CLOSING REPORT ON THE WORK DONE BY THE DAVIS TAX COMMITTEE

TABLE OF CONTENTS

1. INTRODUCTION

This report serves as an overview of the work done by the Davis Tax Committee and its Secretariat over its term that ran from 17 July 2013 to 27 March 2018.

The Davis Tax Committee (previously known as the Tax Review Committee) was appointed by the Minister of Finance on 17 July 2013. Its Terms of Reference were published at a media briefing on the same day.

At inception, the Davis Tax Committee (the Committee) consisted of eight Members and two ex-officio Members (from National Treasury and SARS respectively). One of the Members and the two ex-officio Members left over time. Two new Members were appointed on 17 July 2015. Sadly, one of the original Members, Professor Matthew Lester, passed away on 12 March 2018 following a short illness.

The Members of the Davis Tax Committee were:

- Judge Dennis Davis (Chairperson);
- Professor Annet Oguttu;
- Professor Ingrid Woolard;
- Professor Matthew Lester;
- Dr Nara Monkam;
- Professor Nirupa Padia;
- Dr Tania Ajam;
- Professor Deborah Tickle (appointed on 17 July 2015);
- Professor Thabo Legwaila (appointed on 17 July 2015).

In essence, **"the terms of reference for the Tax Review Committee are to inquire into the role of the tax system in the promotion of inclusive economic growth, employment creation, development and fiscal sustainability. The committee will take into account recent domestic and international developments and, particularly, the long term objectives of the National Development Plan."**

It is important to note that, as mentioned in the Terms of Reference of the Committee, **"the Committee is advisory in nature, and will make recommendations to the Minister of Finance. The Minister will take into account the report and recommendations and will make any appropriate announcements as part of the normal budget and legislative processes. As with all tax policy proposals, these will be subject to the normal consultative processes and Parliamentary oversight once announced by the Minister."**

In addition the specific items listed in the Committee's Terms of Reference, the Minister of Finance requested the Committee to investigate the possibility of a comprehensive wealth tax for South Africa in conjunction with its review of the estate duty system. The Minister also broadened the Terms of Reference of the Committee on 29 July 2016 to deal with very specific tax administration issues.

The Committee was not a creature of statute. It was formed and appointed by the Minister of Finance and, as such, advised and reported to the Minister directly. Accordingly all of its reports were submitted to the Minister of Finance for consideration in the determination of tax policy which is usually articulated in the annual national budget speech. The Committee only published its reports on its website after obtaining the necessary approval of the Minister of Finance.

2. LOGISTICS

2.1 Secretariat

The Committee is supported by a very small Secretariat that is staffed by two permanent SARS employees and one fixed contract employee. Other SARS staff provided invaluable assistance to the Committee from time to time.

2.2 Budget

For ease of administration, it was decided that the expenditure of the Committee would be disbursed from an annual budget allocated by the National Treasury via a specific SARS cost centre.

The operating costs (excluding premises and Secretariat costs borne by SARS) for the five financial years over which the Committee functioned were as follows:

2013/14 (nine months)	R2 475 000
2014/15	R4 225 000
2015/16	R2 908 000
2016/17	R1 702 000
2017/18	R1 070 000
TOTAL FOR 5 YEARS	**R12 380 000**

2.3 Remuneration

The then Minister of Finance also approved a remuneration model for the Members of the Committee. The Secretariat developed and implemented the remuneration model and Members were paid a fixed amount on a monthly basis. Based on a recommendation by the Secretariat, the remuneration model was subsequently revised and approved by the Minister of Finance to improve governance measures and to make it more performance orientated. As the Chairperson, Judge Dennis Davis was not entitled to any remuneration as he was not yet a retired Judge.

2.4 Premises

The official premises of the Committee were located in Hatfield, Pretoria. SARS was responsible for the maintenance and upkeep of the premises. The premises were de-commissioned and vacated by the Committee on 30 November 2018 when the lease expired. The lease was not renewed in light of the Committee wrapping up its work in March 2018.

