ILLICIT TRANSFERS AND TAX REFORMS IN SOUTH AFRICA:

Mapping of the Literature and Synthesis of the Evidence

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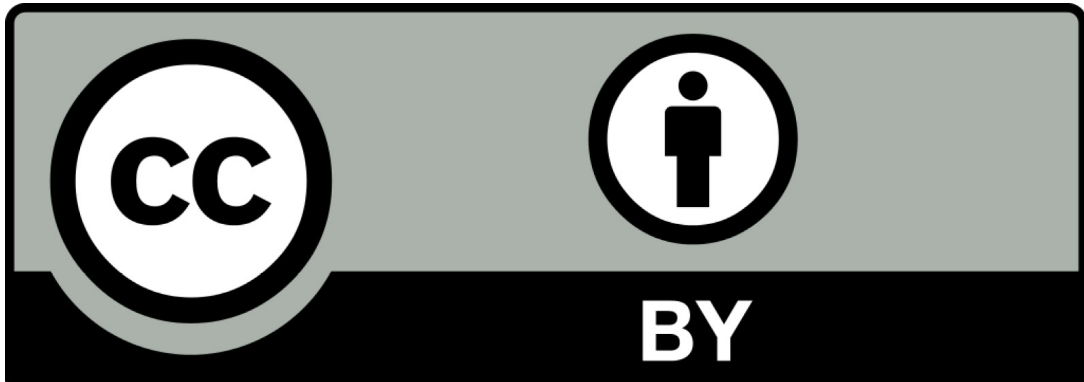

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Acronyms

AIDC	-	Alternative Information & Development Centre
ANC	-	African National Congress
AU	-	African Union
BEPS	-	Base Erosion Profit Shifting
DRC	-	Democratic Republic of Congo
DTC	-	Davis Tax Committee
FICA	-	Financial Intelligence Centre Act
FinSurv	-	Financial Surveillance Department of the Reserve Bank of South Africa
G20	-	Group of 20 Countries
GDP	-	Gross Domestic Product
GEIS	-	General Export Incentive Scheme
GFI	-	Global Financial Integrity
HNWI	-	High Net Worth Individuals
IFFs	-	Illicit Financial Flows
MNCs	-	Multinational Corporations
MPRDA	-	Mineral and Petroleum Resources Development Act 28 of 2002
MPRRA	-	Mineral and Petroleum Resources Royalty Act 28 of 2008
OECD	-	Organisation for Economic Co-operation and Development
PWC	-	Price Waterhouse Coopers
PFMA	-	Public Finance Management Act
RSA	-	Republic of South Africa
SACU	-	Southern Africa Customs Union
SAPS	-	South African Police Services
SARB	-	South African Reserve Bank
SARS	-	South African Revenue Services
UNDP	-	United Nations Development Programme
UNECA	-	United Nations Economic Commission for Africa

Executive Summary

The net outflow paid to owners of foreign capital reached R174 billion (US$11.9 billion) in the first quarter of 2016 alone

There is mounting evidence demonstrating that massive amounts of revenue are transferred from South Africa and other developing countries annually in ways that significantly deprive the national revenue authorities of resources that could be used to improve local livelihoods. For instance, a synthesis of the evidence by Honest Accounts (2017) reveals that foreign corporations have been drawing away profits from South Africa far faster than they were reinvesting or than local firms were bringing home.

The net outflow paid to owners of foreign capital reached R174 billion (US$11.9 billion) in the first quarter of 2016 alone. The paradox of South Africa's considerable reserves of natural resources on the one hand, and the pervasive poverty of its people on the other hand, remains a deep feature of its economic landscape that partly demonstrates the impact of illicit transfers (see UNECA, 2011). In South Africa, abusive transfer pricing or trade mispricing is often committed by large corporations as a form of aggressive tax avoidance and therefore, is illegal in terms of Section 31 of the Income Tax Act. Various research reports confirm that a significant amount of illicit transfers from South Africa takes place through these conduits.

This synthesis report reviews the available literature and relevant policies pertaining to illicit transfers and tax reform landscape. It further identifies key stakeholders in in South Africa order to articulate the key attributes that could make the taxation regime more effective. South Africa is used as a case study that helps in deepening the analysis of key issues one engages with when dealing with tax reforms and illicit transfers in developing countries. Major focus is on how South Africa can improve its national taxation regime, with special attention being paid to the capacity of the state to organise and manage the tax collection system and prevent illicit transfers. Thus, the central question addressed in the paper is: *what should the state in South Africa do to reform its taxation regime and reduce or prevent illicit transfers while ensuring equitable socio-economic development in the country?* Answering this question will enable practitioners and theorists to get a better understanding of the landscape of illicit transfers and tax reforms in South Africa. In the process, more effective options for improving the taxation regime in the country may begin to emerge.

Findings in the report show that since 1994, South Africa's Ministers of Finance have not shied away from highlighting the problem of and challenges arising from illicit transfers and capital flight. It further identifies key stakeholders in South Africa in order to articulate the key attributes that could make the taxation regime more effective.. Notable in this regard is the work done by the Margo Tax Commission established in 1986, the Katz Tax Commission established in 1994, and the Davis Tax Committee established in 2013. Recommendations from these bodies have been taken seriously and many of them have actually been implemented. Several scholars argue that the institutional and administrative reforms implemented in the country, leading to the establishment and strengthening of

SARS, have not only set the foundation for better compliance and administration of taxation in the country but they have also enabled SARS to achieve significant efficiency gains during and after the reform years due to better compliance and administration of tax laws.

Overall, the available literature shows that South Africa's national taxation system is now considered as being comparatively competitive and one of the better-performing ones among Africa and among other middle-income countries. For instance, during the period 1960-2000, South African tax collection as a percentage of GDP has consistently been the highest among middle-income countries. In the period 1997-2002, tax as a percentage of GDP in South Africa averaged over 25 per cent compared with the middle-income country average of 15 per cent. The country's tax as a percentage of GDP has since grown to more than 27% in 2016, thereby moving closer to the OECD average percentage of 35 per cent. South Africa is well-known for its relatively strong tax authority, namely, the SARS. Its tax collection capacity has been bolstered by a very high degree of administrative cooperation among state agencies, particularly between SARS, the National Treasury, and the Central Bank.

