THE REQUIREMENTS OF TAXATION ON COMPANIES AND DIRECTORS
IN RELATION TO NORMAL TAX, SECONDARY TAX ON COMPANIES,
PIERCING OF THE VEIL AS WELL AS LIMITATIONS CONNECTED
TO TAXATION

By

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DECLARATION

This is to declare that the topic and dissertation, hereby submitted, is my original work.

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ABSTRACT

The primary purpose of this study was to establish on whether South African taxpayers have an in-depth understanding of taxation. In particular, an understanding on the requirements on taxation on companies and directors in relation to normal tax, secondary tax on companies and lastly, piercing of any possible veil.

The population was from the North-West Province with particular inclination to the Mafikeng area. Sixty nine respondents participated in the study after random selection. The questionnaire was the primary instrument of data collection for this study. The data was presented in tables and graphs and analysed using the F-Tests and T-Tests.

The responses of directors of companies as opposed to non-directors were what one could safely term unsurprising in that it was, so to speak, what was ordinarily expected; that is, the responses showed that directors had more knowledge regarding tax matter than non-directors. This could be attributed the former's everyday exposure tax matters. Stemming from this, it is recommended that a lot of education needs to be done on the part of non-directors in order to familiarise them with tax-related issues. Further, it is recommended that the language used in the tax field be made more accessible so that any taxpayer could understand it.
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CHAPTER ONE

ORIENTATION

1.1 INTRODUCTION AND BACKGROUND

Taxation is an integral part of every company and person. In order to meet the needs of a country, a government needs to, as one of the ways of contributing to the Socio-economic development, tax citizens and sometimes non-citizens on income accrued to them. Tax is sometimes referred to as a 'necessary evil' in that it is often misunderstood amongst the general public, however, if used judiciously, the income governments derive from such tax contribute significantly to the growth of a country. There are essentially two types of tax; namely, direct and indirect taxes. The former refers to the taxes which are imposed on natural persons as well as juristic persons, whereas the latter refers to taxation that comes into being because of transactions. The basic condition is that no tax will be levied unless income accrues to a taxpayer and/or some parties have entered into a transaction. Of such cash and/or cash equivalents, a percentage thereof is received by the Receiver of Revenue to address the needs of the country.

The aim of this chapter is to give a brief background of taxation and to introduce the problem under investigation. The discussion also focuses on the purpose of the study and its related significance. An overview of the scope of
the study is as well as the organisation of the study. Lastly, since the study deals with a subject that uses terminology not used in everyday language, there will be a clarification of some important concepts for ease of reference.

1.2 PROBLEM STATEMENT

Although taxation plays an ever increasing role in South Africa, the question should be posed whether the taxpayer has a good and thorough understanding of the implications of taxation as well as the various implications for taxpayers. In this study, the understanding of a diverse population of tax-payers will be assessed by focusing on the requirements of taxation on companies and directors in relation to normal tax, secondary tax on companies as well as piercing of the veil will.

1.3 THE OBJECTIVES OF THE STUDY

1.3.1 PRIMARY OBJECTIVE

The primary objective of the study was to identify whether taxpayer in South Africa had a sound understanding of the requirements of taxation on companies and directors in relation to normal tax, secondary tax on companies as well as piercing of the veil will.
1.3.2 SECONDARY OBJECTIVES

Based on the primary aim, the study investigated the following:

- Whether directors in companies understand of the Secondary Tax on Companies applications and implications.
- Whether taxpayers understand the difference between tax avoidance and tax evasion.
- Whether tax planning and tax avoidance could be seen as one and the same concept or whether they could be distinguished from one another and if so how could this be done.
- The similarities and differences between the tax rate for companies and close corporations.
- The tax implications of a director who simultaneously holds the position of an employee.
- The principles of calculating Secondary Tax on Companies (STC) and the criteria for entities to qualify as STC payers.
- The consequences of tax planning and tax avoidance compared.
- The impact of a taxation system in a country on socio-development of a country.
1.3.3 EXPECTED OUTCOME

The expected outcome of the primary and secondary objectives enabled the researcher to make appropriate recommendations, with regard to:

- The knowledge base of the taxpayers in South Africa with emphasise on companies, directors, secondary tax on companies, socio-economic contribution of tax in a company.

Further recommendations include steps that could make a meaningful contribution to the improvement of tax based knowledge in South Africa. In working towards building a stronger South Africa local conditions were taken into consideration to identify and isolate the main areas of concern. The success of this initiative will lead to a reduction in tax evasion and will lead to better tax planning. The successful spin-offs that are expected from such an approach will make a positive impact in improving the living standards in South Africa. In the final analyses, it is hoped that the eventual outcome of this study will make a significant contribution to the taxation system in South Africa as a whole. The importance of the study is one of the reasons why a particular study is followed instead of other studies.

1.4 THE IMPORTANCE OF THE STUDY

The study is important in that it will try to fill in the gaps of research studies, if not to reinforce or refute previous findings based on the dynamic tax world. Compliance of legislation by directors as well as concomitant litigation brought
about by the liability of the same directors is well reported in the media and thus, indicating its importance.

1.5 SCOPE OF THE STUDY

The scope of the study was be limited to income in respect of rates and income being residence-based. Secondly, the study dealt with STC and in particular, rules and periods that apply to STC and lastly, the lifting of the corporate veil for both directors and companies. Unless otherwise stated, when a reference is made to an act, it means the Income Tax Act 58 of 1962 (the Act). Taxes imposed by the Act are normal, Secondary Tax on Companies (STC) and donations tax. For all purposes and intents, donations tax did not form part of this study. The study emphasized the link with liability of directors. Relevant cases were brought in to strengthen the study's case. What now follows is the field of the study.

1.6 FIELD OF THE STUDY

The North West Provinces, like other eight provinces, is expected to contribute to the fiscus of South Africa. In particular, the field of this study focused on the potential respondents who were sourced from a pool of business people in the Mafikeng area. The reason for this choice of population was that there are enough potential candidates around Mafikeng that an inference could be made for the whole province thus discounting seeking candidates outside the confines of Mafikeng. It is not a forgone
conclusion that the reader is familiar with some if not all concepts of the tax field; that is why there is need for clarification of concepts.

1.7 CLARIFICATION OF CONCEPTS

- **Natural person** refers to human beings or individuals
- **Juristic person** (sometimes referred to as a legal person) refers to any other entity which exercises the rights of a natural person. Instead of using both terms, 'taxpayer' will be used
- **Receiver** (sometimes referred to as the Commissioner, taxman, Receiver of Revenue) refers to, in our South African case, South African Revenue Services
- **Holding Company** refers to a company which holds a direct or indirect benefit in one or more intermediate companies

The following discussion reflects the organisation of the study.

1.8 PLAN OF THE STUDY

If the aim of the study is to be effective as well as that helping results can be attained, as is the intention of this study, it then becomes imperative that a systematic approach be adhered to. It is for such reasons that the study will be outlined as follows:
CHAPTER ONE: ORIENTATION

This chapter reflects the introduction and background of the study, statement of the problem, methodology, organisation and scope.

CHAPTER TWO: LITERATURE STUDY

The primary aim of chapter two is to provide insight into the problem under investigation. As much information as possible was sought from a variety of secondary sources in order to give an informed view regarding the subject of the study.

CHAPTER THREE: DEFINING THE PROBLEM AND FORMULATING RESEARCH QUESTIONS

A clear definition of the problem is provided as well as research questions.

CHAPTER FOUR: RESEARCH DESIGN AND ANALYSIS

The design methodology, details regarding population sampling, data collection and data analysis are provided.

CHAPTER FIVE: RESULTS AND INTERPRETATION

This chapter reflects the results of the survey and the interpretation of data.
CHAPTER SIX: DISCUSSION, CONCLUSION, IMPLICATIONS AND RECOMMENDATIONS

Linkages between the literature and the results of the study are highlighted in chapter six. The chapter also presents conclusions; implications and recommendations based on the findings.

The following chapter focuses on the literature reviewed for this study.
CHAPTER TWO
LITERATURE STUDY

2.1 INTRODUCTION

A vast amount of research has been carried out by various authors who have taken a keen interest in the field of taxation. The literature reviewed for this study encapsulates some of the significant aspects of taxation in South Africa. This chapter reflects data gathered and the synthesis to inform the study. Amongst others, reference is be made to Income Tax Act 58 of 1962, Secondary Tax on Companies, dividends and piercing of the veil. Where 'he' and 'his' is used, it is used to cover both sexes.

2.2 SOUTH AFRICAN TAX A HOLISTIC OVERVIEW

2.2.1 INCOME TAX ACT 58 OF 1962

Income Tax Act 58 of 1962 (Act) has 112 sections and 7 schedules. The Act was introduced to South Africa in 1914 and has undergone numerous amendments and consolidations. The Act encompasses three types of tax and they are:

- Normal tax
- Donations tax
- Secondary Tax on Companies (STC)

-A significant part of the emphasis of this dissertation is on around STC.
2.3 SPECIFIC ASPECTS RELATING TO TAXATION THAT HAVE AN INFLUENCE ON THIS RESEARCH

2.3.1 SECONDARY TAX ON COMPANIES

STC does not form part of normal tax and it comes to being when, all things being equal, qualifying distribution of dividends is declared by a resident company. A resident company to be taxed must first:

- Be incorporated, established or formed in South Africa
- Have its place of effective management in South Africa

For companies that are specifically excluded as resident companies despite having complied with the conditions mentioned above, such companies will be exempt from tax liability in South Africa. Payment of STC is still leviable regardless of whether the company has or has not derived a taxable income which is subject to normal tax. An example could be when assessed losses are incurred. STC is currently calculated at 12.5% of the net amount of the dividend declared by a resident company where a dividend is:

- An amount distributed to shareholders' company or
- An amount distributed out of the assets pertaining to a unit portfolio
- An amount distributed to its members by way of:
  - rights as shareholders
  - value of business transactions between individual members and the company or
  - some predetermined basis
STC was initially levied at 15% rate on dividends. This is regardless of whether they be declared or deemed to be declared during the period 17th March 1993 to the 13th March 1996 and the two days being included. From the 14th March 1996 onwards, the rate became 12.5%. As an example, the calculation of STC works like this:

If a company had R100 000.00 as profits, not all of that amount will be declared as dividends because STC needs to be charged against an amount that is retained. So, the maximum dividend that such a company would be able to declare is calculated as follows:

\[
\text{Maximum dividend that could be declared} = \frac{\text{profits} \times 100}{100 + (100 \times \text{STC rate})}
\]

\[
= \frac{100 \, 000 \times 100}{100 + (100 \times 12.5\%)}
\]

\[
= \text{R88 889.00}
\]

And

\[
\text{STC} = \text{total profits} - \text{maximum dividend that could be declared}
\]

\[
= 100 \, 000.00 - 88 \, 889.00
\]

\[
= \text{R11 111.00}
\]

The above calculation is not absolute in that should a company decide not to declare all profits as dividends and there is enough retained income to offset STC liability, the figures change. For example, still using the R100 000.00 as the profit but declaring R50 000.00 as dividends, then the STC liability becomes R6 250.00 calculated as follows:

\[
\text{STC} = \text{R50 000.00} \times 12.5\%
\]

\[
= \text{R6 250.00}
\]

STC is required to be paid to the Commissioner by not later than the prescribed date and the Form IT 56 is specifically prescribed for STC. There
are three prescribed and fixed dates of payment. Two of these dates refer back to a date not later than 31st December 1993 and the other to 31st July 1993. These dates have become somewhat negligible if not irrelevant because over ten years have passed since then. The third and last date of payment refers to a date after the 30th June 1993. In this case, tax must be paid by no later than the last day of the month following the month when a dividend cycle ends. However, the Commissioner can at any time extend any of the dates of payment at a request or upon a pressing need. The following discussion focuses on directors of companies.

2.3.1.1 DIRECTORS

A director holds his office after having been elected by the company in a general meeting. Should he choose to enter into a contract of service with the company, he is a qua director and entitled to director’s fees. Should he be paid a salary, he is termed a qua employee. If a question was to arise about the source of the amount in terms of whether it is for a director or employee, the determination will come from the capacity the amount was paid for. It is generally accepted that the source of a director’s fees is his office and by contrast, the source of a director’s salary is located where the service was executed.
2.3.1.2 DIVIDENDS

A dividend refers to that part of the company's profits which is distributed to the company's members. There is a misnomer that naturally flows from that a dividend will come from where the company's profits were earned. This is not a view held by the courts of law. It is an absolute rule by the courts that a share is held where a share register is. In South Africa, it is requirement by Companies Act 61 of 1973 that all companies keep their register of shareholders within South Africa. Dividends are taxed in the hands of the distributing company.

The 'net amount' of a dividend is the amount difference between declared dividends and accrued dividends. There are six types of dividends which are excluded from accrued dividends realm and they are:

- Dividends declared by a fixed property company which is allowed as a deduction in terms of Section 11 s because it is treated in a manner usually reserved for the treatment of interest.
- The second exemption applies to a condition period of assessment not later than 31st March 1993. No further mention of this exemption will be made because events have overtaken it.
- Dividends declared by a fixed property company to the unit portfolio.
- Unit trust or mutual fund which is treated as interest and not a proper dividend.
- A dividend declared to a holding company by a wholly-owned company
A dividend declared by a foreign source or company

Dividends work in cycles.

2.3.1.3 DIVIDEND CYCLES

There are two rules to the cycles of dividends; they are 'normal' and 'interim' rules. In the normal rule, the first day of the dividend cycle is the day immediately after the last day of the previous cycle. These days are independent from the financial year. The interim rule deals with a cycle period starting with the day following the last dividend were declared before the 17th March 1993. There is a distinction between declared and deemed dividends.

