionary do not have a definition of this phrase. Due to this, the terms "digital" and "economy" are considered separately. These terms will firstly be considered individually and then combined to construct a working definition for this paper.

### 4.2.1 Defining "digital"

The Collins Dictionary (nd(a)) online states that "*a "digital" system is one that transmits very small signals of information*". The online Merriam-Webster Dictionary (nd(a)) defines "digital" as "*composed of data in the form of especially binary digits*" and further states that "digital" is "*characterized by electronic and especially computerized technology*". From these definitions, it can be seen that the definition of "digital" is broad and includes any item which uses the binary system to function, specifically including electronic and computerised technology.

### 4.2.2 Defining "economy"

The next consideration is what is included within an "economy". The Collins Dictionary (nd(b)) indicates that "*an "economy" is a system of wealth and trade within a region*". The Merriam-Webster Dictionary (nd(b)) declares that "*a system is "economic" when it is built on the manufacturing, circulation, and consumption of goods and services"*.

### 4.2.3 Defining "digital economy"

Techopedia (nd) provided a definition stating that *"it includes all economic transactions and interactions which are performed on digital technology"*. The digital economy is more than just the use of the internet but extends into the use of any type of digital technology (Techopedia, nd).

In their report on *The Tax Challenges of the Digital Economy,* the OECD provides some background into the development of the digital economy which can also be considered as part of the definition of the term. One of the main areas they focused on is information and communication technology, as these technologies are the disruptor of the traditional sales and services market which the current tax policies and recommendations were built on. Some of the innovations in this area include personal computing devices, telecommunication networks, use of data, software development, content creation and cloud-based computing. The OECD takes into consideration items which were considered as emerging technologies in 2015 and would also need to be considered in order to keep up with these changes. Some of the changes they noted included future transformations in the internet uses, such as big data processing and machine to machine communication, the use and development of virtual currencies, advanced robotics, 3D printing as was collaborative virtual production between people based all over the world (OECD, 2015:35-49).

From the above definitions, “digital economy”, for the purposes of this study, is the use of modern technology and the internet in order to provide both tangible and intangible goods and services to consumers.

## 4.3 OECD ACTION POINT 1 – TAX CHALLENGES ARISING FROM DIGITALISATIONS

In 2015, the OECD released their final reports on BEPS, which included a report specifically focused on the digital economy, namely, *Addressing the Tax Challenges of the Digital Economy, Action point 1* (OECD, 2015). The key items in this report are discussed below.

### 4.3.1 Fundamental Principles of Taxation

The OECD start their report reviewing the Fundamental Principles of Taxation which need to be considered when changing or updating the international tax policy recommendations. They have noted that neutrality, efficiency, certainty and simplicity, effectiveness and fairness as well as flexibility are the key considerations when designing tax policies. In addition to these principles, the OECD commented significantly on equity including both inter-nations equity as well as equity amongst taxpayers with similar circumstances have a similar tax liability (OECD, 2015:19-33).

Whilst transparency is not specifically indicated, an element of transparency is included in certainty. Certainty was elaborated on and stated that “tax rules should be clear and simple to understand, so that taxpayers know where they stand” (OECD, 2015:20). This indicates that the legislation needs to be transparent to taxpayers in order for them to have a proper understanding of when they are taxed and on what they are being taxed.

All the above principles need to be considered when making policy choices, but the OECD also notes that the relative importance of each principle in changing tax policy may differ and the policy changes will also account for factors outside of just the tax policy consideration such as social and economic impact of the changes (OECD, 2015:19-33).

### 4.3.2 Digital economy and its key features

The OECD specifically noted that, when formulating a way forward to tax the digital economy, the legislation needs to be broad enough in order for it to take into account any future technologies that are developed. Additionally, it was noted that the digital economy is becoming part of the norm of the traditional economy and therefore shouldn’t be treated separately for tax purpose, but to rather find a method which includes the new digital way of doing business into the net of taxation. Additionally, due to the quick-changing and volatile nature of the development in technology, tax authorities and governments need to monitor this going forward in order to ensure that the tax legislation is maintained appropriately for these changes (OECD, 2015:35-74;141-149).

The digital economy has changed the way that multinational companies work. As businesses are able to provide goods and services without creating a defined physical presence in a country, companies are able to move the tangible side of their business to tax beneficial jurisdictions. The OECD notes that there are some key features of the digital economy that needs to be considered from a tax perspective. Firstly, mobility in assets of the business (often being intangibles), mobility in the users of products and mobility in business functions due to modern technology and ease of movement. The use of data, both directly provided by the user or passively obtained, has become a large driver of the digital economy (OECD, 2015:51-74; 141-149).

Secondly, one of the noted emerging or future features of the digital economy, was that of *access to government data*. This future possibility relates to governments making resources available to the public. The intention of this is to create more government accountability and transparency, better performance through co-operation and higher participation from third parties in these open areas. All of these are intended to provide a better service (OECD, 2015:45-47; 141-149). This information sharing and collaboration forms part of a new level of transparency between governments and citizens as well as between the governments of different countries.