An important lesson arising from the South African experience is that political will for reform should be strong and implementation should be based on credible data and evidence. For instance, the commissioning of different tax reform committees by the government over the years since 1986 and the serious consideration of their recommendations has enabled the country to systematically reflect on its resource mobilization capacity in relation to its economic development trajectory and implement appropriate interventions. Also key to the successful implementation of tax reforms in South Africa, has been the recruitment, training and retention of suitably qualified personnel at SARS and its sister agencies such as the National Treasury and the Reserve Bank. This directly speaks to the need to have staff members with the skills required to deal with the complex issues that give rise to tax base erosion, profit shifting and illicit transfers.

From the South African case study, one can also deduce that the success of tax reform is highly dependent on managing both the policy and administrative infrastructure required for effective implementation. In this regard, South Africa has been able to craft the necessary policies and institutional structures, leading to the establishment of SARS as a semi-autonomous tax administration body which is independent from government but sufficiently capacitated to make lasting changes to the whole tax regime. Indeed, in most of the analytical work in this domain, the independence of SARS from the mainstream public service delivery machinery emerges as a key factor that enabled meaningful reforms to be designed and implemented with the level of seriousness and sense of urgency they deserved.

Notwithstanding the reforms to the taxation regime implemented in South Africa, the available evidence shows that illicit transfers continue to prevail in the country. The sheer volumes of illicit transfers in the post-apartheid era is particularly staggering in a country with a huge deficit in terms of addressing alarming socio-economic inequalities in its terrain. This has made it imperative for illicit transfers and other forms of tax malpractices to become an ongoing strategic area of focus for SARS, the National Treasury and the Reserve Bank. In their fight against illicit transfers and tax base erosion, it is crucial that SARS and its sister agencies continue to focus relentlessly on high net worth individuals and the mining and extractives sector. Most analyses indicate that these are the main perpetrators of illicit transfers and tax evasion.

For instance, during the period 1960-2000, South African tax collection as a percentage of GDP has consistently been the highest among middle-income countries. In the period 1997-2002, tax as a percentage of GDP in South Africa averaged over 25 per cent compared with the middle-income country average of 15 per cent. The country's tax as a percentage of GDP has since grown to more than 27% in 2016.

The objective of reducing illicit transfers should be backed by provision of relevant training to the responsible customs and taxation officials in order for them to be capacitated to more effectively detect intentional misinvoicing of trade transactions. It is also quite clear that the battle against illicit transfers is far from over in South Africa and therefore, future reform efforts have to take this into account more seriously than ever before. Any further reforms should also be based on the development of appropriate legislation, regulatory frameworks, and capacitated administrative structures that can enforce transparency and compliance in the tax regime. In addition, more transparent, systematic, complete, and accurate data on exports and imports, especially by product and destination/origin is a key condition for preventing trade misinvoicing and transfer pricing.

1.0 Introduction

Despite concerted efforts by various international agencies and countries to improve national taxation regimes, the capacity of the African state to organise and manage the tax collection system and prevent illicit transfers (externalization) of revenue remains an ongoing challenge.

There is mounting evidence demonstrating that massive amounts of revenue are still being transferred from African and other developing countries annually in ways that significantly deprive the national revenue authorities of resources that could be used to improve local livelihoods (see Ashman et al., 2011; Goredema, 2011; Ndikumana & Boyce, 2011; AU/ECA. 2015; Nicolaou-Manias & Wu, 2016). Illicit transfers are usually closely linked to corrupt activities that have local and international tentacles but with far-reaching consequences for national revenue mobilization. Transparency International (2016) states that in many cases, people frequently face situations of bribery and extortion, rely on basic services that have been undermined by the misappropriation of funds, and confront official indifference when seeking redress from authorities that are on the take. Closed-door deals, illicit financial transfers and weak law enforcement exacerbates many forms of corruption at home and abroad (ibid).

Estimates by GFI (2017) indicate that developing countries lost about $970 billion in 2014 due to illicit revenue outflows. This is consistent with rising figures of such transfers in recent years while poverty remains a 'wicked' challenge in most of the countries experiencing such outflows. Indeed, the paradox of Africa's considerable reserves of natural resources on the one hand, and the pervasive poverty of its people, on the other, remains a deep feature of its economic landscape that partly demonstrates the impact of illicit transfers (see UNECA, 2011). In their seminal work on *'Africa's Odious Debts and Capital Flight'*, Ndikumana & Boyce (2011) demonstrated how Africa has been systematically drained of resources by a global system in which rich individuals and large corporations hide income and assets from public scrutiny and from taxation authorities by covertly transferring them across borders.

South Africa has been no exception to the 'wicked' challenges arising from illicit transfers as numerous reports in the media have demonstrated in recent years. The need to reduce illicit transfers while strengthening the national revenue collection system through systemic reforms in South Africa was identified as far back as 1986 when the government established the Margo Commission to carry out a taxation policy review and make specific recommendations for implementation. Paradoxically, South Africa has taxation policies and institutions that have been hailed as world-class in various platforms even though the ability of the South African Revenue Services (SARS) to prevent illicit transfers cannot necessarily be taken for granted.

Indeed, a number of tax malpractices and injustices in the country have been identified in recent times through the expose provided by the Panama Papers and also widely reported by several media outlets. These malpractices directly and indirectly impact on the effectiveness of the national revenue collection system. They lead to various revenue leakages and failure of the system to fully capture proceeds from the private sector. This significantly reduces the revenue available to the government and limits the number of social development programs and projects that could be implemented for the benefit of its citizens.

There are indications that the international development sector's drive for tax reforms and the need to urgently curb illicit transfers have been partly precipitated by the inertia of government departments and by weaknesses in the taxation models that they deploy as well as poorly configured tax institutions.

The paucity of technical and financial resources also limits their ability to combat international financial

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Poverty remains a 'wicked' challenge in most of the countries experiencing such outflows.

crimes and money laundering. This research paper reviews the available literature and identifies relevant policies and key stakeholders in the illicit transfers and tax reforms landscape in South Africa with the aim of identifying key attributes that could make the taxation regime more effective.

In this regard, the study relied on collection, review and synthesis of published articles, government policy documents, and grey literature to produce a relatively solid narrative of the tax reforms and illicit transfers landscape in South Africa.

In the paper, South Africa is used as a case study that helps in deepening the analysis of key issues one engages with when focusing on tax reforms and illicit transfers in developing country contexts. While a wide search and review of published material that addresses taxation reforms and illicit transfers in South Africa was the main focus, other global level literature containing insights relevant to these sub-themes were also consulted to further inform the study. The central question addressed in the paper is: *what should the state in South Africa do to reform its taxation regime and reduce or prevent illicit transfers while ensuring equitable socio-economic development in the country?* Answering this question may enable practitioners and theorists to get a better understanding of the landscape of illicit transfers and tax reforms in South Africa. In the process, more effective options for improving the taxation regime in the country may begin to emerge. The study directly contributes to the debate on how illicit transfers and poor taxation governance systems can weaken national resource mobilization efforts in South Africa and other developing countries.

