

# The tax deductibility of corporate social responsibility expenditure

Dissertation submitted for partial fulfilment of the requirements for the degree *Master of Law* (LLM) at the North West University (Potchefstroom campus)

by

Marike Jacobs

22702806

Date: 16 November 2015

Study Leader: Prof. H.J. Kloppers

## **Acknowledgements**

This dissertation was made possible by various people who offered their knowledge and support in order to help me to complete the research and writing thereof. I owe a special thank you to the following parties involved:

First, and foremost, a big thank you to my study leader, Professor Henk Kloppers. Without his expertise and continuous guidance on the topic this research paper would not have been possible.

My fiancé, Johan – without his hours of encouragement every time that I had to restructure my paper, I would not have had the will power to continue.

My parents and sister, not only for their financial support, but also for their continuous support and encouragement to help me remain focused on my goal.

My future in-laws – thank you for always offering encouraging words.

The Faculty of Law at the North-West University (Potchefstroom campus) for allowing me the opportunity to further my studies and for the continuing help from their administrative staff.

An honourable mention and thank you also goes out to my Heavenly Father for blessing me with the talents and opportunities to progress in my academic career and to finish my LLM degree.

## Summary

**Key concepts:** Corporate Social Responsibility (CSR); general deduction formula; tax deductibility

As a developing country, the South African government struggles to single-handedly carry the financial burden to care for the needs of the public. There is also a need for socio-economic development in order to improve the circumstances and surroundings of the South African society, but Government, on its own is unable to provide the required development.

Keeping this in consideration, it is evident that alternative options have to be explored that can offer financial assistance. The research conducted revealed that corporate social responsibility (CSR) is an important alternative that must be considered. It does, however, beg the question of how CSR can be implemented to provide this financial assistance?

Businesses have a certain amount of economic power and with this power they have a responsibility towards society, but this does not serve as sufficient incentive to encourage businesses to partake in CSR programmes. CSR also offers many advantages to businesses that include financial and other forms of benefit, but it might only be successful if it provides a tax incentive that encourages businesses to partake. The question that arises from this is: To what extent is CSR expenditure tax deductible? Can CSR expenditure be deductible in terms of the general deduction formula, or should new legislation that specifically addresses the problem be implemented?

Since the current South African legislation does not efficiently support CSR, it is recommended that CSR expenditure should be made deductible and that specialised legal framework should be brought into place to regulate the CSR programmes of participating businesses.

## TABLE OF CONTENTS

<b>LIST OF ABBREVIATIONS</b> .....	<b>VIII</b>	
<b>1</b>	<b>Introduction</b> .....	<b>1</b>
1.1	<i>Problem statement</i> .....	1
1.2	<i>Primary and secondary research questions</i> .....	3
1.3	<i>Guiding arguments</i> .....	4
1.4	<i>The dissertation’s relevance to South Africa</i> .....	4
1.5	<i>Research method to be used</i> .....	5
1.6	<i>Division of sections</i> .....	5
<b>2</b>	<b>The changing definitions of CSR</b> .....	<b>6</b>
2.1	<i>Introduction</i> .....	6
2.2	<i>Definitions in the international context</i> .....	7
2.2.1	<i>The World Bank</i> .....	7
2.2.2	<i>The World Business Council for Sustainable Development (WBCSD)</i> .....	7
2.2.3	<i>The European Commission</i> .....	8
2.2.4	<i>The International Organisation for Standardisation</i> .....	10
2.3	<i>Definitions of CSR by international scholars</i> .....	11
2.3.1	<i>Bowen</i> .....	11
2.3.2	<i>Davis</i> .....	12
2.3.3	<i>Frederick</i> .....	12
2.3.4	<i>Carroll</i> .....	13

2.3.5	<i>Lantos</i> .....	14
<b>2.4</b>	<b><i>Definitions in the South African context</i></b> .....	<b>15</b>
2.4.1	<i>Introduction</i> .....	15
2.4.2	<i>The King II Report</i> .....	15
2.4.3	<i>The King III Report</i> .....	16
2.4.4	<i>The South African Grantmakers' Association (SAGA)</i> .....	17
2.4.5	<i>The Broad-Based Black Economic Empowerment Act</i> .....	17
2.4.6	<i>A proposition for a generally accepted definition of CSR</i> .....	18
<b>3</b>	<b><i>CSR in South Africa and its advantages</i></b> .....	<b>19</b>
<b>3.1</b>	<b><i>Current national CSR legislation</i></b> .....	<b>19</b>
3.1.1	<i>Introduction to national CSR legislation</i> .....	19
3.1.2	<i>The BEE Codes of Good Practice</i> .....	20
3.1.2.1	Introduction .....	20
3.1.2.2	The Broad-Based Black Economic Empowerment Generic Scorecard .....	20
3.1.2.3	The relevant generic scorecard elements that refer to CSR.....	22
3.1.2.3.1	Skills development .....	22
3.1.2.3.2	Socio-economic development .....	23
3.1.2.3.3	Conclusion .....	23
3.1.3	<i>Theoretical assumptions regarding CSR in South Africa</i> .....	24
3.1.4	<i>Conclusion on CSR and the BEE Codes of good practice</i> .....	25
<b>3.2</b>	<b><i>The advantages of CSR</i></b> .....	<b>26</b>

3.2.1	<i>Introduction</i> .....	26
3.2.2	<i>The benefits of CSR to businesses</i> .....	27
3.2.2.1	Introduction .....	27
3.2.2.2	Improved reputation .....	28
3.2.2.3	Employee retention.....	29
3.2.2.4	Cost savings.....	30
3.2.2.5	Increase in revenue .....	30
3.2.2.6	License to operate .....	31
3.2.2.7	Conclusion regarding the benefits of CSR.....	32
3.2.3	<i>Critique against CSR</i> .....	32
3.2.3.1	Introduction .....	32
3.2.3.2	Various definitions .....	33
3.2.3.3	The current voluntary nature of CSR .....	33
3.2.3.4	CSR causes a barrier to trade .....	33
3.2.3.5	Corporate greenwash.....	34
3.2.3.6	A lack of skills .....	34
<b>3.3</b>	<b><i>Conclusion</i></b> .....	<b>34</b>
<b>4</b>	<b>General deduction formula</b> .....	<b>35</b>
<b>4.1</b>	<b><i>Introduction</i></b> .....	<b>35</b>
<b>4.2</b>	<b><i>Carrying on of a trade</i></b> .....	<b>36</b>
<b>4.3</b>	<b><i>Expenditure and losses</i></b> .....	<b>38</b>

<b>4.4</b>	<b><i>That were actually incurred</i></b> .....	<b>39</b>
<b>4.5</b>	<b><i>During the current year of assessment</i></b> .....	<b>40</b>
<b>4.6</b>	<b><i>In the production of income</i></b> .....	<b>40</b>
<b>4.7</b>	<b><i>Not of a capital nature</i></b> .....	<b>41</b>
4.7.1	<i>The true nature of the transaction</i> .....	42
4.7.2	<i>Link between the cost and the income-earning activity</i> .....	43
4.7.3	<i>Procurement of a permanent benefit to the business</i> .....	43
4.7.4	<i>Once-off expenditure</i> .....	43
4.7.5	<i>Capital expenses not deductible in terms of section 11(a)</i> .....	44
<b>4.8</b>	<b><i>The deductibility of CSR expenditure</i></b> .....	<b>44</b>
4.8.1	<i>Introduction</i> .....	44
4.8.2	<i>SARS binding rulings</i> .....	44
4.8.3	<i>Case law</i> .....	46
4.8.4	<i>Application of the general deduction formula on CSR expenditure</i> .....	48
<b>5</b>	<b><i>Recommendations and conclusion</i></b> .....	<b>51</b>
<b>5.1</b>	<b><i>Recommendations</i></b> .....	<b>51</b>
5.1.1	<i>Introduction</i> .....	51
5.1.2	<i>The BEE-Act</i> .....	52
5.1.3	<i>The proposed Corporate Social Responsibility Act</i> .....	53
5.1.3.1	<i>Introduction</i> .....	53
5.1.3.2	<i>The content of the CSR Act</i> .....	53

5.1.3.3	The flowchart of CSR compliance .....	56
<b>5.2</b>	<b><i>Conclusion</i></b> .....	<b>59</b>
	<b>BIBLIOGRAPHY</b> .....	<b>64</b>



## **LIST OF ABBREVIATIONS**

B-BBEE	Broad-based Black Economic Empowerment
BEE	Black Economic Empowerment
BCR	Binding Class Ruling
BPR	Binding Private Ruling
CIR	Commissioner for Inland Revenue
CRP	Corporate Responsibility Performance
CSARS	Commissioner for the South African Revenue Service
CSI	Corporate Social Investment
CSP	Corporate Social Performance
CSR	Corporate Social Responsibility
EC	European Commission
EU	European Union
ISO	International Organisation for Standardisation
IoD	Institute of Directors in Southern Africa
SA	South Africa
SAGA	South African Grantmakers' Association
SARS	South African Revenue Service
WBCSD	World Business Council for Sustainable Development

# 1 Introduction

## 1.1 Problem statement

Corporate social responsibility (CSR) is a concept that is relatively new in South Africa, but one that is nonetheless becoming increasingly important. CSR holds financial advantages for both governments and businesses. However, the advantages that CSR hold, cannot be fully achieved until there is one generally acceptable definition for CSR in the South African context.

One of the definitions that captures the general idea of CSR is that of McWilliams and Siegel<sup>1</sup> which refers to CSR as "actions that appear to further some social good, beyond the interests of the firm and that which is required by law." In its *Guidance on Social Responsibility*,<sup>2</sup> the International Organisation for Standardisation (ISO) – a large developer of international standards – referred to CSR as

the responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that contributes to sustainable development, health and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the organization and practised in its relationships.

CSR is the result of corporate power. Businesses have many powers, including economic, social and political power, and because of these powers, they acquire responsibility (social responsibility to be more precise).<sup>3</sup> Power yields responsibility, but the contrary is also true as responsibility once again brings power to businesses. Should a business show more social responsibility, it would receive a higher degree of credibility in its operating communities thereby increasing the strength of its license to operate.<sup>4</sup>

It becomes apparent that CSR contributions that are made by businesses are contributions that go above and beyond the normal concept of business activities.

---

1 McWilliams and Siegel 2001 *Academy of Management Review* 117. See also Husted, Allen and Kock 2012 *Business & Society* 148.

2 ISO *Guidance on Social Responsibility* 3.

3 Kloppers *Improving land reform through CSR: A legal framework analysis* 101. Hereafter referred to as Kloppers *Improving land reform through CSR*.

4 Kloppers *Improving land reform through CSR* 101.

Frederick<sup>5</sup> went further and identified what he considers to be the six essential principles of CSR:

- 1 Power begets responsibility.
- 2 A voluntary assumption of responsibility is preferable to government intervention and regulation.
- 3 Voluntary social responsibility requires business leaders to acknowledge and accept legitimate claims, rights, and needs of other groups in society.
- 4 CSR requires a respect for law and for the rules of that game that govern marketplace relations.
- 5 An attitude of 'enlightened self-interest' leads socially responsible business firms to take a long-run view of profits.
- 6 Greater economic, social, and political stability – and therefore a lower level of social criticism directed toward the private enterprise system – will result if all businesses adopt a socially responsible posture.

These principles will be discussed throughout the sections of this dissertation and will be related to the importance of CSR and its deductibility.

Currently, there is little encouragement for local businesses to invest in CSR, because they cannot necessarily see the advantages that it might hold for them. According to section 56(2)(a) of the *Income Tax Act*,<sup>6</sup> businesses are allowed to make "casual gifts" (which are usually of a philanthropic nature) up to R10 000 that are tax deductible. This amount is insignificant to serve as incentive to encourage businesses to invest in social responsibility initiatives.

Businesses will partake in CSR initiatives when the aforementioned initiatives are beneficial to their business. The question now is: How can one make CSR programmes advantageous to businesses whilst simultaneously lightening the Government's load and also assisting social development? It is proposed that this can be done by providing tax

---

5 Frederick "Theories of corporate social performance" 144 – 145.

6 58 of 1962 (hereinafter referred to as the *Income Tax Act*).

and other incentives to businesses. In order to describe this proposition properly, the recent *Fees must fall*<sup>7</sup> campaign will be used as an example.

While it is a very noble approach (especially considering the students and their student loans) to freeze the tuition increase at South African universities, it might lead to various other unintended consequences. For example, universities itself also provide certain students with bursaries or financial assistance (the assistance is normally for poor students, international students, students with remarkably high academic or sport achievements, etc.). The funds for these internal bursaries come from the fees paid by other students. When the tuition/student fees are not increased, the university has less money to spend on their day-to-day expenses and as a consequence fewer bursaries might be made available to deserving students. The question is now whether the financial gap that may occur in tertiary educational facilities can be addressed by the private sector? Can this position be addressed through CSR initiatives? In order to identify a possible solution, this problem needs to be addressed through CSR and tax research. This will be done throughout this dissertation. This example will also be used to better explain certain aspects of CSR, and to assess the requirements for the deductibility of CSR.

## ***1.2 Primary and secondary research questions***

The primary research question to be answered in this dissertation is:

To what extent is corporate social responsibility expenditure tax deductible?

In order to answer the primary research question, the following secondary questions will also be referred to and answered in this dissertation:

---

7 The Fees must fall campaign (hereafter referred to as the #FMF campaign) was a national campaign that addressed the increasing university fees, which included tuition fees, that students have to pay from 2016. The campaign started in mid October 2015, because university students were very unhappy that the tuition fees increased so dramatically (some of which were proposed to increase with more than 10%) and protested against it. Protests in some areas became violent (buildings were burned, etc.) and finally, after protests at most of the major universities in South Africa, the SA Government announced on 22 October 2015 that the tuition fees for 2016 will increase by 0%. For more information on the #FMF campaign and protests, refer to Conway-Smith 2015 <http://www.pri.org/stories/2015-10-22/echoes-1976-south-african-students-demand-fees-must-fall>.

1. What is the definition of CSR and what is an acceptable definition of CSR in the South African context?
2. What are the general tax deductions allowed in South Africa?
3. How can CSR expenditures be altered in a legal context and made tax deductible?
4. What are the advantages of deductible CSR expenditures for businesses and the government?

### ***1.3 Guiding arguments***

The following arguments will be the fundamental arguments on which this dissertation is based:

- The South African public has more needs than can be provided for by the government, thus businesses need to help provide for these needs.
- Businesses have a horizontal relationship (and thus responsibility) toward the public and also have an obligation to meet the needs of stakeholders.
- CSR is well-known, but the definition of CSR is unclear and insignificant. A more significant definition of CSR in the South African context must be formulated and a clear set of rules and guidelines pertaining to CSR needs to be developed.
- Government, or legislation should provide for an environment with advantages that encourage CSR investment.

### ***1.4 The dissertation's relevance to South Africa***

The South African government is finding it increasingly difficult to provide for the needs of the public. The responsibility that is on government can be lifted if businesses help the government to provide for the public's needs. By formulating legislative measures and guidelines that regulate CSR expenditures and that make these expenditures increasingly deductible for businesses, businesses will be encouraged to invest in society (minimising the burden on the government). It is not only businesses that stand

to benefit from a successful, tax deductible programme, but also government and society.

### ***1.5 Research method to be used***

This study will mainly be based on a literature study of some relevant textbooks, business and law journal articles, specific relevant case law, various applicable legislation and internet sources that relate to CSR, its definition, its tax deductibility and its value to the market. The research will, however, not be limited to legal literature and will extend beyond this. All the literature that will be studied and examined will be integrated to provide a relevant literature review that can serve as an incentive for government to reconsider the current boundaries of CSR.

### ***1.6 Division of sections***

This dissertation will be divided into five sections that will help to address the primary research question.

Section 1 provides an introduction, in which the problem statement, primary and secondary research questions, guiding arguments, the relevance of the dissertation to South Africa and the research methods to be used or discussed.

Section 2 analyses various definitions of CSR that are in place and will see these definitions integrated into one possible generally acceptable definition that can be accepted in the national context.

In section 3 the advantages of CSR in the United Kingdom are referred to in order to present the advantages it could have in South Africa. The current position of CSR in South Africa is also discussed with specific reference to *Black Economic Empowerment*. This section also focuses on the disadvantages of CSR and ties in with section 5 to determine whether the implementation of CSR will be beneficial in South Africa.

Section 4 discusses the general deductions that are provided for by section 11(a) of the *Income Tax Act* and focuses on the fact that these deductions are insignificant to address the deductibility of CSR expenditures that is needed.

In the fifth and final section, a summary of the conclusions in the preceding sections is discussed. It evaluates the general conclusions reached by the research and shows the extent of the advantage that deductible CSR expenditures has on businesses, society and the government.

## **2 The changing definitions of CSR**

### ***2.1 Introduction***

An abundance of definitions for CSR is available, but this does not alter the fact that the definition of CSR is one of the largest challenges to be faced when researching the topic. The reason is that the definition is a widely disputed concept, nationally as well as internationally.

A single accepted definition world-wide does not exist, and because of this, there is also not a generally accepted definition nationally. Blowfield and Frynas<sup>8</sup> are of the opinion that the uncertainty surrounding the definition of CSR is present because the concept is context-based, which means that it has different meanings to different people.

As long as 40 years ago, Votaw<sup>9</sup> identified the uncertainty surrounding the notion of CSR. He said that CSR has a definitive meaning, but that this meaning changes because it is not the same to everyone. It might show the idea of liability or legal responsibility for some, but socially responsible behaviour (in an ethical sense) to others. It is the mere contribution to a charitable cause for some, and for others it has the meaning of "social consciousness". One aspect was clear to Votaw, and that was the fact that only a few people regard CSR as a fiduciary duty that inflicts a higher standard of behaviour on businesses (as opposed to citizens).