Thirdly, one of the other emerging areas was that of protection of personal data in relation to the digital economy (OECD, 2015:46). Personal data is becoming more protected than before and there has been a movement towards personal data being an asset of an individual, rather than that of a company which has received this data (OECD, 2015:46). The security and permissions needed to transfer this data held by a company to a third party is becoming stricter and individuals need to consent to information being collected about them, even anonymously (OECD, 2015:46). This is an area of future developments which is moving away from transparency as more permissions are required.

### 4.3.3 Some issues with BEPS and the digital economy

Some of the tax issues noted with the digital economy is that the digital economy changes the way in which business is done and the concept of “nexus” for tax purposes is being challenged by this. Nexus provides a jurisdiction the right to tax an entity and nexus has been based on significant “physical” presence in a jurisdiction which is then linked to how a permanent establishment was identified. The change from the traditional way of doing business to a more digital manner is a big driver of the review of the current tax agreements and a significant reason why BEPS is being considered. Multinational companies have managed to move their business assets, like their intangibles, to low tax jurisdictions and justify that this is where they should be taxed due to the current nexus rule and lack of physical presence in these other countries in which they trade. The biggest reason for their ability to do this is the assistance of the digital economy (OECD, 2015:142-147).

Another area which the OECD noted may need further work was that of “controlled foreign companies” (CFC) and the digital economy in order to try bring the use of these intangible assets into the CFC net if their sole purpose in a particular jurisdiction is to have a lower tax rate. The recommendation is to consider this with the analysis of substantial activities for a business (OECD, 2015:146).

The OECD also recommends considering the Value-Added Tax (VAT) consequences of digital transactions between business to business (B2B) sales versus those which are sold directly to consumers. Where a digital product is sold to a consumer, the VAT should be collected in the country of residence of that consumer, at that country’s proposed rate, irrespective of whether the supplier is local or foreign. This means there is a level playing field between local and foreign sellers of these products. A simplified registration process is also recommended in order to make the compliance easier for these foreign service/product providers (OECD, 2015:119-129).

## 4.4 RECOMMENDATION BY THE DAVIS TAX COMMITTEE FOR SOUTH AFRICA ON THE DIGITAL ECONOMY

The DTC was tasked with providing commentary on the current South African tax system as well as review international tax trends, with particular focus on the risk of tax base erosion. They have released an interim as well as a final report specifically focusing on the digital economy. The DTC reports included noting the OECD’s recommendations, an analysis of what other countries have implemented, commentary on South Africa’s current legislation and, finally, recommendations on what should be considered by the Minister of Finance and Parliament when providing legislation for the digital economy. Ultimately, the DTC recommended implementing the OECD recommendations as the issue with the digital economy is a global tax issue and should be dealt with across jurisdictions with similar provisions (DTC, 2017:1-4).

Point 4.4.1 on page 33 and point 4.4.2 on page 34, discuss some of the key recommendations that the DTC recommended to the Minister of Finance and parliament when introducing new legislation relating to the digital economy.

### 4.4.1 Direct taxes recommendations

The DTC noted that the OECD recommends that the definition of a permanent establishment needs to change in order to take into account the digital economy. This should be done at a global level however, South Africa will need to consider updating the source rules, under section 9 of the South African legislation, in order to have a taxing provision for income generated from the digital economy. The DTC also noted that the OECD recommends a broad tax rule due to the ever-changing nature of technology in order to not limit the taxing rights as technology changes. The DTC recommend a "payor principle", similar to that of royalties. They also recommend that the electronic commerce (e-commerce) products include both goods and services. The DTC include an example of where an electronic payment is made to a foreign person for goods received or where a service is rendered digitally within South Africa to a South African resident. These services within South Africa, in order to be included in the source rules for South Africa, are critical to avoid double non-taxation of taxpayers. All these factors taken into account will result in South Africa being able to tax a non-resident transacting within South Africa through digital products, or by providing digital products and services, particularly if the OECD update the nexus rules and these are agreed to multilaterally (DTC, 2017:4).

From an administration point of view of direct taxes, the DTC provided various recommendations. Firstly, the DTC recommended that non-resident tax returns are separated from the current tax returns which corporate companies submit, known as an ITR14. Currently, when a non-resident has a permanent establishment in South Africa, they are required to submit the same tax return as resident South African companies. Instead, the DTC recommends a separate tax return for foreign taxpayers which is simplified, possibly a self-assessment return, which has more legal related questions rather than focusing on accounting related questions like the current tax return. Secondly the DTC also mentioned that a possible way to manage non-resident digital sales/services would be by making a legal requirement for residents to withhold tax on payments to non-residents and penalizing residents if they do not comply (DTC, 2017:4-5).

The DTC noted that the changes which are being recommended will not be in the interest of every country, particularly those who will now receive less tax if the nexus rules change as these countries would now need to provide a foreign tax credit for those taxes paid. This may result in a delay in international consensus which is required in order for the amendment of the current DTA's in place (DTC, 2017:5-6).

The DTC recommendations included provisions of the Electronic Communications and Transactions Act, No. 25 of 2002, for detection and identification purposes, in order to guarantee tax compliance from those working in e-commerce (DTC, 2017:6).