2.0 Background to the Study

2.1 Key Dimensions of Illicit Transfers

In recent years, the agenda for reforming the taxation regimes of most countries has been receiving more attention than ever before in international development discourses, largely because of the corrosive impact that illicit financial flows (IFFs) can have on economic progress and poverty alleviation efforts. GFI (2017) points out that this became part of development orthodoxy in 2015 when the Addis Ababa Action Agenda on Financing for Development was adopted, committing all nations to redouble their efforts towards substantially reducing illicit financial flows by 2030, and eventually eliminating them. The published literature suggests that the term *"Illicit Financial Flows"* was first coined in the 1990s and was initially associated with capital flight (the outflow of money from a country). Now it is generally used in reference to illegal cross-border movement of funds.

While the published literature has many definitions of IFFs, in this paper they are defined as all unrecorded private financial outflows involving capital that are legally or illegally earned, transferred, or utilized by residents to accumulate assets outside the country in contravention of applicable financial capital controls and regulatory frameworks (see GFI, 2013). Often, IFFs are composed of the proceeds of theft, bribery and other forms of corruption by government officials; the proceeds of criminal activities including drug trading, racketeering, counterfeiting, contraband, and terrorist financing; bulk cash movements and smuggling; and the proceeds of tax evasion and laundered commercial transactions (UNDP, 2011; African Monitor, 2015; Patel, 2015). In most cases, this process involves funds being transferred to secret international jurisdictions (see Kar & Curcio, 2011; Nicolaou-Manias & Wu, 2016).

Usually, somewhere at the origin, point of movement or use of the money, national financial regulations are broken or circumvented. At the same time, the transactions facilitating the actual transfers are neither formally recorded nor taxed, hence the *'illicit'* tag associated with them. Therefore, common aspects of IFFs that should be highlighted in the context of this paper include the fact that they are often used by large corporations and wealthy individuals to avoid taxation and thus deprive a particular country of much-needed revenue. For instance, corporations may abuse transfer pricing transactions to shift legally earned profits from high tax jurisdictions to low tax jurisdictions, and in the process, minimise their overall tax liability in the country where the profits are earned (see Economic Justice Network-Africa, 2014; Transparency International, 2015). This suggests that illicit transfers through systematic trade misinvoicing or other means are more likely to be motivated by a desire for tax evasion rather than a response to national political and economic instability (Ashman et al. 2011).

Goal 16.4 of the Sustainable Development Goals has a target which states that countries will "by 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime". This prioritization reflects that there are a number of tax malpractices and injustices that require urgent attention. These are identifiable not only in Africa but also in other parts of the world (in both developed and developing countries). They often directly or indirectly impact on the effectiveness of the taxation regimes and lead to various revenue leakages and failure of the system to fully capture proceeds from the private sector. A detailed report by Kar & Spanjers (2014) points out that frequent scenarios of malpractices include tax avoidance and evasion through underpricing, overpricing, misinvoicing

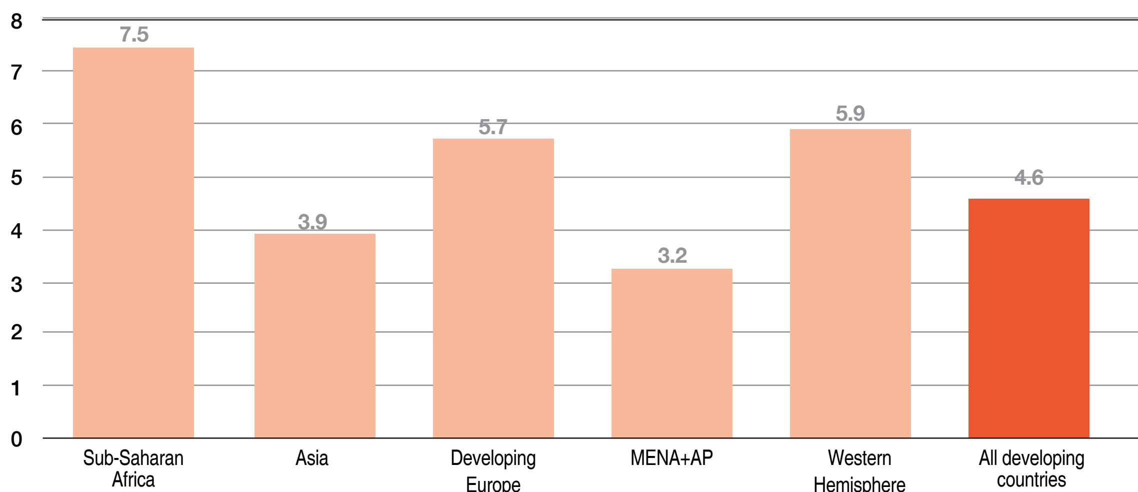
and making completely fake transactions, often through the subsidiaries of the same multinational company, bank transfers to offshore accounts from high street banks offering offshore accounts, and companies formed offshore to keep property out of the sight of the tax collectors.

A GFI survey done to assess the economic practices of 476 multinational corporations found out that 80 per cent of the corporations acknowledged that transfer pricing remains central to their tax strategy (ibid). Sharife et al. (2011) states that the perpetrators of tax evasion use many of the same channels as other forms of corruption to move their proceeds across international borders. These include dummy corporations, shielded trusts, anonymous foundations, falsified pricing, fake documentation and so on, all supported by an army of bankers, lawyers and accountants. The foregoing assertions find common ground with the findings of the High Level Panel on Illicit Financial Flows from Africa which concluded that large commercial corporations are by far the biggest culprits of illicit outflows, followed by organized crime and corrupt practices that are facilitating these outflows, apart from and in addition to the related problem of weak governance capacity in the sector (AU/ECA, 2015). This view is also supported by Mosioma (2016) who states that contrary to the commonly held perception that corruption by state officials is the main avenue of resource outflows, tax dodging resulting from the manipulation of commercial transactions of multinational corporations accounts for the largest share of illicit flows (65% of the annual outflows). All this should also be understood within the context of large corporations having the means to employ and retain the best professionals in law, accountancy, banking and other expertise to help them perpetuate their aggressive illegal activities. Similarly, organized criminals, especially international drug dealers, have the funds to corrupt many players to enable perpetration of IFFs, including and especially in governments, and even to 'capture' weak states (AU/ECA, 2015). In comparative terms, Africa suffers from a staggeringly high level of IFFs than any other region of the world. It has the highest proportion of assets held abroad of any region in the world (see Ashman et al., 2011). Unfortunately, this trend is only getting worse rather than improving. The Tax Justice Network-Africa (2014) points out that illicit transfers and leakages have increased throughout Africa's high growth period between 2000 and 2008. This stands in stark contrast to Asia, where there has been a reduction in IFFs. Estimates by the GFI (2013) indicate that Africa has been losing more than $60 billion a year in illegal financial outflows and price manipulation in the extraction of minerals, with most of the proceeds going offshore.