2.3.1.4 DIVIDENDS – STC: DECLARED DIVIDENDS

In terms of Section 64 B, a dividend accrues when it is declared that payment will be paid out to shareholders in the company's share register on a specified date. This applies to interim dividends as well. Section 64 C came into being as an anti-avoidance provision of the very same section where instead of declaring dividends, companies make loans to shareholders.

2.3.1.5 DEEMED DIVIDENDS

A deemed dividend occurs when:

- Cash or cash equivalent is distributed by a company to a beneficiary
The above has the effect of absolving such a company from monetary obligation.

A debt owed by the recipient mentioned above is paid for by the company.

An amount is expended by the company for any reason that may be of benefit to the beneficiary and

It represent an amount which has been adjusted or disallowed in terms of Section 31.

In real life, there are always exceptions to the general rule hence there are excluded distributions.

2.3.1.6 EXCLUDED DISTRIBUTIONS

Excluded distributions occur:

Where a dividend or any amount perceived to constitute a dividend taking into consideration the provisions of paragraphs (e) to (i) of the definition of a dividend in Section 1. Both paragraphs referred to apply where a company awards certain capitalisation shares and the reduction of its share premium account. This applies again to when a co-operative makes certain distribution.

Any amount due to an employee but for tax purposes does not mean a taxable remuneration. An example could be emoluments of a director of a private company (par 1(vii)) of the Fourth Schedule.

An amount distributed only to the extent that it exceeds the company's profits and/or reserves. Exceptions to this rule are:
• If there is a provision as laid down by any agreement

• If such an amount has been adjusted or disallowed in terms of Section 31 (see 17.54 re: transfer pricing and thin capitalisation)
  
  o A loan granted at a rate not lower than the going rate
  
  o A loan to an employee by the company or its associate company in terms and conditions which would ordinarily apply was it the case that the loan was taken out with an institution other than the company or its associate company
  
  o A loan or credit granted during any period of assessment if that loan or credit will be paid or extinguished within the immediately succeeding year of assessment.
  
  o A loan made by Company A to Company B where the latter uses such a loan in the Republic and both companies' equity share capital belongs to the same person(s). The loan referred to is between wholly owned companies. The exclusion does not obviate or absolve inter-company payments which are taxable because of the relation both companies share.

  o If a company gives a loan or credit to a trust for the latter to purchase shares in the former with the primary intention of selling the shares to the company or associate's as an incentive scheme for the benefit of the employees.

What follows are exemptions on STC dividends.
Section 64B 20i exempts STC from the following of portions of dividends:

- Dividends that are declared whose entire receipts and accruals are, under Section 10, exempted. These receipts and accruals may even be from a source other than investments. However, this exemption does not apply to companies which would have benefited from this exemption only because it derives gross income of a particular nature unless such receipts and accruals are from realisation of assets consisting of gold bullion or certain shares in the company. The primary intention of this exclusion from exemption is to make sure that companies that, in a particular year of assessment, only received amounts that are exempted by their nature; for example, dividends.

- A dividend which has been declared by a fixed property company which is allowed as a deduction in terms of Section 11 (s).

- A dividend which is distributed during the course of or in anticipation of liquidation, winding up or deregistration of a company but should these reasons which have been provided not happen within six months from the time they are forwarded as reasons, the exemption is forfeited. This exemption, amongst other things, applies to where profits are to be distributed when liquidation occurs and such profits come from the years of assessment before the inception of STC.
2.3.2 CLOSED CORPORATIONS

A Closed Corporation (CC) does not qualify for exemption for expenditure incurred in earning any exempt dividends because such an expenditure would not have happened in the production of income as opposed, for example, for interest paid to service a loan that purchased shares in a company that declares a foreign dividend and only to the extent of foreign dividends included in gross income. The following discussion focuses on some cases relating to directors and their purported tax liability. The first case *ITC 235*.

In *ITC 235*, the Board of Directors of a certain company decided that its Managing Director had to reside in England as the company's representative. The company had its Head Office in the then Union of South Africa. Part of the agreement was that the Managing Director be paid his usual salary and traveling expenses. The test was on whether the directors' fees were to be taxed in the Union of South Africa or England. Dr Manfred Nathan KC presided over the matter and adjudicated that the source of income is the Union of South Africa where the Managing Director's voice is heard as a director. As such, the taxpayer lost the case.

In *ITC 266* a taxpayer, who was also a shareholder and a director of a company, was operating as a general agent. The product they were in a business out of was procured from a foreign country whilst the business itself was in the Union of South Africa. Problems were experienced in obtaining the
product from the mentioned foreign country to the extent that the taxpayer was requested by his company to travel to the foreign country to try and negotiate the doing away of the then present obstacles so that business could continue smoothly. For his troubles, the company paid the taxpayer a fee, his expenses as well as an entertainment allowance. The test was on whether these expenses were deductible. Dr Manfred Nathan was presiding over the matter and he indicated that in attending to the foreign affairs of the company, the taxpayer was not acting as a director but more of a negotiator in the foreign country. He indicated that in a similar matter, Justice Maritz ruled that tax liability should arise from where the payment was made. The learned doctor further indicated that the place where services are rendered is where taxation has to take place. His conclusion on the case was that the taxpayer should not be taxed on the amounts in question because the particular execution of duties that made the taxpayer to earn such amounts were executed outside the taxpayer’s country. Comparing the two preceding cases, it can be seen that two tax liability matters, presided over by the adjudicator yielded different results. The onus is on the taxpayer to explain why exemptions and deductions should be allowed in his case.

It is not a clear-cut case for the payment emanating from the source of income if activities are executed in more than one country. The results may be that receipts of funds from such an exercise lead to the whole amount or part thereof being taxed or not being taxed in South Africa. Another case worth discussing is that of Boyd v CIR. In this case, a taxpayer received dividends on shares from a South African company which had its shareholder’s register
in South Africa and its Head Office, where central management and control was made. In one year of assessment, the taxpayer's dividends were comprised by 90% dividends of the then South West Africa and 10% were South African ones. The taxpayer contested when the Commissioner included the whole 100% dividends as taxable. This, the taxpayer argued, was treated as if the 90% dividends were of a South African source. The ruling on the matter favored the Commissioner from the reasoning that the register was located in the Republic. The last case on this matter is *Lamb v CIR*.

The taxpayer held shares in NV Copper Mines Ltd, a company which was incorporated in England and the company's principal registered office was in London whilst a dominion register was in Johannesburg- South Africa. The taxpayer himself was carrying on a business in Johannesburg. In one tax year he received £1 575.00 as dividends from the shares. The test was on whether the £1 575.00 was derived from a South African source or one in England. The ruling was that the source was from England because the dominion register, it was adjudicated, was subservient to the principal one, as such, the taxpayer was not taxed.

### 2.3.3 Piercing of the Veil

The term 'piercing of the veil' is a term used to investigate beyond what is presented. Section 103(1) is intended to deal with that. In this study the dissertation will try to look at the intention of the taxpayer when it comes to tax liability, was examined.
2.3.3.1 VEIL

The study focused on will deal with the requirements of Section 103(1) as a whole and supplement with a selection of cases. On a yearly basis companies and people are assessed on their total income for the year and then taxed, if applicable. There are two cases; case one is for such entities which by sections 10 and 10A of Income Tax Act No 58 of 1962 (as amended) will be exempted from paying, e.g. Non Governmental Organisations. The second case is when an individual has to pay tax, and it is the focus in this study. One's annual total income is summed up and for one to be taxed, the pre-requisites of the definition of gross income must be net and they are:

- The total amount:
  Which means that no amount which accrued to the taxpayer must be left out.

- In cash or otherwise:
  Which means that it will be in the form of cash and any other benefit which the taxpayer enjoys but which is not in the form of cash but has monetary value. It is such value that is taken into consideration.

- Received or accrued to, in favour of a person;
  Which means that such cash or cash equivalents must be actually received by such a taxpayer or must be at his disposal to use; that is, due to him. Whether he uses what accrues to him or not is another matter. However, a taxpayer is taxed for what accrues to him regardless of whether the taxpayer has usufructuary interest (having the right to use but does not own an asset) or has bare dominium (owns the asset but not allowed to use such an asset).

- From a South African source (or a deemed South African source):
A deemed South African source which is based on the reasoning that the resources of South Africa caused such income, such income must be taxed in South Africa irrespective of the taxpayer's residence outside South Africa.

- Other than receipts of a capital nature:
The last part of the definition; that is 'other than receipts of a capital nature' was widely used before the introduction of Capital Gains Tax (CGT). CGT, as the name suggests, is tax on gains made in transactions involving sale of capital goods leading to capital amounts. As CGT is a subject on its own and currently not under study in this dissertation the pattern will only be limited to highlighting the distinction it brought with itself. With CGT, it is the asset that is sold and not what the asset produces. It may well be safe to assume that the last part of the definition should include all receipts regardless of their nature whereas before CGT, only receipts of revenue nature were considered. If an asset is of a capital nature and not something that is exchanged for cash but it produces other things that are sold for cash then such an asset will not be included as part of gross income unless where CGT applies. This is not a problem. A problem arises when deductions are to be made, since when something is of a revenue nature, it is that very thing that money is exchanged for. If an expense meets the definition of the general deduction formula, then such an expense can be deducted whether in full or at a prescribed percentage. It will not be surprising that this is the part that taxpayers would like most. Therefore, it is possible for a taxpayer to try to deduct an expense when it suits him. Such things lead to investigations as to what the initial intention was and whether during the year of assessment the intention still remained unchanged.
The following discussion focuses on the meaning of intention and what a change of intention is whilst at the same time indicating what constitutes something more and what does not.

2.3.4 INTENTION

What must be established is the intention of the taxpayer at the time of acquiring an asset, whether it is for investment or speculation purposes. Intention was originally contested in the case CIR v Stott (1928 AD). Stott was an architect and surveyor who let out a lot of property then bought land, subdivided it and sold such land at profit. He subsequently bought a fruit farm at the Bluff and let it out but later had to sell it because tenants were giving problems with payment of rental. In 1924 he bought another farm fearing that if he does not buy, people on that farm would be evicted. The test was on whether proceeds from these two sales were of capital or revenue nature and it was judged that they were of a capital nature.

2.3.4.1 MIXED INTENTIONS

The possibility of a taxpayer having mixed intentions at the time of acquiring an asset or even during the life of an asset but after procurement, cannot be discounted. In such a case, it becomes necessary to establish the dominant intention. Companies are regulated by Companies Act 1973 and so, it is easier to establish the intention. Still, it remains the taxpayer’s onus to convince the Commissioner and failing which, if it was to go a level higher, the courts are to determine what his intentions were.
2.3.4.2 CHANGE OF INTENTION

Two cases relevant to change of intention are discussed where in one, after an appeal, the taxpayer won the case and in another, the Commissioner won the case. It is significant to establish whether it is the profit, which motivates the sale or the sale that motivates profit. The change of intention will apply in the first instance. This principle comes from the CIR v Stott (1928 AD) case in which Wessels J A contended that it requires something more than the decision to sell to constitute a change of intention. This was again highlighted in the John Bell and Co (PTY) LTD VS SIR (1976 AD) case. John Bell and Company was incorporated on the 3rd October 1916 and its business was to export, import and distribute fruits. In the year 1924, at a fee of R15981.00, the company got a freehold title of some premises. In 1957, the property became redundant but was never sold with the hope of selling it later when property market went up. It managed to do so in 1967 at a profit of R131019.00. At the same time the Company was involved in two isolated transactions involving the purchase and sale of shares in property owning companies. The amount of R131019.00 was included in the appellant’s gross income and to which he objected. It was held that mere holding on of an asset with the aim of disposing it when it is economically advantageous does not mean the appellant was dealing in property but rather only applying his mind to profitably dispose of an asset just as any ordinary man would have had. In connection with the purchase and sale of shares, the judge found that there was no evidence to the fact that the appellant was in a trade of profit-making
business of dealing in shares in property owning business. Therefore, the appellant won the appeal.

In the Levy case, in August 1945, Gelman and Blumenthal were promoting a company by the name of Combined Investment Limited which bought a property for £10 000.00 in Bulawayo. This property comprised of three adjoining stands with some dilapidated yet rent producing. In October 1945, Levy acquired 2 5000 shares for £2 750.00. In June 1947, Crumbier purchased all the shares of the company and Levy received £5531.00 as his share from such a sale. The difference between purchase amount and the sale amount is £2 781.00 and it is exactly the amount which the commissioner included in Levy’s taxable income for the year ended 31st March 1948. However, Levy was dissatisfied and lodged an objection for the reason that the difference was a capital accrual and not income.

Beadle J concluded that it was not a necessity to decide whose onus it was to prove income was of capital nature and not accrual. For the same reasons, Gelman’s case was heard in conjunction with this one. The difference is that Gelman had an interest in the stands even before the company’s chairman and majority shareholder. Beadle, J’s Judgement on Gelman was that it was not taxable because it was of a capital nature as the dominant purpose to acquire was to develop and hold the assets as an income-bearing investment and he never attempted to sell before but only sold because it was just a change in investment. The aim was not to make profit but profit just came out of the sale. The judgement ruled in favour of Levy citing that the purpose to
acquire shares was income-bearing investment. The ensuing discussion focuses the General Deduction Formula.

