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CHAPTER 12

International Tax Simplification in South Africa through Managing Substantive Complexity and Improving Drafting Efficiency

Jinyan Li and Teresa Pidduck

Abstract

This chapter discusses the complexity of the South African international tax legislation in terms of both its substantive complexity and drafting complexity. Substantive complexity is established by examining the current legislation governing tax jurisdiction, the taxation of resident taxpayers and non-resident taxpayers as well as international tax incentive measures and anti-avoidance rules. Drafting complexity is established by comparing the South African Income Tax Act to the Canadian Income Tax Act in respect of the drafting of individual provisions and arrangement of provisions. The chapter recommends ways to simplify the South African international tax legislation by: (a) accepting substantive complexity that is necessary and making it work for the local context, and (b) improving drafting efficiency.

1 Introduction

In this chapter, the simplification of the international tax legislation of South Africa is considered. International tax legislation refers to the provisions of South Africa's Income Tax Act 58 of 1962, as amended (the Income Tax Act) that deal with the international aspects of income taxation. At a high level, these provisions address questions such as: who and what income is subject to tax in South Africa; how to prevent international double taxation if the same income is taxed in a foreign country; how to prevent taxpayers from avoiding South African tax through international tax planning, such as transfer pricing or using corporations in tax havens; how to encourage foreign investment in South Africa through preferential tax regimes; and how to interact with other countries' tax systems through tax treaties. International tax rules are typically more complex than domestic tax rules. The question tackled by this chapter is whether the complexity is necessary and, if not, what the ways are of achieving simplification.

The issue of tax complexity and calls for tax simplification feature prominently in literature on South Africa taxation[1] and commissioned reports, such as those compiled by the Margo and Katz Commissions and the Davis Tax Committee.[2] As a multifaceted and relative concept,[3] tax complexity (or the other side of the coin – tax simplification) can be understood to include legislative (statutory, coding or substantive) complexity[4] and effective (administrative and compliance or operational) complexity.[5] Legislative complexity relates to the difficulty in reading and understanding the tax law owing to the structure and substantive provisions of the legislation, while the effective complexity relates to the difficulty in administering and complying with the law. Both types of tax complexity have been noted in the South African context. For example, the tax legislation has been described as 'far too onerous and complicated

1 T Steyn & M Stiglingh 'The complexity of tax simplification: Experiences from South Africa' in S James *et al* (eds) *The complexity of tax simplification: Experiences from around the world* (2016) 157; K Mandy 'The rewriting of SA's Income [Tax] Act' *FANews* (6 February 2013), available at: http://www.fanews.co.za/article/tax/16/tax/1016/the-rewriting-of-sa-s-income-act/13112 (accessed 12 February 2019); and other chapters in this volume.

2 Commission of Inquiry into the Tax Structure of the Republic of South Africa (C Margo, chair) *Report of the Commission of Inquiry into the Tax Structure of the Republic of South Africa* ([1987]) (Margo Commission); Commission of Inquiry into the Certain Aspects of the Tax Structure of South Africa (M Katz, chair) (Katz Commission) *Third interim report of the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa* ([1995]); Tax Review Committee (Judge D Davis, chair) (Davis Tax Committee) reports (2015-2018), in particular *Final report on macro analysis of the tax system and inclusive growth in South Africa* Pretoria, April 2016; *Second and final report on base erosion and profit shifting* Pretoria, September 2016; *Report on the efficiency of South Africa's corporate income tax system* Pretoria, March 2018 (available at: http://www.taxcom.org.za/index.html).

3 B Tran-Nam 'Tax reform and tax simplification: Conceptual and measurement issues and Australian experiences' in S James *et al* (eds) *The complexity of tax simplification: Experiences from around the world* (2016) 11, 14; B Tran-Nam & C Evans 'Towards the development of a tax system complexity index' (2014) 35(3) *Fiscal Studies* 341, 345. See also G Cooper 'Themes and issues in tax simplification' (1993) 10(4) *Australian Tax Forum* 417; C Evans & J Kerr 'Tax reform and "rough justice": Is it time for simplicity to shine?' (2012) 27(2) *Australian Tax Forum* 387; D Paul 'The sources of tax complexity: How much simplicity can fundamental tax reform achieve?' (1997) 76(1) *North Carolina Law Review* 151; J Partlow 'The necessity of complexity in the tax system' (2013) 13(1) *Wyoming Law Review* 303; SA Donaldson 'The easy case against tax simplification' (2003) 22(4) *Virginia Tax Review* 645; M Walpole 'Tax complexity: A necessary evil?' in C Evans *et al* (eds) *Tax simplification* (2015) 181.

4 The term 'legislative complexity' can be used in a general sense to refer to what Surrey called the 'complex technical structure' of a tax statute, that is, 'complex substantive tax rules with complex interrelationships, characterized by complex variations in the tax treatment of transactions often not differing greatly in substance or form, all of which are expressed in a complex statutory terminology and arrangement': see S Surrey 'Complexity and the Internal Revenue Code: The problem of the management of tax detail' (1969) 34(4) *Law and Contemporary Problems* 673, 673.

5 B Tran-Nam 'Tax reform and tax simplification: Some conceptual issues and a preliminary assessment' (1999) 21(3) *Sydney Law Review* 500; B Tran-Nam *et al* 'Managing tax complexity: The state of play after Henry' (2016) 35(4) *Economic Papers* 347. The Office of Tax Simplification (OTS), United Kingdom (UK), has identified policy, legislative and operational complexity as the key areas of importance in its complexity index: see Office of Tax Simplification 'The OTS complexity index' (2017), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/603479/OTS__complexity_index_paper_2017.pdf (accessed 21 February 2019).

and the associated tax compliance and reporting requirements are becoming too burdensome and expensive to comply with'.[6]

The legislative complexity of the South African international tax provisions is the focus of this chapter. Legislative complexity is analysed in terms of substantive complexity and drafting complexity (or inefficiency). Substantive complexity is presented through a description of the existing international tax rules. It is argued that some substantive complexity is necessary given the intrinsic nature of international taxation, the influence of international tax norms, and a policy objective of maintaining competitiveness of the South African tax system *vis-à-vis* the tax systems of other countries. Drafting complexity refers to legislative complexity caused by drafting style or drafting techniques. The analysis is based on a comparison of the international tax legislation in South Africa and Canada. Canada is chosen as a comparator for several reasons, including the authors' familiarity with the Canadian tax system and the common general features of the two systems, as both have a comprehensive regime of taxation and similar anti-avoidance rules. Similarly, both countries' income tax systems were historically influenced by the tax system in the UK.[7]

The central claim made is that simplification of South Africa's international tax legislation is necessary, but it is important to consider the necessary substantive complexity while improving drafting efficiency. This chapter has four sections. Following this introduction, section 2 presents the international tax system in South Africa at a fairly technical level in order to show the substantive complexity and provide the background for assessing drafting complexity. Section 3 unpacks the extent to which substantive complexity is necessary and areas of drafting complexity. Section 4 offers some simplification (but not simplistic) ideas in the hope of achieving simplification in a manner that will help to advance the policy objectives of South Africa.