Tax dodging resulting from the manipulation of commercial transactions of multinational corporations accounts for 65% of the annual illicit outflows.

While smaller in dollar volumes, developing countries in Eastern Europe, Sub-Saharan Africa, and Latin America consistently indicated high propensities for IFFs over the ten-year period from 2005-2014. Sub-Saharan Africa however trumped all other regions, with illicit outflows estimated at between 7.5 percent and 11.6 percent of total trade over the same period (ibid). Figure 1 presents a general picture of the rate of IFFs from developing countries in different regions of the world.

Figure 1: Estimates of Illicit Financial Outflows from Devloping Countries over the Period of 2005-2014



Source: GFI, 2017

The High Level Panel on IFFs report and other studies argue that Africa lost over US$1 trillion through IFFs in the last 50 years –an amount nearly equivalent to total official development aid poured into the continent during the same period. For instance, in 2015, African countries received $161.6 billion in the form of loans, personal remittances and grants, yet $203 billion was taken from Africa, either directly – mainly through corporations repatriating profits and by illegally moving money out of the continent – or by costs imposed by the rest of the world through climate change (Honest Accounts, 2017). This implies that African countries collectively served as net-creditors to the rest of the world, to the tune of $41.3 billion in 2015 (ibid).

A detailed assessment by Jansky & Prats (2015) focusing on national revenue generation trends reveals that tax revenues in OECD countries represent around 35% of their gross domestic product (GDP) while developing countries obtain on average only 13% (2012). This is mainly attributed to a number of factors that include the existence of large informal sectors in developing countries, high levels of poverty and the consequent inability of poorer citizens to pay taxes, the abuse of tax incentives (for example tax holidays) to attract foreign direct investment, and tax avoidance and evasion by corporations and individuals, coupled with the existence of weak institutional capacity to expand the tax base and enforce taxpayers' compliance. Honest Accounts (2017) argues that another massive problem is corporations buying concessions at falsely knocked-down prices, often linked to corruption and to secret tax havens. For instance, in 2013, the Africa Progress Panel and Global Witness examined five major sales of mining rights in the Democratic Republic of Congo (DRC) in which each deal involved firms registered in the British Virgin Islands. They established that the firms paid at least $1.36 billion below the market value – almost double what the DRC spends each year on health and education combined (also see Kende-Robb, 2016).

Among others, the mining and extractive sector stands out prominently in the published literature as one of the major perpetrators of illicit international transfers.

In the majority of cases, mining and extractive industries have developed as 'enclave economies' which generate wealth that is not ploughed back into the areas where it is needed most in the country (AU/ECA, 2015). Ashman et al. (2011) argue that a closer look at the sectoral patterns of IFFs in South Africa shows that the vast majority of financial outflows through trade misinvoicing occur in the ores and metals sectors. The wealth is transferred out of the host country rather than being used to address pressing human development challenges and needs of that country. Africa Progress Panel (2013) argues that tax authorities in all regions struggle to prevent the erosion of their tax bases by corporations in the extractive sector partly because companies operating in this sector are highly integrated and often make extensive use of offshore centres and tax havens with limited disclosure requirements. These are ideal conditions for tax evasion through mispricing (see Wilkinson & Pickett, 2010).

One of the key reasons that IFFs prevail is that there are 'secrecy jurisdictions' with high levels of confidentiality that provide services to facilitate hiding taxable incomes and to shelter criminal activities (Sharife et al., 2011). 'Secrecy jurisdictions' are places that intentionally create financial regulations for the primary benefit and use of those not resident in their geographical domain. That regulation is designed to undermine the legislation or regulation of another jurisdiction (ibid). In essence, secrecy jurisdictions knowingly assist people from outside their domains to break the law in the places where they live and make it as hard as possible for that law-breaking to be discovered" (Tax Research, 2010). There are about 72 secrecy jurisdictions in the world that guarantee financial secrecy and a safe haven for companies and wealthy individuals to hide their assets and avoid paying the tax on their assets that might otherwise be due in other jurisdictions (Economic Justice Network, 2014).

Countries such as the United States of America, Luxembourg, Mauritius, Liberia, the British Virgin Islands, Switzerland, Cayman Islands and Seychelles are known to have legalised and legitimised corruption and illicit transfers by allowing tax avoidance and tax evasion under a veil of secrecy (also see Jansky & Prats, 2015). Indeed, there is evidence that new havens for IFFs have been increasing in number around the world and providing inducements that those engaged in these illicit activities have found irresistible (Ajayi, 2014). According to Christensen (2009), the number of tax havens and the scale of IFFs has increased dramatically since the late 1970s. One study enumerated 32 tax havens in 1977 while another study conducted in 2005 found about 72 tax havens and this number continues to rise (ibid). Therefore, controls on financial outflows, as opposed to further liberalisation, need to be part of the policy framework (Ashman et al., 2011).

Africa's GDP per capita is estimated to be 16 percent lower than it would be if the continent had been able to retain its private wealth at home (see Collier et al., 2001). Potential domestic investment gains from illicit transfers are also estimated to be very significant (Ndikumana & Boyce, 2012). A detailed study by Fofack & Ndikumana (2010) found empirical evidence pointing to significant growth and welfare gains derived from massive repatriation of transferred capital or reflows of funds to source countries in developing and advanced economies alike, with such repatriation schemes being used quite successfully to boost domestic investment and growth in a number of countries in Asia and Latin America. For example, the implementation of a tax amnesty scheme in favour of private foreign asset holders enabled the government of Italy to recoup at least $30 billion from Swiss banks in 2001 (see Watts, 2002). In Nigeria, the government, through an effective asset recovery strategy, was able to track and recover US$2.3 billion stolen by its former dictator, Sani Abacha (Massa, 2014).

There are some exceptions to the IFFs and 'resource curse' syndrome in Africa but these are the minority. Botswana, for instance, is often praised for having managed to put in place a very effective tax administration system that benefits the country more broadly than is the case in other countries (see Africa Progress Panel, 2013). All this suggests that strategic governance reform initiatives are urgently needed in most African countries to address shortfalls in mainstream taxation systems for large

corporations, and especially the mining and extractives sector as well as the loopholes that enable illicit transfers to go on undetected. Such reforms would need to pay special attention to the strengths and weaknesses evident in the national tax administration systems in each country.