In this dissertation, no clarity will be provided for the various conflicting definitions. Instead, various definitions will be mentioned and used to establish a possible generally

---

8 Blowfield and Frynas 2005 *International Affairs* 502.

9 Votaw 1972 *California Management Review* 25. Also see Kitchin 2003 *Journal of Brand Management* 312 who quotes Votaw on this topic and also adds that CSR is a confusing thing because it changes so frequently between people's different interpretations of the term.

accepted definition for the South-African context. This will be done by considering national, as well as international explanations pertaining to CSR.

## **2.2 Definitions in the international context**

### *2.2.1 The World Bank*

The World Bank<sup>10</sup> is an international financial institution that lends its support (financially and technically) to developing countries for capital programmes. This institution defines CSR as the commitment of a business to contribute to

sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life, in ways that are both good for business and good for development.

This definition has some shortcomings. It acknowledges that business should mainly focus on its contributions to the economy and economic growth, without leaving shocking footprints for future generations. The definition further states that CSR must be dealt with in ways that are "good for business" which shows that, despite the developmental approach of the definition, it should also be advantageous to the business itself. Should there be no advantages for businesses to invest in CSR then there would be few methods to get businesses to use their economic power to make a difference.

Businesses that have an impact on the environment may use the World Bank's definition as good source for their CSR initiatives, but the aim of this section is to propose a general definition that can be used by economic sectors.

### *2.2.2 The World Business Council for Sustainable Development (WBCSD)*

The WBCSD is an association that operates globally by dealing with the issues of business and sustainable development.<sup>11</sup> The company itself focuses largely on sustainable development, but it gives attention to CSR (a concept that it regards

---

10 World Bank 2003 [http://info.worldbank.org/etools/docs/library/57434/publicpolicy\\_econference.pdf](http://info.worldbank.org/etools/docs/library/57434/publicpolicy_econference.pdf).

11 WBCSD Date unknown <http://www.wbcd.org/templates/TemplateWBCSD5/layout.asp?type=p&MenuId=NjA&doOpen=1&ClickMenu=LeftMenu>.



important in the context of social change). The WBCSD defines CSR as a continuous commitment made by businesses which commits them to behaving in an ethical manner in order to make a contribution to economic development. This should be done in a way that improves the quality of life of the company's workforce, their families, the local community and the society.<sup>12</sup>

Clearly, this definition places a large focus on the social dimension by stating that it should improve society at large. This is because the definition places emphasis on the idea that businesses are in a relationship with the local community. An interdependency exists between the business sector and society which suggests that there is an important role to be played by businesses in the improvement of the quality of life of the stakeholders of the businesses.<sup>13</sup>

The ability of businesses to make significant contributions to development and societal transformation is emphasised by this definition.

### *2.2.3 The European Commission*

The *European Commission* (EC) is the executive body of the *European Union* (EU). The EC provided not one, but two definitions of CSR. In 2001, it defined CSR as a concept through which a company integrates various social and economic concerns into its specific business operations as well as into its relationship with its shareholders (which occurs on a voluntary basis).<sup>14</sup>

This definition shows five specific elements that need to be present in CSR: environment, economic, social, stakeholder and voluntary decisions. These elements were also identified and used by Dahlsrud.<sup>15</sup> In essence, the EC, as well as Dahlsrud, states that CSR involves business activities that happen on a voluntary basis and

---

12 WBCSD *CSR: Meeting changing expectations* 3.

13 Kotler and Lee *Corporate Social Responsibility* 3.

14 EC COM(2001) 366 6 and EC COM(2006) 136 2.

15 Dahlsrud 2008 *Corporate Social Responsibility and Environmental Management* 4.

thereby contribute to an improved society, as well as an improved (cleaner) environment.<sup>16</sup>

It is not argued that the EC puts great emphasis on the voluntary-decisions aspect of its CSR definition. The EC prefers the voluntary approach as opposed to a strict legal framework approach.<sup>17</sup> Thus, any requirements that would be added (as the result of a legal framework) are regarded as counter-productive measures, which are undesirable, according to the EC.

Ten years later, the stakeholder element was no longer desirable, because the global economic crisis severely deteriorated the relationship of trust between a business and its stakeholders. This position led to a change in the definition of CSR in 2011. The definition now states that CSR is the responsibility that rests on an enterprise resulting from its impacts on society.<sup>18</sup> This responsibility is based on the law, and is integrated into a specific enterprises' business operations, which is aimed at the maximisation of shared value for the stakeholders, while still aiming to minimise the negative effects that it could have on an enterprise's business activities.<sup>19</sup> This definition only places an emphasis on the improvement to society and the stakeholder approach. It no longer suggests that CSR goes "beyond the minimum legal requirements"<sup>20</sup> and suggests that a mixture should be entered into between voluntary policies of a business and complementary legal regulation. It might seem as if this definition mentions all the critical elements of CSR (even though it does not emphasise all of them), but it does not mention in whom the responsibility vests, thereby making it an inadequate definition when compared to the definition of the ISO.

---

16 EC COM(2001) 366 4. See also Dahlsrud 2008 *Corporate Social Responsibility and Environmental Management* 3.

17 EC COM(2006) 136 2.

18 EC COM(2011) 681 6.

19 EC COM(2011) 681 6. See also the Department for Business Innovation and Skills' paper on corporate responsibility in 2014 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf).

20 Davis 1967 *Business Horizons* 48. See also Husted, Allen and Kock 2012 *Business & Society* 148.

#### 2.2.4 *The International Organisation for Standardisation*

The ISO is an important developer and publisher of international standards.<sup>21</sup> Its definition of CSR was given in section 1.<sup>22</sup> It defines CSR as an organisation's responsibility for the impacts of the decisions it makes and its activities on society and the environment. It also refers to a business's ethical behaviour, which makes a contribution to sustainable development, health and the welfare of society, and it considers the expectations of stakeholders. This must all be in line with international standards of behaviour and must be integrated into and practised by the said organisation.<sup>23</sup>

This definition is by far one of the most comprehensive definitions of CSR that is currently available, and is probably the most comprehensive international definition that can be used in CSR research. Through this definition it is clear that the ISO suggests that an organisation's activities have the potential to change society in both a positive and a negative way. Since an organisation can also have a negative impact on society, organisation's should always consider all the possible impacts that its activities may have.

This definition also suggests that a business has to make a contribution to the wellbeing of its stakeholders. Furthermore, it suggests that social responsibility should be in compliance with the legislation to which it applies, as well as international standards. It is also based on sustainable development and the idea that a business's behaviour makes a contribution to sustainable development, as in the definitions supplied by the World Bank and the WBCSD.<sup>24</sup> The definition supports the stakeholder approach, which suggests that businesses should recognise the expectations of its stakeholders and that this should be taken into consideration when making business decisions and engaging in activities, and also that CSR should be incorporated into management decisions and policies.<sup>25</sup>

---

21 ISO Date unknown <http://www.iso.org/iso/about.html>.

22 See page 1 of section 1.

23 ISO *Guidance on Social Responsibility* 3.

24 ISO *Guidance on Social Responsibility* 4.

25 Grayson and Hodges *Corporate Social Opportunity* 11.

## **2.3 Definitions of CSR by international scholars**

The widely contemplated topic of CSR has, unsurprisingly, led to various academic debates between scholars from the middle of the 1900's. It is important to consider the works of these scholars when discussing CSR (and its possible definition), because they are in many ways the founders of the legal explanations of the concept. A few of the most renowned authors on CSR will be discussed.

### *2.3.1 Bowen*

Bowen was one of the first writers on the topic (since 1953) and is considered to be the "father of corporate social responsibility."<sup>26</sup> He wrote *Social responsibilities of the businessman*, a book that set the ground work for studies on CSR to follow. In this book, he asks two important questions: "What responsibilities to society may businessmen reasonably be expected to assume?"<sup>27</sup> "To what extent do the interests of business in the long run merge with the interests of society?"<sup>28</sup> These two questions are still the epitome of the academic debates regarding CSR.

Although Bowen does not define CSR in his book, he states that a business's responsibility is the obligations that the businessmen have to practise policies, make decisions or follow actions that are deemed to be desirable with reference to the objectives and values of society.<sup>29</sup>

What is important from the approach suggested by Bowen is that it recognises that a business operates in a society and must therefore continuously take the said society into consideration through its business operations. A business's interest is not purely an economic interest.

---

26 Carroll 1999 *Business & Society* 270. See also Husted, Allen and Kock 2012 *Business & Society* 149 and Windsor 2001 *International Journal of Organisational Analysis* 230.

27 Bowen *Social responsibilities of the businessman* xi. See also Carroll 1999 *Business & Society* 270.

28 Bowen *Social responsibilities of the businessman* 5. See also Carroll 1999 *Business & Society* 270.

29 Bowen *Social responsibilities of the businessman* 6. Windsor 2001 discusses this in depth in *International Journal of Organisational Analysis* 227.

### 2.3.2 Davis

Davis<sup>30</sup> initially defined CSR as the decisions and actions that businessmen take for reasons that are beyond the economic or technical interest of the firm (even if such reasons are only partially beyond economic interests).

He regarded a business as an economic unit that has an impact on the community. The business therefore has an obligation to consider the communities that are impacted by its business activities.<sup>31</sup> He suggests that a business's social responsibility is linked to its social power, and it must therefore accept responsibility for its actions that affect the community.<sup>32</sup>

Davis continued his study on CSR and in later years returned to the definition of the concept. He now referred to CSR as the consideration of a business, and its response to problems that go "beyond the narrow economic, technical and legal requirements of the firm."<sup>33</sup> Thus, he suggests that CSR begins where the law ends.<sup>34</sup> A business cannot merely obey the law in order to behave in a socially accepted manner – the business will only act in a socially accepted manner once it complies with the requirements of CSR (as set by the specific country, community, etc.).

### 2.3.3 Frederick

Frederick<sup>35</sup> is also a very renowned writer on the topic of CSR and first wrote that CSR implied that businessmen have to manage the procedures of economic systems to such an extent that they can fulfil the public's expectations.

He goes further and distinguishes between various approaches to CSR. The first approach is the one most often used, which suggests that businesses should be held responsible for those decisions and actions that they make, which has an effect on

---

30 Davis 1960 *California Management Review* 70.

31 Davis 1967 *Business Horizons* 47.

32 Davis 1967 *Business Horizons* 48. Also refer to Davis 1960 *California Management Review* 71.

33 Davis 1973 *Academy of Management Review* 312.

34 Davis 1960 *California Management Review* 70.

35 Frederick 1960 *California Management Review* 60.

society. Waddock<sup>36</sup> describes this approach perfectly by stating that through a CSR framework, companies

could and should be held responsible for their actions and decisions as they affected society and ought to live up to a higher set of standards than simple adherence to the law for the good of all, and they ought to contribute to the well-being of society.

Thus, this approach places the responsibility to act in a more socially conscious manner, beyond that required by the law, on the business itself.

The next approach to CSR provided new thinking in the field of a business's role in society, and gave birth to the term "corporate social responsiveness."<sup>37</sup> Frederick mentions that the word "responsiveness" as opposed to "responsibility", was now the accepted change and not only a fashionable change in the terminology.<sup>38</sup> This approach forces a business to respond to social pressures<sup>39</sup> and to consider the stakeholders of the business, thus moving from a philosophical approach to CSR to a managerial approach to CSR.<sup>40</sup>

This, in turn, led to yet another approach, which changed from "responsiveness" to "rectitude", acknowledging that management practices have an innate ethical nature (which means that ethics plays an important role in CSR).<sup>41</sup>

#### 2.3.4 Carroll

Carroll made various definitions for CSR known, but he first placed emphasis on the idea that CSR has to do with the different responsibilities of a business.<sup>42</sup>

He further identified four obligations (or responsibilities as referred to above) of a business, which embody a business's social responsibilities, and which are not

---

36 Waddock 2004 *Business and Society Review* 14.

37 Frederick 1994 *Business & Society* 154.

38 Frederick 1994 *Business & Society* 154.

39 Frederick 1994 *Business & Society* 154. See also Waddock 2004 *Business and Society Review* 16.

40 Waddock 2004 *Business and Society Review* 17.

41 Frederick "Theories of Corporate Social Performance" 147.

42 Carroll 1999 *Business & Society* 282. Carroll's various definitions are discussed in Carroll 1999 *Business & Society* 282 – 284 and 286 – 292.

mutually exclusive: economic, legal, ethical and discretionary obligations.<sup>43</sup> Thus, with these obligations in mind, Carroll found that a business's social responsibility "encompasses the economic, legal, ethical and discretionary expectations that a society has of organizations."<sup>44</sup> Later Carroll, along with Schwartz, changed this "four-obligation" approach to one with only three obligations: economic, legal and ethical.<sup>45</sup>

### 2.3.5 Lantos

According to Lantos, a business is not only an economic enterprise, but also a social institution.<sup>46</sup> With this idea in mind, Lantos defined CSR as the obligation that arises from the social contract that exists between a business and society, and which is an obligation for firms to respond to the needs and wants of society (making the positive effects of the business's actions on society more and the negative effects less).<sup>47</sup>

Lantos places importance on the social contract which exists not only between the government and society, but also between businesses and society. In terms of such a contract, a business has social responsibilities towards society.

In turn, the business gains a license to operate in that society. A business needs to take societal needs into consideration and take responsibility for the consequences of its business activities.<sup>48</sup>

---

43 Carroll 1979 *Academy of Management Review* 499 – 500. The economic obligation is the core responsibility of a business, because it is a business's responsibility to make a profit. The legal obligations refer to the expectation that the public places on businesses to obey the law and to conduct business within the legal realm. The ethical obligations are those ethical behaviours of a business, which is expected of them by society and which goes beyond legal obligations. Lastly, the discretionary obligations refer to voluntary schemes that are described as philanthropic giving.

44 Carroll 1979 *Academy of Management Review* 500.

45 Schwartz and Carroll 2003 *Business Ethics Quarterly* 513.

46 Lantos 2001 *Journal of Consumer Marketing* 600.

47 Lantos 2001 *Journal of Consumer Marketing* 600.

48 Lantos 2001 *Journal of Consumer Marketing* 608. See also Lantos 2003 *Journal of Consumer Marketing* 205.

## **2.4 Definitions in the South African context**

### *2.4.1 Introduction*

Internationally, literature pertaining to CSR is widely found, but in South Africa, the situation is slightly different, as fewer researchers have dwelled on the topic and even less have offered an acceptable definition of CSR. Perhaps the reason is to be found in the fact that South African businesses and other institutions do not generally use the term corporate social "responsibility". Instead they refer to CSR as corporate social "investment" (CSI).<sup>49</sup> Perhaps the reason for this is because of the wrongs of the country's past and the fact that people feel uncomfortable with the term "responsibility", because they do not wish to feel they have a responsibility to correct past indiscretions.<sup>50</sup>

Whatever the reason, the lack of enthusiasm for the use of the word "responsibility" should be considered when establishing a legal framework for CSR in South Africa. This will be taken into consideration in Section 4 of this dissertation. Literature (with the focus placed on definitions) on CSR that is present in the national context will be discussed in this section.

### *2.4.2 The King II Report*

The *King II Report on Corporate Governance* of 2002<sup>51</sup> does not define CSR. It does, however, mention that a responsible business entity is one that is aware of social problems and responds to such problems. The King II Report does however mention that a corporate citizen with good ethics can be seen as a citizen who does not discriminate, does not exploit and who is responsible regarding environmental and human rights problems.<sup>52</sup>

---

49 Fig 2005 *International Affairs* 601.

50 Fig 2005 *International Affairs* 602. See also Kloppers and Fourie 2014 *African Journal of Agricultural Research* 3418.

51 IoD *King Report on Corporate Governance for South Africa* 2002 (hereafter referred to as the King II Report).

52 IoD King II Report 12.



On this note, it can be accepted that the King II Report refers to CSR as a business's knowledge and acceptance of the social, economic and environmental impacts of its business activities. This corresponds with the international definitions proposed by the World Bank and the ISO.<sup>53</sup> Three elements stand out in this definition: the social, economic and environmental impacts of a business. These elements will be considered when a generally accepted definition of CSR is proposed.

#### *2.4.3 The King III Report*

The King III Report on Governance<sup>54</sup> also fails to supply a definition of CSR, but it also mentions CSR (just as its predecessor, the King II Report, does). This report mentions that CSR is one of the important and core components of corporate citizenship.<sup>55</sup> The King II Report does not provide a link that can lead to a possible definition (as was the case in 2.4.2 above), but it does seem to favour the definition given by the ISO.<sup>56</sup>

The report further distinguishes between the concepts of CSR and CSI. It provides that CSI is simply a materialisation of CSR, and also that it refers to donations and other forms of financial assistance that are made for an "altruistic purpose", and includes contributions that go beyond normal financial assistance.<sup>57</sup> "Altruistic purposes" suggest that this report only considers those donations that are philanthropic. The problem with this is that it offers no strategic benefits to a business, thus can it be regarded as a corporate "investment"? Even in the attempt to clarify the contradicting phrases of CSR as opposed to CSI, more questions than answers arise.

---

53 These definitions were discussed in paragraph 2.2 above.

54 IoD *King Report on Corporate Governance for South Africa 2009* (hereafter referred to as the King III Report).

55 IoD King III Report 232. The King II Report only referred to CSR as a component of corporate governance. Thus, through the King III Report, it is now a component of corporate governance as well as corporate citizenship.

56 Refer to paragraph 2.2.4 above.

57 The King III Report 233.

#### 2.4.4 *The South African Grantmakers' Association (SAGA)*

SAGA acknowledges the King II Report and its implications for CSR, but it also clearly distinguishes between CSR and CSI, even though it believes that these terms are used interchangeably.

SAGA<sup>58</sup> refers to CSR as

corporate concern regarding the legal, ethical, environmental and social management practices applied in an organisation's operations and activities – in effect, conduct as a good corporate citizen.