Lastly, the DTC recommended that the multilateral agreements on exchange of information, which South Africa has signed into, are actively used to assist with identifying and enforcing tax collection from foreign sources. In addition to this, the DTC recommend discussions with financial institutions on the viability of getting further information on electronic transactions with non-residents. This information could be provided through the current method used for the IT3 information, however, whether this would not be too burdensome on the financial institutions compared to the benefit it provides to SARS would need to be considered (DTC, 2017:6-7).

### 4.4.2 Indirect taxes recommendations

The DTC made many recommendations with regards to VAT changes and digital goods or services (DTC, 2017:7). Currently South Africa has implemented VAT on electronic services and released regulations subsequent to the recommendations by the DTC (South Africa, 2019). These recommendations will be noted here, as well as discussed in further detail below in terms of what South Africa has implemented.

South Africa has included rules for electronic services in the VAT Act, but the DTC have noted some gaps which they believe need to be addressed. In general, the DTC noted that the regulations should be refined in order to make the tax provisions more distinct as currently the definition and inclusions are unclear. The DTC commented on the commonly used place of supply rules which are used in other jurisdictions for VAT and also commented that South Africa does not currently include these in our legislation. Further to this, it was noted that "telecommunication services" should be defined clearly and use place of supply rules as this is part of the OECD harmonization of global tax rules (DTC, 2017:7-8).

The OECD recommended treating B2B transactions separately to that of business to consumer (B2C) transactions (DTC, 2017:8-9). At the time of publication of this document, by the DTC, the normal VAT provisions provided for this difference between B2B and B2C transactions, however, the provisions for electronic services provisions do not (DTC, 2017:8-9). The DTC recommended that the electronic services provisions provide what should be included in the scope for electronic services (DTC, 2017:8-9). This recommendation has subsequently been included in the updated regulation, specifically excluding transactions which were within a group of companies or where the services from a company in an export country would be fully consumed by the local company in providing their goods or services to consumers (South Africa, 2019).

One of the issues with differentiating B2B transactions from B2C, is that the foreign supplier will be required to identify who they are selling to and where they will use their product in taxable supplies. This is likely to be difficult for the foreign supplier to do and the DTC recommended providing further guidelines, which could be similar to that provided in the EU, as well as not imposing penalties where a foreign supplier incorrectly identifies the recipient VAT vendor status. In addition to this, the current compulsory foreign vendor registration requirement is R50 000 which is far below the normal threshold of R1 million. Whilst the DTC noted that the reason was to assist local online retailers to be more competitive, this does not result in tax neutrality and a fairer, higher amount threshold should be considered. Another administration consideration is the registration requirements within South Africa which are more burdensome on the foreign supplier than that recommended by the OECD. The recommendation by the DTC was to review the OECD recommendations regularly to see that the simple registration remains compliant with the OECD simplified registration guidelines. The DTC also noted that the requirement for a foreign branch to have a separate account system, if they are providing electronic services, in order to register as a branch for VAT purposes is too burdensome on the taxpayer. Lastly, it was recommended that a more simplified self-assessment return, such as an abridged version, be available to foreign suppliers which should assist with compliance (DTC, 2017:9-10).

The DTC noted that, while provisions had been made, the requirement for foreign vendors to provide a VAT invoice in Rands as well as for foreign suppliers to provide for VAT on the payment basis rather than the invoice basis. Both of these items can be system reliant which can create an issue when creating an invoice. Additionally, the foreign supplier is required to reflect the amounts sold to South African customers in Rands and reflect the purchase price with VAT inclusive. This, too, is a difficult task for a foreign supplier. The DTC recommended that these provisions be reconsidered (DTC, 2017:11-12).

The DTC discussed the challenges surrounding electronic services and enforcing compliance on foreign suppliers. They noted that even where they could identify the taxpayer, to achieve transparency on the amounts received from a South African source could prove difficult (DTC, 2017:12).

## 4.5 OTHER DIGITALISATION CONSIDERATIONS

Besides the OECD and the DTC, other tax stakeholders and commentators are also contributing to the conversations around tax and the digital economy. Some of the key discussions on digitalisation, particularly those who discuss the digital economy with Tax Transparency, have been summarised below.

Hansen and Flyverbom (2015) explore transparency and the digital age in a large realm of areas besides taxation and note that there is more demand for disclosure in fields like healthcare, environment and education, due to the abilities of technology, but also notes the growth in concerns around privacy at the same time. Big data, resulting from activities, leaves a digital trace and make analysis of large data sets possible in order to identify the anomalies and patterns within the information. This information can be from multiple sources and give rise to targeted marketing and services to specific customers. Data analysis can assist governments with surveillance and criminal activity predictions. Hansen and Flyverbom (2014) note that traditional methods of qualitative information gathering, such as a due diligence review, and quantitative information gathering, such as numerical comparison, have generally accepted methods and ethics behind them. However, the emergence of big data analytics, which currently is new and without precedent, results in some concerns about security, manipulation and freedom. Thus, while the digital age provides further transparency, and can result in better services and protection, there are concerns over how this data will be used.