2.3.5 GENERAL DEDUCTION FORMULA

An assumption will be made that all the requirements of the definition of gross income have been met. It must be stated that this formula plays a very important part in all the aspects of tax in that it is used for determining whether tax will be paid or not and if so, how much. This is where most of the transactions which are eventually found to be veiled, are founded. The next step will then be to test whether the expenses will lessen taxpayer’s taxable income by way of a deduction. In achieving that, it must be determined what the ‘analysis of the general deduction formula’ is; and it is like this:

- Carrying on of a trade
- Expenditure and losses
- Actually incurred
- During the year of assessment
- In the production of income
- Not of a capital nature
- To the extent not laid out for the purposes of trade

2.3.6 REQUIREMENTS TO BE MET

The following discussion focuses on requirements to be met arrive at the taxability. We will now start with the requirements.
2.3.6.1 CARRYING ON OF A TRADE

For a deduction to be considered, there must be carrying on of a trade. In assessing whether there was carrying on or not of a trade, the Burgess case will be considered. In this case, the taxpayer got a loan and invested such money with an insurance company. The agreement was that of limited liability in that should the taxpayer’s investment underperform, the taxpayer would only lose to the extent that he has made the investment. Interest accrued to the taxpayer before the amount invested would be paid back to him. The reason, amongst others for the taxpayer investing in the scheme was that the scheme promised tax savings. The taxpayer had no previous skill regarding this investment. The test was on whether a deduction of his liability for tax was allowed or not. Melamet J judged that such a deduction be allowed because the description of the scheme, that is short-term speculation, implied that money was borrowed for purposes of producing income.

Though it flows out of economic sense to venture into transactions for profit motives, S11a is not hard and fast on that rule but rather emphasises that whether there was carrying on of trade that allows for a deduction.

2.3.6.2 THE INCOME

The carrying on of a trade must be in the production of income which income must have accrued to the taxpayer.
2.3.6.3 EXPENDITURE AND LOSSES

Over the years, it has not been easy for the courts to differentiate between expenditure and loss. Other cases before this one where there was still indecisiveness about the matter will not be ventured into for purposes of the scope of the study. In the Joffe case, some clarity between the two was reached. In this case, the taxpayer company was an engineering company. In 1939, one of its employees was killed by a concrete structure erected by the company. The cause of the collapse was due to misplacement of reinforcing steel. The company was not prepared to pay the deceased’s dependents for damages but later lost the case. The company wanted to deduct both the compensation and legal costs to which the Receiver objected.

On appeal, Watermeyer CJ dismissed the legal costs claim on the grounds that such costs were merely legal obligation and not a necessary concomitant. It is in this case that the learned judge cited that loss meant an involuntary deprivation whilst expenditure meant voluntary payment. The question is, is the incural voluntary or not and the onus is on the taxpayer to prove.
2.3.6.4 ACTUALLY INCURRED

The expenditure must have actually happened regardless of whether it was prudent or not. Incural is not solely dependent on cash basis only but credit basis as well.

2.3.6.5 DURING THE YEAR OF ASSESSMENT

The expenditure to be claimed must have happened in the year or part of, that it is claimed.

2.3.6.6 IN THE PRODUCTION OF INCOME

Of note is the fact that it is not expenditures that produce income but concomitant actions.

2.3.6.7 NOT OF A CAPITAL NATURE

Cases regarding the nature of an expense are to be judged singularly as opposed to collectively because of their attendant merits. If an expense was incurred to procure a good or service of a capital nature, then it is a capital expenditure. Conversely, a short-term expenditure acquires a revenue good or service.
2.3.6.8 EXCESSIVE CLAIMS AND APPORTIONMENT

The following discussion covers two sections; in one part focus is on the challenge of amounts to be claimed or already claimed by the taxpayer who the Receiver finds to be too excessive or represent relatively large increases in comparison to amounts charged in previous years save for new cases, this is s7.12. The other is on s11a and s23g in relation to apportionment. To have insight into the relevance of these sections, it is necessary to understand the general deduction formula which has already been dealt with. Essentially, this deals with camouflaging of transactions and as such gives weight to piercing of the veil.

S11a, which is usually called the positive test deals with what is to be deducted whereas s23g, called the negative test, deals with the opposite. The prevalence of excessive remuneration has in most of the cases been that of remuneration paid to directors and shareholders especially where a one-man company is involved. The primary reason has most of the time been that of tax avoidance in that an individual is taxed lesser than a company. The Commissioner's Practice Note 25 had it as a standing practice to regard what is considered to be excessive remuneration in relation to shareholders to be treated as dividends. Exactly how would one know what fits the nature of being excessive is answered by the determining factors:
2.3.6.8.1 DETERMINING FACTORS

In deciding on a case bearing the characteristics or suspected excessive remuneration, some factors need to be taken into consideration and some of them are:

- Value and nature of services rendered.
- The nature of the business.
- The relationship between the employer and the employee.
- The amount of the remuneration in relation to the net profit earned by the employer.
- The dependence of the remuneration paid on the profits earned.
- Presence of motives other than ordinary commercial ones.

From the above factors, one case will be cited and it is in connection with the third factor which deals with a member of a family.

The case of excessive expenditure is that of *Tobacco Father*. A son was employed by his father, the taxpayer, in his business of tobacco-growing. Forming his remuneration was a bonus calculated as a percentage of the company's net profit. The receiver perceived the remuneration amount to be rather high considering the fact the son had just left school. On appeal, judgment was that the very amount under dispute is what is ordinarily being paid in the open market and as such, the taxpayer won the appeal.
It would appear that cases will always present themselves differently and judges will react to them differently. This can be illustrated in Lord Tomlin's thinking in the Duke of Westminster case that:

Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be.

Lord Normand on the other hand in the Lord Vestey's Executors thought that tax avoidance is an evil, but it would be the beginning of much greater evils if the courts were to stretch the language of the statute in order to subject to taxation people of whom they disapproved.

2.3.7 SECTION 103(1)

If the Commissioner has the slightest belief that the taxpayer's transaction's main aim of coming into being is characterised by trying to defeat the following requirements, then he can invoke section 103(1) and use it to tax the taxpayer:

2.3.7.1 REQUIREMENTS OF THE SECTION

- There must be a transaction, scheme or operation which is entered into.
- It must be established which transaction, scheme or operation has the effect of avoiding or postponing a tax liability.
o Or created rights or obligations which would not normally be present between two people or the manner which would normally be present. Such rights may be enjoyed by the taxpayer directly or indirectly.

o Finally, the avoidance or purpose being the main or sole reason for existence.

If the provisions of s103 (1) seem to have been met it would then be safe to assume that the Commissioner will not invoke the section. Several cases have been tested in court over whether a scheme makes a taxpayer to be liable for tax and if so, for how much and one of the cases is that of Gallagher.

2.3.7.2 CASES LOST BY THE COMMISSIONER

In the Gallagher case, the taxpayer had listed shares and other shares in a private investment company. On 15th February 1968 he formed a company by the name of SPH Holdings (PTY) LTD (SPH). On 27th February of the same year he formed three trusts for each of his children and donated all his SPH shares to these trusts. On the very same day the taxpayer sold to SPH, on the advice of his attorney, all his shares to the tune of R74 000, 00. The aim was to save on estate duty.

The Commissioner's invoking s103 (1) and including dividends as income of the taxpayer made the latter to contest and it was put before the courts. The taxpayer won the case on the grounds that the aim was not to avoid tax but estate duty. Here, clearly as the taxpayer put it, there was a deliberate intention to avoid estate duty and not to evade payment of tax, but the move
(tax planning) had the effect of lowering tax liability. If tax avoidance is seen to be the main if not the only scheme forming the purpose a particular action is taken, then s103 (1) applies. After the decision on this case, an amendment was made to include schemes primarily intended to avoid tax.

Another case worth mentioning is that of Hicklin. In this case, Reklame Bestuur (Edms) Bpk (Reklame) had as its directors and shareholders, Hicklin and others. These directors had some R97 000,00 undistributed profits which fell under statutory exemption of undistributed profits tax but distribution of such profits to shareholders meant tax on dividends. The way around this problem, it was agreed, was to engage the services of Ryan Nigel Corporation Ltd. (Ryan) to do dividend stripping. This had the effect of the selling price being paid to Reklame and Reklame not taxed for it because such undistributed profits were not in Reklame’s hands and the same money not being taxed in the hands of Ryan because it was in the business of shares and dividend stripping. It is the engagement of this party that made the Commissioner to visit s103 (1) but he lost the case on the grounds that the court found nothing abnormal about the sale but merely tax planning leading to a win-win situation to those who transacted. ‘Abnormality’ compels the Commissioner to pierce the veil; that is, to look deeper into the transactions.

Depending on a case and its peculiar circumstances, like in the Hicklin case, the intention when the company was initially formed, in the eyes of the Commissioner, may change; that is, when it was formed there was no intention to avoid tax but over the passing of time, the intention became to
avoid the estate duty. Generally, dividend-stripping has two advantages and they are:

- A loss will be set off against income and
- The effective receipt in the form of tax-free dividends of what would under normal circumstances be additional taxable proceeds when shares are disposed of the shares.

Not all cases are lost by the Commissioner.

2.3.7.3 **CASES WON BY THE COMMISSIONER**

The Commissioner lost and won cases upon invoking s103 (1). One won case worth mentioning is that of Meyerowitz. In this case, in 1952, co-authors Silke, Spiro and Meyerowitz had 'The Taxpayer', a monthly journal, to be published by The Taxpayer (PTY) Ltd. which belonged to the three of them. Amongst other reasons for its formation, it was for limited liability purposes. Still at the same time, Visandra (PTY) Ltd. was formed by the taxpayer (Meyerowitz) to take over his interests in textbooks published by Juta. The only shareholders were himself and his wife. At no consideration, he ceded all his rights of two books to Visandra. Later in the year, an amount of £75.00 was paid to Visandra by Meyerowitz Trust for cession of all rights and interests in connection with the books. The trust was for the taxpayer’s children. In October 1952, Spiro, Meyerowitz Trust and Silke Trust partnered on what was called 'Legal Publications' for the purpose of publishing; that is taking over from Juta. The three were paid annual editorial fees.
In the year of assessment 30 June 1959-1960, the taxpayer included as income what was the editorial remuneration but not profit from sale of the two books. The Commissioner included as part of income the amount which was disclosed as income by the trust and the matter had to be decided by the courts. The test was on whether or not The Taxpayer (PTY) Ltd, Visandra (PTY) Ltd. and the Meyerowitz Trust were formed to avoid tax. It was judged that the first company, when formed, was not formed for tax avoidance or evasion purposes but was later used for exactly that as evidenced in the taxpayer’s efforts not paying off on him but his children. The tax net goes where rights and obligations remained. The fact that there was a cession of rights of two books to Visandra, whose shareholders were Meyerowitz and his wife at no consideration, raises eyebrows in that, there seems to be rights and obligations, whether direct or not which would otherwise not be present in arm’s length transaction. The onus, as always, will be on the taxpayer to prove why the penalty must not be affected.

Another case worth discussing is that of Ferera. In the Ferera case it would appear that not all accepted tax avoidance as being morally right. In 1952, a private company P was formed by acquiring the taxpayer’s shares in the three trading companies. The aim was not to avoid or to postpone payment on undistributed profits or to reduce super tax on shareholders but to avoid death duty on taxpayer’s death. In the year of assessment in question only two-thirds of the profit was distributed and one-third retained. This had an effect of avoiding tax on the part retained. The Commissioner assessed the taxpayer’s
returns as if he received aliquot shares as dividends and that meant more tax for the taxpayer.

The matter was placed before the court and judgement was that the reason for the formation of the company was of paramount importance and ‘normally’ the company would give out money in the form of dividends which would then be taxed and as such Macdonald JP indicated that tax avoidance was an evil deed and the appeal was allowed. The judge felt that the taxpayer was avoiding tax, which in turn meant more tax burden for other taxpayers and as such, the taxpayer lost the case. Whatever a verdict and regardless of the possibility of any judgement hinging on subjectivity, objectivity and the facts brought before a judge, a readily available tool to be used by the taxpayer is that of onus. The onus is to prove that non-inclusion of an amount in the taxpayer’s gross earnings or exemption thereof is warranted.

The cases cited in the preceding discussion indicate that upon embarking on a new venture a taxpayer can arrange his affairs in such a matter as to pay less tax. This may be termed tax planning. However, should ‘tax planning’ later during the course of the business activities, draw attention to itself because of ‘shadowy’ activity of some sort, then the s103 (1) is invoked.

2.3.7.4 TAX EVASION

Tax evasion is a deliberate move by a taxpayer not to pay tax to the extent that such a move is an illegal non-disclosure of one's tax information and/or
misinformation of the facts and should it be declared as such is subject to heavy penalties. Upon any indication that there is reason to believe that there is an element of abnormality regarding one's tax affairs, the Commissioner can invoke the provisions of section 103 (1) in order to pierce the veil and display the true nature of whatever the Commissioner will be interested in. The minute the Commissioner embarks on invocation, it suffices to say abuse of the system in terms of tax evasion is curtailed. This means that tax evasion can only survive to the extent that it does not raise an eyebrow to the Commissioner or if it does, to the extent that the onus point is satisfied. A case in mind can be that of Erf 3183/1.

In the Erf 3183/1 case, a group of companies incorporated a subsidiary company to acquire land which was later leased to a pension fund at a lesser than usual rental. The lease agreement was such that the lessee was entitled but not obliged to erect buildings and other improvements on the land at its expense. These buildings were a furniture factory and such buildings were the lessor's property against which the lessee had no claim. This had the effect that the expenses incurred by the operating company were to fund the costs of acquisition of land and buildings. The test was whether a right to income had accrued to the subsidiary company or not. The taxpayer argued that seeing that the subsidiary had no power to enforce any obligation, then no right to erect buildings accrued to it. The ruling on the matter was that the interposition of the provident fund was indeed not truly intended but amounted to simulation.
2.3.7.5 TAX AVOIDANCE AND PLANNING

Tax avoidance is the planning of one's affairs in such a manner as to pay lesser tax or having the effect that there is no income upon which the taxpayer can be taxed as opposed to would it have been the case where tax planning was made. This route is legal but the common denominator in both tax evasion and avoidance is that there is an intention to pay lesser or no tax at all.