This definition also refers to the various responsibilities that a business has, namely the ethical, social, environmental and legal responsibilities.

CSI, according to SAGA,<sup>59</sup> relates to

direct or indirect financial investment in socially responsible initiatives and activities ... A crucial element of corporate social investment is the understanding that corporate assets are involved and that management should seek to provide – and shareowners are entitled to expect – a return on such investment.

Thus, it is suggested that financial investment is a direct contribution to a business's CSR schemes, but indirect investment refers to something like services that are provided free of charge. The definition makes reference to "investment", thus it means that the shareholders of the company should be entitled to a return on their investment.

#### 2.4.5 *The Broad-Based Black Economic Empowerment Act*<sup>60</sup>

The *BEE Act* does not provide a definition of CSR, but it prescribes that socio-economic activities undertaken by businesses will provide the active business with certain advantages.<sup>61</sup>

---

58 SAGA *Implications for corporate social investment* 5.

59 SAGA *Implications for corporate social investment* 6.

60 53 of 2003. Hereafter referred to as the BEE Act.

61 More on this topic can be seen in section 3.1. For the time being it is important to note that the BEE Act may be the groundwork legislation that can be used to implement CSR into SA legislation.

#### *2.4.6 A proposition for a generally accepted definition of CSR*

Through the distinction that SAGA makes between CSR and CSI,<sup>62</sup> it can be said that CSR refers to a business's responsibilities to society, but at the cost of the business, whereas CSI (which emphasises "investment") holds some investment advantages to a business, while acting in accordance with its societal responsibilities. Thus, finding an acceptable midway between these two concepts, which not only holds an advantage for society, but also for a business, would be the perfect compromise to make a CSR framework a reality.

By considering all the definitions discussed above, it is proposed that CSR, in South Africa, is the concept by which

a business obtains an ethical, societal, environmental and legal responsibility towards society regarding the effect of its business activities, while holding some form of benefit for the said business.

In terms of this proposed definition, CSR will be an investment for businesses through which they obtain some type of business benefit, while still placing a responsibility on businesses to improve society. It is the proverbial win-win situation (to both businesses and society).

This definition will now be tested alongside the current national provisions relating to CSR in order to assess whether it is a relevant South African definition and a concept that can be integrated into national legislation with ease.

---

62 Refer to paragraph 2.4.4.

### 3 CSR in South Africa and its advantages

#### 3.1 Current national CSR legislation

##### 3.1.1 Introduction to national CSR legislation

Section 1 explained that CSR is a new concept in South Africa. However, national legislation leaves an opening for its use and interpretation in our law.<sup>63</sup> The *Constitution*<sup>64</sup> also allows for the advantageous interpretation of CSR. The *Constitution* obligates the Government to promote, fulfil and protect the rights that are enshrined within it.<sup>65</sup> CSR includes human rights that are enshrined in the *Constitution*, such as human dignity,<sup>66</sup> equality,<sup>67</sup> a right to fair labour practices<sup>68</sup> and a right to environments that are not harmful.<sup>69</sup> Government is obligated to use voluntary or legislative measures to create an environment that encourages the private sector to take responsibility for its decisions and activities, and the impact they may have on society and its stakeholders.<sup>70</sup>

This section will focus on the possible applicability of CSR in our law and the benefits it may hold for the public and private sector. The *Codes of good practice* will be interpreted alongside our understanding of CSR in order to provide a practical interpretation that may be relevant to our law and society. The section will also include a discussion on the various ways in which CSR can be implemented in South Africa to reap the benefits it holds for businesses and the public.<sup>71</sup>

---

63 Section 2 thoroughly discusses the most important national and international definitions of CSR.

64 *The Constitution of the Republic of South Africa, 1996*. Hereafter referred to as the *Constitution*.

65 Section 7 of the *Constitution*.

66 Section 10 of the *Constitution* which provides that all people have dignity and the right to have this dignity protected and respected.

67 Section 9 of the *Constitution* is the equality-clause and prohibits any form of unfair discrimination.

68 This right is enshrined in section 23 of the *Constitution*.

69 Section 24 of the *Constitution*.

70 Harmann and Acutt 2003 *Development Southern Africa* 258. See also Kloppers *Improving land reform through CSR* 244.

71 And also the indirect benefits it would hold for the government who, upon implementation of CSR legislation, will share the burden of providing for the public with the private sector.

### 3.1.2 *The BEE Codes of Good Practice*<sup>72</sup>

#### 3.1.2.1 Introduction

In order to understand where CSR fits into our legal system, a discussion of the *Codes of good practice* is required, because these codes already refer to the possibility of a CSR environment in South Africa. The relevant codes will be discussed in relation to CSR to propose the merging of the two concepts. This means that CSR in South Africa will be linked to the current references to social responsibility acts that are found in the *Codes of good practice*.

The *BEE Act* is one of the legislative measures enacted by Government to utilise human capital to its full potential.<sup>73</sup> The aim of the *BEE Act* is to eradicate poverty through various measures<sup>74</sup> and to allow black persons to become economically empowered.<sup>75</sup> The *BEE Act* confronts companies with national political and social realities and guides a corporate conscience.<sup>76</sup>

#### 3.1.2.2 The Broad-Based Black Economic Empowerment<sup>77</sup> Generic Scorecard

The *BEE Act* enables the Minister of Trade and Industry to issue codes of good practice that are used to promote the purpose of the *BEE Act*.<sup>78</sup> This is where the generic scorecard comes into play. The generic scorecard indicates the points that a business can earn for adhering to certain requirements. These points are tallied and used to calculate and indicate a business's B-BBEE recognition level. A company with a high recognition level enjoys benefits such as being able to apply for government projects, etc.<sup>79</sup>

---

72 Gen Not 1019 in GG 36928 of 11 October 2013. The *BEE Codes of Good Practice* refer to the *Codes of Good Practice* on black economic empowerment and will hereafter be referred to as the *Codes of good practice*. Black Economic Empowerment will be shortened and referred to as BEE during this dissertation. Furthermore *Broad-based Black Economic Empowerment* will be referred to as *B-BBEE*.

73 Human capital is an important asset in sustainable development.

74 Such as obtaining relevant skills, training, etc.

75 Preamble of the *BEE Act*.

76 Esser and Dekker 2008 *Journal of International Commercial Law and Technology* 169.

77 Hereafter referred to as *B-BBEE*.

78 Section 9(1)(c) of the *BEE Act*.

79 The *Codes of good practice* para 8.1 and 8.2.

The generic scorecard is indicated in the table below:<sup>80</sup>

<b>Element</b>	<b>Weighting</b>	<b>Code series reference</b>
Ownership	25 points	100
Management control	20 points	200
Skills development	25 points	300
Enterprise and Supplier Development	50 points	400
Socio-Economic Development	5 points	500

The "weighting" column indicates how many points are awarded to business activities that fall within the realm of the element in the 'element' column. The 'code series reference' refers to the code in the General Notice that can be accessed in order to find what types of activities fall within the realm of the specific element and can therefore be used to add points to one's scorecard.<sup>81</sup>

The points are added together to indicate a business's B-BBEE recognition level. One hundred points or more offer the status of a Level 1 Contributor. Between 95 and 100 points is a Level 2 Contributor, etc.<sup>82</sup>

Some of these elements on the scorecard can be interpreted in the light of CSR. The relevant elements that refer to CSR contributions are skills development and socio-economic development (25 and 5 points or percent respectively). These two elements

---

80 The weighting points of the generic scorecard was amended by Gen Not 876 in GG 38076 of 10 October 2014 (hereafter referred to as the Amended codes of good practice). The amended values are used in this table and not the values as per the 2012 General Notice mentioned above.

81 For an explanation of what the different codes and elements contain refer to the Codes of good practice.

82 The recognition levels are indicated in para 8.2 of the Codes of good practice. For more knowledge on the levels refer to this section.

were specifically chosen, because they are the elements that mostly relate to CSR and to the advantageous contributions that CSR can make to an entire community, sector, or country, and not only one specific ethnic group. While B-BBEE specifically refers to black persons and their economic empowerment, one must not forget that South Africa consists of many different groups of people. If we allow SED to only benefit one specific group, then one of the other groups may fall into poverty. SED must be to the advantage of all people in order to harness its economic benefits.

These relevant elements will be discussed alongside CSR in order to obtain a connection between the current legislative measures and proposed future ones.

### 3.1.2.3 The relevant generic scorecard elements that refer to CSR

#### 3.1.2.3.1 Skills development

Skills development plays an important role in empowerment and can greatly benefit the economy (with a more educated workforce).<sup>83</sup> Code 300 of the *Codes of good practise* states exactly how skills development will be measured in terms of the generic scorecard.

The *Amended codes of good practise* further describes which activities constitute skills development and what individual weight these elements carry.<sup>84</sup> The activities and contributions that can be weighted are skills development expenditure for black persons as well as for black employees with disabilities, black persons participating in learnerships and internships, and unemployed black persons participating in training. Bonus points are awarded for black persons that are hired after the learnership programmes have been completed.<sup>85</sup> In order to gain a score for skills development, a business must first comply with the requirements of various acts related to the matter.<sup>86</sup>

---

83 McGrath and Akojee 2009 *International Journal of Educational Development* 150.

84 Code series 000 para 5 *Amended codes of good practise*.

85 Each of these skills development elements carry a certain weight which can add up to the maximum total of 25 points. In order to assess exactly what the points that are awarded for the individual elements are, refer to para 5 of the Amended codes of good practise.

86 These acts are the *Skills Development Act* 97 of 1998 and the *Skills Development Levies Act* 9 of 1999.

A skilled workforce contributes immensely to sustainable economic and social development and allows businesses (and governments) to achieve international economic competitiveness.<sup>87</sup> Since the majority of the South African workforce comprises black persons, it makes sense for legislation to be in place that provides for the skills development of black persons. A skilled workforce furthermore contributes to social welfare, which connects the element to CSR.<sup>88</sup>

#### 3.1.2.3.2 Socio-economic development

An increasing focus has been placed on the concept of CSR, which also leads to the inclusion of socio-economic development<sup>89</sup> in the generic scorecard. The element of SED in the Codes of good practice, plays the most important role, because it embodies the inclusion of CSR into legislation. The inclusion of SED demonstrates Government's attempt to encourage the importance of sustainable access to the economy.

The SED scorecard is identified in Code 500 of the *Amended codes of good practice*, but it is not as distinguished as the other scorecards. The SED scorecard simply reads that all SED contributions that were made by the business in the current year must be tallied (but cannot weigh more than 5 points). These include all contributions that were initiated and that favoured the beneficiaries thereof.<sup>90</sup> The SED scorecard measures the business's average annual value of SED contributions as a percentage of the compliance target (which is 1% of the business's net profits after tax).<sup>91</sup>

#### 3.1.2.3.3 Conclusion

It is evident that both skills development and SED contributions are important aspects that relate to CSR. Through skills development a stronger workforce is created which in turn leads to a stronger economy. SED contributions relate to all social and economic aspects that benefit certain persons. These contributions must be made available to

---

87 A full discussion on the importance of skills development in a sustainable economy can be found in McGrath and Akojee 2009 *International Journal of Educational Development* 149 – 156.

88 Jack *The complete guide* 272 – 293 provides an analysis of the skills development element and can be advised for further information on the topic. For the purposes of this dissertation, however, an in depth discussion is not required.

89 Hereafter referred to as SED.

90 Section 2(a) and (f) of the BEE Act.

91 Code 500 of the *Amended Codes of good practice*.



benefit the society as a whole (and not just a select group) in order to harness the advantages of a stronger (and hopefully less poor) society and economy.

SED contributions lie at the heart of the CSR concept. CSR as well as SED aims to benefit society (and as society benefits – be it through education, training or other means – the economy of a country also benefits). Therefore, it is unacceptable that SED contributions weigh a meagre 5 points. If legislation were to connect CSR to the current *BEE Act* or *Codes of good practice*, the weight of SED contributions must be significantly increased to allow for more CSR contributions that can lead to greater economic and societal advantages to the community.

These two elements can be used to further the idea and power of CSR in an economy and must be wholly used for this purpose. Only when CSR is allowed to make a significant difference, by being applied to aspects that influence the public, will it.

### *3.1.3 Theoretical assumptions regarding CSR in South Africa*

It has already been mentioned that there is no legislation in SA that regulates CSR, but there are national definitions that provide for the possibility of such legislation. The theory provided from these definitions may be used to create possible new CSR legislation.

Carroll's model, that a business's CSR activities should be based on the four principles: economic, legal, ethical and discretionary powers,<sup>92</sup> is widely used to measure a business's CSR activities. Crowter and Aras<sup>93</sup> considered the foundation laid by Carroll, but felt that there are only three principles that underlie CSR activities: sustainability, accountability and transparency.<sup>94</sup>

---

92 Refer to section 2.3.4.

93 Crowter and Aras *Corporate Social Responsibility* 42.

94 Sustainability refers to resources used by the business and that a business should not use more resources than they can renew; Businesses should also acknowledge the impact that they have on the environment and take responsibility for it (accountability); Lastly, transparency simply suggests that all the business's impacts should be clear to the public (a business should not try to hide its negative or positive actions).

Regarding these theoretical models of Carroll, as well as Crowter and Aras, together with the 2001 definition of CSR by the EC,<sup>95</sup> Kloppers and Fourie<sup>96</sup> suggest theoretical criteria that businesses can use to evaluate CSR programmes. They suggest that CSR programmes should:

1. Reflect a company's responsibility for its impacts and activities on society
2. Be extraneous to the company's regular business activities
3. Be focused on sustainable development and assist development initiatives
4. Be beneficial to local communities of companies as well as society at large
5. Consider the economic, legal and ethical responsibility of the organisation
6. Be strategically aligned with the goals of the organisation
7. Address social and environmental concerns
8. Be sustainable, transparent and demonstrate that the company is accountable.

Even though these criteria are based on a definition that was replaced in 2011,<sup>97</sup> it still provides many useful suggestions that may be integrated into national CSR legislation. Some of these criteria will be used during a proposition of national CSR legislation in SA.<sup>98</sup>

#### *3.1.4 Conclusion on CSR and the BEE Codes of good practice*

While the BEE legislation offers the groundwork to incorporate CSR into national legislation, it does not quite attend to all the legislative needs that relate to CSR. CSR is a concept that focuses on improving social good, while the Codes of good practice only focus on improving the needs of black persons. Bearing this in mind, it is not suggested that black persons should not be advantaged by CSR, because they should. It is simply offered that CSR is a concept that should benefit all ethnic groups living in the same society in order to benefit that society and its social and economic needs as a whole.

Thus, relating to the relevant current legislation it would seem that the current measures in place are insufficient. It is therefore proposed that a completely new legislative medium for CSR should be considered and adopted.<sup>99</sup> In order to consider possible CSR legislation one must first consider whether it would be truly advantageous

---

95 Refer to 2.2.3 above.

96 Kloppers and Fourie 2014 *African Journal of Agricultural Research* 3421.

97 Refer to section 2.2.3 above for the 2011 definition of CSR by the EC.

98 See section 3.3.

99 See more on this proposition in section 5.

for a country to implement CSR contributions. The advantages of CSR will be discussed hereafter.

### 3.2 The advantages of CSR

#### 3.2.1 Introduction

In section 2, it was mentioned that CSR is the voluntary action taken by a business that is above the legal requirements to manage the impacts they have on society.<sup>100</sup> Therefore, CSR is not only about contributing monetary value to the benefit of society. It is also about business responsibility, and creates a shared value for business and society through a strategic and integrated approach.<sup>101</sup> UK-based businesses felt that even though CSR started as philanthropic and charitable contributions, there is now an expectation that CSR activities should benefit both parties (society and the business) through shared value.<sup>102</sup>

The *UK Department for Business Innovation and Skills* commenced a study in 2014, in which it approached various UK businesses and asked them about their CSR initiatives. During this study, Mark Wakefield of *IBM UK Ltd*,<sup>103</sup> noted that

IBM believes that the concept of CSR is now recognised and understood and that it is now increasingly accepted as a required area of business activity. It has moved beyond the status of 'latest management fad' and a significant body of policy and practice has been established, delivered through an increasingly professional body of CSR practitioners and others.

While CSR in the UK is a voluntary process, its continuous CSR consciousness has already led to various business policies relating to CSR. Therefore, even though it does

---

100 This is another rendition of the definition of CSR in terms of the EC. EC COM(2011) 681 6.  
101 Department for Business Innovation and Skills 2014  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf).  
102 Department for Business Innovation and Skills 2014  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf). This position only confirms the proposition made in section 2.4.5 that proposes that CSR should involve an advantage to the contributing business as well.  
103 Department for Business Innovation and Skills 2014  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf).

not have national legislation in place, it still contributes to CSR, not only because it feels a certain business responsibility to better society, but also because of the business advantages it offers them (or so it would seem). It has become part of everyday business practice, and this is what South Africa should also strive for.

CSR, in countries that have implemented the notion, has developed from a concept of how a business's money is spent to a concept of how a business's money is earned.<sup>104</sup> In this section, the societal as well as the business advantages of CSR will be discussed to assess whether CSR can be deemed 'worthwhile'. The focus will be on the business advantages of CSR. The social benefits are evident, but the business benefits are not and businesses need to be made aware of the possible benefits in order to be encouraged to take part in CSR incentives.<sup>105</sup> Specific reference will be given to the advantages of CSR that have been identified and measured in other countries (specifically the UK), which clearly show that CSR (where it is already a successful concept) can benefit both ends of the socio-economic spectrum.