2 International tax legislation in South Africa: an overview

International tax legislation refers to the rules in the Income Tax Act that apply to income arising from international transactions or circumstances. These rules are found mostly in Chapter 2 of the Act, such as Part 1

6 Davis Tax Committee *Closing report on the work done by the Davis Tax Committee* Pretoria, March 2018.

7 For the history of the Canadian income tax system, see C Campbell & R Raizenne 'The 1917 Income War Tax Act: Origins and enactment' in J Li *et al* (eds) *Income tax at 100 years: Essays and reflections on the Income War Tax Act* (2017) ch 2. For the history of the South African income tax system, see P Harris 'Importing and exporting income tax law: The international origins of the South African Income Tax Act' in J Hattingh *et al* (eds) *Income tax in South Africa: The first 100 years, 1914-2014* (2016) ch 1.

(Normal tax), Part II (Special provisions relating to companies), Part IIIA (Taxation of foreign entertainers and sportspersons), Part IVA and Part IVB (Withholding tax on royalties and interest), and Part VIII (Dividends tax).[8] For purposes of the discussions below, these rules are grouped as follows: jurisdictional rules, outbound rules, inbound rules, anti-avoidance rules and tax incentive rules. The focus of this discussion is on companies.

2.1 Tax jurisdiction rules

The Income Tax Act addresses the tax jurisdiction issue indirectly through the definition of 'gross income' and 'taxable income' in section 1 and the charging provision in subsection 5(1) which imposes tax on the annual taxable income of any person, including a company. Because 'gross income' is defined differently for residents and non-residents, it can be concluded that the basis for South African tax liability is residence and source of income in South Africa.[9] Further, as far as resident persons are concerned, income from both domestic and foreign sources is taxable.

The notions of 'residence' and 'source of income' are defined to some extent. A company's residence in South Africa is defined in section 1 to be the company's place of incorporation or place of effective management in South Africa. Section 9 provides rules for determining the source of specific items of income, such as rent, royalties, dividends, interest, service fees, pensions and annuities, and capital gains. However, the concept of 'source' is undefined in the Income Tax Act and its meaning may be gleaned from case law.[10] For example, in deciding whether a taxpayer carried on business in South Africa, relevant factors include: the degree of continuity, the profit-making motive, the frequency of the business transactions and the facts surrounding the matter.[11]

2.2 Outbound rules

The outbound rules apply to resident companies that earn income from sources outside South Africa. They generally aim at achieving several tax policy goals, such as facilitating outbound investments by South African companies by preventing double taxation of foreign income, while simultaneously minimising the avoidance of South African tax through

8 Administrative rules are found in the Tax Administration Act 28 of 2011 and apply to any person qualifying as a taxpayer as provided in sec 151.

9 Prior to 2001, South Africa implemented source-basis taxation only. See Steyn & Stiglingh (n 1 above) 161.

10 For example, in the case of *Commissioner for Inland Revenue v Lever Bros & Unilever Ltd* (1946) 14 SATC 1 it was held that the word source referred to the originating cause of income and that the originating cause of income was the income-earning activity or work done (in the case of active income), or the property, or its use (in the case of income derived from granting the use of property). Whether the source is in South Africa is established by way of a facts and circumstances test.

11 *CIR v Kuttel* 1992 (3) SA 242 (A), 54 SATC 298.

using foreign companies, 'offshoring' locally developed intangible property or importing foreign losses. For purposes of this discussion two main sets of rules, the foreign tax relief and controlled foreign company (CFC) rules, are reviewed below.

The Income Tax Act provides double taxation relief through a foreign tax rebate (or credit) method, foreign tax deduction method or a foreign income exemption method:

- A foreign tax rebate is the main method used to provide foreign tax relief. Section 6*quat* stipulates the key requirements for this rebate, such as: who is eligible for the tax rebate; which payments are in the form of foreign taxes; what income is derived from a foreign source; how much credit can be claimed; how can foreign taxes be translated into domestic taxes, and how should one interact with the double tax method under an applicable tax treaty. Generally, income taxes paid in a country that has a tax treaty with South Africa qualify for the tax rebate. The amount of foreign taxes subject to the rebate is limited by the amount of South African tax otherwise payable on the foreign income, and any excess amount can be carried forward.
- The foreign tax deduction method applies only if a rebate cannot be applied to the foreign taxes.[12]
- The foreign income exemption method is limited and applies only to certain types of foreign income.[13] For example, section 10B(2)(a) provides for a participation exemption rule according to which dividends received from a non-resident company are exempted from tax if the shareholder is resident in South Africa (whether alone, or together with another company forming part of the same group of companies) and holds at least 10% of the total equity shares and voting rights in the non-resident company.[14]

The controlled foreign company rules in section 9D are among the most complex in South Africa[15] and other countries as they rely on technical rules to establish boundaries between the legitimate use of foreign companies and other uses to protect South Africa's tax base, without impeding outbound investments or causing over-taxation of foreign

12 For example, a resident deriving taxable income from carrying on any trade in a foreign jurisdiction may deduct foreign income taxes in terms of sec 6*quat*(1C), except when foreign taxes on income qualify for a foreign tax rebate under secs 6*quat*(1), (1A) and 1B). Furthermore, the amount deducted may not exceed the South African total taxable income (before taking into account this special tax deduction) that is attributable to income that was subject to the foreign tax sought as a deduction (sec 6*quat*(1D)).

13 See sec 10B of the Income Tax Act and para 64B of the Eighth Schedule for exemptions on foreign dividends and capital gains. See secs 10(1)(o) and 10(1)(gC) of the Income Tax Act for exemption of foreign employment income, pension and welfare payments.