Zu and Krever (2018:127-135) provide a summary of some key aspects that they had noted at the 13th International Conference on Tax Administration in April 2018. Some of the common themes which they noted were opportunities and threats from the digital economy as well as the challenges for international tax within the digital age. One of the opportunities noted was the ease in which information can be transferred and stored. This ease, together with the internet's ability to store data, can assist whistleblowers or disgruntled employees reporting information to the tax authorities or governments similar to the information leak in the 'Panama Papers' scandal.

Zu and Krever (2018:127-129) also discussed the ability for tax administrators to make use of the internet in order to make tax returns more efficient. Tax administrators had noted that the use of pre-populated information received from third parties has encouraged further disclosures from taxpayers. It was speculated that the reason for this can be ascribed to the taxpayer being uncertain as to what other information the tax authority might have through third parties. Zu and Krever (2018:128) provided further commentary on a New Zealand integrated system between various government departments in order to advise citizens on multiple benefits available and responsibilities from the different government departments. This means that the tax consequences for a new company could be found on the same page as information on the government benefits as the system is integrated, thus providing a simple and efficient method for persons looking for a various information surrounding a single topic. Another interesting mechanism which Zu and Krever (2018:129) noted was that of "lifestyle audits" with the use of social media in order to estimate income, which has already been applied by an unmentioned jurisdiction.

Zu and Krever (2018:129-134) also noted that there were some views which indicated the difficulties which may arise, particularly with Tax Transparency. It was noted that one of the biggest challenges is the disclosure of the amount of taxable supplies for VAT purposes. Particularly in the sharing economy area, for example AirBnB and Uber who provide a service via an internet platform to a large customer base. It was further noted that an Australian Tax Transparency program had little uptake and did not show practices being altered due to this reporting consideration.

Woodward (2016:104-117) also raised some concerns in the area of Tax Transparency and actual practice, specifically in relation to the OECD's previous regime before automatic exchange was implemented. It was noted that in order to remain off the "grey list" or "black list" imposed by the OECD, many countries may enter into the minimum TIEA's, currently a minimum of twelve, in order to avoid being on these lists. These TIEA's do not have to be with big trade or international business countries and could result in little true benefit. Additionally, the peer review process which the OECD included, where competent authorities of another jurisdiction reviewing your policies and implementation, had found as many as 818 results in various jurisdictions for their policies. The changes needed to make these countries compliant was slow and time consuming. Woodward (2016:117) notes that automatic exchange of information is a game changer in this area but warns that it must be monitored to make sure that the administrative costs involved do not exacerbate the mock compliance problem.

Corkery, Forder, Svantesson and Mercuri (2013:6742-6756) consider the risks and problems caused by the digital economy, specifically challenges on how to tax digital products, capital location flexibility and discuss the possible solutions to this problem, they specifically mention the need for global co-operation. Corkery *et al.* (2013:6746-6748) go into detail on the tax scheme Google uses for managing to pay minimal taxes globally and details the criticisms that Google has received as they are not contributing fairly to the jurisdictions in which they receive revenue from, through these business structures. It was further noted that there is a sense of corporate social responsibility which forms part of their branding and paying the fair amount of taxes where work is performed forms part of this, particularly because the infrastructure, social systems and education provided by local taxes assist these businesses to be successful (Corkery *et al.,* 2013:6753-6755). Corkery *et al.* (2013:6754) noted that global transparency is part of the solution to taxation in the digital economy. For example, Anglo American, a global multinational, discloses how much tax they pay in each jurisdiction and which provides insight into their tax optimization methods and assists with determining whether the operations are conducted at arms' length (Corkery *et al.,* 2013:6754). This transparency creates a reputation of a diligent taxpayer adding value to the company's brand, similar to that of corporate social responsibility and philanthropic acts by businesses (Corkery *et al.,* 2013:6754).

Forstater (2017) considers financial transparency, with a focus on beneficial ownership transparency as well as transparency within the CBCR model. The current model of CBCR is where information is provided to the tax authority within each jurisdiction and then this information is shared with other tax authorities. It is noted that there has been a call to make these CBCR documents available to the public and not only between tax authorities. Forstater (2017) provides the possible positive and negative outcomes of sharing this information publicly. Firstly, if the CBCR information is shared publicly then other stakeholders within a country, such as the media and Non-government Organisations, will be able to hold companies accountable where they are receiving significant benefits from a country but are not paying what is due from them to the tax authorities. Not only will this assist in holding taxpayers accountable, by strengthening companies' corporate social responsibility, but will also provide the public with trust in the tax system. Making CBCR information public, it would also assist the tax authorities, within developing countries, in obtaining this information. The current system relies on notifications by subsidiaries, in a specific country, to their local tax authority and then that tax authority must approach the foreign tax authority with the information. The exchange requires mutual agreement between these authorities and whereby, if one authority doesn't agree, information access can be limited.