2.5 Dedicated e-mail and website

An e-mail address (taxcom@sars.gov.za) was operational since inception. The Committee also has an official website, www.taxcom.org.za

2.6 Public awareness

The Committee built up wide public awareness as many people were looking to the Committee to solve the problems in the tax system and the economy as a whole.

Awareness of the Committee was generated by media statements, interviews, newspaper reports and by word of mouth through various forms of engagement. The Committee held 205 meetings and received 433 submissions in total. It also released 23 media statements and held 7 public workshops.

The Committee consulted with civil society; international and local universities; business organisations (including the Chamber of Mines); professional bodies; tax practitioners; international organisations (World Bank, IMF and the OECD); trade unions; NEDLAC; political parties, and government departments and agencies. The Committee also briefed the Standing Committee on Finance in Parliament on two occasions.

3. PROGRESS

The Committee submitted 25 reports to the Minister of Finance. All of these reports have been published on the Committee's website with the approval of the Minister of Finance.

Using the Terms of Reference as its point of departure, the Committee established 12 sub-committees, with members and various ad hoc members, over the course of its lifespan to deliver on its mandate. The sub-committees progressed as follows:

3.1 Small business (item 2 in the Terms of Reference)

Recognising that small businesses or small and medium enterprises (SME's) are critical for the growth of the economy, a small business first interim report was submitted to the Minister of Finance within six months as a matter of priority. The Minister then announced in the 2014 National Budget that two recommendations by the Committee have been accepted and that the report would be released for public comment. The report was subsequently released for public comment on 14 July 2015.

The second and final small business report was submitted to the Minister of Finance on 14 April 2016. He subsequently approved the publication of the report on the Committee's website which was done on 24 August 2016.

It was encouraging to note that the Minister of Finance accepted the Committee's recommendation for the turnover tax system for micro businesses (turnover up to R1 million each) to be retained albeit with lower tax rates and more relaxed deregistration requirements.

3.2 **Macro Analysis (item 1 in the Terms of Reference)**

Following its appointment in July 2013, and the submission of the small business report in January 2014, the Committee submitted a macro analysis preliminary report to the Minister of Finance on 20 January 2014 to assist with preparations for the 2014 National Budget. An updated report was submitted to the Minister of Finance on 30 December 2014. The report was released for public comment on 05 June 2015 with his approval.

A concurrent report (*Sector Study of Effective Tax Burden & Effectiveness of Investment Incentives in South Africa*), written by the World Bank on request by the Committee, was published with the Committee's report on the Committee's website. The Committee's Secretariat provided the necessary support to the World Bank for the production of the report.

After taking public comments into account, the second and final Macro Analysis report was submitted to the Minister of Finance on 21 April 2016. He subsequently approved the publication of the final report on the Committee's website which was done on 24 August 2016.

The second part of the mentioned World Bank's report (*Sector Study of Effective Tax Burden & Effectiveness of Investment Incentives in South Africa*), was also published on the Committee's website on the same day.

It was heartening to note that the Minister of Finance agreed with the Committee in his 2015 Budget that, compared with rates in other countries, there appeared to be some scope to increase taxes on capital income, marginal personal income tax rates and indirect taxes such as fuel levies and VAT and that the necessary actions were taken accordingly.

The Committee accordingly provided advice and guidance to the Minister of Finance on revenue raising initiatives in his annual national budgets e.g. limiting fiscal drag for personal income tax, increasing the top marginal rate for personal income tax, increasing the capital gains tax inclusion rates, and increasing the fuel levy.

3.3 **Base erosion and profit shifting (BEPS) (item 3b in the Terms of Reference)**

The Committee submitted a first interim report to the Minister of Finance on 30 June 2014. With his approval, the report was released for public comment on 23 December 2014.

The report is aligned with the fifteen-point BEPS Action Plan of the OECD, which met with the sub-committee in April 2014.

After the OECD finalised its reports on all fifteen Actions, the BEPS Sub-Committee updated its report and submitted the report to the Minister of Finance on 01 September 2016. The final detailed report was published on the Committee's website on 13 November 2017 with the approval of the Minister of Finance.