### *3.2.2 The benefits of CSR to businesses*

#### 3.2.2.1 Introduction

It only makes sense to assume that businesses would only take part in CSR practices if they gain something from their generosity. For this reason businesses have to derive some advantage as 'payment' for their resources that are applied to CSR activities.<sup>106</sup>

Businesses do not necessarily have to earn back money as an incentive to encourage them to take part in CSR.<sup>107</sup> However, as mentioned above, CSR should also benefit

---

104 Many governments have investigated CSR and have found that it does not only benefit society when a business spends money on CSR projects, but that it also benefits business's earning capabilities. This will be discussed further in section 3.2.2.5.

105 The notion that a business must gain an advantage from its CSR contributions was discussed in section 2.4.5 where the proposed definition of CSR in this dissertation refers to a business advantage that must be present (because how can businesses be encouraged to contribute to CSR if they receive no benefit and only lose money?). The business advantage is used to encourage businesses to become part of CSR and to invest in CSR while it will bring them various benefits while benefiting society at the same time. It offers a sort of win-win situation to both the private and the public sector, as well as to citizens.

106 This adds to one of the principles of Frederick (see section 1.1) and would probably suit him, because the business now earns some or other form of return on its CSR activities.

society. This requirement should not be forgotten as businesses conduct their CSR planning processes.

In this section the business benefits of CSR will be discussed briefly and examples from studies done in Europe will be used to prove that benefits do, in fact, occur in practice and not just in theory.

### 3.2.2.2 Improved reputation

Consumers are becoming increasingly aware of the impact that businesses have on various factors that concern them (such as the environment). For this reason, they tend to look upon businesses that consider these factors with more favour and this increases the specific business's reputation positively.<sup>108</sup> Nowadays, consumers avoid what they regard as being socially irresponsible, whether it is products or conduct.<sup>109</sup>

Studies conducted in the UK also show that consumers are more inclined to pay more for a product from a business that partakes in CSR activities, than to buy cheaper products from a business that does not.<sup>110</sup> Thus, it would seem that money is not an issue for the public if they have trust in the business and its CSR views.

The media usually provides consumer awareness regarding the business's CSR activities. Advertising through CSR activities could also provide awareness to consumers. Where a company sponsors T-shirts to an underprivileged school's soccer

---

107 Weber 2008 *European Management Journal* 250 states that the benefits of CSR, for a business, can either be monetary (benefits with a financially measurable value) or non-monetary (the benefits are not directly measurable in a monetary value).

108 Siegel and Vitaliano 2007 *Journal of Economics and Management Strategy* 773. See also Servaes and Tamayo 2013 *Management Science* 1046. The public seems to put more trust in a business that respects the things that they respect, which allows a positive growth for the business. On the other hand, the less a business cares, the less favour it will have with the public as well.

109 Hopkins 2004 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1723126](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1723126).

110 Servaes and Tamayo 2013 *Management Science* 1046. See also Department for Business Innovation and Skills 2014 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf).

team with their logo on, they advertise their business and through this increase in their reputation the expense was incurred in the production of their income.<sup>111</sup>

It might not be the case that a business notices a definite increase in its reputation when it partakes in CSR initiatives, but it will definitely notice an obvious decrease if it does not and this becomes known to the public.<sup>112</sup>

Therefore, it is evident that CSR initiatives lead to an increase in a participating business's reputation, but this does not mean that businesses should partake in these initiatives only to gain a reputation advantage over their competitors. It is not a marketing tool. It should not be used to create improved public relations.<sup>113</sup>

### 3.2.2.3 Employee retention

A positive link between employee retention and motivation and CSR has been established.<sup>114</sup> It would seem that employees are motivated to work harder for a business that is socially responsible in the same way that consumers are willing to pay more for the said business's products. Potential employees also seem to be drawn to more socially responsible businesses, which offer a wide selection of recruits.<sup>115</sup>

It is only logical that a business with a committed workforce would enjoy more positive feelings towards the business from their employees. In time, this will also have an effect on the customers, because staff who are committed to the business will also be committed to their customers.<sup>116</sup>

---

111 This example was provided by Ernst and Young 2011 [https://www.saica.co.za/integritax/2011/1916.%C2%A0Corporate\\_social\\_responsibility\\_expenditure.htm](https://www.saica.co.za/integritax/2011/1916.%C2%A0Corporate_social_responsibility_expenditure.htm) and will be referred to in section 4 again.

112 This was the case when Nike did not adhere to the international labour standards and its image and reputation suffered a lot of damage. See Werther and Chandler *Strategic Corporate Social Responsibility* 12 where Nike's misfortune, the impact, and their attempt to rectify the situation are explained.

113 Even though this is one of the advantages that a participating business may enjoy, it should not be the only reason for entering into CSR activities. This may lead to impure intentions, i.e. that the main objective of the business is not to improve society (the cornerstone of the concept of CSR). See also Kloppers *Improving land reform through CSR* 178 where he explains this phenomena.

114 Weber 2008 *European Management Journal* 249. Servaes and Tamayo 2013 *Management Science* 1046.

115 See Thorne, Ferrell and Ferrell *Business and Society* 27.

116 Servaes and Tamayo 2013 *Management Science* 1047.

#### 3.2.2.4 Cost savings

There are many possible cost-saving benefits that a socially responsible business may enjoy.<sup>117</sup> An example would once again be the business that practices environmental impact and awareness. Awareness of electricity consumption may lead to savings on electricity costs.<sup>118</sup>

#### 3.2.2.5 Increase in revenue

It was mentioned above that a socially responsible business tends to grab the attention of more consumers.<sup>119</sup> It can only naturally be assumed that an increase in the number of customers will lead to an increase in revenue for the business.<sup>120</sup> An increase in consumers, while offering an increase in the financial performance of the business, also seems to increase the business's value.<sup>121</sup>

A business that is involved in aspects within its own walls and on the outside, also makes its products and services increasingly attractive to consumers, which increases business profits.<sup>122</sup>

A positive CSR history or association may also benefit a business that wishes to raise capital for whatever reason, because investors prefer businesses with an established social record. This may also offer an advantage over the socially responsible business's competitors.<sup>123</sup> Recent studies have proved that firms with a high level of CSR take pleasure in lower capital costs, thus implying that they seem to have lower systematic

---

117 For one example of such a list please refer to Den Hond, De Bakker and Neergaard *Managing Corporate Social Responsibility* 86.

118 Mazurkiewicz 2004 <http://siteresources.worldbank.org/EXTDEVCOMMENG/Resources/csrframework.pdf>.

119 See section 3.2.2.2.

120 More customers equal more money. Muller 1999 *Business Week* 94. It is said that a positive reputation benefits sales. Sales then benefit profits which increases revenue. Muller points out that CSR offers a positive return on assets and growth in sales. Interestingly a study on market prices revealed that businesses with an environmental interest to their CSR activities enjoy a significantly higher value that is afforded to their firm (in this regard see Buckingham, Gregory and Whittaker 2011 <http://business-school.exeter.ac.uk/documents/papers/finance/2011/1107.pdf>).

121 Servaes and Tamayo 2013 *Management Science* 1045.

122 Hopkins 2004 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1723126](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1723126). It would also seem that costs to implement CSR activities will be high, but it is most likely that the benefit of increased profits will outweigh the costs on the long-run.

123 Mazurkiewicz 2004 <http://siteresources.worldbank.org/EXTDEVCOMMENG/Resources/csrframework.pdf>. See also Kloppers *Improving land reform through CSR* 180.

risk.<sup>124</sup> Investors are also becoming increasingly aware of a business's social activity and it would seem as if they place ethics on the same level as personal gain when deciding on where to invest.<sup>125</sup>

Barnett<sup>126</sup> suggests that the relationship between corporate social performance (CSP) and financial performance has the shape of a "U". When interpreted, it is discovered that firms with a low CSP have higher financial performances, because the return on their assets is higher, compared to firms with a moderate CSP. The winner in the financial performance race, however, is a firm with a high CSP, which seem to be the most successful financially.<sup>127</sup>

### 3.2.2.6 License to operate

A business's license to operate refers to societal acceptance of the business's activities.<sup>128</sup> Since every business needs permission to do business (whether it be from governments or communities) a license to operate is an important tool in the operating sphere. A business will continuously be endorsed and accepted if it acts in a socially responsible manner, but once society decides to withdraw the operating license (for instance for socially irresponsible behaviour) the business's reputation will decrease, and with it, the other benefits mentioned above will also dwindle.

---

124 For an explanation regarding these findings please refer to El Ghouli, Guedhami, Kwok and Mishra 2010 *Journal of Banking & Finance* 30.

125 Thus investors no longer want to carry the risk of being implicated in irresponsible social practices and do not invest in businesses that do not have responsible CSR initiatives. See Hopkins 2004 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1723126](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1723126). CSR has the definite advantage of increasing a business's investors (in the UK) and if this advantage were to be found in SA it could hold tremendous advantageous investment advantages and options for the private and the public sector.

126 Barnett 2007 *Academy of Management Review* 798.

127 Barnett discusses the U-shaped relationship in Barnett 2007 *Academy of Management Review* 794 – 816. His theory is also applied by the University of Exeter Business School which conducted studies to prove that markets in the UK value CSR (because of the advantages it poses to them. The advantages discussed in their paper are the same as those discussed in section 3.2.2, but with clear evidence of how it actually benefitted UK-based companies). In this regard see Buckingham, Gregory and Whittaker 2011 <http://business-school.exeter.ac.uk/documents/papers/finance/2011/1107.pdf>. The team used empirical accounting models to test the value relevance of businesses and also to test whether the dimensions of CSR are market priced. The findings of their study showed that for their collective measure of CSR, the market prices show that "high CSR firms have higher long-run growth prospects than low CSR firms". This demonstrates a clear relationship between CSR and market earnings and implies that businesses that partake in CSR activities enjoy higher income and greater growth.

128 Porter and Kramer 2006 *Harvard Business Review* 81 – 82.



The license to operate can also be linked to the current BEE generic scorecard. A company that scores a low mark in terms of the generic scorecard is not allowed to step into business with the public sector. In contrast, a business that scores a high mark is considered to act in a socially responsible way and will be rewarded with the possibility to enjoy business contracts with the public sector.

### 3.2.2.7 Conclusion regarding the benefits of CSR

There have been various studies supporting CSR on the basis that it holds many benefits to businesses that engage in it. These benefits were discussed above and included an improved reputation, employee retention, cost savings, an increase in revenue and a license to operate. It would seem that CSR offers socially responsible businesses an overall improvement to their business's social and financial standing.

Research also suggested that a business's own sustainability depends on mutual efforts and the sharing of socio-economic needs between businesses and the common man.<sup>129</sup>

### *3.2.3 Critique against CSR*

#### 3.2.3.1 Introduction

It seems that CSR would be the solution to South Africa's poverty problems, but this may not necessarily be the case. CSR holds many benefits,<sup>130</sup> but there are also a few points of critique against CSR which may hinder the implementation of national CSR legislation. The critique against CSR will be discussed briefly in this section.

---

129 Parijat and Bagga 2014 [http://natlex.ilo.ch/wcmsp5/groups/public/dgreports/integration/documents/publication/wcms\\_079130.pdf](http://natlex.ilo.ch/wcmsp5/groups/public/dgreports/integration/documents/publication/wcms_079130.pdf). They do not only refer to collaborative efforts regarding socio-economic resources, but also include efforts in human development, social and economic upliftment, social and economic cooperation, better economic opportunities for all, better workplace cultures, a happier work environment, growth and the betterment of employees and environmental end ecologically sustainable business practices. The authors also believe that a sustainable and progressive business organisation should ensure more emphasis on CSR.

130 Refer to section 3.2.2.

### 3.2.3.2 Various definitions

Even internationally, where CSR is an important part of some business sectors, there is not one single widely accepted definition.<sup>131</sup> There are also different interpretations of CSR available, which further hinder the evolution of and research into CSR.<sup>132</sup>

It is impossible to draft CSR legislation that will hold businesses accountable when each business virtually has its own definition of CSR. A single definition offered by a controlling act should be implemented to clearly define the lines of CSR activities.

### 3.2.3.3 The current voluntary nature of CSR

CSR is still regarded as a voluntary act. The problem with this situation is that businesses cannot be trusted to adequately contribute to society if it is on a voluntary basis. Therefore, legal requirements must be set to take part in CSR.<sup>133</sup>

Although it is thought that CSR should not be forced onto business, nor should it be of a completely voluntary nature, it is suggested that a business should be encouraged to take part in CSR activities.<sup>134</sup>

### 3.2.3.4 CSR causes a barrier to trade

It is suggested that resources that are now being used for CSR activities should actually accrue to the shareholders of the business.<sup>135</sup> By using these resources for other purposes, it is believed that economic efficiency and profits are lowered.

Although this is a valid point, and although using funds for other activities threatens a business's competitive advantage, directing these funds also holds other non-monetary

---

131 Refer to section 2 for the different definitions of CSR.

132 CSR has been sub-divided into many other categories, such as corporate citizenship, CRP, CSI and even the *BEE Codes of good Practice*. With all of these different versions of CSR in place, the growth of CSR itself is stunted.

133 Allouche *Corporate Social Responsibility* xxiii. It is suggested by Allouche that CSR will only be met adequately once it is in the business's self-interest to do so, or when they are required by government mandate to meet the requirements.

134 This will only be present if there is some form of gain for the business to take part in CSR initiatives.

135 Crane *et al Corporate Social Responsibility* 55 – 62.

advantages for a business.<sup>136</sup> It is believed that the value of these advantages may outweigh the loss in competitive advantage or the small loss in funds.

#### 3.2.3.5 Corporate greenwash

Corporate greenwash is the attempt of a business to improve its image without changing its business model (which disguises the usual business activities of the business).<sup>137</sup> It is believed that CSR promotes greenwash and perhaps this is also the reason why many businesses and members of the public are sceptical about CSR.

#### 3.2.3.6 A lack of skills

CSR has not been widely accepted as of yet, therefore it only makes sense that many business managers are not qualified or do not have the necessary knowledge to adequately address social issues through CSR. Therefore this point of critique asks whether businesses are equipped to address social issues and help the community develop if this has nothing to do with their business activities or their business knowledge.<sup>138</sup>

The simple solution to this would be to appoint a "CSR manager", whose only focus would be to adhere and see to the business's CSR activities, while the focus of the other managers would remain an economic one.

### **3.3 Conclusion**

CSR is not without its challenges, but these challenges can only be overcome if there is a clear move towards the implementation of CSR activities in businesses. Possible difficulties can also be addressed by other sources, for instance a governing body for CSR,<sup>139</sup> but this will only become a possibility once CSR legislation that address all of these issues becomes a reality. International studies have proven that CSR benefits a

---

136 Refer to section 3.2.2.

137 Utting 2003 *Global Future* 10. An example of corporate greenwash would be a mining company that pollutes the local water supply with its activities, but builds a pre-school in the area for the poor locals. They attempt to improve their image by seeming like good Samaritans that help the local community, but in fact they are trying to redirect the eyes from their negative activities by having them focus on their positive ones.

138 Prieto-Carron *et al* 2006 *International Affairs* 984.

139 This will be suggested and discussed in section 5.

country's economy and also that it is advantageous to the private sector.<sup>140</sup> In developing countries it also tremendously benefits the public sector.<sup>141</sup> South Africa can definitely also benefit from implementing CSR, but not by combining it with current legislation on the matter (such as the BEE Act), because the latter mentioned legislation is, in my opinion insufficient to encourage CSR practices.

The question also arises whether or not CSR will be accepted by the private sector if it holds all of these disadvantages? It is submitted that it will, because the disadvantages can be addressed from a legal point of view, but advantages cannot be created where there are none. Fortunately, in this instance the advantages for businesses outweigh the disadvantages. A tax advantage would further the business advantages even more which will be the case if CSR contributions, in general could be tax deductible. Should CSR expenditure be tax deductible, it provides the possibility of strategic benefits to businesses. In the next section the general deduction formula will be discussed, because it is the section that relates to business deductions. This section will then be discussed in the light of the deductibility of CSR contributions and will also shed some light on the #FMF campaign and the help that CSR contributions can provide for universities that will suffer financial problems due to the 0% tuition fees increase for 2016.<sup>142</sup>

#### 4 General deduction formula

##### 4.1 Introduction

Section 11(a) of the *Income Tax Act* is known as the general deduction formula, and states that, in order to determine the

---

140 Department for Business Innovation and Skills 2014  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf).

141 Rondinelli Date unknown  
<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan006231.pdf>.

142 Refer to section 1.1 for an explanation regarding the #FMF campaign and the financial perils that universities may face.

taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived – expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature.

This section provides the requirements for deductions that are of a general nature. From the wording of the section the requirements for a general deduction can be identified as the following:<sup>143</sup>

- the carrying on of a trade;
- expenditure and losses;
- that were actually incurred;
- during the current year of assessment;
- in the production of income; and that are
- not of a capital nature.

Each of these requirements will be discussed individually in this section, and their applicability to CSR will be highlighted.

#### ***4.2 Carrying on of a trade***

According to section 11(a)<sup>144</sup> a deduction is only permitted should the taxpayer be involved in the carrying on of a trade. Thus, expenditure prior to a trade will not be deductible.<sup>145</sup> It is evident that the definition of trade is very important to assess whether or not an expenditure is deductible.

Trade has a wide definition. Section 1 of the Act<sup>146</sup> describes trade as

---

143 These five requirements are evident from the general deduction formula and are also identified as the requirements that have to be met by Van Zyl "General deductions" 135-164. Van Zyl "General deductions" identifies 'carrying on of a trade' as the most important requirement and states that if there is not a trade, then the other requirements are not even relevant. Van Zyl "General deductions" 136.

144 *Income Tax Act.*

145 Section 11(a) *Income Tax Act.* See also Van Zyl "General deductions" 137.

146 *Income Tax Act.*

every profession, trade, business, employment, calling, occupation or venture, including the letting of any property and the use of any patent ... or any design ... or any trade mark ... or any copyright ... or any other property of a similar nature.