The above provided the positive view on sharing CBCR reports publicly, however, there is also support for keeping the reports between tax authorities. Some tax professionals dealing with CBCR raised the concern that without the understanding of the differences between tax planning, tax avoidance and tax evasion, sharing this information could lead to accusations and misunderstandings of the information provided and lead to further administrative issues, as well as mistrust within the tax system. It was further noted that the tax laws are complex, with timing differences, allowances and special provisions, which can make it difficult for people to determine a fair value of the tax liability of a business without this deeper knowledge. Similarly, CBCR information, providing the number of staff in a jurisdiction with profits made, cannot be simplified to profits per headcount globally. Without a more detailed understanding, the public is likely to make these types of calculations and find errors within systems which are sound. What Forstater (2017:23-30) notes, is if public disclosure for CBCR is not the way forward, there is still a need to build towards public and political inspection of the tax system in order to build trust in the system (Forstater, 2017:23-30).

PwC and Microsoft (2017:10-21) put together a collaborative document providing details into the digital transformation of tax administration. They note that research has shown that transparency within the government system through structured formats have increased taxpayer satisfaction and increases taxpayers' compliance voluntarily. They note that the international sharing of information, such as CBCR, provides an opening into the use of large amounts of data by tax authorities. The paper advises that in order to balance the taxpayers' want for data privacy while also wanting personalised and real-time services, tax authorities need to implement better ways to collect, secure and process data. This will help compliance and improve public image, due to taxpayers believing the tax system is fair and honest, through greater transparency and accountability. This links-up with the three noted methods to engage with taxpayers, namely to simplify, be more transparent and to manage data better.

Gillis and Stephanny (2014) discuss the impact of big data on the tax system, particularly in the indirect tax space. In their article it was noted that fairness with regard to taxation paid by a company, both to their local tax authority and other global tax authorities, is under scrutiny by governments as well as the public and media. These global tax discussions focus on global mobility with transfer pricing, VAT, customs and trade consequences. This has led to the development of BEPS, CBCR, FATCA with tax morality and Tax Transparency also being considered. Gillis and Stephanny (2014:3) indicated that some businesses, for example Rio Tinto, have already started producing audited Tax Transparency reports which discloses the amount of taxes paid per country and a total of taxes paid by the business.

Gillis and Stephanny (2014:1-5) discuss the opportunities and the growth of the use of data analytics by tax authorities with the increase of automation and electronic delivery and invoicing. Specifically noted in their article was the growth in electronic invoicing, electronic filing and electronic accounting/audit requirements. Their study noted that e-invoicing is already required in some jurisdictions, with some jurisdictions requiring specific information on the invoice to prove validity as well as specific submission methods. Gillis and Stephanny (2014:1-5) further noted that in some countries, such as China, Brazil and Mexico, tax authorities are already regulating the e-invoicing system. These countries all use different methods and processes, however, ultimately the tax authority needs to certify any e-invoice which results in real-time verification of the transaction for VAT purposes. It is also speculated that this e-invoicing could be mandated for all businesses by some governments in the next decade.

Gillis and Stephanny (2014:1-5) note that another area of increased digital tax impact is with regards to the filing of tax returns and additional online reports to the tax authorities. The EU already requires taxpayers to provide their intra-EU sales of goods and services in a report in order to assist with the sharing of data amongst EU tax authorities, based on the VAT Information exchange system. This makes it possible for tax authorities to cross-check transactions between vendors in different EU countries to see that information is aligned and fully disclosed, resulting in better Tax Transparency.

Lastly, Gillis and Stephanny (2014:1-5) indicate that there has been a rise in the area of e-accounting and e-auditing within several countries, particularly EU countries, requiring that the information submitted be in a particular format such as the "standard audit file of tax", which stems from the OECD recommendations on facilitating tax audits. This means that tax authorities are able to use technology in order to detect any errors in the amount of VAT reported. Brazil has taken this a step further and has implemented a "*public system of digital accounting used to approve, store and certify books and documents of commercial and tax bookkeeping and enables the tax authorities to make a complete assessment of the tax information*." Ultimately, tax authorities are understanding the importance of data in the modern world and will require more of it at a faster pace allowing them to assess the taxpayer effectively due to the transparency of information.

Li (2018:5) considers that measures are needed to protect the tax base in the digital economy. One of the interesting points is that the following countries, Brazil, Russia, India, China and South Africa (BRICS) are substantial, if not equal, players in the new digital economy (Li, 2018:5). Li (2018:5) notes that, by 30 June 2016, Africa, Asia, Latin America along with the Caribbean and the Middle East made up 73% of the world's internet users. Moreover, in China, one of the largest economies, around 65% of Chinese shoppers make purchases online through mobile devices whilst only 22% of American shoppers shop in this way (Li, 2018:5). This indicates how developed countries are not solely affected by the digital economy and developing countries also need to be proactive in their approach to addressing these problems.

Li (2018:5) notes how the digital economy provides developing countries the opportunity to participate in the world economy without physical barriers. Li (2018:5-6) goes further to comment on the growth of Africa, specifically noting that Africa's middle class has tripled over the past 30 years. With the expected growth of Africa to be 1.1 billion people by 2060 and have a gross domestic product growth of over 6%, Li (2018:5-6) indicates that it is expected that these people will take advantage of the growth of e-commerce with more digitally exposed consumers who are choosing to purchase goods and services online.