14 For similar rules in other countries, see Canada, Income Tax Act RSC 1985, c 1 (5th supp) (Canadian Income Tax Act), sec 113(1)(a) and United States (US), Tax Cuts and Jobs Act of 2017, PL 115-97, sec 355 of Internal Revenue Code.

15 J Hattingh 'South Africa - corporate taxation' IBFD Country Analyses 10.4 (1 August 2018).

income.[16] In essence, section 9D defines a controlled foreign company as a non-resident company in which one or more South African residents (natural and legal persons) directly or indirectly hold more than 50% of the participation rights[17] or voting rights exercisable in the company.[18] The tainted controlled foreign company income is essentially its non-business income (such as dividends, interest, royalties or rental) received from arm's-length parties,[19] excluding business income, the income of a public company or company located in a high-tax country.[20]

The controlled foreign company rules interact with foreign tax relief rules[21] and dividend exemption rules. Any foreign taxes attributed to the imputed, tainted income of a controlled foreign company are subject to the section 6*quat* rebate. When the imputed income is subsequently paid to the South African resident as dividends, such dividends are eligible for exemption under section 10B or section 10(1)(k)(ii).[22] The controlled foreign company rules complement the headquarter company regime by not applying to headquarter companies.[23]

2.3 Inbound rules

The primary policy goals of inbound rules are to generate tax revenue, achieve tax neutrality between residents and non-residents, and encourage foreign investment. These rules deal with business income and investment income and capital gains separately.

16 See A Oguttu *International tax law: Offshore tax avoidance in South Africa* (2015) 135 where it is submitted that without controlled foreign company rules it would be easy for a taxpayer to defer domestic taxation on foreign income by interposing a foreign company in a territory with a lower level of taxation, instead of remitting the income to the home country.

17 Participation rights are defined under sec 9D(1) as the right to participate, directly or indirectly, in the share capital, share premium, current or accumulated profits or reserves of the company, whether or not of a capital nature.

18 The controlled foreign company definition was expanded as of 1 January 2018 to include any foreign company where the financial results of that company are reflected in the consolidated financial statements of any South African resident company. This is to capture arrangements where a resident company uses foreign trusts or foundations to avoid the status of having a CFC. See Hattingh (n 15 above).

19 Section 9D(2A) defines the net income of a controlled foreign company as the amount determined in a manner that is almost identical to that used for a resident company and provides specific exclusions and limitations. One major exclusion is income attributable to a foreign business establishment, thus taxing non-genuine business transactions that effectively divert or shift South African income offshore (the so-called diversionary transactions under sec 9D(9A)). Intragroup payments of dividends, interest, royalties and rent or similar income are also excluded.

20 To determine whether a foreign country's tax rate is high, it is measured against the South African tax (if the foreign tax is at least 75% of the amount of South African tax that would have been payable had the controlled foreign company been a South African taxpayer).

21 Oguttu *International tax law* (n 16 above).

22 *Ibid*.

23 See sec 9D(1)(a) for the exclusion of headquarter companies from the definition of a controlled foreign company.

A non-resident company providing services or carrying on business activities in South Africa is subject to the normal tax at the rate applicable to resident companies.[24] The tax is levied on net profit as a non-resident is generally entitled to deduct business expenses. In effect, as far as South African source business income is concerned, a local branch or place of business and a local company are treated similarly under the Income Tax Act in terms of the tax rate and computation of taxable income.[25]

Investment income in the form of dividends, interest, rent, or royalties as well as certain capital gains are subject to withholding taxes.[26] The tax rate is 15% on interest and royalties, 20% on dividends and 10% (in the case of a company) on capital gains derived from the sale of fixed property.[27] The Income Tax Act defines the key concepts and source rules. For example, the term 'royalties' is defined in section 49A to be any amount in respect of: the use of, or the right of use of, or permission to use any intellectual property; the imparting of any scientific, technical, industrial or commercial knowledge or information (often known as 'know-how'); or the rendering of a service in connection with the application or utilisation of know-how ('show-how' services).[28]

The source rules can be found in section 9, including:

- dividends have a South African source if the payer company is resident in South Africa (section 9(2)(a));
- interest and royalties have a South African source if: (a) the payer is a South African resident, unless the amounts are attributable to a permanent establishment outside South Africa (section 9(2)(b)(i) and (c)), or (b) the utilisation of the debt or intellectual property/know-how is in South Africa (section 9(2)(b)(ii) and (d));
- know-how service fees have a South African source if a service is rendered in connection with the use of know-how in South Africa (section 9(2)(f)).

24 Refer to section 2.1 above for the discussion of the South African tax jurisdiction provisions.

25 Unlike a local subsidiary of a foreign company, however, repatriation of after-tax profits of a permanent establishment is not subject to withholding tax, but dividends paid by a subsidiary to its foreign parent are subject to such a tax. The Income Tax Act does not have a branch profit tax, as is found in Canada (sec 219 of the Canadian Income Tax Act).

26 Prior to 2012 withholding taxes differed in treatment as to rates, timing, refunds and other procedures, resulting in complex administration and compliance. In 2012 withholding taxes were simplified through more co-ordination between the withholding tax regimes. See Explanatory Memorandum on the Taxation Laws Amendment Bill 2012 114.

27 For further discussion, see T Koole 'South Africa' (2018) *Cahiers de Droit Fiscal International*, vol 103B: Withholding tax in the era of BEPS, CIVs and the digital economy 5.

28 The terms know-how and show-how services are not used in the Income Tax Act. They are used in this chapter for easy reference. Section 1 defines dividends and secs 50A and 24J(1) define interest.