This wide definition applies only to trade and not yet the "carrying on of a trade". In order to be applicable to the carrying on of a trade requirement, the specific trade and its principle features must be assessed. This is done by asking the following questions:

1. Is the activities of the business continuous?<sup>147</sup>
2. Is the objective of the trade to receive enough income to make a profit?<sup>148</sup>

The continuity and profit requirements are not prerequisites for the carrying on of trade.<sup>149</sup> Rather, all the activities should be considered and assessed as a whole to determine if the requirement for the carrying on of a trade has been met.<sup>150</sup>

The Tax Court has also found that the requirement of carrying on trade involves an active action.<sup>151</sup> Thus, simply waiting for a return on investment (that is not profitable) will not be considered as the carrying on of a trade. The person must actively endeavour to generate profit.

Furthermore, section 23(g)<sup>152</sup> prohibits any deductions that are not incurred for the purposes of trade. It is one of the requirements of the latter mentioned section. Thus, if an expense was not incurred for a trade, then it cannot be deducted. Both these sections support the statement that expenses incurred during the carrying on of a trade are indeed tax deductible.

The moment that a taxpayer carries on a trade, he/she may endeavour to deduct certain specified expenditures by using the general deduction formula.

---

147 If it is indeed, then it is clear that there is a carrying on of a trade.

148 If it is the objective, then it is the carrying on of a trade. These two questions were established by the Tax Court in *ITC 1529* 1992 54 SATC 252 para 6. Hereafter referred to as *ITC 1529*.

149 These two elements do not necessarily have to be present (they are not prerequisites), but the court identified them as questions that may aid in deciding whether 'carrying on of a trade' is indeed present in the case of *ITC 1529*. See also Meyerowitz *Meyerowitz on Income Tax* 11-13. Also refer to *De Beers Holdings (Pty) Ltd v CIR* 1986 1 SA 8 (A) para 27.

150 *Estate G v COT* 1964 2 SA 701 SR para 32.

151 *ITC 1476* 1989 52 SATC 141 T.

152 *Income Tax Act*.

### 4.3 Expenditure and losses

The word 'losses' has not been defined as of yet. However, the court has stated that it has several meanings.<sup>153</sup> The judge did, however, mention that when the term "losses" is used in conjunction with trading operations, it is used to indicate a deprivation of some kind that was suffered by the loser.<sup>154</sup>

The term "expenditure" was thoroughly discussed in 2011. In *CSARS v Labat*<sup>155</sup> the court stated that expenditure refers to an act where funds are spent, or consumption. Therefore, if expenditure is present, there must be a reduction or movement of the assets of the person who is spending the money (even if it is only of a temporary nature).<sup>156</sup>

The difference between expenditure and losses is that expenditure is often made voluntarily while a loss befalls the taxpayer without his/her consent or without choice, however the distinction is not important where it relates to deduction.<sup>157</sup>

Expenditure does not necessarily refer to cash payments and losses – it also includes outlays of amounts that are in other forms.<sup>158</sup> SARS also has a practice where they allow own shares' (that were issued for the services that were rendered) nominal value as a deduction.<sup>159</sup> Expenditure that is not in cash, the cost to the taxpayer will be deductible and where the taxpayer did not previously purchase the asset it is the value that will be

---

153 *Joffe & Co (Pty) Ltd v CIR* 1946 AD 157 13 SATC 354 (hereafter referred to as the Joffe case). The court stated that it was unclear whether or not losses meant something other than expenditure.

154 Joffe case para 360. The court further specifies in this paragraph that losses are in most cases an involuntary deprivation whereas expenditure refers to an intentional payment of an amount of money. The court confirmed this finding in *CIR v Felix Schuh (SA) (Pty) Ltd* 1994 2 SA 801 A.

155 2011 ZASCA 157 para 72. Hereafter the Labat case.

156 Labat case para 76. See also Van Zyl "General deductions" 140 where the author discusses this specific finding of the case.

157 Meyerowitz *Meyerowitz on Income Tax* 11-10.

158 South African Institute of Tax Professionals 2012 <http://www.thesait.org.za/news/104533/Determining-expenditure-actually-incurred-using-the-General-Deduction-Formula.htm>. As long as it has a worth that can be determined in terms of money it can be deductible. Refer to Meyerowitz Meyerowitz on Income Tax 11-10.

159 *ITC 703* 17 SATC 208.

deductible.<sup>160</sup> In the case where the taxpayer creates assets himself/herself, only the cost to the taxpayer will be deductible and not the labour costs.<sup>161</sup>

#### **4.4 That were actually incurred**

Section 11(a) specifically uses the phrase "actually incurred", which broadens the deductibility of certain expenses. 'Incurred' has a wider meaning than "paid". As soon as a liability to pay an expenditure has been incurred, it will be deductible (therefore in this case money that is still owed will also be deductible, because the expense was incurred even though it has not yet been paid).<sup>162</sup> It is not important whether or not the expense was necessary, but merely whether the expense was incurred in the production of income (if the taxpayer runs his/her business inefficiently and makes a loss it does not remove their tax liability and it also does not make the expense non-deductible).<sup>163</sup>

The court also found that for section 11(a) to be applicable, the expense will be deductible during the tax year in which the expense was actually incurred – not during the tax year in which the expense was actually paid.<sup>164</sup>

"Actually incurred" cannot refer to the deduction of provisions for expenditure that are not certain, future expenditure, or expenditure that is less than expected.<sup>165</sup> The Appellate Division went on to explain that expenditure in terms of which a taxpayer "incurred an unconditional legal obligation" during the current assessment year may be deducted from the taxpayer's income in terms of section 11(a).<sup>166</sup> Therefore, if a legal obligation to pay an expense occurred, then the expense was actually incurred and it can be deducted. Expenditure will only be deductible where it was incurred in the

---

160 Meyerowitz *Meyerowitz on Income Tax* 11-10.

161 Meyerowitz *Meyerowitz on Income Tax* 11-10.

162 Van Zyl "General deductions" 140. Therefore it is clear that actual payment is not essential for the requirement of actually incurred to have been met. See also Hamel *et al Tax Workbook* 126.

163 Meyerowitz *Meyerowitz on Income Tax* 11-10. See also *Port Elizabeth Electric Tramway Company Ltd v CIR* 8 SATC 13 para 243. Hereafter referred to as the PE Tramway case.

164 *Caltex Oil (SA) Ltd v SIR* 1975 37 SATC 1 para 12.

165 Hamel *et al Tax Workbook* 126. See also Van Zyl "General deductions" 140.

166 *Edgars Stores Ltd v CIR* 1988 3 SA 876 A para 5.



production of income (this means in the production of income that is subject to tax) and where the monies were expended to carry on a trade.<sup>167</sup>

#### **4.5 During the current year of assessment**

It is evident that section 11(a) does not specifically mention this requirement, but court cases have specifically held that expenditure will only be deductible where it was incurred in the current year of assessment, i.e. during the year that the transaction was made.<sup>168</sup>

This simply implies that expenditure cannot be carried over to the succeeding or the preceding year to be deducted. Therefore expenditure that was incurred during the specific year, should be calculated and accounted for at the end of that year.<sup>169</sup>

There is, however, an exclusion to this rule. The provisions of section 23H<sup>170</sup> state that there are instances where expenses incurred in a preceding year, may be deducted during the current year of assessment.<sup>171</sup>

#### **4.6 In the production of income**

Only expenditure and losses that were incurred in the production of income will be deductible during the year of assessment. Income is defined in terms of section 1.<sup>172</sup>

There have been many court cases considering whether certain expenses have been incurred in the production of income. In one such case the court formulated a test to determine whether it has been incurred in the production of income. In the *PE Tramway* case, the court stated that the cause of the expense first had to be determined. After this it must be determined whether the expense was necessary or whether there was a certain level of risk attached to the expense. Therefore, the test determines that the expenses must be linked to the income gained in such a close

---

167 Meyerowitz *Meyerowitz on Income Tax* 11-13. Both of these requirements have to be met.

168 *Concentra (Pty) Ltd v CIR* 1942 CPD 509 12 SATC 95 para 7.

169 Van Zyl "General deductions" 142.

170 *Income Tax Act*.

171 See section 23H of the *Income Tax Act* for such exclusions. For the purposes of this discussion, they are not important and will thusly not be mentioned further.

172 Section 1 of the *Income Tax Act* which states that income is the exempt income deducted from the gross income.

manner that it may be considered part of the cost.<sup>173</sup> This applies to expenses incurred for business performance.

It is important to determine whether or not expenditure was incurred in the production of income. To determine this, two questions must be asked. What action caused the expenditure? Is this action closely linked to the income-earning ability? Should the answer to the second question be 'yes', the expenditure will be incurred in the production of income, and will therefore be deductible.<sup>174</sup>

Another case added to the principle set out in the *PE Tramway* case. The *Sub-Nigel Ltd v CIR* case<sup>175</sup> states that it is unnecessary to prove that the particular expenditure has an effect on the production of income in the year of assessment.<sup>176</sup> Thus, what has to be proved is not that the expenditure incurred provided the business with greater income, but simply that the expenditure was undergone for the production of income (whether or not such increased income came to be is irrelevant).

The principles as set out in the *PE Tramway* case were confirmed in 2006 in *CSARS v BP South Africa Pty (Ltd)*<sup>177</sup> and it was found that the reason the expense was incurred was important to determine whether the expense was incurred in the production of income.<sup>178</sup>

#### **4.7 Not of a capital nature**

Capital gains do not form part of gross income and as a result, capital expenses do not form part of the requirements of section 11(a) either.<sup>179</sup> In order for an amount to be deductible, the expenditure should not have been of a capital nature.<sup>180</sup>

There are several tests that can determine whether expenses are of a capital nature or not. In the *New State Areas Ltd v CIR*<sup>181</sup> case the business structure test was

---

173 PE Tramway case para 241. See also Van Zyl "General deductions" 143.

174 These two questions are evident from the test that was laid down in the PE Tramway case that was mentioned above.

175 1948 4 SA 580 (A). Hereafter the Sub-Nigel case.

176 Sub-Nigel case para 23.

177 2006 68 SATC 229.

178 *CSARS v BP South Africa (Pty) Ltd* 2006 68 SATC 229 para 6.

179 Hamel *et al Tax Workbook* 131. Also refer to Van Zyl "General deductions" 144.

180 Section 11(a) *Income Tax Act*.

established. This test states that expenses will be of a capital nature when they form part of the costs to begin or improve the income-earning structure.<sup>182</sup> Some of the other tests that are available will be briefly discussed below.

#### *4.7.1 The true nature of the transaction*

The transaction's true nature is a factual question that has to be answered.<sup>183</sup> The reason the expense was incurred is an important factor that also has to be considered. The moment the expense was incurred to procure a capital asset for the business, it is a capital expense.<sup>184</sup>

The court struggled with a test to determine the true nature of an amount. In the *CIR v Pick-n-Pay Employee Share Purchase Trust*<sup>185</sup> case the minority of the judges found that the test to determine the nature of an amount should be an objective one, therefore the facts of each case should be considered to decide whether a business was conducted and whether the amount was then received during the ordinary course of business.<sup>186</sup> If this consideration holds a positive response, then the amount under consideration was not of a capital nature. The majority of the court, however, split the test. They said that it must first be asked whether the tax payer conducted a business (this is an objective test) and next it must be determined whether it was the taxpayer's objective to conduct a business (subjective test).<sup>187</sup> This is an adequate way to determine the true nature of the transaction, but it is submitted that the minority's decision is more applicable to this dissertation and practice.

---

181 1946 14 SATC 155. Hereafter the New State Areas case.

182 New State Areas case para 627.

183 Hamel *et al Tax Workbook* 138.

184 Hamel *et al Tax Workbook* 139. See also Venter "Algemene Aftrekkingsformule" 99-138.

185 54 SATC 271 (hereafter referred to as the Employee Share Trust case).

186 Employee Share Trust case para 56 G-I.

187 Employee Share Trust case para 56 G-G.

#### 4.7.2 Link between the cost and the income-earning activity

The link is an important aspect that should be considered. Expenses that were incurred to start or get hold of an income-earning enterprise are considered capital expenses.<sup>188</sup>

The well-known "fruit tree analogy" can be used for explanatory purposes in this instance. In terms of this analogy an amount is capital in nature if it represents income from the disposal of an asset that is income producing.<sup>189</sup> An amount that represents the fruit of the tree (the income producing asset) will be considered as income.<sup>190</sup> Therefore, capital is the thing that produces income (like a tree produces fruit).<sup>191</sup>

#### 4.7.3 Procurement of a permanent benefit to the business

Was the expense procured in order to purchase something that could be a permanent benefit to the business? If the answer to this question is 'yes', then it is a capital expense.<sup>192</sup>

Another possible test to determine whether a procurement is a permanent benefit to the business is the "fixed versus floating capital" test. In terms of this test an asset is a capital asset if it is not consumed during the production process while producing wealth for the company.<sup>193</sup> Thus, if the asset continuously produces wealth for the company, and is not easily "used-up", then it is a capital asset incurred in terms of a capital expense.

#### 4.7.4 Once-off expenditure

In *Vallambrosa Rubber Company v Farmer*,<sup>194</sup> the court was of the opinion that an income expense will occur repeatedly, while a capital expense will only occur once. It

---

188 Hamel *et al Tax Workbook* 139. See also the case of *CIR v George Forest Timber Co Ltd* 1924 AD 516 1 SATC 20 para 526.

189 This will represent the tree. See TaxStudents 10 March 2015 <http://taxstudents.co.za/second-year-crib-note-capital-in-nature/>.

190 TaxStudents 10 March 2015 <http://taxstudents.co.za/second-year-crib-note-capital-in-nature/>.

191 Making the tree itself the capital asset and the fruit will be income.

192 *British Insulated and Helsby Cables Ltd v Atherton (HM Inspector of Taxes)* 1926 AC 10 TC 155 para 87.

193 Therefore if the asset remains intact while producing income it is capital in nature. See *CIR v George Forest Timber Co Ltd* 1 SATC 20 para 23-24 (hereafter the George Timber case).

194 1910 SC 519 para 5.

seems that this principle has become outdated, but that is not to say that the test has no place in our law.

#### *4.7.5 Capital expenses not deductible in terms of section 11(a)*

Money lent, losses obtained on capital assets of a fixed nature, loss obtained by a tenant on his or her lease termination and losses obtained on shares are all examples of expenses of a capital nature that are not deductible under the general deduction formula.<sup>195</sup>

### **4.8 The deductibility of CSR expenditure**

#### *4.8.1 Introduction*

Participating in CSR incentives can be very advantageous to businesses as well as the public sector. While South Africa does not have legislation in place that commands or regulates CSR programmes, there ought to be some form of business incentive in place to encourage businesses to partake and enter into a CSR "awareness" through CSR projects in order to demonstrate their social responsibilities towards the community.

It is submitted that the required encouragement could come from a tax incentive. In order for an expense to be tax deductible, it has to adhere to the principles of the general deduction formula found in section 11(a) of the *Income Tax Act*. The question beckons, however, whether CSR expenses find themselves in the realm of these principles? The answer to this will be discussed in this section. A discussion regarding SARS rulings regarding CSR as well as the application of the general deduction formula will follow in order to determine the tax deductibility of CSR expenditure.

#### *4.8.2 SARS binding rulings*

Except for the national legislative provisions that provide a definition of CSR in the South African context,<sup>196</sup> SARS has attended to CSR in only one of its Binding Private Rulings (BPR) as well as in a Binding Class Ruling (BCR). SARS enjoys legislative permission and authority to issue these rulings regarding any provisions of any tax

---

195 Van Zyl "General deductions" 146. See also Venter "Algemene Aftrekkingsformule" 99-138.

196 Refer to section 2.4 for the definitions in the South African context.

act.<sup>197</sup> The purpose of these rulings issued by SARS is to provide clarity to the public on issues that may confuse or mislead them.<sup>198</sup> It offers certainty where a tax act and its application is concerned.<sup>199</sup> BCR 2 indicated that CSR expenditure would be deductible<sup>200</sup> while BPR 113 indicated that expenditure that can be linked to B-BBEE is deductible.<sup>201</sup>

BCR 2 was issued for South African resident holding companies and the subsidiaries of these companies.<sup>202</sup> The applicant holding company wished to meet their BEE requirements through SED by means of educational assistance in the form of bursaries.<sup>203</sup> SARS held that the expenses in terms of the CSI programme will be deductible (as requested by the applicant) if it was used for the purpose of the company's BEE rating and if the expenditure in terms of the CSI programme was incurred in the carrying on of a trade. SARS allowed the deduction of CSR expenditure as long as it is incurred in terms of a company's BEE ratings, but social development does not only apply to the BEE ratings. There are many projects that can add to social development and therefore all of these programs ought to be tax deductible to some extent.<sup>204</sup>

It is evident (from the rulings that were in place as well as the national CSR definitions that are available) that South Africa has considered CSR on various levels, and as a result the question is why are we still struggling to implement legislation that makes CSR and all its possible advantages a reality? BPR 113 has even associated CSR

---

197 S 77 *Tax Administration Act* 28 of 2011 (hereafter referred to as the *Tax Administration Act*).

198 SARS Date Unknown <http://www.sars.gov.za/Legal/Interpretation-Rulings/Published-Binding-Rulings/Binding-Private-Rulings/Pages/default.aspx>.

199 S 76 *Tax Administration Act*.

200 Of course this specific issue related to bursary payments, but it still indicates that South Africa has issued and enjoyed the possibility of CSR in the past. Unfortunately this BCR is no longer in effect (the period that allowed for these deductions ended 27 August 2013). See SARS 2008 <http://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntR-R-BCR-2008-11%20%20BCR2%20Deduction%20of%20a%20bursary%20payment.pdf>. See also Cliffe Dekker Hofmeyer 2014 [https://www.saica.co.za/Integritax/2014/2299.\\_Empowerment\\_costs.htm](https://www.saica.co.za/Integritax/2014/2299._Empowerment_costs.htm).