## 4.6 WHAT ARE THE TAX TRANSPARENCY AND DIGITAL TOOLS THAT SOUTH AFRICA HAS IMPLEMENTED SO FAR?

Part of the objectives of this mini-dissertation is to consider what South Africa has put in place in light of the recommendations of both the OECD and the DTC.

### 4.6.1 Multilateral agreement

On 21 February 2014, Regulation No. 113 for the Income Tax Act, No. 58 of 1862 (Income Tax Act) was released (South Africa, 2014). Regulation No. 113 brought into legislation the provisions Mutual Administrative Assistance in Tax Matters which the OECD developed to assist with the exchange of information between jurisdictions (OECD, 2019a). This regulation is brought into effect in terms of section 108 of the Income Tax Act which focuses on the prevention of double taxation (South Africa, 2014).

### 4.6.2 Common reporting standards and FATCA

The OECD developed CSR guidelines on 14 July 2014 (OECD, 2019e). South Africa has included this within their legislation, specifically within the Tax Administration Act, No. 28 of 2011 (TAA), by releasing Regulation No. 210 on 2 March 2016, specifically including FATCA and CSR in the definition of "international tax standard" (South Africa, 2016a:4). CSR and FATCA require the exchange of information on specified information supplied by SARS to another jurisdiction's tax authority. This change in legislation assists with getting this information from financial institutions where foreign taxpayers have bank accounts (SARS, 2018). The financial institutions are required to disclose the following for each reportable person:

- Name;
- Address;
- Date and place of birth;
- Jurisdiction of residence; and
- Taxpayer identification number (SARS, 2018; Kyamulesire, 2017:26-33).

The following must be disclosed for each reportable account:

- Name and identifying number of the account holder;
- Account number;
- Account balance/value; and
- Movements within the account during the year (SARS, 2018; Kyamulesire, 2017:26-33).

The wording in the TAA includes any other exchange of information agreement as specified by the Minister of Finance which makes further changes or agreements binding if the Minister chooses so. This exchange of information is a step forward to improve Tax Transparency in terms of offshore accounts which taxpayers may have (Kyamulesire, 2017:28-33).

### 4.6.3 TAA provisions

In addition to the change in the definition of “international tax standard”, there have been other inclusions within the TAA which also assist with Tax Transparency. Firstly, SARS inserted section 26 – *Third Party Returns* which gives the Commissioner of SARS the authority to request taxpayers to submit a return where a person is engaging with a third party. In additional to this, section 26(2)(c) of the TAA requires the taxpayer to provide information and perform the required due diligence in terms of a South African tax Act or an international tax standard or agreement. This is another provision which provides SARS with the right to obtain further taxpayer information.

Also included in the TAA is section 35 which deals with reportable arrangements. There are multiple situations which can possibly be flagged as reportable arrangements, including those specifically noted by government notices. Reportable arrangements are linked to the South African General Anti-Avoidance Rules, specifically those which lack commercial substance. By including a specified list of reportable arrangements, SARS requires further Tax Transparency by taxpayers in order to correctly tax the arrangements and to identify any simulated transactions which a taxpayer may have entered into. Section 36 of the TAA also provides the arrangements which are specifically excluded from reportable arrangements.

Section 46 of the TAA – *Request for relevant information* also provides another method for SARS to request information from the taxpayer or another person. In addition to this, section 46(2)(b) allows requests from a connected person to the taxpayer who is located outside of the Republic. This "another person" would include third parties and provides a very wide net of persons which SARS is able to question in relation to a taxpayer in addition to the specific provisions provided for foreign connected persons. Section 46(3), however, assists this "another person" by limiting the information request from another person to the information which they should have and maintain with regards to that taxpayer (Kyamulesire, 2017:35-36).

#### 4.6.4 Country-by-Country reporting

As discussed, in point 3.5.3, CBCR forms part of key transfer pricing documentation, with a focus on enhancing the transparency for tax authorities and high-level transfer pricing information across borders (Panayi, 2018:81).

CBCR is not a stand-alone item, but rather forms part of a three-tiered approach where a master file, local file and CBCR is compiled (Panayi, 2018:81). CBCR requires multinationals to provide information regarding their revenue, profit margins, employment information and taxes paid in the countries in which they do business (Forstater, 2017:6). The process agreed to by the OECD/G20 in terms of their BEPS initiative is that information is shared via submission to the local tax authority which is then shared, through automatic exchange mechanisms, with other tax jurisdictions based on their mutual agreement (Forstater, 2017:23).

The definition for “international tax standard” was amended in the TAA. This was further amended in December 2016 to specifically include CBCR standards for multinationals into the South African legislation (South Africa, 2016b:28). As noted in the SARS guide on how to complete and submit the CBCR documentation, the threshold for South Africa is R10 billion (if a South African multinational) or €750 million (if the foreign entity is the Ultimate Parent Entity) in group turnover (SARS, nd:3; Brodbeck, 2016; PKF South Africa, 2017; Deliotte, 2018a).