Under the withholding tax regime, the South African payer of the taxable amounts must deduct the tax and remit the deducted tax to the government.[29]

2.4 Headquarter company regime

Headquarter companies are essentially resident companies that function as regional headquarters of multinational enterprises.[30] Through election they can qualify for preferential treatment, primarily in the form of being exempted from the various anti-avoidance rules and withholding taxes.[31] The policy goal is to make South Africa a 'gateway to Africa', or an ideal location for multinational enterprises to set up regional headquarters.[32]

Section 9I sets out the qualifying conditions for a headquarter company, which include that each shareholder in the company must hold at least 10% of the equity shares and voting rights; 80% or more of the company's assets (valued on a cost basis) are attributable to equity in, debt advanced to, or intellectual property licensed to a foreign affiliate,[33] and, where the gross income of the company exceeds ZAR 5 million, at least 50% of the company's gross income consists of investment income (rent, dividend, interest, royalty) or a service fee paid or payable by a foreign affiliate.[34]

Preferential treatment of a headquarter company includes exemption from the application of the controlled foreign company rules (section 9D(2)); dividends, royalties and interest paid by a headquarter company to non-residents are free from withholding taxes;[35] capital gains realised on the sale of shares in a foreign affiliate are tax-free,[36] and certain transactions between a headquarter company and its related companies are free from the 'thin capitalisation' and transfer pricing rules (section 31(5)). Interest and royalty expenses are, however, ring-fenced in the sense that they are deductible to the extent of interest and royalties received from qualifying investments in foreign affiliates.[37] If a headquarter company

29 Sections 156 and 157 of the Tax Administration Act provide that the payer of the taxable amounts are 'withholding agents' who are personally liable for any of these amounts that are not paid or, for amounts that should have been withheld, were not withheld and paid to the South African Revenue Service (SARS).
30 Refer to SARS Interpretation Note 87 (Issue 2) 2018 82 and Explanatory Memorandum on the Taxation Laws Amendment Bill 2010 127.
31 E Mazansky 'South Africa: New headquarter company regime' (2011) 65(3) *Bulletin for International Taxation* 166.
32 Mazansky (n 31 above).
33 We use foreign affiliate to refer to a non-resident company in which at least 10% of the equity shares and voting rights are held by the resident company (sec 9I(2)(a)). This term is relevant in the context of CFC rules and other rules.
34 This 50% rule applies only where the gross income exceeds ZAR 5 million.
35 Sections 49D(c) for royalties, 50D(1)(a)(i)(aa) for interest, and 64E for dividends.
36 Eighth Schedule, para 64B(2). Foreign exchange control rules and regulations do not apply to HQCs.
37 Any disallowed amounts can be carried forward.

earns any South African business income, it is liable for the payment of normal tax on such income.

2.5 Specific anti-avoidance rules

The Income Tax Act contains a general anti-avoidance rule[38] and numerous specific anti-avoidance rules[39] to protect the tax base without unduly interfering with legitimate tax planning or causing unnecessary uncertainty.[40] A key issue in drafting anti-avoidance rules is defining the kind of avoidance transaction that is unacceptable from a policy perspective and then deny the tax benefit of such transaction. The main international anti-avoidance rules are overviewed below, including those on transfer pricing, debt financing, hybrid instruments and round tripping of intangible property.

2.5.1 Transfer pricing

Transfer pricing rules in section 31 of the Income Tax Act codify the widely-accepted arm's-length principle. Like the tax administration of many other countries, SARS generally follows the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines (OECD Guidelines),[41] even though it is acknowledged that some difficulties are encountered in doing so.[42] These transfer pricing rules apply to any 'affected transaction' (essentially a transaction between

38 The current general anti-avoidance rule is found in secs 80A to 80L of the Income Tax Act. It is beyond the scope of this chapter to discuss this rule. For further discussion, see A Marais 'South Africa' (2018) *Cahiers de Droit Fiscal International*, vol 103A: Anti-avoidance measures of general nature and scope – GAAR and other rules 5; A Oguttu 'South Africa' in M Lang *et al* (eds) *GAARs – a key element of tax systems in the post-BEPS world* (2016) 611; BT Kujinga 'Factors that limit the efficacy of general anti-avoidance rules in income tax legislation: Lessons from South Africa, Australia, and Canada' (2014) 47(3) *Comparative and International Law Journal of Southern Africa* 429; SARS *Draft comprehensive guide to the General Anti-Avoidance Rule* (13 December 2010).

39 Oguttu *International tax law* (n 16 above) 7 and TMC Pidduck 'The South African general anti-tax avoidance rule and lessons from the first world: A case law approach' unpublished PhD thesis, Rhodes University, 2017 550-552.

40 SARS 'Discussion paper on tax avoidance' (2005) 8.

41 SARS 'Section 31 of the Income Tax Act, 1962 (the Act): determination of the taxable income of certain persons from international transactions: transfer pricing' Practice Note 7 (1999) 6. For further discussion, see W Horak 'South Africa - transfer pricing' IBFD Transfer Pricing (31 October 2018). Because the OECD Guidelines occupy more than 600 printed pages and are frequently updated, the South African transfer pricing rules are, in practice, more extensive (and complex) than is conveyed by sec 31 of the Income Tax Act.

42 South Africa states the following in D.5.6.1 of the *United Nations practice manual on transfer pricing for developing countries* (2017) (UN Manual):

> The main challenge that South Africa has in determining arm's length profits has to be the lack of domestic comparables. … The obvious problem this gives rise to has no simple or definitive solution. Instituting comparability adjustments to account for geographical differences (for example, market, economic and political differences) in order to improve the degree of reliability of the comparable data, is often extremely complex and can in some instances have the reverse effect, ie, where the comparable data is no longer comparable.

'connected persons'[43] such as members of a multinational group) if any term or condition of that transaction results or will result in any tax benefit being derived by a person who is a party to that transaction. A typical transaction would be one entered into by a company in South Africa with its foreign parent or sister in respect of, among other things, sales of goods or services or financing or licensing of intellectual property or know-how. Such transactions may result in the avoidance of South African tax if the resident company receives less or pays more than the arm's-length price in respect of the affected transaction.

Determining the arm's-length price (or the profit of the resident company) is at the heart of the arm's length principle. The OECD Guidelines provide five methods for making this determination: comparable uncontrolled price; resale price; cost plus; transactional profit method; and profit split.[44] It is beyond the scope of this chapter to discuss the details of these methods. Suffice it to say that these methods are not easy to apply as they require a transactional, comparative analysis of affected transactions and arm's length transactions, and are inherently unsuitable for unique transactions involving intangibles and services. In South Africa, it is often challenging for SARS to obtain sufficient information to make the comparative analysis.[45] The recent introduction of country-by-country reporting (CbC) regulations pursuant to the OECD's base erosion and profit shifting (BEPS) project (discussed further in section 3.1 below) attempts to address this challenge.[46]

2.5.2 Intragroup debt financing

Intragroup financing is one of the common structures used by multinational enterprises to shift profit from source countries.[47] Sections 31 and 23M[48] specifically limit interest expense deductions in cross-border

43 The term 'connected person' is defined in sec 1. In relation to a company, a connected person is: any other company that would be part of the same group of companies (more than 50% equity ownership); any other company if at least 20% of the equity shares in the company are held by that other company and no shareholder holds the majority voting rights in that company.