201 SARS 2013 <http://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntR-R-BPR-2013-11%20%20BCR2%20Deduction%20of%20expenditure%20broad%20based%20BEE.pdf>. Also refer to Cliffe Dekker Hofmeyer 2014 [https://www.saica.co.za/Integritax/2014/2299.\\_Empowerment\\_costs.htm](https://www.saica.co.za/Integritax/2014/2299._Empowerment_costs.htm) for a discussion of this BPR.

202 SARS 2009 <http://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntR-R-BCR-2012-02%20-%20Expenditure%20Corporate%20Social%20Investment%20Programmes.pdf>.

203 SARS 2009 <http://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntR-R-BCR-2012-02%20-%20Expenditure%20Corporate%20Social%20Investment%20Programmes.pdf>.

204 SARS issued the ruling according to section 76R of the *Income Tax Act*.

deductibility with the *Codes of good practice*, when a multinational company enquired from SARS if they could use their CSR expenses in other countries as part of their SED points in terms of the *Generic scorecard*,<sup>205</sup> but we continue to ignore its place in South African law.

Furthermore, the *Income Tax Act* also provides for the possible deduction of CSR outside of the general deduction formula following expenditure associated with indirect BEE.<sup>206</sup> Section 12H provides that "learnership allowances" are deductible.<sup>207</sup> Training allowances are also deductible.<sup>208</sup> The introduction of BEE actually opened the door to many philanthropic donations that offer tax, as well as business advantages to businesses. Even the court has addressed the issue of pure philanthropic donations that are not deductible.

With all of these educational or training programmes that are deductible, or that enjoy the advantage of higher BEE points, the background for educational help through CSR is already set. Therefore, there should not be a problem to allow businesses to provide students with bursaries with the added benefit of deducting it from their tax liabilities when they give a helping hand in the financial turmoil that is the #FMF campaign.

#### 4.8.3 Case law

In *CIR v Pick 'n Pay Wholesalers (Pty) Ltd*<sup>209</sup> the court found that expenditure that was incurred for general philanthropic purposes is not incurred in the carrying on of a trade and therefore these expenditures are not deductible under section 11(a) of the *Income Tax Act*. During 2003, the court took a different approach and dealt with CSR

---

205 And SARS allowed these deductions in terms of section 11(a) and section 23 of the *Income Tax Act*.

206 See section 4 for a discussion of the general deduction formula found in section 11(a) of the *Income Tax Act*.

207 *Income Tax Act*. This section includes payments made to educate black people in South Africa, thus such payments will be tax deductible in terms of the *Income Tax Act*.

208 Section 12I of the *Income Tax Act* provides that expenditure incurred to train black persons in South Africa will be deductible.

209 1987 49 SATC 132 para G12.

deductibility. The court found that CSR expenditure that was incurred was indeed deductible.<sup>210</sup>

In the *Lambert* case the court had to consider the deductibility of CSR incurred by a US subsidiary company. The company adhered to the *Sullivan Code*<sup>211</sup> which is similar to the empowerment principles in South Africa. The court held that the expenses that were incurred by the subsidiary company were deductible, because the CSR expenses reduced the taxpayer's risk of losing its subsidiary status.<sup>212</sup> Losing its status as subsidiary company could entail the loss of trade advantages, and therefore the CSR expenses were incurred *bona fide* for the company's income earning activities.<sup>213</sup> Furthermore it was held that the CSR expenses were incurred to protect the income and thus it was not of a capital nature.<sup>214</sup> The court in this case held that where a new asset was not obtained (for trading operations) the expenditure in question will almost certainly be of a revenue nature.<sup>215</sup> The money was spent to protect the taxpayer's income, because if the business did not adhere to the *Sullivan Code*, the parent US company would probably close their South African company (like it was done with Kodak) or sell it (like in the case of Mobil Oil).<sup>216</sup> Thus, to protect its business (and with it its income) the South African company had to adhere to the *Sullivan Code* and spend money on social responsibility expenses. For these reasons the CSR expenses were deductible.

In terms of SARS rulings and case law it would seem that the courts (and the National Revenue) favour the idea that CSR expenditure should be deductible. The question now remains whether or not it is deductible in term of the current law.

---

210 *Warner Lambert SA (Pty) Ltd v CSARS* 2003 65 SATC 346 para 87. Hereafter referred to as the Lambert case.

211 The Sullivan Code provided for non-segregation (of races) in the workplace, as well as equal employment, equal pay, development training, etc. See the facts of the Lambert case.

212 Lambert case para 14. The court used the idea of paying insurance premiums in order to insure yourself against unforeseen risks to describe their decision. Accordingly the court held that the CSR expenditure insured the company against the risk of losing its status as a subsidiary. See Lambert case para 17.

213 Lambert case para 16.

214 Like the court a quo held. Lambert case para 18.

215 Lambert case para 17.

216 Lambert case para 5.



#### 4.8.4 Application of the general deduction formula on CSR expenditure

The *Lambert* case evidently adhered to the conditions of the general deduction formula, because (as a subsidiary company that might lose its operating license) it was incurred in the carrying on of a trade (seeing as the company may have lost its trade license if it did not partake in CSR programmes as prescribed by the holding company in the USA).

Apart from the court decisions that allowed the deduction of CSR expenditure, the general deduction formula also allows for CSR deductions as long as these deductions fall within the principles set out in section 11(a) of the *Income Tax Act*.<sup>217</sup> The problem arises with the "carrying on of a trade requirement", because the question is whether or not a South African company carries on a trade if it participates in CSR programmes? According to BCR 2, a company carries on a trade when it participates in CSR programmes that involve bursaries to students, or employees, to further their skills. This is because it can be argued that a company carries on a trade by insuring its future existence through insuring it has skilled employees (when offering the bursaries), but other forms of CSR (such as sponsoring T-shirts to an underprivileged soccer team) probably does not constitute the carrying on of a trade.

The BCR pertaining to CSI programmes is no longer in effect, and the question is whether similar CSR expenses can still be considered deductible? If we refer back to the #FMF campaign that serves as our case study, we can measure it against the requirements of the general deduction formula in order to determine whether or not it is deductible. Assuming that company ABC (an accounting company) offers bursaries to accounting students with the condition that upon the completion of their degree they should work for the company for a certain period of time, it should be asked whether this is in the carrying on of a trade? Accounting is a profession, therefore it adheres to the definition of "trade". The next question is whether it forms part of the carrying on of a trade?<sup>218</sup> It does not, because the business does not necessarily provide bursaries

---

217 The deductibility of CSR in accordance with section 11(a) will be discussed in section 5.1 and will be applied to the example of the #FMF campaign.

218 This should be answered by answering the two questions pertaining to business continuity (carrying on a trade continuously): Is the activities of the business continuous? Is the objective of the trade to receive income to make a profit? Should the company continuously offer bursaries (maybe on a yearly basis) it is continuous, but skilled employees do not ensure continuity, because

on a continuous basis to train more professionals in the field. The next requirement is if expenditure or losses were incurred? The company voluntarily made payments in the form of bursaries, thus an expense was incurred.<sup>219</sup> Was it incurred during the current year of assessment? If the definition of "current year of assessment" was to be interpreted in a strict and pedantic manner, then the answer would be no it was not incurred during the current year of assessment. This is because the bursaries were offered at the start of the student's university degree, but the student will only work for the company (and generate income) after the completion of the degree, which is three or four years later. Thus, it was not incurred in the current year of assessment. It has already been stated that it is not a necessary requirement that income should be incurred during the current year of assessment,<sup>220</sup> but for the purposes of this test against the general deduction formula, the definitions of the requirements are strictly interpreted. The *Income Tax Act* in section 18A together with Part II of the *Ninth Schedule*<sup>221</sup> also provides for the possibility that donations to a university would be deductible. This is in fact the case, but for the possibility of a new framework providing for CSR, these sections are not considered and the example is tested against the requirements of the general deduction formula and alternatively the proposed CSR requirements. Was it incurred in the production of income? No, because not only does the bursary not generate income in the same year as the expense was incurred, but the human factor is also too unpredictable. Providing person X with a bursary on the condition that he or she works for your business after completion of their degree, does not guarantee that X will work for your business. Another business could buy out or take over, the bursary obligation that X has toward company ABC. Therefore, you are not guaranteed to have the services of student X to generate an income for your

---

human effort does not determine or ensure that a business enjoys a prolonged existence. A business may fail due to many reasons and skilled employees cannot be held to efficiently ensure that this does not occur. Skilled employees, however, offer better chances at higher profits. The answer to the first question, however, was negative, which means that it does not constitute the carrying on of a trade.

219 This also answers the question whether an expense was actually incurred, because the company has a liability to pay the educational institution for the skills it offers to the students or employees.

220 See paragraph 4.6 and the Sub-Nigel case in this regard.

221 *Income Tax Act*.

business. Held against the test that was determined in the *PE Tramway* case<sup>222</sup> the business provides money to train accountants. It is an accountant's profession to serve the clients and earn money. If there were no accountants at the accounting company, it would not have an income. The business is paying to train the individuals that will earn profits for the business, but the business is not guaranteed the trained workforce it pays for. Thus, the expense and the income are not very closely linked.

Lastly, it is asked whether or not bursaries to students or employees are of a capital nature? It is not of a capital nature. The *New State Areas* case<sup>223</sup> constructed the business structure test that states that expenses will have a capital nature when it was incurred to begin or improve the income-earning structure. In this case paying to train accounting professionals does not start a business, but it does improve the income-earning ability (when the individual whose training you paid for earns income for your business). Therefore, strictly speaking, the bursary program of ABC fails to adhere to the requirements of the general deduction formula. The bursary expense is not incurred in the carrying on of a trade, it is not incurred in the current year of assessment and it is not incurred in the production of income.

SARS Interpretation Note 66,<sup>224</sup> however, provides that bona fide bursaries to employees are generally deductible, but it is subject to certain conditions. This was done specifically to provide businesses with the opportunity to do some good and help the underprivileged to obtain skills. Thus, with the Interpretation Note in place it seems unnecessary to further the idea of CSR programmes, but it only makes provision for bursaries and not any other form of SED. It therefore does not encourage the inclusion or advantages of CSR as a whole.

The purpose of this section was to assess whether or not CSR expenditure is tax deductible in terms of the general deduction formula. The #FMF campaign as example was tested against each one of the requirements of the general deduction formula.

---

222 Refer to section 4.6. The test determined that the expenses have to be linked to the income in such a close manner that it is considered as part of the expense.

223 Para 627. Also refer to section 4.7.

224 SARS 2012 [http://c.ymcdn.com/sites/www.thesait.org.za/resource/resmgr/individuals\\_tax/75818\\_interpretation\\_note\\_66.pdf](http://c.ymcdn.com/sites/www.thesait.org.za/resource/resmgr/individuals_tax/75818_interpretation_note_66.pdf).

Based on the assessment it was established that three of the criterion were not met (it was not in the carrying on of a trade, it was not incurred in the current year of assessment and it was not in the production of income). Therefore, the expenditure in the example is not tax deductible, but there is a need for the financial benefit it provides.

The conclusion is that the current legislation must be amended in order to ensure that expenditure as per the example will be tax deductible. This is where the proposal of tax deductible CSR expenses come into play. The deductible amount would, however, have to be regulated and limited in order to better control the regulation of CSR programmes and deductions. A proposal regarding this will be made in section 5. There is a position in the South African law to acknowledge CSR in a formal legislative context and to explain and clarify everything associated with it. There is also a possibility to reconcile CSR with the general deduction formula and to allow CSR expenditure to be tax deductible. The general deduction formula therefore needs to be expanded to include all types of CSR expenditure. This recommendation is made and discussed in the following section of the dissertation.

## **5 Recommendations and conclusion**

### ***5.1 Recommendations***

#### *5.1.1 Introduction*

All of the above will be considered in order to reach the following conclusion – that CSR expenditure of businesses should be tax deductible. A brief reference to some general aspects regarding CSR will be given, but the main focus remains: To what extent, if any, are CSR expenses tax deductible in South Africa in terms of the current legal framework?

### 5.1.2 The BEE-Act

The *BEE-Act* already provides for social development by businesses to some extent,<sup>225</sup> but it does not address the entire area of CSR, nor does it provide sufficient incentive to encourage businesses to take part in CSR activities.

The *Codes of good practice* hold their own advantages for businesses in that businesses can gain points and qualify for government business contracts, but this does not adequately address the concern of CSR, because it does not develop society to the desired extent.<sup>226</sup>

Due to a lack of proper inclusion it is suggested that CSR should not be incorporated into the current BEE legislation, but that CSR should rather enjoy its own specialised legislation. The reason being that contributions to BEE incentives are not mandatory and the *Generic scorecard* allows businesses to be high level contributors without participating in any form of CSR.

It is not suggested that BEE should be removed completely, nor is it suggested that a business should lose its operating license when it does not actively participate in CSR programmes. It is suggested, however, that CSR contributions in terms of the *BEE Act* should be a prerequisite, because the moment businesses are compelled to make CSR contributions, section 11(a) and section 23 of the *Income Tax Act* becomes relevant and allows the possibility of a business income tax deduction.

CSR could be incorporated into the *BEE Act*, or it could be introduced into the legal system by a new Act that specifically addresses the regulation of the topic. It is suggested that CSR in terms of the suggested definition should be incorporated into the *Income Tax Act* (in correlation with section 11(a)) and that a new CSR Act should only play a regulatory role.

---

225 Refer to section 3.1 above in this regard.

226 This is because the sum of the BEE points that are also relevant to CSR is a meagre 30. The rest of the BEE points are made up of other activities that do not fall within the realm of CSR. See section 3.1 for a full discussion of BEE, CSR and the point system through the generic scorecard.

### 5.1.3 *The proposed Corporate Social Responsibility Act*

#### 5.1.3.1 Introduction

In order to properly introduce CSR into the South African legislation, CSR should enjoy its own Act which discusses the criteria that have to be met by businesses when conducting CSR activities, the governing body that will control CSR activities or investigate them if necessary, the consequences of failure to comply, etc.

The proposed act will be an instrument to define and regulate CSR in South Africa. The most important elements of the proposed act will be highlighted briefly.

#### 5.1.3.2 The content of the CSR Act

The Act should explain why the implementation of CSR into national legislation is important and what government aims to gain through its implementation.<sup>227</sup> Furthermore, the Act should clearly define CSR through one adequate and undisputed definition that shows the nature of CSR. One possibility of this definition was already mentioned in section 2 above and would read that CSR is the concept by which a business will obtain ethical, societal, environmental and legal responsibilities towards society with regards to the effect of its activities and while providing a form of benefit to the business in question.<sup>228</sup>

This suggestion, as well as those that follow in this specific section, are only general aspects that the Act has to address. One of the most important goals or aspects of the CSR Act should be the tax deductibility aspect of CSR. In other words, it is most important that CSR expenditure should be tax deductible and this should be clearly envisaged in the suggested CSR Act. Therefore CSR needs to be interpreted in terms of the general deduction formula along with added requirements as deemed necessary to regulate CSR programmes. Therefore, while it was suggested that CSR deductions should enjoy its own section in the *Income Tax Act*, based on the general deduction formula, but with some adjustments (like the expense should be to the benefit of the

---

227 This would be the development of society which is the most important motivation for CSR.

228 Refer to section 2.4.5 where the suggested definition and the motivation behind it are discussed.

business), these requirements need to be explained in a clear manner. In other words, when will CSR expenditure be expenditure that was actually incurred in the production of income, during the current year of assessment, and in the carrying on of a trade without being of a capital nature? Added requirements should also be explained, for example if CSR expenditure should benefit the business, which types of benefits would be accepted, etc.

The scope of the Act would also be very important. This part of the Act would state which businesses would be liable to comply with the Act. It is suggested that the Act should apply to all businesses in South Africa, because it is envisioned that CSR will hold certain benefits for businesses.<sup>229</sup>

The Act should furthermore provide for the establishment of a governing body of CSR that will make sure that the vision of CSR and the Act are upheld in all instances and that would also investigate non-compliance to CSR, etc. This body may be referred to as the Commission on Corporate Social Responsibility and will be the watch dog of CSR in South Africa.<sup>230</sup>

It is also very important that the Act should state the statutory requirements that have to be met. This part of the Act will discuss the measures that businesses have to take to adhere to CSR. The suggested requirements that have to be met are those proposed by Kloppers and Fourie.<sup>231</sup> A business will have to meet these criteria when implementing its CSR programmes.

---

229 The proposed definition of CSR suggests that there must be a benefit to the business (see section 2.4.5). The various benefits that have already been identified (mostly internationally) also apply to businesses that partake in CSR activities (see section 3.2.2).

230 See Kloppers *Improving land reform through CSR* 435, where he also suggests the implementation of a governing body (known as the Commission on CSR) and the responsibilities of the proposed Commission.