In the *ITC 1518*, two brothers had intricately tax-planned their affairs in such a way that farming companies be owned by the brothers' family trusts and the said trusts operate as managers to the farming companies. The trusts were remunerated for their 'managerial services' to the companies. The trust would then distribute part of their remuneration to loan accounts of the brothers' minor children through the trust. This whole planning had the effect of lessening the brothers' tax liability in their farming activities. The so-called managerial services were done early in the morning and late at night to which the Commissioner disallowed a deduction on the adduction that the amounts for remuneration to trusts were too high.

When the matter came before the court it was judged that while it could not be contested that they were no longer the owners of income, they still had control over it and this justified that s103 (1) be invoked. Further, it was found to be abnormal the way low interest loans had been constructed. Following the court's ruling, the taxpayer later negotiated with the Commissioner on what amount could be considered reasonable for managerial services and what
amount had to be added back to the brothers' incomes because the implication that income was due to them did not absolve them from controlling it. The so-called tax planning on the part of the taxpayer may not necessarily be seen as such by the Commissioner. Here and there, changes may have to be effected so that all parties reach an amicable end.

The number of cases currently under study as well as those dealt with before these ones revolve around one point and the point being 'onus'. If the Commissioner challenges a claim of deduction the taxpayer will have to explain why the disputed amount should be in the taxpayer's favour. As the dispute will be put before the court, it is not automatic that the taxpayer will win. Regardless of whether the motive for excessive remuneration is favouritism, tax evasion or any other reason, the resultant effect is that there is a possibility of tax liability being transferred from one taxpayer to another. The intention then is to thwart exactly that.

2.3.7.5.1 EXPENDITURES

Section 7.11a deals with expenditures made up of mixed intentions. Though s11a (deals with expenditure and losses) does not provide expressly for apportionment, the courts have sanctioned such apportionments. Mixed motives, sometimes called dual purposes, may take the form of a lump sum payment for the benefit of more than one trade.
2.3.7.5.2 WHOLLY AND EXCLUSIVE

Still on definition, The Income and Corporation Taxes Act 1970 of the United Kingdom (UK) stated that:

No sum shall be deducted in respect of any disbursements or expenses where such money is not wholly and exclusively laid down for the purposes of trade, profession or vacation...

It is for this reason that the Solaglass case becomes relevant. In this case there was a company called Plate Glass Shaterprufe Industries. It was a holding company and had, as one of its subsidiaries, Solaglass Finance Company (PTY) Ltd (the company). The company borrowed funds from either the holding company or commercial banks and lent to the holding company's other subsidiaries at a percent more than the borrowing rate. Further, it made loans to staff members and discounted bills for trading companies still within the group. In the 1998-1999 year of assessment, the company claimed as a deduction the following losses:

- R4.5 million as irrecoverable loan by one of the subsidiaries
- R55 000.00 bad debts in relation to staff members

This did not auger well with the Receiver causing a challenge. The test was on whether the requirements of s11a and s23g had been met. Section 23g is in place for combating tax schemes between lessors and lessees in sale and leaseback arrangements. The judgment was that whilst s11a requirements were met, the problem was with s23g in that the intention was to make profit for the taxpayer as well as further the interests of the holding company. This
amounted to duality and as such, the losses were not deductible. A reduction of tax liability is dependent on variables like an increase in expenditure related to business operations and that is where tax planning should be as well and therefore sections like s23g and s11a are brought into play. After much trepidations and debates, s23g was amended in order to do away with ‘wholly or exclusively’ and so apportionment came into being but the subsequent question was ‘when?’

2.3.7.5.3 APPORTIONMENT

This can only be possible when:

“The lump sum can be dissected and that portion expended for the purposes of trade can be identified...”

As indicated in ITC 800 where the taxpayer company’s memorandum of association entitled the company to invest and finance and exploit base mineral claims. In the course of events, exploitation which was underway had to be discontinued and it was in January 1952 that the company injected ready cash from which it earned £637 11s.0d. For the assessment year ended June 1952 the company had the very amount reflected as income and had a total amount of £2 497 15s.10d. as its expenditure. The Receiver only allowed 5% of the claim which was an estimate of the expenses incurred in the production of income, which in this case is interest. To this the taxpayer objected and the court ruling was that some money was actually spent for mining claims whilst to others there seemed to be no attendant feature and as such, the assessment was reduced by allowing income which is interest to be
£631 11s.0d. and the expenditure to be £571 8s.2d. This shows the limitations lurking regardless of resources invested in tax planning but at least it better than before when apportionment was not allowed.

This case inadvertently touches on what is considered to be fair and reasonable by the courts and the attendant subjectivity and/or objectivity on rulings depending on perception(s) one has. The next case reflects on the issue of fairness and reasonability as well.

2.3.7.5.4 FAIR AND REASONABLE

Nemojim, the taxpayer company was dealing in shares. It primarily dealt with dividend stripping whereby it purchased shares from dormant companies which had large reserves awaiting distribution as dividends, caused such dividends to accrue to Nemojim then sold the shares. Nemojim, in terms of s10 (1) k, was exempted to pay tax on dividends. The company included proceeds from sale in its gross and claimed a deduction for the purchase price of shares. At issue was whether a full amount or part of the purchase price had to be deducted. It was held that there was dual purpose for purchase in order to gain exempt income in the form of dividends and gain income by selling after receiving dividends. So, apportionment was appropriate and the judgment seen as fair and reasonable. The limitation here is the judgment being either objective or subjective.
2.3.7.5.5 DERIVING INCOME AND ACQUISITION OF CAPITAL ASSET

A case dealing with both acquisition of a capital asset and the deriving of income is that of Rand Selections. In this case, a taxpayer company, amongst other things, derived its income from share dealing and dividends. On 1st October 1948 the company had shares in a company called Lace and on 18th December 1948 more shares were bought with the knowledge that Lace was going to be liquidated. Indeed it happened on the 11th February 1949 and three distributions were made to the taxpayer company where the last payment was made in the next year of assessment. Part of the first distribution was regarded as a return of capital and share premium whilst the other part and two other distributions were regarded as profits earned by Lace and thus formed part of taxpayer company’s dividends. The part perceived as dividends were exempted from taxation whilst the rest was not. The judgment was based on the fact that when buying the shares the company knew that Lace was going into liquidation and hoped that the liquidation dividend would be higher than its purchase price. So, the intentions were more than one.

2.3.7.5.6 CONTRACTS

One of the objectives of the study was to look at the judicial nature of contract and the variety of effects it can have, which sometimes is very profound, on the tax position of parties to a contract. The study highlights some of the terms and conditions which protect a taxpayer because if this part is not
covered by the taxpayer or the draftsman for the taxpayer, then the taxpayer may be befall by an adverse tax position.

It is not advisable to take a conclusive thought that a transaction is riddled with adverse tax consequences for the taxpayer but rather each an every factor that affects such a transaction must be isolated. Tax implications affecting it be identified then neutralising counterbalances be exhausted. This may shed new light as opposed to how things were first perceived. The following discussion focuses on the nature of the contract is like.

2.3.7.5.7 THE NATURE OF THE CONTRACT

The nature of the contract is tested in the light of quality, incidence, time and source. So, in drawing up a contract, one has to bear in mind the effect that his choice of words in a contract will have.

2.3.7.5.8 QUALITY

It is necessary to determine whether the income received or to be received is of a capital or revenue nature. The distinction is that if it is of revenue it will attract tax but if it is not, it will not attract tax. Some contracts are sui generis in that a lot has to be dealt with in order to determine whether income emanating from a contract is of capital or revenue nature. For example, in the Tuck case it was judged that an amount being paid determines its nature (quid pro quo). In this case, the taxpayer had, in 1957, become a Managing
Director of Wyeth Laboratories (PTY) Ltd which was a subsidiary of American Home Products (American Home). In 1967, American Home came up with an incentive plan by providing awards to those who had contributed substantially to the company. The awards were in the form of cash, contingent cash and contingent stock. Contingent stock was converted into shares, which shares were delivered to such an employee after retirement in ten instalments with the agreement of restraint of trade.

In the years 1981 and 1982, the taxpayer received instalments of R14 251.00 and R20 977.00 respectively. The question was whether such income was of a capital nature or not. To the extent of restraint, Corbet JA ruled, it was of a capital nature and the remaining part was of revenue nature. So, tax planning will be based on whether income is of capital or revenue nature.

2.3.7.5.8.1 INCIDENCE

Incidence refers to who the taxpayer is; a closed corporation, partnership, trust or individual and whether this is a new or existing taxpayer. Tax planning regarding incidence may result in one party to a contract not being adversely affected whilst another is or both suffering whilst the Commissioner is not adversely affected or even all the parties to a contract being left with a win-win situation. How the choice of parties to a contract affect tax consequences is illustrated by the African Life case. African Life Insurance Company, which was in the business of long-term insurance, operated a scheme whereby profits made by long-term insurers in respect of share dealing, were to remain
free of income tax. In 1963, the board of the African Life Group consolidated the share profits of all long-term insurance companies under one stable and a new company was specifically formed for this purpose.

The ruling on the matter was that the objective was that of administrative convenience and that such a consolidation was no tax haven because after such consolidation, money which was before not impervious to tax then was. It is the new arrangement that led to that. In incidence, to a certain degree, the type of taxpayer influences the amount to be paid in tax. Tax law makes a distinction between employees, office bearers and independent contractors. The last one fares better than the first as he is regarded as an independent contractor as he is exempted from assessment to the extent of a fringe benefit. There seems to be a current trend to move away from companies to trusts. The reason may be that of secondary tax on companies (STC). The effective rate is currently 43% being made up of 35% company rate at 12, 5%. At the same time it does not deter company taxpayers as they are still around and if the tax rate reasoning were used, 43% is a flat rate whereas individuals are taxed at a progressive rate which is currently at 45%.

The preceding discussion is evidence that the intentions will be realised because of an array of measures put in place. These measures range from allowing a set-off against assessed loss only when it suits the State to taxing a portion instead of nothing in terms of a person staying abroad, an abroad business as well as a local one. Further, the State introduces restrictions on how much money or assets can be taken out of the Republic at a time;
leaving those which are remaining to be taxed in the meantime and how some of the payments can be prepaid in the Republic's favour. Generally, these tax anti-avoidance measures will lead to an increase of revenue to the fiscus. Close to this case is that of *Witwatersrand Association*.

In tandem with incidence is the question of in whose hands does income have to be taxed. Failing to be wary of that can lead to a situation like in the Witwatersrand Association case where a race meeting was organised by the taxpayer with the understanding that the proceeds from the race meeting were to be divided between South African Tuberculosis and Johannesburg Coronation Foundation. The proceeds amounted to £7 906.00 and such proceeds were divided as agreed upon. Come tax year-end, the Commissioner included the said amount in the taxpayer’s income which the taxpayer challenged citing that the two charities are the ones liable for tax. In passing judgement, Ogilvie-Thompson JA said that the decision to hold a meeting was the taxpayer’s as well as the organising of the meeting through the taxpayer’s secretary and as such. Further, the amount in dispute accrued to the taxpayer and it was only subsequent to that the money was given to the charities. This implies that the taxpayer was entitled to the money and not the two charities at the time when such money accrued. This problem could have been averted by invoking the comfort of Section 56(1) (l) which deals with exemptions on donations made to or by an institution for the advancement of science, art, religion as well as charity.
The potential question to be raised in the Witwatersrand Association case is what if the taxpayer ceded his rights to the income, which leads us to the *Smart* case. In the *Smart* case, before 31st October 1966, the taxpayer was a Managing Director and a sole trader of Neaf (PTY) Ltd. and for his services, he was getting R12000.00 per year. Thereafter, Media (PTY) Ltd acquired all the taxpayer’s shares in exchange for:

- R80 000.00 in cash.
- 133 331 shares in Media.
- A salary of R1 589.00 per year.
- A monthly sum equal to one hundred and twentieth of the aggregate nominal value of the taxpayer’s shares in Media.

On the 13th July 1967, the taxpayer sold all his shares to a certain Plank for R100 000.00 and the agreement of sale was such that the taxpayer cedes all his rights to Plank in relation to fourth bullet above. It transpired that the Media directors, though the contract remained effective, refused to register transfers of shares to Plank. This had the effect of the taxpayer receiving income as per the fourth bullet, which income he used to reduce the purchase price of shares. However, the Secretary of Inland Revenue included the amounts received in gross income. The taxpayer contested that though he acknowledges having received the amount, such an amount did not accrue to him because he had previously ceded his right to Plank and as such if anybody was to pay tax it was Plank. The matter was put before Holmes JA who judged in favour of the taxpayer citing the following reasons:

- The Secretary was unable to prove that the amount in question was remuneration.
- The taxpayer had actually ceded his rights to Plank which did not yield dividends immediately. This means that cession happened before accrual and as such, the taxpayer was divested from future payments.
- Though Plank never physically received any cash, it was his account with the taxpayer which was credited with such amounts.

Generally, a taxpayer cannot be assessed for cession of right to receive interest but can be assessed for a right to receive remuneration even after cession.