2.2 Imperatives for Tax Reforms in Developing Countries

The need to address challenges and opportunities identifiable in most national tax administration systems has already become a frequent topic of discussion in international forums and government officials have been hard at work strengthening rules and procedures in support of improved tax cooperation (see Addis Tax Initiative, 2015). The level of interest by countries from around the globe to reform and improve their revenue systems has been significant and therefore, a key challenge before us is to ensure that all countries have the capacity to craft fair and transparent revenue policies and effectively manage their revenue collection systems (ibid). Through systematic reforms of the tax administration and governance systems, it is possible to implement specific capacity building interventions and realize substantive gains. According to Rao (2014), tax reform may be defined as the process of changing the way in which taxes are collected and managed by the government. Thus, tax reform is generally undertaken to improve the efficiency of tax administration and to maximise the economic and social benefits that can be achieved through the tax system. In addition, it can enable significant reduction of tax evasion and avoidance by large corporates, and allow for more efficient and fair tax collection whilst making national revenue levels more sustainable (ibid).

Most studies carried out in different parts of the world to determine *'best-practice'* in tax administration demonstrate that the manner in which various countries collect and distribute taxation varies considerably. According to Africa Progress Panel (2013) tax authorities in all regions struggle to prevent the erosion of their tax bases, but Africa struggles more than most partly because of the restricted human, technical and financial resources available to revenue administrations. An informative study by Calder (2010) divided the institutional issues associated with tax administration into those regarding the organization per se and those regarding the administrative capacity of the key actors involved. Through this division, he discussed some alternatives for alleviating the issues that arise within the taxation system by focusing on issues of a structural nature, which are usually more difficult to alter, and issues of a resourcing nature, which can in many instances be tackled more easily if the necessary financial support is made available (see Guj et al., 2013). Since in South Africa and most other African countries all fiscal matters in relation to taxation are dealt with at the national level, policy and institutional design considerations for effective administration of the sector have to be directed at that level.

The articulation by Calder (2010) is quite informative in terms of the key ingredients for an effective national tax administration system. These may also be used to inform tax reforms in South Africa and elsewhere. He focuses his discussion of the organizational issues on four main areas, namely:

(i) Should a centralized or dispersed tax administration system be used?

(ii) What level of cooperation is required between agencies?

(iii) What organizational structures should exist within the tax administrative agency?

(iv) Should a separate non-civil service agency be given overall responsibility for tax administration?

In all cases, the tax administration system would have to be supported by adequate skills and resources. Consistent with this view, a study by the World Bank (1992) concluded that most African states neither have the necessary financial capital to invest nor the management and technical capabilities needed for

effectively administering taxation, particularly to ensure capturing of proceeds from multinational corporations. To address these challenges, the World Bank prescribes recommendations in three main domains relevant for this research report, namely, establishing an appropriate regulatory framework; prudent economic and fiscal policies; and instituting relevant institutional reforms and infrastructure.

An examination of the available literature also reveals that the main challenge in mobilising resources from taxation in African countries tends to be about how to effectively administer tax and gain the optimum value out of the process. A second equally crucial issue relates to tax evasion which tends to undermine the entire tax system as it makes it harder to tax the profits of foreign investors, wealthy individuals and cross-border financial flows (see Sharife et al., 2011). In Africa, the majority of countries often formulate fiscal policies with clear foreign investment attraction and revenue collection objectives in mind, but rarely with adequate consideration of the administrative skills, systems and processes necessary for governments to effectively and efficiently administer corporate sector revenue collection (see Guj et al., 2013).

In line with the technical view of institutions inherent in the focus of this Research Paper, we are mainly concerned with the capacity approach to tax governance in South Africa. This is an approach that identifies administration-related constraints as the main barrier to the ability of states to collect revenues from taxes in general and direct them to key sectors of the economy in ways that improve national growth prospects (see Bird & Casanegra, 1992; Di John, 2006). Essentially, the administrative approach focuses on the role of institutional design and policy in enhancing the prospects of efficiency and effectiveness of the tax administration system. Efficiency refers to minimization of administrative costs in collecting different types of taxes, enforcing tax laws, and the costs of tax-payers in complying with those laws (Lledo et al., 2004). Effectiveness refers to the extent to which taxes are predictable, transparent, and enforced by a fair judicial system (ibid). Some of the detrimental factors commonly identified in developing country corporate taxation systems include insufficient staff with appropriate skills, lack of up-to-date equipment and facilities, ill-defined and complex tax laws, poor enforcement of penalties for tax evasion and corruption, and poor information collection and identification of taxpayers (see Bird & Slack, 2014; Campbell, 2009).

It is also important to acknowledge that in recent decades, international financial institutions and other key players in the sector have been advocating that revenue collection authorities in developing countries operate autonomously or semi-autonomously from the state in order for them to be more effective. In some cases, recommendations have been made for the tax administration departments to operate as commercial entities that are removed from the government rather than as a department within the government administration (see Taliciero, 2004). Autonomy is assumed to protect revenue authorities from political interference and allow Directors and Managers to circumvent the institutional obstacles inherent in weak public sectors such as cumbersome regulations, low pay, and antagonistic unions (see Therkilsden, 2003). As a result, the creation of parallel agencies is favoured over the restructuring of existing tax institutions.

Throughout the world, the need for tax reforms is now often taken for granted due to the articulated weaknesses in most taxation systems, including failure to detect and decisively deal with illicit transfers. The reforms are ordinarily implemented to improve tax collection efficiency and realise a structural improvement in revenue mobilization. Where illicit transfers are concerned, the same reforms would be expected to adequately address evident loopholes that often enable perpetrators to get away with illegal shifting of funds to international destinations. Rao (2014) states that strategies that have helped to minimise resistance to reform and to align reform with the political economy context include: phasing in tax increases gradually; obscuring the impact of tax reforms; appealing to fairness and equity; linking

reform to specific benefits; engaging with networks and institutions; building reform coalitions; and using a flexible, pragmatic approach.

The need to focus on the transparency of MNCs as the major culprits in the IFFs domain runs through a substantial volume of the available literature, especially when one considers the MNCs' abuse of transfer pricing opportunities. One of the key questions in this regard relates to how MNCs report on their financial performance and taxation obligations. In this regard, institutions such as Transparency International have advocated full disclosure of MNC subsidiaries and minority holdings and country-by-country reporting (CBCR) of basic financial data as the starting point for ensuring transparency and reducing profit base shifting (see Kowalczyk-Hoyer, 2015).