44 It is beyond the scope of this chapter to discuss the details of these methods. For further information, see UN Manual (n 42 above).

45 UN Manual (n 42 above).

46 This is to implement the recommendations of the OECD's BEPS Action 13 Report. When the ultimate parent entity of an MNE is a South African tax resident and has a consolidated group turnover of more than ZAR 10 billion (or, in certain circumstances, EUR 750 million), it must file a CbC report with SARS and notify them that it is the ultimate parent. See OECD *Action 13 – 2015 final report, transfer pricing documentation and country-by-country reporting* OECD/G20 Base erosion and profit shifting project (2015).

47 M Durst 'Poverty, tax competition, and base erosion' (2018) 89 *Tax Notes International* 1189.

48 It was introduced in 2013 and took effect in 2015, incorporating the recommendation in BEPS Action 4, 'Limiting base erosion involving interest deductions and other financial payments'. Some elements of limitation on interest deduction preceded the BEPS project and were borrowed from other jurisdictions, eg, Germany.

situations. Interest arising in affected transactions within the meaning of section 31 is limited to the arm's length amount.[49] Even if interest is paid at the arm's length rate, section 23M limits the aggregate deductions for interest that is *not* subject to tax in the hands of the creditor who is in a controlling relationship[50] with the debtor.[51] The deduction limit is defined in section 23M(3) with reference to a percentage of adjusted taxable income. The percentage is defined by the formula:[52]

$$A = B \times C/D,$$

where:

A = the percentage to be determined;
B = the number 40;
C = the average repo rate plus 400 basis points; and
D = the number 10,
but the percentage cannot exceed 60% of the adjusted taxable income of the debtor.

Adjusted taxable income is similar to the notion of EBITDA (earnings before interest, depreciation and amortisation) in the BEPS Action 4 Report.[53] It is defined in section 23M(1) as the taxable income of the debtor determined under normal rules with certain adjustments. One type of adjustment is to add back three items that are generally deductible in computing taxable income, that is, interest, capital allowances and losses brought forward. Another type of adjustment is to exclude interest income received by the debtor, include controlled foreign company net income, and amounts recovered in respect of capital assets (or recaptures).

49 Previously, SARS applied a 3:1 ratio in SARS, 'Income tax: determination of taxable income where financial assistance has been granted by a non-resident of the Republic to a resident of the Republic' Practice Note 2 (1996), issued under the former transfer pricing regime, which functioned as a thin capitalisation rule.

50 A controlling relationship exists if a person directly or indirectly holds at least 50% of the equity shares or 50% of the voting rights in a company (sec 23M). This rule applies to a resident company or a non-resident with a permanent establishment in South Africa to which an interest-bearing debt claim is effectively connected. It does not apply if the interest is included in the imputed income of a controlled foreign company. In other words, sec 23M aims at preventing base erosion through interest deductions.

51 Interest expenses in excess of the limitation will not be deductible, but the excess will be carried forward to the following year.

52 The formula ensures that the percentage is adjusted according to changes in the Reserve Bank rate (the average repo rate). A Readhead 'Preventing base erosion: South Africa's interest limitation rules' Natural Resource Charter Case Study, Natural Resource Governance Institute (17 April 2017), available at: https://resourcegovernance.org/analysis-tools/publications/preventing-base-erosion-south-africa-interest-limitation-rules (accessed 18 September 2018). The additional 400 basis points is a risk premium to account for volatility in the rand. For example, if the Reserve Bank rate is 6%, the limit will be 40%: (40 x (6% + 4%))/10. If the rate falls to 3%, the limit would be 28%: (40 x (3% + 4%))/10.

53 OECD *Action 4 – 2015 final report, limiting base erosion involving interest deductions and other financial payments* OECD/G20 Base erosion and profit shifting project (2015).

2.5.3 Hybrid instruments

Sections 8E, 8F and 8FA deal with cross-border financial instruments with mixed features of debt and equity in private law which, for tax purposes, may be characterised differently in South Africa than in another country. These instruments, which are covered by BEPS Action 2,[54] can be used to achieve the outcome of double non-taxation by taking advantage of the mismatch between the tax and private laws of different countries.

Section 8E targets equity funding with specific debt-like features, for example redemptions within prescribed periods; prescribed interest rate or the time value of money; and preference shares secured by financial instruments (for example, interest-bearing arrangements).[55] Dividends on hybrid equity instruments are deemed to be income (as opposed to dividends) for the shareholder and are therefore subject to normal tax rules. The effect is that the dividend exemption rules are rendered inapplicable.

Sections 8F and 8FA target hybrid debt or hybrid interest instruments and, for income tax purposes, deem interest to be dividends. A hybrid debt instrument is a debt instrument with equity features, such as a convertible share, subordinated loan and instrument with longer maturity date.[56] Hybrid interest is interest for which the amount is not determined by a specified rate of interest or the time value of money, or interest that is tied to the profits of the company. The effect of these rules is to deny an interest deduction to the issuer of the instruments.

2.5.4 Roundtripping of intellectual property

Section 23I applies to what is known as 'roundtripping' of intellectual property developed in South Africa,[57] but designed to shift income offshore. Typically, such property can be transferred to a related company in a no- or low-tax country outside the controlled foreign company regime, after which it can be licensed back to a company in South Africa in return for royalties. Royalties are generally tax deductible under the Income Tax Act.[58]

Section 23I(2) prohibits any deduction of royalties or similar payments in respect of tainted intellectual property to the extent that, under the

54 OECD *Action 2 – 2015 final report, neutralising the effects of hybrid mismatch arrangements* OECD/G20 Base erosion and profit shifting project (2015).
55 Hybrid equity instrument is defined in sec 8E(1) the Income Tax Act.
56 Section 8F(1) the Income Tax Act.
57 Section 23I(1) the Income Tax Act broadly defines intellectual property as a patent, design, trade mark or copyright; a property or right of a similar nature and knowledge connected to the use of such a patent, design, trade mark, copyright, property or right.
58 The general deduction formula is found in secs 11a and 23g of the Income Tax Act.