2.3.7.5.9 TIME

Time relates to any year of assessment under study. It further relates to the effect of deferrals from one year of assessment to another as this has a bearing on the potential changes in tax rules, tax rates and taxpayer’s status (the taxpayer may not be able to pay his dues in the next year(s) of assessment). The other fact to consider is that if there are conditions to be met relating to the receipt of income, then such conditions are to be met first before a party becomes liable for tax. The timing of such an accrual is vital as it can lead to a deferred recognition of income but the attendant condition must be real. The last test is on source.

2.3.7.5.10 SOURCE

When it comes to source, two questions come to one’s mind and they are what did the taxpayer do so that such income can accrue and whatever he
did, whether he did it in South Africa or outside its borders? The answers to these questions informs whether will pave way as to whether the taxpayer is to be taxed or not and if so to what extent. Having tested the nature of the contract, a discussion of the nature of the service contract will be relevant

2.3.7.5.11 BASIC LIMITATIONS REGARDING TAX PLANNING

- Morality as mentioned supra.
- Practicality; that is tax planning must not lead to impoverishment of the taxpayer.
- Other taxes; that is trying to save on one tax may lead to more vulnerability of tax payment by the taxpayer on another form of tax.
- Domicile of the taxpayer; that is moving a taxpayer from a place of domicile he is used to, to a so-called tax haven may lead to other problems. The tax haven route must not lead to the erosion of taxpayer’s social network.
- Adverse effect on contracting parties; that is there must be a balance of tax burden on the parties to a contract otherwise that may lead to one party gaining whilst the other is highly penalised.

It can be seen from the above that for as long as there are different approaches as to how to adjudicate a case involving tax planning or mere tax evasion that cases will be judged according to merit and sometimes subjectively according to how a judge strongly feels about a matter put before him as in the Ferera case. However, not all judges hold Macdonald PJ’s views and they judge cases in accordance with how a taxpayer’s case is
presented to them because the onus is on the taxpayer to convince the judge that the route taken is not characterised by features similar to those of a person evading tax. This means that the taxpayer will have to move on a continuum, from what is seen by the Commissioner to be artificial to what is seen to be of substance and holding water. Before even passing judgement, the judge will have to be equipped with the knowledge that a sane man will arrange his affairs in such a manner that tax liability will be lessened if not eliminated.

The Commissioner can only claim tax to the extent that the taxpayer would normally have been taxed should he not have gone the tax avoidance route.

After 1996, the Commissioner is obliged to impose interest but not penalty as per s103 (1) should he feel there is reason for that. Particular care was taken regarding this to limit it to what scope it is supposed to cover; it could have been very interesting to merge this section with s103 (2) which deals with the use of assessed loss (tainted income) which could be relevantly used in our current cases. The bottom line is that s103 (1) is not applicable where neither rights nor obligations arise. This may lead to a case that was cited in the preceding discussion dealt with earlier and we are not going to deal with now where what was passed on to a recipient was the benefit of a donation but the obligation to pay tax was still with the one donating; the case in question is that of CIR v Wiwatersrand Association of Racing Club 1960 (3) SA 291 (A), 23 SATC 380.
It is important then that when somebody else is handling his matters which have tax implications that whoever is attending to such affairs should be the one penalised should an occasion call for that.

Another case is that of *ITC 1178* in which A and B were directors in a private company taxpayer. A second company was formed to take over business of the first company and undistributed profits then amounted to slightly over R100 000.00. This meant that instead of assessing the first company on undistributed profits, they had to be taxed in the hands of the second company, but then again company too could not be taxed because such profits were still fresh and consequently not taxable. The Commissioner was not happy about this and judgement was in favour of the Commissioner as it was adjudicated that:

- Formation of the second company constituted a scheme.
- Such a scheme had the effect of reducing taxpayer's tax liability.
- The rights created would not be normally created between persons dealing at arm's length and
- Such a scheme was mainly for the purpose of avoiding tax.

It is vital to discuss the *Smith* case because Smith had shares in a company which was about to declare dividends. A series of transaction happened leading to Smith being a sole shareholder of a company which was incorporated in South West Africa. The original company declared dividends to its subsidiary which in turn declared such dividends to its shareholders. Part of the reasoning for transacting like that, the taxpayer reasoned, was to
save on estate duty and income tax. The Appellate Division dismissed these contentions because it was of the view that it was not a requirement that it be shown that the taxpayer's intention was to avoid tax on his income.

2.3.8 CONCLUDING REMARKS

The preceding discussion implies that there are tax liability implications if a director changes from the initial intention when acquiring an asset and such implications may be good or bad such a director depending on the judge's adjudication. Should there be a need for the Commissioner to investigate a case, he can always invoke Section 103 (1). Lastly, the way a contract is structured between parties has an influence on how such parties will be taxed in the future.
CHAPTER 3

DEFINING THE PROBLEM AND FORMULATION OF RESEARCH QUESTIONS

3.1 INTRODUCTION

This chapter reflects the definition of the problem, the rationale and the research questions. What is of essence to comprehend is that if the problem is incorrectly defined, the problem will be minimally solved if solved at all.

3.2 RATIONALE TO THE PROBLEM

This study was motivated by the gap that existed in insight into taxation by taxpayers. The fundamental reason to the problem is that there are tax requirements which directors must adhere to but as to whether they do adhere or if such adherence is optimal is another matter.

3.3 DEFINING THE PROBLEM

Problems are questions about relations between postulates and variables. This research focused on 'The requirements of taxation on companies and directors in relation to normal tax, secondary tax on companies, piercing of the veil as well as limitations connected to taxation'
3.3.1 PRIMARY PROBLEM

The primary problem of the study was to determine whether taxpayers in South Africa had a sound understanding of the requirements of taxation on companies and directors in relation to normal tax, secondary tax on companies as well as piercing of the veil.

3.3.2 SECONDARY PROBLEM

The secondary problem of the study was to identify whether taxpayers in South Africa had a clear understanding on the areas as enumerated below:

- Whether directors in companies have insight into the Secondary Tax on Companies applications and implications.
- Whether taxpayers understand the difference between tax avoidance and tax evasion.
- Whether tax planning and tax avoidance are regarded as the same or whether they could be distinguished from one another and if so how could this be done.
- The similarities or differences between the tax rate for companies and close corporations.
- The tax implications of a director who simultaneously held the position of an employee.
• The principles of calculating Secondary Tax on Companies (STC) and the criteria for entities to qualify as STC payers.
• The comparison of consequences of tax planning and tax avoidance compared,
• The impact of a taxation system in a country on socio-development of a country.

3.4 RESEARCH QUESTIONS BASED ON THE SECONDARY PROBLEMS

• Do directors in companies have a clear understanding of the Secondary Tax on Companies applications and implications?
• Do taxpayers understand the difference between tax avoidance and tax evasion?
• Are tax planning and tax avoidance one and the same concept or are they distinguishable from one another and if so how could this be done?
• What are the similarities or differences between the tax rate for companies and close corporations?
• What are the tax implications of a director who simultaneously holds the position of an employee?
• What are the principles of calculating Secondary Tax on Companies (STC) and the criteria for entities to qualify as STC payers?


- What are the consequences of tax planning and tax avoidance if compared?
- What is the impact of a taxation system socio-development of a country?

3.5 CONCLUDING REMARKS

The rationale of the research problem places emphasis on the possibility that there is a major need to educate taxpayers in South Africa to the requirements of taxation with special emphasis on directors, companies, Secondary tax on Companies, tax avoidance and evasion and the section 103 enforcement thereof as well as the socio-economic impact of tax on a country.
CHAPTER 4
RESEARCH DESIGN AND ANALYSIS

4.1 INTRODUCTION

This chapter reflects on the methodology used in this study. The major focus of the chapter includes methodology, population, sampling and data collection procedure. The study was intended to investigate the requirements of taxation on companies and directors in relation to normal tax, secondary tax on companies, piercing of the veil as well as the imitations connected with taxation. The method of survey will be discussed and finally, a statistical method, which is informed by all the above, will be arrived at.

The data to be collected for the research, which is actually opinions, is to come from two groups and they are directors and non-directors of companies.

Both the deductive research and descriptive research were employed in this study though much of the research method used was deductive research. The reason for this combination was that the former research, which is formal and structured in nature, was best suited for this kind of study since it focused mainly on the analysis of quantitative data emanating from representative samples. The descriptive research deals with the part of describing, explaining and exploring relationships amongst variables. Both methods, when merged, resulted in a holistic study of the problem.
4.2 SAMPLING TECHNIQUES

Bless (1995:86) defines a sample as:

...a subset of the whole population which is actually investigated by a researcher and whose characteristics will be generalized to the entire population.

In keeping with this definition, one of the most practical and convenient methods used for the collection of relevant data is through the process of sampling, which is the technique used in this study. Random sampling as a probability sampling technique was used in this study and therefore each member of the targeted group had a known and equal chance of being selected in the sample. One of the advantages of probability sampling is that it is a good representation of the target population, particularly if the study is effectively carried out. However, a compounding limitation is that the researcher is compelled to be dependent on a schedule of the prospective respondent within the targeted group.
4.3 MEASURING INSTRUMENT

A carefully planned and properly designed measuring instrument is essential for the collection of the required data. Whilst many options may be used for the collection of relevant information, this research was conducted through the medium of a questionnaire. The questionnaire consisted of six carefully planned structured questions, with each question having various categories that were completed by the respondents. This was the most convenient and expeditious method as opposed to any other approach because the participants are based in the various regions within the North West Province.

4.3.1 QUESTIONNAIRE

In order to meet the objectives as set out in this dissertation, a carefully planned questionnaire was designed and distributed for completion by members of the identified sample group. The analysis was therefore carried out through the collation of the data as contained in the questionnaires that were completed by the participants.

4.4 POPULATION

The respondents were from the North West Province with special emphasis on the Mafikeng area. The sample size was 69 which was the determined by number of questionnaires sent out. There were fifty directors and fourteen non-directors.
4.5 SURVEY METHODS

Copies of the questionnaire were distributed to the identified target group for the answers to be selected by indicating a cross in the appropriate block. The closed ended questions were formally structured in the form of a five point Likert scale, complimented by appropriate guidelines regarding the procedure to be followed. A copy of the questionnaire is shown at the end of the study and reflected as Appendix A, a questionnaire comprising of a multiple choice of five indicators, comprising of “Strongly Disagree, Disagree, Don’t know, Agree and Strongly Agree.” The respondents had to choose one answer per question.

Telephonic effort as well as physical contact was made to ensure that the total targeted sample of participants, returned questionnaires duly completed.

4.6 DATA COLLECTION

The required information was obtained through the use of a questionnaire that administered to the respondents. Chapter five of this study reflects the findings based on the data from the questionnaire.
4.7 STATISTICAL METHOD USED

The statistical method used in this study to analyse the data emanating from the survey was the descriptive statistics. This form of data analysis is used to describe, explain and explore the relationships amongst the variables. In order to present the data collated from the respondents in an orderly manner, tables, figures, frequency counts and percentages were used in this study. The research results culminate in an appropriate discussion on the outcome of the study, which is complimented by relevant suggestions and recommendations for the future. In addition, other statistical methods utilized for the testing of significance included the F - Test and T - Test.

4.8 CONCLUDING REMARKS

From the preceding discussion it is evident that the nature of the challenges in data collection play a significant role in determining the type of instruments to be used for the collection of relevant data. This statement highlights the justification for the use of a questionnaire in this study particularly in the light of the fact that the research revolved around opinions and attitudes, surveyed through the medium of closed ended questions.

The chapter dealt with the research design and is closely linked to chapter five where the results emanating from the study are presented.
CHAPTER 5

RESULTS AND INTERPRETATION

5.1 INTRODUCTION

This part of the dissertation deals with the results that were arrived at from the computations that were done in chapter four and it will later deal with the interpretations of the same results after having analysed them; that is, what exactly do they mean. The responses from the questions were intended to cover the requirements of taxation on companies and directors in relation to STC, piercing of the veil in relation to directors and attendant limitations. The method used to collate is the descriptive one. Seventy questionnaires were distributed and only sixty nine of them were returned after having been completed.

The make-up of the chapter will be such that the chapter will firstly deal with the statistical fit informed by the data collected; secondly, deal with the influences that the biographical responses have in arriving at the probabilities and lastly, there will be tables encompassing the responses collected and an analysis of such responses will be embarked on.
5.2 STATISTICAL FIT OF DATA COLLECTED FROM THE QUESTIONNAIRE

5.2.1 EDITING OF STATISTICAL DATA

the respondents answered all the questions in the questionnaires except for question seventeen from one respondent. It therefore means that the responses from sixty nine respondents were used for statistical analysis. It can be safely argued that the omission of a response to one question does not affect the interpretation because such an omission, in terms of numbers, is negligible.

The data used for the testing of statistical significance was interval data as opposed to ordinal data. This stems from equality of interval in the Likert scale where the questions were evenly averaged as a way of rating the sphere covered by such a question.