231 Refer to section 3.1.3. However there are a few changes. While Kloppers and Fourie suggest eight requirements, less are suggested for adherence in terms of the Act, because only some of them are deemed to be truly important for the nature and advancement of CSR. The suggested requirements are: Is the CSR activity extraneous to the business's regular business activities? Is the CSR programme focused on sustainable development or in assisting development initiatives? Is the CSR programme beneficial to the local community or to society as a whole? Does the programme consider the economic, legal and ethical responsibility of the organisation? Is it strategically aligned with the goals of the organisation? Does it address social and environmental concerns? It is important that the CSR activities of a business should be strategically in line with its

The Act should also discuss the benefit of compliance to CSR programmes, which is the most important aspect of the proposed definition.<sup>232</sup> There are probably many incentives available to Government to encourage adherence to CSR, but a tax incentive is believed to be the most powerful incentive. The tax incentive would entail that a business's contributions to CSR should be tax deductible (perhaps in terms of section 11(a) of the *Income Tax Act*). Section 56(2)(a) of the *Income Tax Act*<sup>233</sup> provides that businesses are allowed to deduct R 10 000 from their taxes if they make casual gifts of a philanthropic nature. The nature of CSR is philanthropic, but through the example of the soccer team's T-shirts<sup>234</sup> it is evident that CSR expenditure can be in the production of income as well. The allowable deductible amount however has to be raised in order to allow an investment advantage for businesses, otherwise businesses will not adhere to their social responsibility, and will not help towards improving society. The amount as it is now is inadequate to provide an incentive to businesses to comply with CSR regulations. Section 11(a)<sup>235</sup> may be used to incorporate possible CSR deductions as well, but in order to avoid confusion, it is suggested a completely separate CSR clause should be added to the *Income Tax Act*, which provides the criteria that have to be met through CSR programmes in order to enjoy a tax benefit. The proposed criteria would mostly be based on the principles of section 11(a) itself.

Regarding the fact that CSR should hold a tax benefit for businesses, it would probably be sensible to consider a possible limit to how much complying businesses may deduct from their taxes. It is proposed that CSR contributions should be limited to 5% of the specific business's annual income in order to prevent possible tax evasion under the guidance of CSR. Therefore, businesses are allowed to make CSR contributions up to the value that is the equivalent of 5% of their annual income and will therefore also be able to deduct 5% of their annual income from taxes. Government may "lose" a certain

---

goals, because this serves as a further incentive to business, since it holds even more benefits to the business if it can link its CSR activities to its business.

232 It is such an important principle, because the aim is to establish an incentive that would encourage businesses to take part in CSR activities, because it will hold some form of gain for them. Adequate adherence to CSR, in turn, benefits Government as well, which no longer bears the burden of social development alone. This is the proposed win-win situation that was discussed in the sections above.

233 Also see section 1.1.

234 Refer to sections 3.2.2.2 and 4.8.

235 Refer to section 4 for the discussion of section 11(a) of the *Income Tax Act*.



amount when it allows this (because it, in fact, means that it is 5% less that Government can tax the business), but it will gain through the input of the money into society.

Lastly, the Act should also mention the penalties that will be applicable for non-compliance with the Act. CSR always used to be voluntary, but by implementing penalties businesses are now compelled to adhere to CSR. The amount that they wish to spend on CSR programmes is still entirely up to them, but it should be considered that a larger amount would hold a greater benefit (in tax deductions). The penalty should be a fine that would be payable to Government (that can then be used for social development).

It is also important to mention that the Act should contain a separation clause that will protect the other sections of the Act and keep them in force when certain sections are found to be unconstitutional or invalid.

#### 5.1.3.3 The flowchart of CSR compliance

From the preceding sections it is evident that there has been reference to CSR expenses in the South African legal system. From a BCR ruling relating to possible CSR deductions to the *BEE Act* that creates an aura of CSR. BCR 2 specifically relates to bursary payments and allowed businesses to deduct the amount they spent on bursaries for students from their tax liability.<sup>236</sup> The *BEE Act* also allows businesses to gain BEE points if they contribute to skills development.<sup>237</sup> Therefore it seems that the need is present to encourage private bursaries from businesses to tertiary education students. If these bursaries were tax deductible it would likely encourage businesses to invest in the education of students and they can use this for investment planning in the long run.<sup>238</sup> Of course the investment planning does not only relate to bursaries.

---

236 Refer to section 4.8 for the discussion of the BCR.

237 Section 3.1 discusses the *BEE Act*. Skills development can also be linked to bursaries for students, because students gain a certain skill set when they study in specific academic areas.

238 This can include not only tax advantages on the long haul, but also educational investments where they can provide bursaries to students who study areas that may be applicable to their everyday business ventures and then return to work for the company once they complete their degree. Frederick (refer to section 1.1) also said that socially responsible businesses have an enlightened self-interest which means that they take a long run view on profits. This emphasises that

Businesses can contribute to various different CSR projects and use their contributions as part of their investment planning if these contributions also hold an advantage to them.<sup>239</sup> Therefore it is suggested that CSR expenditure will be tax deductible to the extent to which it falls within the realm of the proposed definition of CSR<sup>240</sup> as well as the general deduction formula.

It is suggested that businesses use the flowchart on the next page as an easy way to determine whether certain activities will constitute CSR activities and thereby be tax deductible in terms of the proposed *Corporate Social Responsibility Act*.

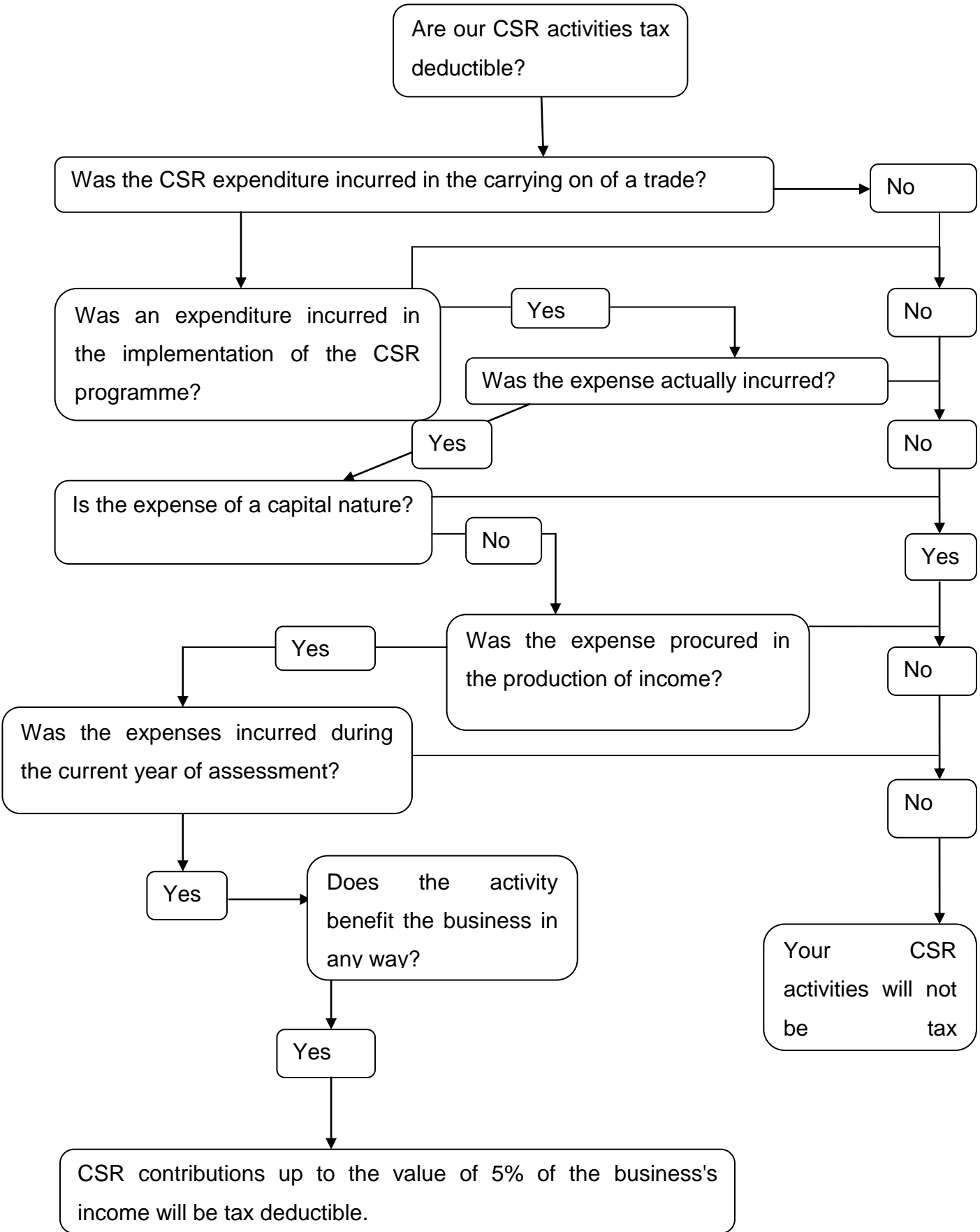
By following this flowchart a business can not only determine whether its activities are tax deductible, but also whether it adheres to the requirements for CSR programmes as set out in the Act. The chart is not only based on the requirements suggested, but also on section 11(a) of the *Income Tax Act* and the requirements set out by the suggested definition of CSR.

---

businesses should and will only partake in CSR incentives if they can see the bigger picture and use it to provide them with future and long-term benefits.

239 These advantages relate to those discussed in section 3.2 and also to the proposed tax advantage that is highlighted in section 5.1.3.2.

240 See section 2.4.6.



The #FMF campaign can be the first incentive for businesses to start investing in CSR initiatives. If private businesses provide bursaries for students, the universities will have an adequate money supply to spend on their own bursary initiatives, therefore it is important to give CSR (and in this case especially CSR with reference to bursaries) some serious consideration. The #FMF campaign will now be interpreted in terms of the proposed flowchart in order to determine whether bursaries to students should be tax deductible (because it is already evident that it falls within the realm of CSR).<sup>241</sup>

1. Was the CSR expenditure incurred in the carrying on of a trade? Yes.
2. Was an expenditure incurred in the implementation of the CSR programme? Yes.
3. Was the expense actually incurred? Yes.
4. Is the expense of a capital nature? No.
5. Was the expense undergone in the production of income? Yes.<sup>242</sup>
6. Was the expenses incurred during the current year of assessment? Yes.
7. Does the activity benefit the business in any way? Yes.<sup>243</sup>

All of the requirements are met, thus bursaries to university students will be a tax deductible CSR activity of up to 5% of the business's annual income.

## **5.2 Conclusion**

CSR is a concept that does not enjoy a single understanding or definition worldwide and it is also new to many countries (South Africa included). CSR used to be done on a completely voluntary, purely philanthropic basis, but after a few economic sectors have realised its usefulness this situation has changed.

Due to the fact that businesses hold corporate power due to their economic activities, they should also be encouraged to act responsibly with their power (in this case by giving some of it back to the community). In section 1 it was stated that Frederick was

---

241 In order to determine whether the CSR programme adheres to the elements of the general deduction formula, refer to the explanation of the principles in section 4.

242 The students may work for the company after completing their degree which brings increases the company's income.

243 The students may be required to sign a contract to work for the company that provides them with a bursary which benefits the company. This is just one example.

of the opinion that "power begets responsibility", and this is the general idea of CSR – the community supports the businesses, and therefore the businesses can be expected to give back to the community in the form of social development. Another reason to prioritise CSR is because some governments can no longer adequately provide for the public (especially developing countries). By partaking in social development programmes, the private sector shares some of the burden that was previously solely on Government.

Various accepted definitions also make CSR research increasingly difficult. Blowfield and Frynas<sup>244</sup> believed that the reason for the abundance of definitions is because CSR is context-based. Votaw supported this notion when he noticed that the meaning of CSR differs from person to person.<sup>245</sup> There are many different definitions available, but it was found that one of the most important definitions is that of the EC as discussed in section 2.2.3.

The 2011 definition provided from the EC is the most general encompassing definition, and reads that CSR is found to be the responsibility that a business has due to its impacts on society. This definition, along with the available definitions in the South African context<sup>246</sup> and some definitions and ideas of CSR provided by international scholars on the matter, was used to formulate a suggested definition of CSR that can be used and applied in South Africa. Section 2 asked: What is the definition of CSR and what is an acceptable definition if the South African context? It was determined that there is no general definition available, because CSR is context-based, but in South Africa CSR could be defined as the concept by which a business obtains ethical, societal, environmental and legal responsibility towards society regarding the effect of its business activities, while holding some form of benefit for the said business.

The idea that CSR must hold a benefit for the said business is very important, because a business cannot be forced to partake in something that it does not benefit from in even a single way. This would not be ethical. The question was also asked as to what

---

244 Blowfield and Frynas 2005 *International Affairs* 502. Context-based suggests that it has different meanings to different people, because all people interpret text differently.

245 Votaw 1972 *California Management Review* 25.

246 Especially found in the King II and King III reports.

the advantages of CSR are. In section 3.2.2 these advantages were explored and discussed and included the following: a license to operate, increased public awareness, increased income and employee retention. It also benefits Government by lightening the SED burden that rests on its shoulders.

South Africa already has some forms of tax benefits available that can be used by businesses to gain a tax benefit through their social projects. Section 56(2)(a) of the *Income Tax Act* provides for a tax deductible amount of up to R 10 000 for philanthropic gifts (those donated by businesses out of the goodness of their hearts) and section 11(a) provides the general deduction formula that can be used to claim back expenditure that was actually incurred during the current year of assessment, in the production of income and that a business has incurred during the carrying on of trade which was not of a capital nature. No set list of allowable deductions is available, therefore each potential deduction needs to be tested against the requirements of the general deduction formula. It was, however, submitted that in addition to the requirements of the general deduction formula, the expense should also be to the benefit of the business that incurred the expense. This could be any of the benefits that CSR provide and that were discussed during this dissertation.

The idea behind these sections is very helpful indeed, but the amount of R 10 000 is inadequate to make a difference in society, and the deductions allowed under section 11(a) are only for business purposes and business improvements. Therefore, the tax deductions that are allowed in South Africa (asked by the second secondary question) are those that adhere to section 11(a), but it ought to include the extra requirement of a benefit to the business, as proposed in section 5. It is evident that new legislation, or a change to current legislation, is needed to incorporate CSR and to allow businesses, as well as society, to gain through CSR programmes (by having their CSR expenditure be tax deductible). This was the third question asked in section 1 and it can be done by using the principles of section 11(a), but then adding a CSR 'twist' to it (as was done in the proposed flowchart which will allow CSR to be deductible in terms of the general deduction formula as well). CSR should be tax deductible in as far as it adheres to the principles of section 11(a) and if it holds a benefit for the business. This is the answer to the primary research question that was thoroughly discussed in section 4.8.

There was a possibility that CSR could be incorporated into the current BEE legislation which also promotes the idea of the social responsibility of businesses, but after a thorough look at the *BEE Act* it became evident that the focus of BEE is more on providing benefits to a race that was previously disadvantaged and less about benefitting society as a whole. It was also found that socially responsible acts in terms of the *BEE Act* are completely voluntary. The problem with this is that the general deduction formula only comes into play the moment that a legal obligation rests on the business and the expense will only then become deductible.

Thus, it was recommended that CSR should enjoy an Act of its own that allows for all the benefits that accompany CSR to businesses and society. The benefits of CSR to businesses do not necessarily have to be of a monetary value. It can be something as simple as increased consumer awareness that captures the attention of more consumers. In the UK, statistical studies found that consumers actually prefer to buy from businesses that partake in CSR rather than from their competitors that do not, even though it may cost them more. This suggests that businesses actually have to partake in CSR programmes (whether they like it or not) in order to stay ahead of or on the same level as their competitors.

Lastly this dissertation suggested that new legislation pertaining specifically to CSR must be implemented in South Africa. This legislation would provide the requirements that a business's CSR programmes have to meet, the penalties payable by those that fail in this regard, a governing body to oversee CSR activities in the country and the tax incentive that has to play the role of encouraging businesses to partake in CSR by being able to enjoy this tax benefit along with many other benefits. The tax benefit suggested was that a limit should be placed on businesses. The limit was 5% of their annual income, therefore a business can make CSR contributions to a maximum amount of 5% of its annual income, through which the same business can then claim this 5% CSR expenditure back from SARS.

Although there is not legislation regarding CSR in SA as of yet, the need for such legislation is certainly there. Along with this need the hope is that CSR will be thoroughly researched, so as to bring it into a South African context, and implemented

into national legislation in order to introduce the win-win aura surrounding CSR (by which businesses gain, society gains and even Government gains) in the country.