This allows stakeholders to have a clearer understanding of the extent of a company's operations and makes the company more accountable for its activities in a given country, including assessing whether it contributes financially in a manner appropriate to its level of activity and in some instances, provides entry-points for identifying potential cases of corruption and illicit transfers (Transparency International, 2014). The OECD has come up with guidelines that show and promote the use of country-by-country reporting (CbCR). It argues that there are significant benefits that CbCR can offer a tax administration in undertaking high level risk assessment of transfer pricing and other BEPS related tax risks (see OECD, 2017). A number of countries have already committed to implementing CbCR, including some developing countries. South Africa will need to seriously consider this in the near future to move towards greater levels of MNC transparency.

The fight against illicit transfers has international collaboration dimensions that also need to be highlighted. Some experts have called for automatic exchange of information among countries as one of the measures that may help to curb illicit transfers. According to the OECD (2014b), an open international architecture where taxpayers operate cross-border but tax administrations remain confined to their national borders, can only be sustained where tax administrations co-operate. Therefore, systematic and periodic transmission of "bulk" taxpayer information among different tax administrations by the source country to the residence country concerning various categories of income (e.g. dividends, interest, royalties, salaries, pensions, etc.) is crucial. In practice, this should encompass exchange upon request, spontaneous information exchange and automatic exchange of information (Knobel & Meinzer, 2014). This process enables the tax authority of a taxpayer's country of residence to check its tax records and verify that taxpayers have accurately reported their foreign source income (see Filipova-Slancheva, 2017). In addition, information concerning the acquisition of significant assets may be used to evaluate the net worth of an individual, to see if the reported income reasonably supports the transaction.

Other benefits of automatic exchange of information include provision of timely information on non-compliance where tax has been evaded either on an investment return or the underlying capital sum (OECD2014b). It can help detect cases of non-compliance even where tax administrations have had no previous indications of non-compliance. It also has deterrent effects, increases voluntary compliance and encourages taxpayers to report all relevant information, knowing that not doing so may be counter-productive in any case (ibid). In a small number of cases countries have been able to integrate the information received automatically with their own systems such that income tax returns can be prefilled. Knobel & Meinzer (2014) point out that in essence, automatic information exchange is a vital transparency tool that could help developing countries redeem trillions of dollars in IFFs that end up hidden in the financial centres of many tax havens. South Africa has joined the group of countries that have already expressed commitment towards implementation of automatic exchange of information as part of the fight against IFFs. This includes signing memoranda of understanding to enable formal cooperation among the countries involved.

3.0 Study Findings

3.1 The Trajectory of Illicit Transfers in South Africa

There is a considerable amount of evidence demonstrating that massive volumes of finance are frequently shifted across international borders through illicit transfers made from South Africa and other countries on the African Continent (see African Monitor, 2015). A synthesis of the evidence by Honest Accounts (2017) includes figures from the South African Reserve Bank in 2016 showing foreign corporations drawing away profits from South Africa far faster than they were reinvesting or than local firms were bringing home. The net outflow paid to owners of foreign capital reached R174 billion (US$11.9 billion) in the first quarter of 2016 alone (also see Bond, 2016). The Panama Papers exposé that started in April 2016 caused a substantial shake-up in the global community as well as in South Africa. The offshore holdings revealed in those papers involve government institutions, political leaders, billionaires, kings, celebrities and criminals linked to drugs, commodity and human trafficking and fraudsters (Haynes, 2016). A newspaper article by Greg Nicolson (2017) alleged that South Africa is failing to tackle IFFs and in the process losing billions in potential tax revenue mainly because the relevant government agencies struggle with the complexity of the problem.

A study by Nicolaou-Manias (2016b) concluded that IFFs drain South Africa's wealth and natural resource base; undermine economic and financial integrity and stability. Further disaggregation of these flows revealed that:

> South Africa's IFFs account for nearly 7.6 percent of GDP, representing nearly twice the average for developing countries

(i) South Africa experienced IFFs totalling more than $122 billion between 2003 and the end of 2012. In 2012 alone, $29.1 billion left the country undetected;

(ii) South Africa's IFFs account for nearly 7.6 percent of GDP, representing nearly twice the average for developing countries;

(iii) Trade mispricing and abusive transfer pricing for South Africa account for approximately 65 percent of IFFs (this is the BEPS focus) and;

(iv) Proceeds from criminal activities represent approximately 35% of IFFs.

A detailed report by GFI (2017), estimates that IFFs from South Africa between 2005 and 2014 could represent as much as 14% of total trade by the country. Between 2003 and 2012, GFI estimated that $122-billion in IFFs was transferred out of the country, with the majority of the outflows arising from trade misinvoicing (ibid). The GFI 2015 Report ranked South Africa 7th place globally among the top ten source economies for IFFs, with trade misinvoicing being identified as the primary measurable means for shifting funds out of South Africa and accounting for about 95% of the total IFFs between 2004 and 2013 (See Kar & Spanjers, 2015). In early 2017, revelations from the Panama Papers made global news about IFFs. These papers contain leaked confidential information concerning the provision of trust services, wealth management, international business structures and commercial law services by the Panamanian law firm MOSSACK FONSECA for its clients in offshore jurisdictions, covering services performed between 1970s and early 2016. About 603 South African taxpayers were cited in the Panama Papers and 1,666 secretive offshore holdings involving South Africans were identified. This indicates that IFFs are a big reality in South Africa (Ensor, 2017). Commenting on these developments, Dr Claude Kabemba, the Director of Southern Africa Resource Watch pointed out that:

> *"The revelations in the Panama Papers are not new, however, they have amplified and elevated to the macro level, raising three critical questions: firstly,*

what is the nature and extent of tax avoidance and evasion taking place in South Africa? Secondly, our capacity to detect these tax avoidances and lack of transparency in business ownership is in question; and thirdly, do we have the regulations to ensure this tax evasion is curbed? If we can detect, then how do we sanction? These are all critical questions when we confront this challenge." (see Haynes, 2016)

In March 2017, the South African Revenue Services (SARS) uncovered widespread abuse amounting to hundreds of millions of rands in advance import payments that are being used to illegally transfer money offshore (see Ensor, 2017). Four importers involved in 93 transactions amounting to R621m were subsequently referred for criminal investigation. The discovery of such abuses confirms the findings by Global Financial Intelligence Unit which concluded that South Africa suffered IFFs of $122bn from 2003-2012 and was among the 10 worst affected countries on the continent. The SARS group executive for customs compliance risk pointed out that the perpetrators used the legitimate channel of advance payments to take money out of South Africa by simulating imports.Payments can be effected by bank draft or electronic transfer.