5.2.2 DISTRIBUTION OF DATA

The Analysis of variance (ANOVA) Test was applied to determine if the data used is normally distributed. The F-ratio is the test statistic for the ANOVA and it is a ratio between the variance of between-groups and within-groups.
TABLE 5.1: ANOVA TEST FOR NORMAL DISTRIBUTION OF DATA

<table>
<thead>
<tr>
<th>Source of Variation</th>
<th>SS</th>
<th>df</th>
<th>MS</th>
<th>F</th>
<th>P-value</th>
<th>F crit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Between Groups</td>
<td>3207.017</td>
<td>17</td>
<td>188.6481121</td>
<td>361.34972</td>
<td>0</td>
<td>1.63112901</td>
</tr>
<tr>
<td>Within Groups</td>
<td>638.485</td>
<td>123</td>
<td>0.522065184</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>3845.502</td>
<td>1240</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 5.1 above was computed using MS-Excel and the main interest was P-value. Stemming from what the above table depicts, it is safe to conclude that 95% of the data for each of the data series fits a normal distribution.
5.3 BIOFIGUREICAL ANALYSIS

5.3.1 BIOFIGUREICAL DISTRIBUTION OF POPULATION PER DESIGNATION, AGE, GENDER AND INCOME

TABLE 5.2: TOTAL NUMBER OF RESPONDENTS, RANK, GENDER, AGE AND INCOME

<table>
<thead>
<tr>
<th>Number of respondents</th>
<th>Population</th>
<th>Rank</th>
<th>Gender</th>
<th>Age</th>
<th>Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Questionnaires</td>
<td>69</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Director</td>
<td>55</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Director</td>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>57</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20-24</td>
<td></td>
<td></td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25-29</td>
<td></td>
<td></td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30-34</td>
<td></td>
<td></td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>35-39</td>
<td></td>
<td></td>
<td>15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>40-45</td>
<td></td>
<td>18</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;45</td>
<td></td>
<td>32</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>0-99999p.a</td>
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<td></td>
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<td>2</td>
<td></td>
</tr>
<tr>
<td>100000-199999p.a</td>
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<td>7</td>
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</tr>
<tr>
<td>200000-299999p.a</td>
<td></td>
<td></td>
<td></td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>300000-399999p.a</td>
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<td></td>
<td>14</td>
<td></td>
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<td>400000-499999p.a</td>
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<td>19</td>
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<td>&gt;500000</td>
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<td></td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>69</td>
<td>69</td>
<td>69</td>
<td>69</td>
</tr>
</tbody>
</table>

All the biographical data as per the above heading, is tabled in Table 5.2. This table is to be read in conjunction with the figures showed that follow it. A brief analysis will follow each figure.

Table 5.2 shows that the total number of the respondents amounts to sixty nine (69), fifty five (79.71%) were directors and fourteen (20.29%) were non-
directors. The number of female participants was fifty seven (82.61%) and twelve (17.39%) males. The age categories of the respondents were as follows: Four respondents fall within the age group 30 to 34 years age group (5.80%) while fifteen were 35 to 39 years of age (21.74%). Eighteen (26.09%) of the respondents were between the age 40 to 45 years and 32 are older than 45 years old (46.38%). Two (2.90%) of the participants earned in the range 0 to R99,999.00 while seven (10.14%) earned between the income groups R100,000.00 to R199,999.00. Twelve earned between the income group R200,000.00 to R299,999 and fourteen (20.29%) between the income groups R300,000.00 to R 399,999.00. Nineteen (27.54%) earned between R400,000.00 and R499,999.00 and fifteen (21.74%) more than R500,000.00.

Figure 5.1 indicates the number of respondents per designation

![Graph](image)

**Figure 5.1: Number of respondents per rank**

Figure 5.1 shows that fifty five (79.71%) of the respondents were directors and fourteen (20.29%) were non-directors.
Figure 5.2 indicates the number of respondents per gender group.

![Number of participants per gender](image)

**Figure 5.2: Number of respondents per gender.**

Figure 5.2 indicates the number of female participants was fifty seven (82.61%) and twelve (17.39%) were males.

Figure 5.3 indicates the number of respondents per age group

![Number of participants per age](image)

**Figure 5.3: Number of respondents per age**

The data in figure 5.3 show that there were none of ages ranging from 20-24 and 25-29 but from 30 upwards. The range 30-34 was 5.8% of the
respondents under study whilst range 46 and more is 46.38%. In fact, the higher the age the more the number of the respondents.

Figure 5.4 reflects the number of respondents per income group

**Figure 5.4: Number of respondents per income group**

The range that earned less than R100 000.00 accounted for 2.9% of all the ranges. The pattern shows a steady rise until the last but one range of 400 000.00 to 499 999.00 where it is 27.54% then the figure goes down to 21.73% for the last range.
5.3.2: TESTING SIGNIFICANT BIOGRAPHICAL INFLUENCE OF DESIGNATED GROUPS ON THE ANSWERING OF QUESTIONS

What follows are tests which were conducted to point out any biographical factors that may have influenced the respondents the way they have responded.

5.3.2.1. TESTING SIGNIFICANT INFLUENCE OF DESIGNATED GROUPS ON THE ANSWERING OF QUESTIONS

Table 5.3: MEAN RESPONSE PER RESEARCH OBJECTIVE

<table>
<thead>
<tr>
<th>Designation</th>
<th>Mean per research objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director</td>
<td>4.8  4.7  5.0  5.0  4.8  2.8  1.2  5.0  4.9  4.5  4.9</td>
</tr>
<tr>
<td>Non-director</td>
<td>3.9  3.5  4.1  4.5  3.7  3.5  1.9  4.5  4.2  3.2  4.2</td>
</tr>
<tr>
<td>Total</td>
<td>8.7  8.2  9.1  9.5  8.5  6.3  3.1  9.5  9.1  7.7  9.1</td>
</tr>
</tbody>
</table>

The table below showed the mean between two tiers; that of directors and that of non-directors. The directors were ranking higher than the non-directors when the means were compared which was an indication of different reasoning or responding by virtue of respondents' rank.
5.3.2.2 TESTING SIGNIFICANT INFLUENCE OF GENDER GROUPS ON THE ANSWERING OF QUESTIONS

**TABLE 5.4: F-TEST TWO SAMPLE FOR VARIANCE**

<table>
<thead>
<tr>
<th></th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean</td>
<td>3.37745098</td>
<td>3.597836503</td>
</tr>
<tr>
<td>Variance</td>
<td>1.843852124</td>
<td>2.755295435</td>
</tr>
<tr>
<td>Observations</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>Df</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>F</td>
<td>0.669203056</td>
<td></td>
</tr>
<tr>
<td>P(F&lt;=f) one-tail</td>
<td>0.215261556</td>
<td></td>
</tr>
<tr>
<td>F Critical one-tail</td>
<td>0.428544311</td>
<td></td>
</tr>
</tbody>
</table>

Two tests, F-Test and T-Test were made to test if gender played a significant role in terms of answering the questions. The major reasons for using the two tests were:

The former was intended to determine if all the samples had variances. The answer from this would in turn, determine if for equal and unequal variances, a T-Test was to be used and further, computation of the degrees of freedom that was to be applied in determining the critical value. The results these tests are shown in Table 5.4 above.

The difference of mean between male and female participants was just over 0.22. That meant two things; one, the data are a 95% fit and two, the difference of gender did not play a role when the questions were responded to.
## Table 5.5: t-Test: Two-Sample Assuming Equal Variances

<table>
<thead>
<tr>
<th></th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean</td>
<td>3.37745098</td>
<td>3.597836503</td>
</tr>
<tr>
<td>Variance</td>
<td>1.843852124</td>
<td>2.755295435</td>
</tr>
<tr>
<td>Observations</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>Pooled Variance</td>
<td>2.29957378</td>
<td></td>
</tr>
<tr>
<td>Hypothesized Mean Difference</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Df</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>t Stat</td>
<td>-0.423710133</td>
<td></td>
</tr>
<tr>
<td>P(T&lt;=t) one-tail</td>
<td>0.337305918</td>
<td></td>
</tr>
<tr>
<td>t Critical one-tail</td>
<td>1.693888407</td>
<td></td>
</tr>
<tr>
<td>P(T&lt;=t) two-tail</td>
<td>0.674611837</td>
<td></td>
</tr>
<tr>
<td>t Critical two-tail</td>
<td>2.036931619</td>
<td></td>
</tr>
</tbody>
</table>

The other test as shown in Table 5.5 above, was intended to determine the statistical differences between the means of independent samples.

Both tests, the are F-test and T-test, revealed that the difference in gender was not in itself a determining factor in responding to questions. It is for that reason that it becomes prudent not to use information related to gender until the whole analysis is completed.
5.3.2.3 TESTING THE SIGNIFICANT INFLUENCE OF AGE GROUPS IN RESPONDING TO THE QUESTIONS

The ANOVA test, as represented by Table 5.6 below, was used to test what significance does age play, if any, to influence the way the respondents responded.

Table 5.6: ANOVA: SINGLE FACTOR

<table>
<thead>
<tr>
<th>Groups</th>
<th>Count</th>
<th>Sum</th>
<th>Average</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>30-34</td>
<td>4</td>
<td>253</td>
<td>3.514</td>
<td>0.310</td>
</tr>
<tr>
<td>35-39</td>
<td>15</td>
<td>802</td>
<td>3.145</td>
<td>0.693</td>
</tr>
<tr>
<td>40-44</td>
<td>18</td>
<td>1153</td>
<td>3.559</td>
<td>0.374</td>
</tr>
<tr>
<td>45&gt;</td>
<td>32</td>
<td>1978</td>
<td>3.441</td>
<td>0.291</td>
</tr>
</tbody>
</table>

Figure 5.5: AVERAGE SCORES

The data in Table 5.6 and Figure 5.5 reveal that age did not play a significant role in determining the way the questions were responded to. In the same way
as in the analysis relating to Table 5.5, the age influence is to be put in abeyance until the end of the analysis exercise.

5.4 PRESENTATION OF RESULTS

The ANOVA test for normal distribution of data was shown in Table 5.1; the demographical questions were presented above by Tables 5.2 to 5.6 and Figures 5.1 to 5.5. the following discussion focuses on the analysis of responses which are non-demographic. it is important to note that in all these cases that are to follow, the impact will be shown more by what directors have responded as opposed to non-directors because the respondents were more for the former (55) than the latter (14). That is, there is strength in numbers.

Table 5.7: Tax planning has an influence on tax avoidance

<table>
<thead>
<tr>
<th>Response</th>
<th>Combined</th>
<th></th>
<th>Director</th>
<th></th>
<th>Non-director</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Disagree</td>
<td>1</td>
<td>1.45</td>
<td>0</td>
<td>0.00</td>
<td>1</td>
<td>7.14</td>
</tr>
<tr>
<td>Neutral</td>
<td>3</td>
<td>4.35</td>
<td>0</td>
<td>0.00</td>
<td>3</td>
<td>21.43</td>
</tr>
<tr>
<td>Agree</td>
<td>19</td>
<td>27.54</td>
<td>12</td>
<td>21.82</td>
<td>7</td>
<td>50.00</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>46</td>
<td>66.66</td>
<td>43</td>
<td>78.18</td>
<td>3</td>
<td>21.43</td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>100.00</td>
<td>55</td>
<td>100.00</td>
<td>14</td>
<td>100.00</td>
</tr>
</tbody>
</table>
Figure 5.6 Tax planning has an influence on tax avoidance

From Table 5.7 and Figure 5.6 it is evident that 78.18% of directors strongly agreed that tax planning had an influence on tax avoidance whereas 21.43% of non-directors believed so as well. The total of the two percentages accounted for 67% of all responses to the same question. There was a strong skewness to strongly agreeing in the continuum from strongly disagreeing. As a matter of uniformity, from here until the end of the chapter, the flow of presentation will follow this fashion: it will be a table, followed by a figure then some attendant analysis notes.
Table 5.8: A CC pays tax on its taxable income at the same rate as any other company

<table>
<thead>
<tr>
<th>Response</th>
<th>Combined</th>
<th></th>
<th>%</th>
<th>Director</th>
<th>No.</th>
<th>%</th>
<th>Non-director</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly disagree</td>
<td>0</td>
<td>0.00</td>
<td></td>
<td>0</td>
<td>0.00</td>
<td></td>
<td>0</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>disagree</td>
<td>3</td>
<td>4.35</td>
<td></td>
<td>0</td>
<td>0.00</td>
<td>3</td>
<td>21.43</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Neutral</td>
<td>2</td>
<td>2.90</td>
<td></td>
<td>0</td>
<td>0.00</td>
<td>2</td>
<td>14.29</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agree</td>
<td>22</td>
<td>31.88</td>
<td>14</td>
<td>25.45</td>
<td>8</td>
<td>57.14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strongly agree</td>
<td>42</td>
<td>60.87</td>
<td>41</td>
<td>74.55</td>
<td>1</td>
<td>7.14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>100.00</td>
<td>55</td>
<td>100.00</td>
<td>14</td>
<td>100.00</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Figure 5.7 Tax rate of a Close Corporation

It is evident from Table 5.8 and Figure 5.7 that just as in the previous responses; there is skewness to strongly agree that a CC pays tax on its taxable income at the same rate as any other company. 69% of responses indicated that. For directors, there is a steep rise from agreeing (25.45%) to strongly agreeing (74.55%) whereas for non-directors, there is a downswing from 57.14% to 7.14% under the same conditions. The contrast in responding is evident.
Table 5.9: Directors of Private Companies who are simultaneous employees, pay tax on their remuneration

<table>
<thead>
<tr>
<th>Response</th>
<th>Combined</th>
<th></th>
<th></th>
<th>Director</th>
<th></th>
<th></th>
<th>Non-director</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Disagree</td>
<td>1</td>
<td>1.45</td>
<td>0</td>
<td>0.00</td>
<td>1</td>
<td>7.14</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Neutral</td>
<td>1</td>
<td>1.45</td>
<td>0</td>
<td>0.00</td>
<td>1</td>
<td>7.14</td>
<td>1</td>
<td>7.14</td>
</tr>
<tr>
<td>Agree</td>
<td>10</td>
<td>14.49</td>
<td>2</td>
<td>3.64</td>
<td>8</td>
<td>57.14</td>
<td>4</td>
<td>28.57</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>57</td>
<td>82.61</td>
<td>53</td>
<td>96.36</td>
<td>4</td>
<td>28.57</td>
<td>14</td>
<td>100.00</td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>100.00</td>
<td>55</td>
<td>100.00</td>
<td>14</td>
<td>100.00</td>
<td>14</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Figure 5.8 The tax position of Directors of Private Companies who are simultaneous employees

The data in Table 5.7 and Figure 5.8 reveal that the responses to this question were exponential in that one choice (strongly disagree), is not chosen. The impact for disagreeing and neutral was almost negligible except for 14.49% that agree that Directors of Private Companies who were simultaneous employees, paid tax on their remuneration whereas 82.61% strongly agreed; which was a steep rise from the pattern.
Table 5.10: STC is tax separate from normal tax

<table>
<thead>
<tr>
<th>Response</th>
<th>Combined</th>
<th></th>
<th>Director</th>
<th></th>
<th>Non-director</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Disagree</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Neutral</td>
<td>1</td>
<td>1.45</td>
<td>0</td>
<td>0.00</td>
<td>1</td>
<td>7.14</td>
</tr>
<tr>
<td>Agree</td>
<td>6</td>
<td>8.69</td>
<td>1</td>
<td>1.82</td>
<td>5</td>
<td>35.72</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>62</td>
<td>89.86</td>
<td>54</td>
<td>98.18</td>
<td>8</td>
<td>57.14</td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>100.00</td>
<td>55</td>
<td>100.00</td>
<td>14</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Figure 5.9 the essence of Secondary tax on companies (STC)

Table 5.10 and Figure 5.9 show that 98.18% of directors strongly agreed that STC was tax separate from normal tax whereas 35.71% of non-directors and 57.14% agreed and strongly agree respectively. For both groups, there were no responses recorded for strongly disagreeing as well as disagreeing.
Table 5.11: STC is imposed on the difference between declared and accrued dividends.