The Committee's recommendations for section 6*quin* of the Income Tax Act to be repealed, and for section 10(1)(o)(ii) of the said Act to be reviewed, were implemented by National Treasury and SARS accordingly. These two sections appeared to be eroding the tax base of South Africa hence the concerns raised by the Committee. SARS also took heed of further recommendations by the Committee to increase its enforcement efforts to curtail base erosion and profit shifting.

3.4 **Mining (item 4a in the Terms of Reference)**

A highly anticipated first interim report on hard-rock mining was submitted to the Minister of Finance on 01 July 2015. The report was subsequently released for public comment on 16 August 2015 with his approval.

A concurrent report written by the International Monetary Fund (IMF) (*Fiscal Regimes for Mining and Petroleum*) on request by the Committee was published with the Committee's report on the Committee's website. . The Committee's Secretariat provided the necessary support to the IMF for the production of the report.

After taking public comments into account, the second and final hard-rock mining report was submitted to the Minister of Finance on 12 December 2016. The final report was published on the Committee's website on 13 November 2017 with the approval of the Minister of Finance.

The Committee also compiled a separate report on the oil and gas sector which was submitted to the Minister of Finance on 02 September 2016. A concurrent oil and gas report, written by the IMF on request by the Committee, was submitted with the Committee's oil and gas report. . The Committee's Secretariat provided the necessary support to the IMF for the production of the report. Both reports were published on the Committee's website on 13 November 2017 with the approval of the Minister of Finance.

3.5 **Value-Added Tax (item 5 in the Terms of Reference)**

A first interim report on VAT was submitted to the Minister of Finance on 30 December 2014. The report was subsequently released for public comment on 07 July 2015 with his approval. A second and final report (replaced the first report) was submitted to the Minister of Finance in March 2018 and published on the Committee's website in the same month.

A concurrent report (*VAT Gap in South Africa*) written by the IMF on request by the Committee was published with the Committee's first report on the Committee's website. . The Committee's Secretariat provided the necessary support to the IMF for the production of the report. It was interesting to note from the IMF report that South Africa's VAT Gap compares favourably with that of similar countries meaning that its VAT system is working fairly efficiently.

In light of the recommendations in the Committee's first VAT report, as well as its observations on South Africa's tax mix in its Macro Analysis report, the Committee tried to arrange for the Minister of Finance to chair a public debate on a possible increase in the VAT rate. Unfortunately this did not materialise. However, an increase in the VAT rate from 14% to 15% was announced by the Minister of Finance in the 2018 Budget Speech.

It is important to note that, as per the Committee's media statement, dated 17 August 2015, the Committee did not explicitly recommend an increase in the VAT rate. What it did say was that, to the extent that the economic evidence points to VAT being the most efficient source of additional revenue in relation to personal income tax and corporate income tax, a VAT increase without a significant measure of recycling of revenue (e.g. grants) in favour of the poorer sections of the population would be inherently retrogressive. Hence were government to consider a VAT increase, then it would have to be accompanied with sustainable measures which would mitigate against these retrogressive effects.

The first VAT report was updated and replaced by a second and final VAT report that was published on the Committee's website in April 2018.

3.6 **Estate duty and CGT implications (item 7 in the Terms of Reference)**

A first interim report on estate duty was submitted to the Minister of Finance on 25 January 2015. The report was subsequently released for public comment on 13 July 2015 with his approval.

The Committee submitted its second and final report on estate duty on 28 April 2016 after taking public comments into account. The report was published on the

Committee's website on 24 August 2016 with the approval of the Minister of Finance. The Committee made far reaching proposals with regard to trusts. This was pursued in earnest by the National Treasury and SARS e.g. the tightening up on interest-free loans to trusts.

In conjunction with its inquiry into the estate duty system, the Committee accepted an invitation from the Minister of Finance to investigate a possible wealth tax for South Africa in light of the country's historically skewed distribution of wealth. South Africa has the highest wealth inequality gap in the world with a wealth gini coefficient in excess of 0,9.