The investigation by SARS also established that 66,743 transactions were made with no proof of importation, with approximately R34bn being moved out of the country in this way. Contraventions under investigation in 2016-17 amounted to an estimated R3.2bn (R14.6bn in 2015-16) and R5bn-R8bn in IFFs had been prevented. SARS stated that, in collaboration with the South African Reserve Bank, it has improved its ability to detect, deter and disrupt IFFs and routinely undertook proactive data analysis of cross-border foreign currency transactions (ibid). The concerted efforts by law enforcement agencies in South Africa and beyond in recent times to deal with allegations of 'state capture' and pilfering of public funds from South African state enterprises and transferring the funds overseas by the Gupta Brothers has also made repeated headlines in the media, thereby demonstrating that the country is certainly not immune from illicit transfers.

An address by Pravin Gordhan (the then Minister of Finance) in July 2016 also revealed the South African government's concerns about illicit transfers. He stated that "the danger of illicit flows and money laundering is not new to South Africa. It was in fact identified as a priority integral to a tranche of laws which were passed by Parliament almost immediately after the birth of our democracy in 1994 and was seen as critical". He went on to say that:

"tax crimes, money laundering and illicit flows are part of a complex phenomenon which is undermining good governance, ethical politics, government and civil society programs intended to promote inclusive growth, reduce inequality and improve the standard of living of the poor and lower middle classes in South Africa and elsewhere in the world."

In practical terms, IFFs make efforts to tax the wealthy largely ineffective and therefore, contribute directly to worsening income inequality in South Africa. While it is common to think that these outflows are linked to practices such as bribery, corruption or money laundering, studies have shown that commercial tax evasion is responsible for the biggest component (see African Monitor, 2015). Tax Justice Network-Africa (2014) states that South Africa is one of the countries worst affected by IFFs in Africa. Between 1980 and 1993, IFFs were on average 5.4% of GDP.

In line with global trends, South African research has confirmed that the vast majority of IFFs arise from transfer pricing by multinationals, particularly those operating in the mining sector (ibid). An internal SARS report on high net worth individuals (HNWI) which was leaked in January 2012 showed that SARS uncovered 30,000 HNWI – 20,000 of whom who were identified after just one consultation with a financial institution regarding how many individuals were investing at least R1m (US$138,510 using 2011 average exchange rate) on an annual basis. There is, however, a huge discrepancy between these numbers and the taxes collected. Only 2,000 HNWI were registered and declared income taxes between 2008 and 2010 in South Africa (see Van Der Walt, 2012).

Table 1: Revenue Losses through Trade Mispricing in selected SSA countries - US$ million (2005-2007)

Country	2005	2006	2007	3-Year Total
Ghana	21.39	55.3	64.09	140.78
Kenya	19.23	21.46	18.13	58.82
Malawi	2.07	1.01	1.65	4.73
Nigeria	325.11	186.59	444.59	956.29
Sierra Leone	1.5	2.32	2.43	6.25
South Africa	305.03	671.67	740.58	1,717.28
Zambia	0.7	2.2	2.47	5.37
Zimbabwe	1.83	1.91	2.29	6.03

Source: Christian Aid, 2009

The statistics in Table 1 reflect that, from the countries sampled, South Africa was leading in terms of losses experienced through trade mispricing. At a cumulative total of US$1,717.28 million over 3 years, indeed the gap between the figures for South Africa and most of the countries in the sample is prodigious. For instance, Zambia lost an estimated US$5.37 million only while Kenya lost an estimated US$58.82 million during the same period. Nigeria was the only other country with a relatively large total amount of estimated losses through trade mispricing worth US$956.29 million.

In South Africa, abusive transfer pricing/ trade mispricing is often committed as a form of aggressive tax avoidance and therefore illegal in terms of Section 31 of the Income Tax Act and various research reports confirm that a significant amount of illicit transfers from South Africa takes place through these conduits (Forsland, 2014). Mohamed & Finnoff (2004) argue that from 1980 to 2000 the structural weaknesses in the economy led wealthy South Africans to take their wealth out of the country rather than investing domestically. Specifically, they found that the General Export Incentive Scheme (GEIS) led to substantial over-invoicing of exports from 1990 to 1994 as exporters fraudulently took

advantage of export subsidies under the GEIS. Import over-invoicing also increased during this period, partly as a result of less IFFs occurring through export under-invoicing. The authors found out that as export under-invoicing increased, import over-invoicing dropped off (ibid). Other incidents of illicit transfers include Evraz High Steel and Vanadium's channelling of funds worth billions through a fake manufacturing subsidiary in Austria, with tax allowances facilitating a 75% reduction in the tax bill.

The company is still trying to settle a tax claim with SARS of ZAR 689 million ($51 million).

Detailed investigations by SARS (through forensic audits) have revealed that suspicious transactions between seemingly unrelated entities involve entities that are actually somehow related. In a recent workshop a SARS official argued that there are cases where a third unrelated party is drawn into a transaction between two related entities. In this case, the third party is indifferent to which of the two related companies it sells its goods. The related entities will identify the most favourable tax case. The South African Revenue Services (SARS) notes that the world-class financial systems, along with the large extractive industry of mining and resources, the presence of large multinational corporations, and open economy and tradable currency, exposes South Africa to a very high risk of tax motivated financial outflows (African Monitor, 2015). Reasons contributing to these serious losses include lack of clarity in some of the relevant legislation, lack of skills, inadequate and incomplete statistics on IFF, lack of engagement between stake holders and insufficient monitoring of IFFs across sectors (Mniki-Mangaliso, 2015).

...world-class financial systems, along with the large extractive industry of mining and resources, the presence of large multinational corporations, and open economy and tradable currency, exposes South Africa to a very high risk of tax motivated financial outflows

In 1994, the Minister of Finance in South Africa instituted a Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa chaired by Judge Katz (The Katz Commission). The Katz Commission issued and submitted a total of nine reports, which were submitted to the Parliamentary Joint Committee on Finance for consideration between 1996 and 1999. In virtually all the interim reports, the question and phenomenon of transfer pricing was highlighted.

During his 1995 Budget speech, the Minister of Finance drew attention to the high level of tax avoidance, much of it implemented by means of sophisticated financing structures. Submissions to the Parliamentary Portfolio Committee on Finance by South Africa's Finance Intelligence Centre has illustrated that over the last decade, the country lost in excess of R600 billion in IFFs, and transfer pricing plays a major role in these transfers.