<table>
<thead>
<tr>
<th>Response</th>
<th>Combined</th>
<th></th>
<th>Director</th>
<th></th>
<th>Non-director</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Disagree</td>
<td>2</td>
<td>2.90</td>
<td>0</td>
<td>0.00</td>
<td>2</td>
<td>14.29</td>
</tr>
<tr>
<td>Neutral</td>
<td>4</td>
<td>5.80</td>
<td>1</td>
<td>1.82</td>
<td>3</td>
<td>21.43</td>
</tr>
<tr>
<td>Agree</td>
<td>16</td>
<td>23.18</td>
<td>10</td>
<td>18.18</td>
<td>6</td>
<td>42.85</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>47</td>
<td>68.12</td>
<td>44</td>
<td>80.00</td>
<td>3</td>
<td>21.43</td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>100.00</td>
<td>55</td>
<td>100.00</td>
<td>14</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Figure 5.10 the calculation of STC

Table 5.11 and Figure 5.10 show that there is a steady increase in the continuum in no one from the two groups strongly disagreeing, 2.9% disagreeing, 5.8% being neutral, 23.18% agreeing and 68.12% strongly agreeing that STC is imposed on the difference between declared and accrued dividends.
Table 5.12: There is a possibility that directors may seek to evade tax behind the veil of tax planning

<table>
<thead>
<tr>
<th>Response</th>
<th>Combined</th>
<th>No.</th>
<th>%</th>
<th>Director</th>
<th>No.</th>
<th>%</th>
<th>Non-director</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly disagree</td>
<td>10</td>
<td>14.49</td>
<td></td>
<td>9</td>
<td>16.36</td>
<td></td>
<td>1</td>
<td>7.14</td>
<td></td>
</tr>
<tr>
<td>Disagree</td>
<td>18</td>
<td>26.09</td>
<td></td>
<td>15</td>
<td>27.27</td>
<td></td>
<td>3</td>
<td>21.43</td>
<td></td>
</tr>
<tr>
<td>Neutral</td>
<td>16</td>
<td>23.19</td>
<td></td>
<td>12</td>
<td>21.82</td>
<td></td>
<td>4</td>
<td>28.57</td>
<td></td>
</tr>
<tr>
<td>Agree</td>
<td>17</td>
<td>24.64</td>
<td></td>
<td>17</td>
<td>30.91</td>
<td></td>
<td>0</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>Strongly agree</td>
<td>8</td>
<td>11.58</td>
<td></td>
<td>2</td>
<td>3.64</td>
<td></td>
<td>6</td>
<td>42.86</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>100.00</td>
<td></td>
<td>55</td>
<td>100.00</td>
<td></td>
<td>14</td>
<td>100.00</td>
<td></td>
</tr>
</tbody>
</table>

Figure 5.11 Directors evading tax behind the veil of tax planning

The data in Table 5.12 and Figure 5.11 reveal that the question of a possibility that directors may seek to evade tax behind the veil of tax planning nearly yielded a bell-shape in that there were lesser respondents who strongly agreed (11.59%) and strongly disagreed (14.49%) as opposed to disagreeing, neutral and agreeing. It would have been a perfect bell-shape if under the circumstances; ‘neutral’ scored the highest.
Table 5.13: Tax avoidance leads to punishment from the Law

<table>
<thead>
<tr>
<th>Response</th>
<th>Combined No.</th>
<th>Combined %</th>
<th>Director No.</th>
<th>Director %</th>
<th>Non-director No.</th>
<th>Non-director %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly disagree</td>
<td>45</td>
<td>65.21</td>
<td>44</td>
<td>80.00</td>
<td>1</td>
<td>7.14</td>
</tr>
<tr>
<td>Disagree</td>
<td>13</td>
<td>18.84</td>
<td>10</td>
<td>18.18</td>
<td>3</td>
<td>21.43</td>
</tr>
<tr>
<td>Neutral</td>
<td>4</td>
<td>5.80</td>
<td>0</td>
<td>0.00</td>
<td>4</td>
<td>28.57</td>
</tr>
<tr>
<td>Agree</td>
<td>1</td>
<td>1.45</td>
<td>1</td>
<td>1.82</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>6</td>
<td>8.70</td>
<td>0</td>
<td>0.00</td>
<td>6</td>
<td>42.86</td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>100.00</td>
<td>55</td>
<td>100.00</td>
<td>14</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Figure 5.12: The implications of tax avoidance

The data in Table 5.11 and Figure 5.12 show that 65.21% responded that tax avoidance leads to punishment from the Law. But of this total, 80% of directors strongly disagreed whereas in the case of non-directors it was 7.14% who strongly disagreed, 21.43% who disagreed 28.57% who were neutral on the issue of tax avoidance leading to punishment from the Law. But due to power in numbers, it appears as if two groups strongly disagree as shown by the above figure.
Table 5.14: Tax evasion leads to punishment from the Law

<table>
<thead>
<tr>
<th>Response</th>
<th>Combined</th>
<th></th>
<th>Director</th>
<th></th>
<th>Non-director</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Disagree</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Neutral</td>
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<td>0</td>
<td>0.00</td>
<td>0</td>
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</tr>
<tr>
<td>Agree</td>
<td>9</td>
<td>13.04</td>
<td>2</td>
<td>3.64</td>
<td>7</td>
<td>50.00</td>
</tr>
<tr>
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<td>60</td>
<td>86.96</td>
<td>53</td>
<td>96.36</td>
<td>7</td>
<td>50.00</td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>100.00</td>
<td>55</td>
<td>100.00</td>
<td>14</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Figure 5.13 The consequences of tax evasion

Data in Table 5.14 and Figure 5.13 show that for both groups, 13.04% of responses agreed and 86.96% strongly agreed that tax evasion leads to punishment from the Law. This showed a pattern of somewhat the same feeling for both groups and none of either had responses from strongly disagreeing, disagreeing to neutral.
Table 5.15: Upon suspicion that there is an element of tax evasion, the Commissioner may invoke Section 103(1) in order to pierce the veil

<table>
<thead>
<tr>
<th>Response</th>
<th>Combined No.</th>
<th>%</th>
<th>Director No.</th>
<th>%</th>
<th>Non-director No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly disagree</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Disagree</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
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<tr>
<td>Neutral</td>
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<td>0.00</td>
<td>3</td>
<td>21.43</td>
</tr>
<tr>
<td>Agree</td>
<td>8</td>
<td>11.59</td>
<td>3</td>
<td>5.45</td>
<td>5</td>
<td>35.71</td>
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<tr>
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<td>58</td>
<td>84.06</td>
<td>52</td>
<td>94.55</td>
<td>6</td>
<td>42.86</td>
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<td>100.00</td>
<td>55</td>
<td>100.00</td>
<td>14</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Figure 5.14 the implications and enforcement of Section 103(1)

Data in Table 5.15 and Figure 5.14 show that there was a tendency to strongly agree that upon suspicion that there is an element of tax evasion, the Commissioner may invoke Section 103(1) in order to pierce the veil in that 84.06% for both groups responded so. Further and for both groups, there was 0% that disagreed and strongly disagreed.
Table 5.16: Whatever the kind of tax, it contributes to the socio-economic development of a country

<table>
<thead>
<tr>
<th>Response</th>
<th>Combined No.</th>
<th>%</th>
<th>Director No.</th>
<th>%</th>
<th>Non-director No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly disagree</td>
<td>2</td>
<td>2.90</td>
<td>1</td>
<td>1.82</td>
<td>1</td>
<td>7.14</td>
</tr>
<tr>
<td>Disagree</td>
<td>6</td>
<td>8.70</td>
<td>1</td>
<td>1.82</td>
<td>5</td>
<td>35.72</td>
</tr>
<tr>
<td>Neutral</td>
<td>11</td>
<td>15.94</td>
<td>8</td>
<td>14.55</td>
<td>3</td>
<td>21.43</td>
</tr>
<tr>
<td>Agree</td>
<td>11</td>
<td>15.94</td>
<td>10</td>
<td>18.18</td>
<td>1</td>
<td>7.14</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>39</td>
<td>56.52</td>
<td>35</td>
<td>63.63</td>
<td>4</td>
<td>28.57</td>
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<tr>
<td>Total</td>
<td>69</td>
<td>100.00</td>
<td>55</td>
<td>100.00</td>
<td>14</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Figure 5.15 The contribution of tax to the socio-economic development in a country

The data in Table 5.16 and Figure 5.15 show that this is the question that was mentioned earlier that one respondent did not respond to but the effect thereof could not have been that significant unless it was for the non-directors. There is a smooth rise in the continuum from lesser respondents strongly disagreeing (2.90%) to more strongly agreeing (56.52%) that whatever the kind of tax, it contributes to the socio-development of a country to socio-development of a country.
Table 5.17: Every taxpayer should have at least a minimum knowledge of tax planning

<table>
<thead>
<tr>
<th>Response</th>
<th>Combined</th>
<th></th>
<th>Director</th>
<th></th>
<th>Non-director</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Disagree</td>
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<td>0</td>
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<td>0</td>
<td>0.00</td>
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<tr>
<td>Neutral</td>
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<td>5.80</td>
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<td>5.45</td>
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<tr>
<td>Agree</td>
<td>11</td>
<td>15.94</td>
<td>2</td>
<td>3.64</td>
<td>9</td>
<td>64.29</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>54</td>
<td>78.26</td>
<td>50</td>
<td>90.91</td>
<td>4</td>
<td>28.57</td>
</tr>
<tr>
<td>Total</td>
<td>69</td>
<td>100.00</td>
<td>55</td>
<td>100.00</td>
<td>14</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Figure 5.16 Minimum knowledge required by every taxpayer

Table 5.17 and Figure 5.16 show that there is skewness of 78.26% responses showing that every taxpayer should have at least minimum knowledge of tax planning. The responses were only from neutral to strongly agreeing responses and in the very same cases, there was a steady rise.
5.5 CONCLUSION

The responses received were presented in several tables and bar figures and lastly analysed to make sense out of them.

Many of the questions were generally agreed on and mostly strongly agreed on with the exception of the question whether there is a possibility that directors may seek to evade tax behind the veil of tax planning. In this case, the responses were somewhat bell-shaped. Another exception is whether tax avoidance leads to punishment from the Law. In this particular case, the figure skewed the opposite direction of the pattern it has followed.

The following chapter will again focus on outcomes of the research and that will be the last chapter.
CHAPTER 6

DISCUSSION, CONCLUSION, IMPLICATIONS AND RECOMMENDATIONS

6.1 INTRODUCTION

This is the final chapter of the research study. It is wholly dependent on the findings in all the chapters with particular attention to responses to the questionnaires as discussed and analysed in the chapter preceding it as a way of soliciting responses to deliberately prearranged questions. This was premised on the understanding that the objective of this exercise gives ratification or not of the earlier mentioned primary and secondary questions as reflected in chapter three. The rest of the chapter will now concentrate on the discussion, conclusion, implications and lastly, recommendations.

6.2 DISCUSSIONS AND CONCLUSIONS

The discussion and the conclusions drawn from the study stem from the analysis on the research questions which in turn, are based on the primary and secondary problems.
6.2.1 QUESTIONS ON PRIMARY PROBLEM

- Does tax planning have an influence on tax avoidance?
- Does any kind of tax contribute to the socio-economic development of a country?

6.2.2 QUESTIONS ON SECONDARY PROBLEMS

- What are the requirements of taxation on companies and directors?
- What is Secondary Tax on Companies (STC)?
- What tax planning limitations do directors have?
- What is piercing of the veil in connection with tax paid by the directors?
- What limitations are there in tax planning?