Income Tax Act, royalties do not constitute income for the recipient or part of imputed controlled foreign company income.[59] Tainted intellectual property is at the heart of this anti-avoidance rule. This term is defined in section 23I(1) to mean, essentially, intellectual property that was originally created and used in South Africa, but is owned by a related foreign company.[60]

Section 23I works together with the transfer pricing rule in section 31 and the controlled foreign company rule in section 9D and was presumably enacted because these two rules were deemed insufficient. It is not easy to apply the transfer pricing rule to intellectual property, since the arm's-length price or market value of unique intellectual property is difficult to establish.[61] Similarly, an arm's-length royalty rate may also be difficult to establish.[62]

3 Legislative complexity

The international tax rules discussed in section 2 above are complex in terms of the substantive rules. The complexity is arguably more evident when compared to general rules for domestic transactions. Such complexity includes necessary substantive complexity, owing to the inherent nature of international taxation and the need to achieve multiple tax policy objectives, and drafting complexity, attributable to drafting choice. Each type of complexity is briefly discussed below.

3.1 Substantive complexity

The notion of legislative complexity can be understood as referring to the 'complex technical structure' of a tax statute.[63] According to this notion, the international tax legislation in South Africa is complex. This is particularly true in the case of anti-avoidance rules which are 'complex substantive tax rules with complex interrelationships, characterized by complex variations in the tax treatment of transactions often not differing greatly in substance or form, all of which are expressed in a complex statutory terminology and arrangement'.[64] A certain level of substantive complexity is, however, 'necessary' for two main reasons: (1) the

59 The withholding tax on royalties may be reduced under sec 23I(3) the Income Tax Act.
60 The South African end user or its connected person must hold at least 20% participation rights in this foreign company.
61 See section 2.5.1 above for a discussion on the difficulties related to the arm's-length pricing.
62 In practice, as explained by Horak (n 41 above) 9.8, it is very difficult to transfer intangible property rights to a connected person who is a non-resident due to exchange control restrictions.
63 Surrey (n 4 above).
64 Surrey (n 4 above).

international tax norms and standards incorporated into South African are complex, and (2) international tax issues are inherently more complex.

The South African legislation incorporates many international tax norms and standards. These norms and standards tend to be more complex as they were generally developed first by countries with more mature tax systems. Examples are the hybrid instrument rules and debt financing rules that are based on the standard developed by the BEPS project.[65] In order to prevent double taxation and tax avoidance and remain competitive, South Africa's tax laws must consider the tax laws of other countries.[66] This unique aspect of international taxation is inherently more complex as South Africa must clarify whether and when to cede tax jurisdiction to another country (through foreign tax relief measures).

More fundamentally, international tax rules are complex in order to address complicated issues, including interacting with other countries' tax systems, addressing sophisticated international tax planning, and responding to emerging global tax challenges. Compared to pure domestic taxpayers, international taxpayers have more complex situations in terms of their tax affiliation with South Africa: some have foreign income and desire to avoid South African tax,[67] and some are foreign-based multinational enterprises which may bring capital and technology to South Africa but also use aggressive tax planning practices to avoid South African tax.[68] The recent rise of new business models (such as global value chains), digital businesses and the increasing importance of intangibles in value creation have created new challenges to international tax system.[69] The BEPS project attempted to address these challenges and adopted measures, including minimum standards and best practices for countries to implement.

Most anti-avoidance rules are inherently complicated. Typically, they must first describe the mischief (or offensive type of tax avoidance arrangement) and then remove the mischief without affecting the operation of the basic rules or other specific anti-avoidance rules or interfering with legitimate business arrangements. While expressing which specific tax arrangements are not acceptable, specific anti-avoidance rules may also signal to taxpayers that what is not prohibited is permitted.

65 For an overview of the BEPS Project and reports generated by the project, see OECD 'Base erosion and profit shifting', http://www.oecd.org/tax/beps/.

66 Davis Tax Committee *Second interim report on base erosion and profit shifting (BEPS) in South Africa: Introduction* (n 2 above) 11.

67 See Oguttu *International tax law* (n 16 above) 600-635 for a discussion of exchange of information on tax matters.

68 Davis Tax Committee *Report on the efficiency of South Africa's corporate income tax system* (n 2 above) 72 and *Final report on macro analysis of the tax system and inclusive growth in South Africa* (n 2 above) 66.

69 Davis Tax Committee, *Executive summary of the second interim report on base erosion and profit shifting (BEPS)* (n 2 above) 77.

As a tax policy issue, becoming more internationally tax competitive[70] is important to South Africa. However, this also leads to legislative complexity. Preferential tax regimes, such as the headquarter company regime, need to be designed not only to work well with other international rules but also to prevent the regime from being used as an opportunity for tax avoidance. This point is recognised by the Davis Tax Committee, which states that the 'value and importance of a headquarter company regime must not be understated', and that an appropriately designed regime should be 'not only attractive from a tax perspective in terms of tax benefits and ease of compliance' but should also take base erosion and profit shifting concerns into account.[71]

3.2 Drafting complexity

Some of the legislative complexity is attributable to how the international tax provisions are drafted and arranged.[72] However, it is difficult to assess the quality of drafting or organisation of provisions in an abstract manner, largely owing to a lack of any objective standard. A comparative approach is used as a second-best option. International tax provisions of the Canadian Income Tax Act are used as comparators. It should be noted, however, that this comparative approach has its limitations, the most important of which is that it takes a snapshot of the current systems without considering the broader historical, social, economic and legal contexts.

With respect to the drafting of individual provisions, we use three examples to illustrate the drafting inefficiency: implicit drafting, 'wordy' drafting and overly broad drafting. Section 5 of the Income Tax Act is an example of implicit drafting. It functions as a tax jurisdiction rule, but it does so in an implicit manner by relying on the definitions of 'gross income' and 'taxable income' in section 1. By comparison, section 2 of the Canadian Income Tax Act sets forth the Canadian jurisdiction to tax residents and non-residents.

An example of 'wordy' drafting is section 31. The definition of affected transactions in section 31(1) uses more than 200 words to capture cross-border transactions between parties under common control (typically known as non-arm's length transactions):

> *affected transaction* means any *transaction*, operation, scheme, agreement or understanding where

70 Davis Tax Committee *Executive summary of the second interim report on base erosion and profit shifting (BEPS)* (n 2 above) 60.
71 Davis Tax Committee *Report on the efficiency of South Africa's corporate income tax system* (n 2 above) 88.
72 Davis Tax Committee *Closing report* (n 6 above) 15.