A wealth tax report was submitted to the Minister of Finance and published on the Committee's website in April 2018. The report takes into account 132 (rather emotional) written submissions from the public as well as three lively public workshops that were held on 27 July 2017, and on 16 and 27 August 2017 respectively. It must be noted that it was never the intention of the Committee for middle class and poorer citizens to pay a wealth tax. The Committee is essentially targeting the minority of the population that owns the bulk of the wealth of South Africa. According to the Credit Suisse Global Wealth Report (2016), the richest 1% of South Africa's population owns 40% of the wealth of the country. Africa Check published on its website on 22 March 2018 that 10% of the South African population owns 70% of the net financial assets of the country based on figures from Allianz. A clear definition of "wealth" is, therefore, necessary if a comprehensive wealth tax is to be introduced.

In the absence of a comprehensive wealth tax, the Committee gave serious consideration to retaining the estate duty system despite calls to the contrary. Whilst a possible wealth tax for South Africa is under consideration, it is the view of the Committee that the current estate duty system needs to be strengthened and be more targeted to achieve its objectives as a wealth tax. This would indicate government's clear intentions to pursue a tax policy that aims to redistribute the historically skewed wealth of the country. More stringent wealth tax measures would also serve as mitigating factors in relation to the impact of the one percent VAT increase (effective from 1 April 2018) on the poor.

The Minister of Finance took the first step in this direction by accepting one of the Committee's recommendations in his 2018 Budget Speech to the effect that an increased estate duty rate (25%) will apply to an amount in excess of a dutiable amount of R30 million in an estate. More actions need to be taken to strengthen the estate duty system, as recommended by the Committee in its estate duty reports.

3.7 **Carbon Tax (Generic provision in the Terms of Reference)**

The Committee received numerous requests to inquire into the carbon tax proposed by National Treasury in various discussion papers released to the public. Although not specifically listed in its Terms of Reference, there was sufficient scope for the Committee to examine the proposed carbon tax and make recommendations to the Minister of Finance.

In light of the United Nations Climate Change Conference in December 2015, the Committee thought it expedient to submit a copy of its First Interim Report on Carbon Tax to the Minister of Finance on 29 October 2015 as input for South Africa's representation at the conference. The report took into account 45 written submissions from the public and two lively public workshops that were held on 12 and 27 May 2015 respectively.

A preliminary discussion on the draft report was held with National Treasury on 30 July 2015. The Committee's report was subsequently released for public comment on 13 November 2015.

The Committee tried to meet with the National Treasury to discuss the reservations expressed in its report, the public comments received, as well as the draft carbon tax bill, but this never materialised. The National Treasury published its draft carbon tax bill on 02 November 2015 for public comment.

3.8 **Public Benefit Organisations (PBO) (Generic provision in the Terms of Reference)**

The PBO Sub-Committee consulted closely with SARS, National Treasury, the Department of Social Development, the Department of Planning, Monitoring and Evaluation and PBO experts in drafting its report.

The report was submitted to the Minister of Finance in March 2018 and published on the Committee's website in April 2018.

3.9 **Tax Administration (Added Specific Terms of Reference)**

The Committee felt that it was within its remit to examine certain key aspects of the tax administration model, as the highly acclaimed Katz Commission did in the 1990's, but only where these aspects impact on the implementation of certain tax policy recommendations. It also felt that this was an opportune time (about 20 years later) to review the Katz Commission's recommendations which were implemented and underpin the current tax administration model.

The Committee met with the SARS Advisory Board (Kroon Committee) on 25 November 2015 to discuss possible overlaps in functions as far as reviewing the current tax administration model go. Unfortunately this did not yield much as the Kroon Committee came to the end of its term shortly after the meeting.

It was then decided to obtain more clarity from the Minister of Finance as to what he envisages for the Committee to deal with as far as a tax administration review is concerned. The Minister of Finance decided to add very specific Tax Administration Terms of Reference to the Committee's original Terms of Reference on 29 July 2016.