6.3 RESPONSES TO QUESTIONS ON THE PRIMARY PROBLEMS

6.3.1 Tax planning has an influence on tax avoidance

As per Table 5.7, there were forty three directors and three non-directors who strongly agreed that tax planning had an influence on tax avoidance and whose responses translated to 78.18% and 21.43% respectively. The table shows that on both groups, there is no respondent who strongly disagreed and only one non-director disagreed, this accounts for 7.14% of non-directors.
What is conspicuous as well is that in the continuum from 'strongly disagreeing' to 'strongly agreeing', there is a steady rise in agreement from both groups with the problem posed. This can be best expressed by the combined figures of 1.45% disagreeing, 4.35% neutral, 27.54% agreeing and finally, 66.67% strongly agreeing. As there are a total number of fifty five directors and fourteen non-directors, it follows then that most of the responses would have been from directors and as such this large difference will play a role in arriving at the responses; that is, more responses will come from directors. It would be interesting to establish what the results would have been like had the ranks been equal or had we had more non-directors than directors.

6.3.2 DOES ANY KIND OF TAX CONTRIBUTE TO THE SOCIO-ECONOMIC DEVELOPMENT OF A COUNTRY?

Whether for social or economic reasons, any country needs to get funding from somewhere in order to sustain itself. In exception of loans and grants, one of such ways is by taxing its citizens and companies.

Table 5.16 and Figure 5.15 reflect the responses to the question whether regardless of the kind of tax; it contributes to the socio-economic development of a country. For non-directors, they have ticked everything from strongly agreeing to strongly disagreeing and the figure is going up and down. For the ‘directors, there is a gradual increase from disagreeing to strongly agreeing.
This shows that directors seem to know the reason they are taxed whilst it seems not to be case for non-directors.

6.4 RESPONSES TO QUESTIONS ON THE SECONDARY PROBLEMS

6.4.1 What are the requirements of taxation on companies and directors?

Both companies and directors need to comply with the set law governing tax during any year of assessment. The tax rates which are applied are tabled by the National Minister of Finance during his yearly budget speech and such rates are enforced by the South African Revenue Service (SARS). Failure to comply with tax laws prosecutable by law therefore, it is very important for the Accounting Officer to know to what the then current rates are. Failure to comply may be construed as tax evasion which is a deliberate and unlawful scheme to avoid paying tax. However, there is tax avoidance which too is a scheme aimed at reducing the tax liability of a taxpayer.

The responses provided for the question whether tax planning has an influence on tax avoidance reflected in Table 5.7 and Figure 5.6. 12 directors (21.82%) agreed that it does and 43(78.18%) strongly agree. For the same question, one non-director (7.14%) disagreed whilst three (21.43%) were neutral, seven (50%) agreed and three (21.43%) strongly agreed. The above is an indication that the non-directors who participated in the study had limited
tax knowledge as compared to their director counterparts. This is especially evident when the percentage falls from 50% to 21.43 in agreeing and strongly agreeing.

Table 5.8 and Figure 5.7 deal with the question whether a CC pays tax on its taxable income at the same rate as any other company. Because of the difference in the types companies it is a requirement that they pay different taxes on their taxable income. For the directors, a pattern can be seen. The same cannot be said about non-directors in that no respondent strongly disagreed but 21.43% disagreed. Further, 14.29% were neutral, 57.14% agreed whilst 7.14% strongly agreed. Essentially, this means that the figure is going up and down with most respondents agreeing. On the whole, the picture is that non-directors still need more information about tax matters.

6.4.2 Secondary Tax on Companies (STC)

STC is the tax charged after company tax has been charged. This tax in most cases, is not charged in the hands of the directors because by that time it had already been charged in the hands of the company. It is charged on the difference between declared and accrued dividends received by directors. In their returns, directors just have to show it under income and then minus it under exemptions.

Table 5.9 and Figure 5.8 show the responses to whether directors of Private Companies who are simultaneous employees, pay tax on remuneration,
which is related to STC. Directors strongly agreed (96.36%) whereas for the non-directors only 28.57%. 57.14%, which is the highest in the non-director group, agree otherwise equal percents of 7.14 disagree are neutral. Overall, the same trend applies as above in that the figures show that non-directors seem to lack insight into tax matters.

Table 5.10 and Figure 5.9 are a depiction of responses to the question whether STC is some kind of tax separate from normal tax. For non-directors the responses show a gradual rise from 7.14% being neutral, 35.72% agreeing to 57.14% strongly agreeing. For directors, it is a steep rise from 1.8% agreeing to 98.18% strongly agreeing. Notwithstanding this contrast, the similarity is that for both groups there was no disagreement or strong disagreement observed. In all the cases so far, this is the most visible example of point of commonality.

Table 5.11 and Figure 5.10 show responses to the question whether STC is imposed on the difference between declared and accrued dividends and 80% of directors strongly agreed whilst for non-directors the responses ranged from disagreeing to strongly agreeing with the most percentage (42.85%) going to agreeing.

6.4.3 What tax planning limitations do directors have?

This question corresponds hand in glove with 6.4.1 dealt with earlier in that the law is laid down to deal with such issues. However with this come
windows of opportunity that favour the taxpayer in that as long as this tax planning is covered by the law there is no problem. However again, there is a limit on how ‘tax avoidance’ can be allowed because beyond that, it is tax called tax evasion.

6.4.4 What is piercing of the veil in connection with tax paid by the directors?

Table 5.12 and Figure 5.11 show the responses to the question whether there is a possibility that directors may seek to evade tax behind the veil of tax planning. For the directors, the shape of the figure is bell-like whilst for the non-directors it is skewed to the right but because there were more directors than non-directors, the impact of responses from the latter is somewhat insignificant in the total picture. It is be worthwhile to note that this is the question in the whole questionnaire to have yielded such results. It begs the question; to what can these responses especially from the director’s point of view be attributed.

Assuming that the veil has been pierced and the scheme of things suggest foul play, such purported tax evasion can be decided by the courts and if found guilty, is a punishable offence by law. Table 5.13 and Figure 5.12 were responses to the question whether tax avoidance leads to punishment from the law. In the combination of scores for both groups, the figure is gradually skewed to the left but in reality for the non-directors it is skewed to the right. This is evidence that non-directors seriously lack considerable tax knowledge.
To the question whether tax evasion leads to punishment from the law as per Table 5.13 and Figure 5.12, the responses do reflect the opposite of Table 5.14 and Figure 5.13 as it would have ordinarily been expected because the two questions are opposites of each other. Though the percentages may vary the pattern is that both groups’ responses were skewed to the left but skewed to the right on both questions.

6.4.5 What limitations are there in tax planning?

As mentioned in the preceding discussion, there are limitations to which tax planning is considered legal but beyond that, it can be perceived as tax evasion which is illegal. This is where the invocation of Section 103(1) is in order to ascertain that the taxpayer’s tax matters are in order.

Table 5.15 and Figure 5.14 reflect the responses to the question that upon suspicion that there is an element of tax evasion, the Commissioner may invoke Section 103(1) in order to pierce the veil. 94.55% of directors and 42.86% of non-directors strongly agreed whilst 5.45% of directors and 35.71% of non-directors agreed and lastly, for directors there were no responses below that point whilst it was 21.43% of responses from non-directors which were just neutral. On the whole, it can be safely said that the two groups are somewhat in agreement that the Section can be invoked.
6.5 IMPLICATIONS

From the preceding discussion, it can be concluded that in more cases than not, directors have responded in a manner that is not surprising of a taxpayer to respond as opposed to their non-director counterparts. The implication could be that because of their day-to-day business, they intentionally or not, are exposed to tax matters. It further shows that the directors know what and why they are taxed; although this cannot be said about non-directors.

The most important implication is that non-compliance of the law is punishable and if taxpayers do not understand tax implications they may find themselves at the wrong end of law.

The analysis of the information obtained, highlights the need for the establishment of a campaign to improve the knowledge of South African taxpayers regarding taxation.

6.6 RECOMMENDATIONS

The recommendations from this study will only be proper if they have managed to provide responses to the questions as posed in the opening chapters of this study. The following are then recommended:

- More serious effort be done to educate non-directors about the reasons there is taxation.
- Courses be made available to directors in order to improve willingness to pay tax instead of evading it.
- More information be made to the public regarding tax.
- The complex language of tax be simplified.
- More studies be conducted in order to get as much information about the subject as possible

6.7 CONCLUSION

Based on the methodology and the findings of this study, it is considered safe to come to the conclusion that this research is reliable. This is informed by the fact that random sampling was used as a sampling technique. It can as well be said that there is a difference in the way the directors and non-directors deal with their tax matters with the former being relatively knowledgeable as opposed to the latter.

In order to overcome this disparity, a lot needs to be invested in the education of both groups but with particular attention going to non-directors. This will lessen the frequency of having to invoke Section 103(1) which is the ultimate arm which the Commissioner can use in order to get his stake back.
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APPENDIX A

Dear respondent

I am a student with the University of North West pursuing Masters in Business Administration. My dissertation is tax-related; that is why the type of questions to be asked.

My research title is: THE REQUIREMENTS OF TAXATION ON COMPANIES AND DIRECTORS IN RELATION TO NORMAL TAX, SECONDARY TAX ON COMPANIES, PIERCING OF THE VEIL AS WELL AS LIMITATIONS CONNECTED WITH TAXATION

As part fulfillment towards this certificate, it is expected that a student (myself), conduct a dissertation informed by such a research.

The objective of the study is to, amongst others, find out if taxpayers (directors) or potential taxpayers know:

- What the requirements of taxation on companies and directors are.
- What tax Secondary Tax on Companies (STC) is.
- What tax planning limitations do directors have.
- What is piercing of the veil in connection with tax paid by directors
- What limitations are there in tax planning
SECTION A : BIOGRAPHICAL INFORMATION

Instruction: Tick where appropriate

1. What is your gender?
   - Male
   - Female

2. What is your age?
   - 20-24
   - 25-29
   - 30-34
   - 35-39
   - 40-44
   - 45 and over

SECTION B: TAX-RELATED INFORMATION

3. Are you a director in a company?
   - Yes
   - No

4. From 3 above, have you had any exposure to STC?
   - Yes
   - No
5. Which of the following net income group describes the situation of your company best?

<table>
<thead>
<tr>
<th>Net Income Group</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
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<td></td>
</tr>
<tr>
<td>100 000 - 199 999 p.a</td>
<td></td>
</tr>
<tr>
<td>200 000 - 299 999 p.a</td>
<td></td>
</tr>
<tr>
<td>300 000 - 399 999 p.a</td>
<td></td>
</tr>
<tr>
<td>400 000 - 499 999 p.a</td>
<td></td>
</tr>
<tr>
<td>500 000+ over</td>
<td></td>
</tr>
</tbody>
</table>

6. Is your main source of income

- Salary
- Own business
- Other

7. Do you know the difference between tax avoidance and evasion?

- Yes
- No

8. Tax planning has an influence on tax avoidance

<table>
<thead>
<tr>
<th>Influence</th>
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<th>disagree</th>
<th>neutral</th>
<th>agree</th>
<th>Strongly agree</th>
</tr>
</thead>
</table>
9. A CC pays tax on its taxable income at the same rate as any other company

<table>
<thead>
<tr>
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<th>disagree</th>
<th>neutral</th>
<th>agree</th>
<th>Strongly agree</th>
</tr>
</thead>
</table>

10. Directors of Private Companies who are simultaneous employees, pay tax on their remuneration

<table>
<thead>
<tr>
<th>Strongly disagree</th>
<th>disagree</th>
<th>neutral</th>
<th>agree</th>
<th>Strongly agree</th>
</tr>
</thead>
</table>

11. STC is tax separate from normal tax

<table>
<thead>
<tr>
<th>Strongly disagree</th>
<th>disagree</th>
<th>neutral</th>
<th>agree</th>
<th>Strongly agree</th>
</tr>
</thead>
</table>

12. STC is imposed on the difference between declared and accrued dividends.

<table>
<thead>
<tr>
<th>Strongly disagree</th>
<th>disagree</th>
<th>neutral</th>
<th>agree</th>
<th>Strongly agree</th>
</tr>
</thead>
</table>

13. There is a possibility that directors may seek to evade tax behind the veil of tax planning

<table>
<thead>
<tr>
<th>Strongly disagree</th>
<th>disagree</th>
<th>neutral</th>
<th>agree</th>
<th>Strongly agree</th>
</tr>
</thead>
</table>
14. Tax avoidance leads to punishment from the Law

<table>
<thead>
<tr>
<th>Strongly disagree</th>
<th>disagree</th>
<th>neutral</th>
<th>agree</th>
<th>Strongly agree</th>
</tr>
</thead>
</table>

15. Tax evasion leads to punishment from the Law

<table>
<thead>
<tr>
<th>Strongly disagree</th>
<th>disagree</th>
<th>Neutral</th>
<th>agree</th>
<th>Strongly agree</th>
</tr>
</thead>
</table>

16. Upon suspicion that there is an element of tax evasion, the Commissioner may invoke Section 103(1) in order to pierce the veil

<table>
<thead>
<tr>
<th>Strongly disagree</th>
<th>disagree</th>
<th>Neutral</th>
<th>Agree</th>
<th>Strongly agree</th>
</tr>
</thead>
</table>

17. Whatever the kind of tax, it contributes to the socio-development of a country

<table>
<thead>
<tr>
<th>Strongly disagree</th>
<th>disagree</th>
<th>neutral</th>
<th>agree</th>
<th>Strongly agree</th>
</tr>
</thead>
</table>

18. Every taxpayer should have at least minimum knowledge of tax planning

<table>
<thead>
<tr>
<th>Strongly disagree</th>
<th>disagree</th>
<th>neutral</th>
<th>agree</th>
<th>Strongly agree</th>
</tr>
</thead>
</table>

End of questionnaire