(a) that transaction, operation, scheme, agreement or understanding has been directly or indirectly entered into or effected between or for the benefit of either or both-

(i) (aa) a person that is a resident; and
(bb) any other person that is not a resident;

(ii) (aa) a person that is not a resident; and
(bb) any other person that is not a resident that has a permanent establishment in the Republic to which the transaction, operation, scheme, agreement or understanding relates;

(iii) (aa) a person that is a resident; and
(bb) any other person that is a resident that has a permanent establishment outside the Republic to which the transaction, operation, scheme, agreement or understanding relates; or

(iv) (aa) a person that is not a resident; and
(bb) any other person that is a controlled foreign company in relation to any resident, and those persons are connected persons in relation to one another; and

(b) any term or condition of that transaction, operation, scheme, agreement or understanding is different from any term or condition that would have existed had those persons been independent persons dealing at arm's length …

By comparison, in the transfer pricing rule in section 247 of the Canadian Income Tax Act, fewer words are used to capture a broader scope of offensive transactions:

(2) Where a taxpayer or a partnership and a non-resident person with whom the taxpayer or the partnership, or a member of the partnership, does not deal at arm's length (or a partnership of which the non-resident person is a member) are participants in a transaction or a series of transactions and

(a) the terms or conditions made or imposed, in respect of the transaction or series, between any of the participants in the transaction or series differ from those that would have been made between persons dealing at arm's length, or

(b) the transaction or series
(i) would not have been entered into between persons dealing at arm's length, and
(ii) can reasonably be considered not to have been entered into primarily for bona fide purposes other than to obtain a tax benefit …

Furthermore, the phrase 'transaction, operation, scheme, agreement or understanding' is repeated 20 times in section 31. By comparison, section 247(1) of the Canadian Act defines a transaction as including 'an arrangement or event' and uses only the word 'transaction' in the remainder of the provision.

An example of overly broad drafting are the hybrid rules in sections 8F and 8FA and the interest limitation rules in section 23M. The Davis Tax

Committee considered them to be 'overly broad and excessively complex, which results in often unintentional noncompliance by taxpayers and lack of enforcement by SARS'.[73]

With respect to the arrangement of provisions, the lack of a coherent structure and duplication are two areas of drafting inefficiency. It is difficult to see the structure of the international tax system in South Africa by looking at the list of sections. International tax provisions are scattered throughout the Income Tax Act. For example, the first few substantive provisions provide for the levy of normal tax and tax rates (section 5), tax rebates (section 6) and special credits for medical scheme fees and medical expenses (sections 6A and 6B). The next group of provisions is concerned with specific timing and accounting issues (sections 7-7E) and specific items of income to be included when income is computed, such as gains made by directors of companies (sections 8 and 8A). Substantive inbound and outbound rules are scattered across different places.[74] By comparison, the Canadian Act arranges the sections pertinent to international taxation as follows:

- Section 1, short title

  Part I, Income Tax
- Section 2, liability for tax (residents and non-residents)
- Sections 3 - 108, computation of income (including sections 90 - 95 in respect of shareholders of non-resident corporations, such as the controlled foreign company rules)
- Sections 109 - 116, computation of taxable income (including sections 115 - 116 in respect of non-residents)
- Sections 117 - 127, computation of tax

  ...

  Part XIII and Part XIV
- Sections 212 - 218, withholding taxes applicable to non-residents
- Section 219, additional tax on on-resident corporations (branch tax)

  Part XV, Administration and enforcement

  Part XVI and Part XVI.1
- Section 245, the General Anti-Avoidance Rule
- Section 247, transfer pricing.

73 Davis Tax Committee *Report on the efficiency of South Africa's corporate income tax system* (n 2 above) 89.

74 Davis Tax Committee *Report on the efficiency of South Africa's corporate income tax system* (n 2 above) 63:

> The fragmentation of the provisions increases the risks to business in completing income tax returns accurately as it adds complexity and requires deep professional knowledge and understanding of the law to identify the potential provisions that may find application to the income derived by the business.

An example of duplication in the South African Act is the legislation on withholding taxes. Part IVA (royalties) and Part IVB (interest) each has eight identical sections dealing with:

- definitions – sections 49A/50A;
- the levy of tax – sections 49B/50B;
- liability for tax – sections 49C/50C;
- exemptions – sections 49D/50D;
- withholding of the tax – sections 49E/50E;
- payment and recovery of tax – sections 49F/50F;
- refund of tax – sections 49G/50G; and
- currency of payment to the Commissioner – sections 49H/50H.

By comparison, the Canadian Act imposes withholding tax on interest and royalties under section 212(1)(b) (interest) and (d) (royalties).

Another example of duplication perhaps relates to the various provisions limiting interest deduction (see Table 1 below).

Table 1: Selected rules on interest deduction limitations

Section of the Income Tax Act	**Issue/Description**
Section 8F	Denies the deduction of interest incurred or accrued under a hybrid debt instrument and deems it to be a dividend for the payer and recipient.
Section 8FA	Denies the deduction of interest incurred or accrued under a hybrid debt instrument and deems it to be a dividend *in specie* for the payer and recipient.
Section 8E	Treats a hybrid financial instrument as a 'hybrid equity instrument' in certain circumstances and dividends on the share are taxed as income (not interest) in the hands of the shareholder.
Section 8EA	Applies to equity that resembles debt (preference shares), where the dividend yields in respect of the shares are secured or guaranteed by a third-party. It subjects a dividend to tax in certain instances.
Section 23(q)	Disallows a deduction of expenditure incurred to earn foreign dividends that are subject to section 10B.
Section 23M	Limits cross-border interest deductions where a controlling relationship exists between the payer/debtor and payee/creditor and the latter is not subject to tax. It provides for the non-deduction / non-inclusion, if deductible interest is paid to non-resident and exempt persons.
Section 23N	Limits the use of excessive debt financing to achieve tax savings in reorganisation and acquisition transactions.

Section 24J	Deals with the accrual and incurring of *interest* for the holder and issuer.
Section 35(2) of the Tax Administration Act 28 of 2011	Reportable arrangement rules that require the reporting of share buy-backs, hybrid equity and debt instruments.
Section 80A	Round-tripping may be impermissible tax avoidance, subject to the general anti-avoidance rule.
Section 31	Intra-group financing.