The three specific tax administration areas that were examined by the Committee are:

- Whether the governance and accountability model for SARS, as proposed by the Katz Commission, is still relevant (SARS made a presentation to the Committee on its envisaged new operating model on 21 September 2015). This will include the question of the rights of taxpayers (increasingly relevant around the world) and the efficacy of the current Tax Ombud model (discussed with the Tax Ombud);

- Whether the current structure and operations of SARS is congruent with the recommendations by the Committee, especially with regard to base erosion and profit shifting (BEPS), corporates, small businesses, and high net worth individuals;
- Whether SARS has the correct mechanisms to deal with illicit financial flows from an integrated tax and customs perspective.

The Tax Administration Sub-Committee was at pains to emphasise the very limited nature of this inquiry and that it was only concerned with the overlap between tax policy recommendations and tax administration. To this end, the sub-committee informed the SARS Commissioner in 2016 about this limited remit concerning the tax administration work of the Committee and requested meetings with him to discuss further. Despite this consultative approach, there was a (widely publicised) breakdown in relations between the SARS Commissioner and the Committee in early 2017 with the result that the report had to be finalised without further consultation and co-operation.

The final tax administration report of the Committee was submitted to the Minister of Finance on 17 October 2017. It was subsequently published on the Committee's website on 13 November 2017 with the approval of the Minister of Finance.

The Tax Administration Sub-Committee also provided advice to the Minister of Finance on the feasibility of the Border Management Agency Bill as well as a potential Special Voluntary Disclosure Program (SVDP), after consulting with the Governor of the Reserve Bank and SARS. The SVDP recommendation was accepted and implemented. The program has yielded about R3 billion to date.

3.10 **Funding National Health Insurance and Tertiary Education (Item 7 in the TOR)**

After extensive consultation with the public and private sectors, a report on *Financing a National Health Insurance for South Africa* was submitted to the Minister of Finance on 17 March 2017. The final report was published on the Committee's website on 13 November 2017 with the approval of the Minister of Finance.

The Committee of its own accord submitted a report on the Funding of Tertiary Education to the Minister of Finance on 19 October 2016. This report was updated and re-submitted to the Minister of Finance in light of further developments on the matter. The final report was published on the Committee's website on 13 November 2017 with the approval of the Minister of Finance.

3.11 **Corporate Income Tax (Item 3 in the Terms of Reference)**

A corporate income tax (CIT) report was submitted to the Minister of Finance and published on the Committee's website in April 2018. It covers areas like efficiency of the CIT structure, average and effective corporate income rates in various sectors of the economy, and the efficacy of tax incentives.

3.12 **Tax Incentives (Item 3c in the Terms of Reference)**

The Committee tried to assess whether the current tax incentives on offer to companies in South Africa are worth retaining in the sense that they give rise to ultra-economic behaviours that promote the economic objectives of the country, as detailed in the National Development Plan, or do they simply reduce the effective corporate income tax rate.

The Committee explored the cost of the incentives to the fiscus in relation to what they have produced for the benefit of the country as a whole. It was interesting to measure the alternative use of the money foregone or opportunity cost.

The World Bank undertook to assist the Committee with an analysis of the efficacy of certain tax incentives in South Africa in the promotion of developmental objectives. Unfortunately the analysis did not live up to expectations due to a lack of the relevant data. It is suggested that SARS and National Treasury ensure that the necessary data is gathered going forward e.g. restructured tax returns with added fields to capture the relevant data.

The report on the efficacy of tax incentives, based mainly on the work of the World Bank, was incorporated in the CIT report, as mentioned above.

4. MAIN THEMES THAT EMERGED FROM CONSULTATIONS

The twelve sub-committees engaged and consulted widely. The main themes that emerged from the consultations are:

4.1 The role of the tax system in South Africa must be considered in a holistic context i.e. its main mandate is to collect revenue for the state and it cannot be used to address all impediments to economic growth and job creation – this requires a coordinated "whole of government approach" in consultation with Business and Labour;

4.2 To what extent can the tax system contribute to behavioural changes that contribute to economic growth, employment creation, development and fiscal sustainability?