## **BIBLIOGRAPHY**

### **Books**

#### **A**

Allouche *Corporate Social Responsibility*

Allouche J *Social Responsibility Volume 1 – Concepts, accountability and reporting*  
(Palgrave Macmillan Hampshire 2006)

#### **B**

Bowen *Social responsibilities of the businessman*

Bowen H *Social responsibilities of the businessman* (Harper & Row New York  
1953)

#### **C**

Crane *et al Corporate Social Responsibility*

Crane A *et al The Oxford Handbook of Corporate Social Responsibility* (Oxford  
University Press Oxford 2008)

Crowter and Aras *Corporate Social Responsibility*

Crowter D and Aras G *Corporate Social Responsibility* (Ventus Publishing ApS  
Copenhagen 2008)

#### **D**

Den Hond, De Bakker and Neergaard *Managing Corporate Social Responsibility*

Den Hond F, De Bakker F and Neergaard P *Managing Corporate Social  
Responsibility in action* (Ashgate Surrey 2007)

#### **E**

EC COM(2001) 366

European Commission *Green Paper – Promoting a European framework for  
corporate social responsibility* (COM (2001) 366) (European Commission Brussels  
2001)

EC COM(2006) 136

European Commission *Implementing the partnership for growth and jobs: Making Europe a pole of excellence on corporate social responsibility* (COM(2006) 136) (European Commission Brussels 2006)

EC COM(2011) 681

European Commission *A renewed EU strategy 2011 -14 for Corporate Social Responsibility* (COM(2011) 681) (European Commission Brussels 2011)

## **F**

Frederick "Theories of corporate social performance"

Frederick W "Theories of corporate social performance" in Sethi S and Falbe M *Business and Society* (Lexington Books Lexington 1987) 144 – 145

## **G**

Grayson and Hodges *Corporate Social Opportunity*

Grayson D and Hodges A *Corporate Social Opportunity! 7 steps to make corporate social responsibility work for your business* (Greenleaf Sheffield 2004)

## **H**

Hamel *et al Tax Workbook*

Hamel EH *et al Tax Workbook* (Butterworths Durban 2006)

## **I**

IoD *King Report on Corporate Governance for South Africa 2002*

Institute of Directors *King Report on Corporate Governance for South Africa 2002* (IoD Parklands 2002)

IoD *King Report on Corporate Governance for South Africa 2009*

Institute of Directors in Southern Africa *King Report on Governance for South Africa – 2009* (IoD Parklands 2009)

ISO *Guidance on Social Responsibility*

International Standards Organisation *Guidance on social responsibility* (ISO Geneva 2010)

## **J**

Jack *The complete guide*

Jack V *Broad-Based BEE - The complete guide* (Frontrunner Publishing Northcliff 2007)

## **K**

Kloppers *Improving land reform through CSR: A legal framework analysis*

Kloppers HJ *Improving land reform through CSR: A legal framework analysis* (LLD-dissertation NWU 2012)

Kotler and Lee *Corporate Social Responsibility*

Kotler P and Lee N *Corporate Social Responsibility: Doing the most good for your company and your cause* (John Wiley & Sons New Jersey 2005)

## **M**

Meyerowitz *Meyerowitz on Income Tax*

Meyerowitz D *Meyerowitz on Income Tax* (The Taxpayer Cape Town 1997)

## **S**

SAGA *Implications for corporate social investment*

South African Grantmakers' Association (SAGA) *The King report 2002: Implications for corporate social investment in South Africa* (SAGA Braamfontein 2002)

## **T**

Thorne, Ferrell and Ferrell *Business and Society*

Thorne D, Ferrell O and Ferrell L *Business and Society – A strategic approach to social responsibility* 3<sup>rd</sup> ed (Houghton Mifflin Company Boston 2008)

## **V**

Van Zyl "General deductions"

Van Zyl L "General deductions" in Stiglingh M (ed) *SILKE: South African Income Tax 2015* (LexisNexis Durban 2014) 135 – 164

Venter "Algemene Aftrekkingsformule"

Venter JMP "Algemene Aftrekkingsformule" in Venter JMP, de Hart KL, Coetzee K and Koekemoer AD *Studentebenadering tot Inkomstebelasting: Natuurlike persone* 2013 (LexisNexis Durban 2012) 99 – 138

## **W**

WBCSD *CSR: Meeting changing expectations*

World Business Council for Sustainable Development *CSR: Meeting changing expectations* (WBCSD Geneva 1999)

Werther and Chandler *Strategic Corporate Social Responsibility*

Werther W and Chandler D *Strategic Corporate Social Responsibility* 2<sup>nd</sup> ed (SAGE Washington DC 2011)

## **Academic Journals**

### **B**

Blowfield and Frynas 2005 *International Affairs*

Blowfield M and Frynas G "Setting new agendas: critical perspectives on Corporate Social Responsibility in the developing world" 2005 *International Affairs* 499 – 513

Barnett 2007 *Academy of Management Review*

Barnett M "Stakeholder influence capacity and the variability of financial returns to Corporate Social Responsibility" 2007 *Academy of Management Review* 794 – 816

### **C**

Carroll 1999 *Business & Society*

Carroll A "Corporate social responsibility – evolution of a definitional construct" 1999 *Business & Society* 268 – 295

Carroll 1979 *Academy of Management Review*

Carroll A "A three-dimensional conceptual model of corporate performance" 1979 *Academy of Management Review* 497 – 505

## **D**

Dahlsrud 2008 *Corporate Social Responsibility and Environmental Management*

Dahlsrud A "How corporate social responsibility is defined: an analysis of 37 definitions" 2008 *Corporate Social Responsibility and Environmental Management* 1 – 13

Davis 1960 *California Management Review*

Davis K "Can business afford to ignore social responsibilities?" 1960 *California Management Review* 70 – 76

Davis 1967 *Business Horizons*

Davis K "Understanding the social responsibility puzzle" 1967 *Business Horizons* 45 – 50

Davis 1973 *Academy of Management Review*

Davis K "The case for and against business assumption of social responsibilities" 1973 *Academy of Management Review* 312 – 322

## **E**

Esser and Dekker 2008 *Journal of International Commercial Law and Technology*

Esser I and Dekker A "The dynamics of corporate governance in South Africa: Broad Based Black Economic Empowerment and the enhancement of good corporate governance principles" 2008 *Journal of International Commercial Law and Technology* 157 – 169

## **F**

Fig 2005 *International Affairs*

Fig D "Manufacturing amnesia: Corporate Social Responsibility in South Africa" 2005 *International Affairs* 599 – 617

Frederick 1960 *California Management Review*

Frederick W "The growing concern over business responsibility" 1960 *California Management Review* 54 – 61

Frederick 1994 *Business & Society*

Frederick W "From CSR<sub>1</sub> to CSR<sub>2</sub> – The maturing of business-and-society thought" 1994 *Business & Society* 150 – 164

## **G**

Ghoul, Guedhami, Kwok and Mishra 2010 *Journal of Banking & Finance*

Ghoul SE, Guedhami O, Kwok CCY and Mishra DR "Does corporate social responsibility affect the cost of capital?" 2010 *Journal of Banking & Finance* 2388 – 2406

## **H**

Harmann and Acutt 2003 *Development Southern Africa*

Hamann R "Mining companies' role in sustainable development: the 'why' and 'how' of corporate social responsibility from a business perspective" 2003 *Development Southern Africa* 237 – 254

Husted, Allen and Kock 2012 *Business & Society*

Husted BW, Allen DB and Kock N "Value Creation Through Social Strategy" 2012 *Business & Society* 115 – 132

## **K**

Kitchin 2003 *Journal of Brand Management*

Kitchin T "Corporate social responsibility: A brand explanation" 2003 *Journal of Brand Management* 312 – 326

Kloppers and Fourie 2014 *African Journal of Agricultural Research*

Kloppers EM and Fourie LM "Defining corporate social responsibility in the South African agricultural sector" 2014 *African Journal of Agricultural Research* 3418 – 3426

## **L**

Lantos 2001 *Journal of Consumer Marketing*

Lantos G "The boundaries of strategic corporate social responsibility" 2001 *Journal of Consumer Marketing* 595 – 630

Lantos 2003 *Journal of Consumer Marketing*

Lantos G "The ethicality of altruistic corporate social responsibility" 2003 *Journal of Consumer Marketing* 205 – 230

## **M**

McGrath and Akojee 2009 *International Journal of Educational Development*

McGrath S and Akojee S "Vocational education and training for sustainability in South Africa: The role of public and private provision" 2009 *International Journal of Educational Development* 149 – 156

McWilliams and Siegel 2001 *Academy of Management Review*

McWilliams A and Siegel D "Corporate social responsibility: A theory of the firm perspective" 2001 *Academy of Management Review* 117 – 127

Muller 1999 *Business Week*

Muller J "Ford: The high cost of harassment" 1999 *Business Week* 94 – 96

## **P**

Porter and Kramer 2006 *Harvard Business Review*

Porter M and Kramer M "Strategy and society: The link between competitive advantage and Corporate Social Responsibility" 2006 *Harvard Business Review* 78 – 92

Prieto-Carron *et al* 2006 *International Affairs*

Prieto-Carrón M *et al* "Critical perspectives on CSR and development: What we know, what we don't know, and what we need to know" 2006 *International Affairs* 977 – 987

## **S**

Schwartz and Carroll 2003 *Business Ethics Quarterly*

Schwartz M and Carroll A "Corporate social responsibility: A three domain approach" 2003 *Business Ethics Quarterly* 503 – 530

Servaes and Tamayo 2013 *Management Science*

Servaes H and Tamayo A "The Impact of Corporate Social Responsibility on Firm Value: The Role of Customer Awareness" 2013 *Management Science* 1045 – 1061

Siegel and Vitaliano 2007 *Journal of Economics and Management Strategy*

Siegel D and Vitaliano D "An empirical analysis of the strategic use of corporate social responsibility" 2007 *Journal of Economics and Management Strategy* 773 – 792

## **U**

Utting 2003 *Global Future*

Utting P "Promoting development through Corporate Social Responsibility – Does it work?" 2003 *Global Future* 11 – 13

## **V**

Votaw 1972 *California Management Review*

Votaw D "Genius became rare: A comment on the doctrine of social responsibility Part 1" 1972 *California Management Review* 25 – 31

## **W**

Waddock 2004 *Business and Society Review*

Waddock S "Parallel universes: Companies, academics and the progress of corporate citizenship" 2004 *Business and Society Review* 5 – 42

Weber 2008 *European Management Journal*

Weber M "The business case for corporate social responsibility: A company-level measurement approach for CSR" 2008 *European Management Journal* 247 – 261

Windsor 2001 *International Journal of Organisational Analysis*



Windsor D "The future of corporate social responsibility" 2001 *The International Journal of Organisational Analysis* 225 – 256

## **Case Law**

*British Insulated and Helsby Cables Ltd v Atherton (HM Inspector of Taxes)* 1926 AC 10 TC 155

*Caltex Oil (SA) Ltd v SIR* 1975 37 SATC 1

*CIR v Felix Schuh (SA) (Pty) Ltd* 1994 2 SA 801 A

*CIR v George Forest Timber Co Ltd* 1924 AD 516 1 SATC 20

*CIR v Pick-n-Pay Employee Share Purchase Trust* 54 SATC 271

*CIR v Pick 'n Pay Wholesalers (Pty) Ltd* 1987 49 SATC 132

*Concentra (Pty) Ltd v CIR* 1942 CPD 509 12 SATC 95

*CSARS v BP South Africa Pty (Ltd)* 2006 68 SATC 229

*CSARS v Labat* 2011 ZASCA 157

*De Beers Holdings (Pty) Ltd v CIR* 1986 1 SA 8 (A)

*Edgars Stores Ltd v CIR* 1988 3 SA 876 A

*Estate G v COT* 1964 2 SA 701 SR

*ITC 703* 17 SATC 208

*ITC 1476* 1989 52 SATC 141 T

*ITC 1529* 1992 54 SATC 252

*Joffe & Co (Pty) Ltd v CIR* 1946 AD 157 13 SATC 354

*New State Areas Ltd v CIR* 1946 14 SATC 155

*Port Elizabeth Electric Tramway Company Ltd v CIR* 8 SATC 13

*Sub-Nigel Ltd v CIR* 1948 4 SA 580 (A)

*Vallambrosa Rubber Company v Farmer* 1910 SC 519

*Warner Lambert SA (Pty) Ltd v CSARS* 2003 65 SATC 346

## **Legislation**

*Black Economic Empowerment Act* 53 of 2003

*Constitution of the Republic of South Africa, 1996*

*Income Tax Act 58 of 1962*

*Skills Development Act 97 of 1998*

*Skills Development Levies Act 9 of 1999*

*Tax Administration Act 28 of 2011*

### **Government publications**

General Notice 1019 in *Government Gazette* 36928 of 11 October 2013

General Notice 876 in *Government Gazette* 38076 of 10 October 2014

### **Internet sources**

Buckingham, Gregory and Whittaker 2011 [http://businessschool.](http://businessschool.exeter.ac.uk/documents/papers/finance/2011/1107.pdf)

[exeter.ac.uk/documents/papers/finance/2011/1107.pdf](http://businessschool.exeter.ac.uk/documents/papers/finance/2011/1107.pdf)

Buckingham G, Gregory A and Whittaker J 2011 *Do Markets Value Corporate Social Responsibility in the United Kingdom?* <http://businessschool.exeter.ac.uk/documents/papers/finance/2011/1107.pdf> accessed 24 February 2015

Cliffe Dekker Hofmeyer 2014 <https://www.saica.co.za/Integritax/2014/2299.Empowermentcosts.htm>

Cliffe Dekker Hofmeyer 2014 *Empowerment costs* <https://www.saica.co.za/Integritax/2014/2299.Empowermentcosts.htm> accessed 14 May 2015

Conway-Smith 2015 <http://www.pri.org/stories/2015-10-22/echoes-1976-south-african-studentsdemand-fees-must-fall>

Conway-Smith E 2015 *Update: After massive protests, South Africa freezes tuition fees* <http://www.pri.org/stories/2015-10-22/echoes-1976-south-african-studentsdemand-fees-must-fall> accessed 26 November 2015

Department for Business Innovation and Skills 2014 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf)

Department for Business Innovation and Skills 2014 *Good for Business and Society*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf) accessed 23 February 2015

Ernst and Young 2011 [https://www.saica.co.za/integritax/2011/1916.%C2%A0Corporate\\_social\\_responsibility\\_expenditure.htm](https://www.saica.co.za/integritax/2011/1916.%C2%A0Corporate_social_responsibility_expenditure.htm)

Ernst and Young 2011 *Corporate social responsibility expenditure*  
[https://www.saica.co.za/integritax/2011/1916%C2%A0Corporate\\_social\\_responsibility\\_expenditure.htm](https://www.saica.co.za/integritax/2011/1916%C2%A0Corporate_social_responsibility_expenditure.htm) accessed 18 November 2015

Hopkins 2004 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1723126](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1723126)

Hopkins M 2004 *The Market Value of CSR*  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1723126](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1723126) accessed 18 September 2015

ISO Date unknown <http://www.iso.org/iso/about.htm>

International Organisation for Standardisation Date unknown *About ISO*  
<http://www.iso.org/iso/about.htm> accessed 24 April 2015

Mazurkiewicz 2004 <http://siteresources.worldbank.org/EXTDEVCOMMENG/Resources/csrframework.pdf>

Mazurkiewicz P 2004 *Corporate environmental responsibility: Is a common CSR framework possible?* <http://siteresources.worldbank.org/EXTDEVCOMMENG/Resources/csrframework.pdf> accessed 20 September 2015

Parijat and Bagga 2014 <http://natlex.ilo.ch/wcmsp5/groups/public/dgreports/integration/documents/publication/wcms079130.pdf>

Parijat P and Bagga S 2014 *Corporate Social Responsibility*  
<http://natlex.ilo.ch/wcmsp5/groups/public/dgreports/integration/documents/publication/wcms079130.pdf> accessed 24 February 2015

Rondinelli Date unknown <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan006231.pdf>

Rondinelli DA Date unknown *Partnering for Development: Government-Private Sector Cooperation in Service Provision*  
<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan006231.pdf>  
accessed 12 October 2015

South African Institute of Tax Professionals 2012 <http://www.thesait.org.za/news/104533/Determining-expenditure-actually-incurred-using-the-General-Deduction-Formula.htm>

South African Institute of Tax Professionals 2012 *Determining expenditure actually incurred using the General Deduction Formula*  
<http://www.thesait.org.za/news/104533/Determining-expenditure-actually-incurred-using-the-General-Deduction-Formula.htm> accessed 16 November 2015

South African Revenue Service Date Unknown <http://www.sars.gov.za/Legal/Interpretation-Rulings/Published-BindingRulings/Binding-PrivateRulings/Pages/default.aspx>

SARS Date unknown *Binding Private Rulings*  
<http://www.sars.gov.za/Legal/Interpretation-Rulings/Published-BindingRulings/Binding-Private-Rulings/Pages/default.aspx> accessed 24 September 2015

South African Revenue Service 2008 <http://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntR-R-BCR-200811%20%20BCR2%20Deduction%20of%20a%20bursary%20payment.pdf>

SARS 2008 *Binding Class Ruling 2* <http://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntR-R-BCR-200811%20%20BCR2%20Deduction%20of%20a%20bursary%20payment.pdf> accessed 24 September 2015

South African Revenue Service 2013 <http://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntR-R-BPR-201311%20%20BCR2%20Deduction%20of%20expenditure%20broad%20based%20BEE.pdf>

SARS 2013 *Binding Private Ruling 113* <http://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntR-R-BPR-201311%20%20BCR2%20Deduction%20of%20expenditure%20broad%20based%20BEE.pdf> accessed 14 May 2015

South African Revenue Service 2009 <http://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntRR-BCR-2012-02%20%20Expenditure%20Corporate%20Social%20Investment%20Programmes.pdf>

SARS	2009	<i>Binding</i>	<i>Class</i>	<i>Ruling</i>
<a href="http://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntRRBCR201202%20%20Expenditure%20Corporate%20Social%20Investment%20Programmes.pdf">http://www.sars.gov.za/AllDocs/LegalDoclib/Rulings/LAPD-IntRRBCR201202%20%20Expenditure%20Corporate%20Social%20Investment%20Programmes.pdf</a> accessed 14 May 2015				

South African Revenue Service 2012 <http://c.ymcdn.com/sites/www.thesait.org.za/resource/resmgr/individualstax/75818interpretationnote66.pdf>

SARS 2012 *Interpretation Note 66* <http://c.ymcdn.com/sites/www.thesait.org.za/resource/resmgr/individualstax/75818interpretationnote66.pdf> accessed 24 September 2015

TaxStudents 2015 <http://taxstudents.co.za/second-year-crib-note-capital-in-nature/>

TaxStudents 2015 *Capital in Nature* <http://taxstudents.co.za/second-year-crib-note-capital-in-nature/> accessed 28 November 2015

WBCSD Date unknown <http://www.wbcds.org/templates/TemplateWBCSD5/layout.asp?type=p&MenuId=NjA&doOpen=1&ClickMenu=LeftMenu>

World Business Council for Sustainable Development Date unknown *About the WBCSD* <http://www.wbcds.org/templates/TemplateWBCSD5/layout.asp?type=p&MenuId=NjA&doOpen=1&ClickMenu=LeftMenu> accessed 31 March 2015

World Bank 2003 [http://info.worldbank.org/etools/docs/library/57434/  
publicpolicyconference.pdf](http://info.worldbank.org/etools/docs/library/57434/publicpolicyconference.pdf)

World Bank 2003 *Public Policy for CSR*

<http://info.worldbank.org/etools/docs/library/57434/publicpolicyconference.pdf>

accessed 21 April 2015