South African taxpayers are required to submit their CBCR information, based on the R10 billion threshold, within 12 months of their financial year end for all periods starting 1 January 2016 (Ernst & Young, 2018; SARS, nd:3). Where a South African multinational is not the Ultimate Parent Entity, there is still a requirement to notify SARS that they form part of a multinational company and indicate to SARS where the Ultimate Parent Entity is situated (PKF South Africa, 2017). Additionally, where a company is not expected to exceed the R10 billion turnover threshold but should any transaction exceed R100 million, starting 1 October 2016, that company is also required to submit their local and master files to SARS (PKF South Africa, 2017). Where the R100 million criteria is met, SARS requires the taxpayer to have detailed information on local transactions above R5 million readily available for review on their request (Deliotte, 2018a).

The information a company needs to report on in the CBCR includes detailed information about transactions which occur between different jurisdictions. Some of the specific items included are: (see page 46)

- Turnover information;
- Profit or loss before tax;
- Capital and accumulated retained earnings information;
- Number of employees; and
- Tangible assets held (PKF South Africa, 2017).

In addition to the above, the transfer pricing policy documentation required to be submitted to SARS also have some items which should be included, namely:

- Ownership structure information;
- For affected transactions, the detailed information about the person whom the transaction was entered into with;
- Summary of business operations;
- Senior management organogram including position and location;
- Economic and legal factors impacting profitability;
- Restructuring plans or movement of intangible assets;
- Percentage of market share and competitor analysis and industry policies;
- Key value drivers; and
- Entity’s role within the group (PKF South Africa, 2017).

Finally, where any transactions exceed R5 million, SARS requires the following detailed information with regards to the transaction:

- Nature of the transaction;
- Any contract entered into for the transaction;
- Any South African Reserve Bank approvals/applications;
- Functional and comparative analysis;
- Operation flows information such as cash flow and product information; and
- Details of any financial assistance received (PKF South Africa, 2017).

On 11 May 2018, SARS specifically included any non-submission of CBCR filings as non-compliance and penalties can be raised monthly for any non-compliance with the submission requirements (South Africa, 2018; Ernst & Young, 2018). This penalty is to encourage companies to comply and provide this transparency information to SARS for distribution.

### 4.6.5 VAT on electronic services

On 1 June 2014, the provisions of the Valued-Added Tax Act, No. 89 of 1991 (VAT Act), came into effect in South African legislation. This required foreign providers of “electronic services” to register as VAT vendors in South Africa and charge VAT on their services provided to South African consumers (Cliffe Dekker Hofmeyr, 2018). Originally, the registration threshold for these electronic service providers was the compulsory registration threshold of R50,000 which was not in line with other VAT vendors who had a voluntary registration threshold of R50,000 but had a compulsory registration threshold of R1 million (Cliffe Dekker Hofmeyr, 2018; Deliotte, 2018b). The DTC also noted that this should be amended to be in line with the requirements for local VAT registration (DTC, 2017:9-10). Subsequent to their report, this has been updated and has been effective from 1 April 2019 (Cliffe Dekker Hofmeyr, 2018; Deliotte, 2018b).

SARS provides some detail in their explanatory memorandum as to why they have implemented this provision. Where tangible goods are imported from a foreign country, these products go through Customs and Duty controls which then levy Customs and VAT depending on the value of the item. This brings the products supplied from overseas companies in line with the prices of South African retailers who are required to charge VAT on the products and services they provide. However, with digital products which could be provided over the internet or provided electronically were falling outside of this control mechanism, provides an opportunity for tax avoidance by foreign taxpayers. This legislation is specifically targeting those entities which are providing digital services to South African consumers in order to bring their services into the South African VAT net and tax them accordingly (National Treasury, 2018). Whilst VAT on electronic services in not a direct Tax Transparency tool, it is addressing the digital economy.

### 4.6.6 Financial statement Tax Transparency disclosure

Part of the objectives of this study is to consider the Tax Transparency measures within South Africa. One of the areas which is important to consider is general Tax Transparency disclosure in terms of the financial statements. Stiglingh, Venter, Penning, Smit, Schoeman, and Steyn (2017:151-171), performed a review of the Tax Transparency reporting of the top 50 entities which are listed on the Johannesburg Stock Exchange (JSE). Their paper noted that in terms of Tax Transparency disclosure, 86% of all these firms complied with at least 70% of the Tax Transparency mandatory reporting requirements. However, they commented that more than 50% needed to make progress on some of their transparency reporting and noted that areas where further disclosure is necessary is around tax strategy, total tax contribution as well as risk management.

This study had a focus on the accounting disclosure and the annual financial statement disclosure on the part of these companies and voluntary disclosures which these companies made (Stiglingh *et al.*, 2017:151-171). The mandatory reporting requirements for listed companies in South Africa is for their disclosure to comply with the International Financial Reporting Standard (IFRS) and tax disclosure is specifically contained in IAS 12 – *Income Taxes* (Stiglingh *et al.*, 2017:4). Additionally, JSE listed companies are also required to adhere to the King Code of Corporate Governance (King III) as part of their listing requirements.

Whilst the sample of the top 50 may seem low, it is worth noting that their market capitalisation made up 87% of all the JSE firms listed at 31 December 2013 which covers a significant part of the JSE value (Stiglingh *et al.*, 2017:161).