4.3 The current tax revenue stream is under severe pressure to meet and sustain the needs of the country, including future developmental needs like the funding of tertiary education for deserving students and the National Health Insurance;

4.4 To what extent can the tax system be used to address the pressure on the current revenue stream and the twin deficit (fiscal and current accounts) without inducing "taxpayer fatigue" and without compromising local and foreign direct investment?

4.5 Tax legislation has become far too onerous and complicated and the associated tax compliance and reporting requirements are becoming too burdensome and expensive to comply with – there is a need for simplicity and certainty to encourage local and foreign direct investment;

4.6 Taxpayers need assurance and indications that their taxes are being spent prudently and invested in the best interests of the country.

5. CHALLENGES FACED BY THE COMMITTEE

The Committee faced many challenges in its almost five years of existence. The major challenge faced by the Committee was the political uncertainty due to the comings and goings of six Ministers of Finance. Another notable challenge was the breakdown in relations with the SARS Commissioner in early 2017 after a widely publicised spat. The Committee had to make do with very limited resources (provided by SARS), a small Secretariat (provided by SARS), and Members working on a part-time basis to deliver on its Terms of Reference but it did so, and more. Attrition within the Committee over the five years also had an effect on the motivation of the Committee.

Other challenges include:

5.1 Various stakeholders approached the Committee in the hope that it will make recommendations to the Minister of Finance to address all of the problems and impediments that South Africa is currently faced with. As mentioned above, the tax system cannot be used to address all problems – this requires a coordinated “whole of government approach” in consultation with Business and Labour.

5.2 The Terms of Reference of the Committee are quite elaborate yet many requests were made to address items not specifically stated. Whilst it could not accommodate all requests, the Committee was able to deal with additional items like tax administration, a possible wealth tax, oil and gas exploration, carbon tax, and public benefit organisations.

6. CONCLUSION

This report serves as an overview of the work done by the Committee and its Secretariat over its term that ran from 17 July 2013 to 27 March 2018.

The Committee and its twelve sub-committees held 205 meetings and received 433 submissions in an effort to consult widely. It issued 23 media statements and held 7 workshops to further engage with the public. The Committee also presented progress reports on two occasions to the Standing Committee on Finance in Parliament.

The Committee’s operating costs over almost five financial years amounted to R12 380 000 (excludes costs of premises and Secretariat borne by SARS) which is considered to be prudent in light of monthly payments that had to be made to the eight

Members of the Committee for services rendered and the vast array of expertise that was provided to the Committee by outside parties.

The Committee was able to deliver on its Terms of Reference (and more) with 25 reports to the Minister of Finance within five years despite the challenges mentioned above.

It is important to note that, as mentioned in the Terms of Reference of the Committee, "the Committee is advisory in nature, and will make recommendations to the Minister of Finance. The Minister will take into account the report and recommendations and will make any appropriate announcements as part of the normal budget and legislative processes. As with all tax policy proposals, these will be subject to the normal consultative processes and Parliamentary oversight once announced by the Minister." This is indeed an opportune time for the Committee to conclude its work as the country leaves behind difficult times and enters a more hopeful era (A New Dawn) of socio-political change and economic transformation. Based on the findings of the Committee, it is evident that the tax system of South Africa has an important role to play in the new era.

The Committee sincerely hopes that it has delivered on its mandate and that it has served the needs of South Africa well despite its challenges. It also hopes that its reports will serve as useful references in the formulation of tax policy and tax administration going forward.

The Davis Tax Committee would like to take this opportunity to thank all persons who have expressed an interest in the work of the committee and for providing assistance where required, especially the various Ministers of Finance, National Treasury, SARS, the International Monetary Fund and the World Bank for the support that they provided to enable the Committee to deliver on its mandate.

Compiled by the Secretariat for the Davis Tax Committee

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