There are good reasons why the above-discussed drafting inefficiencies exist. One reason may be the need to keep the existing structure of the Income Tax Act intact as far as possible while addressing new issues. The numbering system may be an example. Arabic numerals (1, 2, 3, 4) are used for the original sections and subsequent additions are numbered by adding capital letters (4A, 5A, 6A). Presumably, newer provisions were numbered using double capital letters (8EA and 8FA). Some sections (such as section 6) use a different numbering system – *bis, ter, quat, quin and sex.* The result is a numbering system that is rather confusing. The need for constant amendment of the legislation to address emerging policy concerns or tax avoidance schemes leads to ad hoc additions to the Income Tax Act. In some cases, these amendments appear to be just patchwork. The Davis Tax Committee notes the following:[75]

> The complexity in the Act is manifest in many of the individual provisions on a stand-alone basis and certainly also in the statute as a whole. The Act has evolved over the last half century (since its last consolidation in 1962) as a patchwork of specific provisions to address specific technicalities and transactional developments - with insufficient regard for overall policy and structure objectives or the desire to retain simplicity.

4 Simplification ideas

The case for simplification has been made by the Davis Tax Committee: 'increasing complexity of corporate tax legislation (often influenced by international developments) has rendered the system more open to interpretation, less certain and less transparent',[76] and '[t]he overall complexity of the corporate income tax system is a cause for concern and simplification should be a priority'.[77] This section contributes two general

75 Davis Tax Committee *Report on the efficiency of South Africa's corporate income tax system* (n 2 above) 89.
76 Davis Tax Committee *Executive summary of the final report on macro analysis of the tax system and inclusive growth in South Africa* Pretoria, April 2016 13.
77 Davis Tax Committee *The tax system and inclusive growth in South Africa: Towards an analytical framework for the Davis Tax Committee executive summary* Pretoria, June 2015 28.

ideas about how to achieve simplification: keeping the substantive complexity simple for South Africa and improving drafting efficiency.

4.1 Managing necessary substantive complexity

As pointed it out in section 3.1 of this chapter, there are valid reasons for having substantive complexity in South Africa's international tax legislation. In fact, the level of substantive complexity is generally beyond South Africa's control if South Africa wishes to be part of the global tax community. The causes of such complexity are not really within the control of any individual country. Therefore, a reasonable level of complexity is inevitable. We strongly support the Davis Tax Committee's view on a balanced approach to simplification:[78]

> Although tax laws should be drafted simply, this may not always be adequate to address complex situations, as simple rules might undermine ease of administration. Simplicity should not be an end in itself and it should not come at an unacceptable cost in relation to other policy objectives. A balance must be struck. Care should be taken to note that simplicity is not easily taken advantage of by sophisticated taxpayers.

One way of achieving simplification is to modify complex rules that were created for mature tax systems to suit the South African context. Less legislation may be more effective in the South African context as excessively detailed legislation tends to create unnecessary complexity in compliance and introduces uncertainty for the tax system. For example, the claim that the controlled foreign company rules are too complex, and perhaps unnecessarily so,[79] is valid. Without denying the need for controlled foreign company rules to protect South Africa's tax base, these rules can be simplified through, among other things, providing safe harbours or more clearly indicating that only foreign nonbusiness income and diverted domestic income of controlled foreign companies are subject to these rules.

Another method of simplification may be to keep the system simple for ordinary taxpayers, by clearly indicating the rules that apply to them. For example, the international tax rules have little relevance for taxpayers that are not involved in cross-border transactions. If such rules are clearly labelled or moved to a separate part of the Income Tax Act, these taxpayers would not be engaged with the complexity of international tax rules. Similarly, anti-avoidance rules can perhaps be simplified by more efficient drafting. Even though specific anti-avoidance rules and a general anti-

78 Davis Tax Committee *Report on the efficiency of South Africa's corporate income tax system* (n 2 above) 90.

79 B Tran-Nam *et al* 'Tax complexity and tax simplification: A critical review of concepts and issues', this volume; T Hoppe *et al* 'Tax complexity for multinational corporations in South Africa – evidence from a global survey', this volume.

avoidance rule are necessary in a modern system of taxation, a holistic review, and perhaps a consolidation of some of these rules, will lead to simplification and enhance effectiveness. In this regard, consolidating the various rules on interest deductions may be a good start.[80]

Finally, it is worth considering using fewer specific anti-avoidance rules or simplifying some specific anti-avoidance rules so that the general anti-avoidance rule can be invoked to deal with tax avoidance arrangements. The courts may, when called upon to do so, develop adequate jurisprudence on the general anti-avoidance rule, rendering that rule an effective shield for the tax system.

4.2 Improving drafting efficiency

Improving drafting efficiency through rewriting some of the provisions and rearranging the provisions can simplify the international tax legislation and make it more user friendly and effective. 'A tax system that people can understand is preferable to one that is complex and opaque.'[81] Based on the success with drafting the Tax Administration Act,[82] there are reasons to believe that such rewriting is feasible. Simplification and rationalisation of the international tax legislation can be achieved by, among other things:

- having a clear structure that follows the logic of taxation;
- providing a better numbering system by rearranging sections into modules according to the key elements of the tax system;
- using meaningful headings to provide better guideposts for readers; and
- using a simplified numbering system; for example, using a unique system for each tier of a section, such as 1 or 2 for sections; 1.1 or 2.1 for new additions; (1) or (2) for subsections; (a) or (b) for paragraphs; (i) or (ii) for subparagraphs; (A) or (B) for clauses, and (I) or (II) for subclauses.

In conclusion, this chapter has emphasised the importance of recognising the necessity for substantive complexity in simplifying South African international tax legislation. It has suggested some ideas for managing that substantive complexity while improving drafting efficiency. Further research is clearly warranted to ensure that simplification is achieved

80 For further discussion of debt financing, see C West & D West 'South Africa' (2012) *Cahiers de Droit Fiscal International*, vol 97B: The debt-equity conundrum 633.

81 Davis Tax Committee *Executive summary of the final report on macro analysis of the tax system and inclusive growth in South Africa* (n 76 above) 5.

82 The Tax Administration Act 28 of 2011 (as amended) contains the main administrative aspects of the South African tax system and was promulgated about a year before its implementation on 1 October 2012. In consolidating the administrative aspects of the South African tax system in the Tax Administration Act, most aspects related to tax administration were removed from various other taxing Acts and relocated to the Tax Administration Act, sometimes in an amended form. However, many new provisions relating to tax administration were also included. See the Memorandum on the Objects of the Tax Administration Bill, 2011 78.

without sacrificing the effectiveness of the tax rules in defending South Africa's tax base, and while promoting its tax competitiveness.