## 4.7 CONCLUSION

The purpose of this study is to consider the influence of digitalisation and the digital economy on Tax Transparency as a Fundamental Principle of Taxation. Firstly, a definition, based on both dictionary and literature discussed for the “digital economy”, was considered and defined for this study.

Secondly, the OECD's *Action Point 1 – Tax Challenges Arising from the Digital Economy* was discussed. The OECD is a leading body in writing global tax policies and have consolidated concerns from multiple jurisdictions which form part of their membership. Their recommendations and challenges are discussed.

Thirdly, the DTC have considered the OECD recommendations and provide a South African perspective on the challenges as well as consider the recommendations provided by the OECD in terms of changing the South African legislation. Their recommendations and view on the digital economy with regards to the South African legislation are summarised.

Fourthly, other literature which focuses on the digital economy and taxation, particularly those which consider Tax Transparency, is summarised. These articles provide a more practical experience of what changes have already occurred and what is predicted to occur in the near future.

Finally, the South African Legislation and other provisions are considered in order to gain an understanding of the impact of the digital economy and what Tax Transparency measures have been put in place in South Africa.

# CHAPTER 5

# Conclusion and Analysis

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## 5 CONCLUSION AND ANALYSIS

### 5.1 INTRODUCTION

The purpose of this study was to consider the impact that digitalisation has had on Tax Transparency as a Fundamental Principle of Taxation. Ultimately what the study sought to achieve was an understanding of Tax Transparency and -how it was impacted by digitalisation. Additionally, the South African legislation and mechanisms for better Tax Transparency with digitalisation are considered. This chapter provides a summary of the findings and details the contributions of this study to this particular field of taxation. The limitations of the study are reiterated and recommendations are provided for further research opportunities.

### 5.2 HOW THE RESEARCH QUESTION WAS ANSWERED

Three research objectives were determined for this study, namely:

- To explore and analyse the history and development of Tax Transparency;
- To understand the impact of digitalisation and modern technology on this principle;
- To analyse the current application of this Fundamental Principle by comparing the current South African legislation to the recommendations provided by the OECD and the DTC.

In order to answer these research objectives, two key themes were explored. Firstly, a deeper understanding of what Tax Transparency is and how it has developed over time. As the study was considering Tax Transparency in terms of being a Fundamental Principle of Taxation, a definition of what a “Fundamental Principle of Taxation” was constructed.

Furthermore, a definition of Tax Transparency was constructed for this study by considering the general dictionary definition as well as literature which discussed this matter. A look at the historical development of Tax Transparency is discussed and finally a short summary of global agreements which currently support Tax Transparency were noted.

The second theme was that of the digital economy. Whilst this is a broad topic, the focus of the digital economy in this study was on the commentary which has been provided on this in relation to taxation. Firstly, a definition of what the digital economy is, is considered. The OECD is the leading body on international tax policy and having specifically commented in this area, their views on the challenges which the digital economy has on taxation is discussed. The third theme of this study focused on a South African perspective, the DTC's commentary in this area is considered in order to have an understanding of what is being done within South Africa. This is followed by a review of other journal articles and commentary on the impact of digitalisation on taxation, with particular focus on those articles which consider Tax Transparency. Finally, the Tax Transparency tools which South Africa has in place are discussed.

This extended literature review indicates that digitalisation has impacted and increased the need for Tax Transparency in the modern tax system, both locally and globally. This is not, however, without concern of personal information and data privacy considerations. However, there are many ways which technology has made transparency easier and, with the increase of cross-border transactions, a focus of tax authorities going forward. From a South African perspective, it was noted that South Africa has thoroughly considered the changes recommended by the OECD in relation to BEPS, through the research and recommendations provided by the DTC, and have taken up many of the recommendations which create further Tax Transparency. South Africa has included specific provisions within legislation which makes the access to information easier and have kept up to date with the changes recommended by the OECD in most areas of taxation. South Africa has also entered into cross-border co-operation agreements, such as TIEA's and other multilateral agreements, which assists with Tax Transparency both locally and internationally.

## 5.3 LIMITATIONS

One of the biggest limitations of this study is that its focus is mainly on the impact of digitalisation based purely on Tax Transparency. Digitalisation will impact various other areas of taxation as well as other Fundamental Principles of Taxation. Additionally, the focus of this study was on the impact from a South African perspective and other jurisdictions legislation could be explored. Additionally, this study considers digitalisation as it currently stands at this point in time. As this is a fast-moving area, the study focuses on the taxation consideration based on the technology that exists at this point in time.

## 5.4 FUTURE RESEARCH

Some future research topics which could be considered are:

- The impact of digitalisation on Tax Transparency in a different jurisdiction with consideration to their legislation changes;
- How digitalisation has influenced equity of tax collections between jurisdictions;
- How has Tax Transparency influenced the collection of tax revenue?

## 5.5 CONCLUDING REMARKS

As the use of the digital economy grows, the need for information grows with it. The need for Tax Transparency is also growing with the digital changes in the way that goods and services are provided to consumers. In order to keep up with the fast pace changes of digital goods and services, governments need to focus on Tax Transparency as a key Fundamental Principle of Taxation for future policy and legislation developments.

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