A report by the High Level Panel on Illicit Transfers (2015) uses a case study in South Africa wherein the South African authorities informed the Panel about a case in which a multinational corporation was found to have avoided $2 billion in taxes by claiming that a large part of its business was conducted in the United Kingdom and Switzerland, which at that time had lower tax rates for their business, and moving the legal site of their business to these jurisdictions (AU/ECA, 2015). When the South African authorities investigated the case, they found that the UK and Swiss subsidiaries/branches had only a handful of low-paid personnel with relatively junior responsibilities, and that these offices did not handle any of the commodities in which the company dealt (nor were they legally able to take title to those commodities). The company's customers were often in South Africa, but for each transaction, a paper trail was created that would route the transaction through the Swiss or UK offices to give the impression that these offices were critical to the business. The South African authorities were able to reclaim the tax that was avoided because it was clear that the substance of the company's activities was conducted in South Africa (ibid).

In their submission to the Davis Tax Committee, AIDC (2015) points out that for South Africa, IFFs are massive. Ashman et al. (2011) argue that capital flight has plagued South Africa for five decades, with apartheid governments repeatedly turning a blind eye to the capital taken out of the country illegally by large conglomerates. They estimated them to be in the region of 20% of GDP in 2007 – the year before the financial crash (and the peak year of profits in platinum mining during the decade). They put the SA mining sector in the lead when it comes to trade misinvoicing, to an estimate of about US$31.7 million in 2006. In the 2013 report from GFI, Kar & LeBlanc (2013) ranked South Africa number 11 among the 15 developing countries with the highest illicit capital export. GFI's 2014 report places South Africa as number 10. IFFs reached a peak in 2012 with more than R300bn (US$29.1bn) or close to 10% of GDP illicitly leaving the country (AIDC, 2015).

In an interview conducted with Moneyweb, the Director for African Monitor, Mniki-Mangaliso admits that "South Africa lost R237bn in illicit financial flows in 2011 and over R1trn between 2002 and 2010" and that this is mainly due to the reality that "South Africa does not have any internal system of monitoring what these quantities are and we all generally – both government and NGOs – depend on Global Financial Integrity to gather that data" (Moneyweb, 2014). Furthermore, the African Monitor Director points to the reality that:

> *"SARS has this infrastructure but however it is not publicly available and parts of what we want to recommend is in fact processes which are transparent about which South African companies are undertaking those kinds of activities"* (Moneyweb, 2014).

The GFI (2017) states that globally, South Africa has moved into the top ten countries experiencing high illicit transfers, jumping from number 13 to number ten. South Africa is ranked number 64 out of 176 countries on the Transparency International Corruption Perceptions Index (2016) that measures the perceived levels of public sector corruption worldwide. The highest ranked country in Africa is Botswana at number 35. Ashman et al. (2011) argue that the vast majority of IFFs from South Africa arise out of transfer pricing by conglomerates, especially in and around mining, and forms part and parcel of a more general adjustment of such conglomerates to the imperatives of financialization and globalization in the wake of an apartheid backlog. Close examination reveals that virtually all the big multinational corporations in South Africa have subsidiaries in jurisdictions considered as tax havens and have financial relationships with the tax havens, whilst there is no real activity from those tax havens. For instance, an investigation by ActionAid (2012) revealed that about 117 subsidiaries of Anglo American are registered in multiple tax havens. The same investigation also exposed tax avoidance by SABMiller that shifted £100 million of profits from Africa into tax havens, with an estimated tax loss of £20 million while mining giant Glencore stood accused of evasion that amounted to as much as £76 million per year in Zambia (ibid).

Statistics from SARS and the National Treasury Budget 2013 show that corporate tax revenue in South Africa declined from 7.2% of GDP in 2008/9 to 5.5% in 2009/10 and 4.9% in 2010/11. This decline in corporate tax revenue was a major concern for government. This ratio recovered marginally in 2011/12 to 5.1%, but went down to 4.9% in 2012/13 (see National Treasury Budget, 2013). While this is not necessarily irrefutable evidence of IFFs, it is something that requires further investigation as the decline might have been partly precipitated by illicit transfers as well. In July 2016 UNCTAD released a report entitled *Trade Misinvoicing in Primary Commodities in Developing Countries: The cases of Chile, Cote d'Ivoire, Nigeria, South Africa and Zambia*. The report points towards a systematic practice of invoicing manipulation among mining companies in these countries. The report states that mining and oil companies have misappropriated as much as 67% of export revenue in the countries studied. For South Africa, the report calculated cumulative under-invoicing over the period of 2000-2014 amounting to USD 102.8 billion (2014 US dollars): USD 600 million for iron ore; USD 24 billion for silver and platinum; and USD 78.2 billion for gold (see EUNOMIX, 2016).

Since 1994, South African finance ministers have not shied away from highlighting the problem of and challenges arising from illicit transfers and capital flight. For instance, in the 2016 Budget Speech, then Finance Minister Pravin Gordhan said that, "we will continue to act aggressively against the evasion of tax through transfer pricing abuses, misuse of tax treaties and illegal money flows". As rightly pointed out by Ashman et al. (2011), the scale of illicit transfers from South Africa has profound implications for the country's economic performance, particularly in terms of foregone domestic investment. The 2018 financial secrecy index Report states that the country's elite, and South African and foreign multinational companies within its borders exploit weaknesses in legislation and use other secrecy jurisdictions to reduce their tax obligations in a country with deep inequality (see Tax Justice Network, 2018). The foregoing suggests that issues of illicit transfers and tax reforms increasingly require further research to enable the development of more effective interventions in South Africa and elsewhere.

3.2 Dimensions of Tax Reforms in South Africa

In contemporary times, the need for structural reforms to the South African tax system was initially raised by the Margo Commission in 1986 (before independence in 1994). This Commission was specifically appointed to enquire into and make recommendations for the implementation of a cohesive tax structure at all levels of government in South Africa (Margo Commission, 1986). The commission concluded that the Inland Revenue Authority was institutionally and operationally weak and thus recommended that its autonomy be reconsidered, so that it would not have to be bound by Governmental procedures that tended to inhibit its operations (ibid). In post-apartheid South Africa, three distinct periods of reform are identifiable. The first period of tax reform stretches from 1994 to 1999 under what came to be known as the Katz Commission. The second period ran from 2000 to 2012. The third phase starts from 2013 up to the present day under the Davis Tax Committee. From 2000 to 2012, the government was busy implementing most of the recommendations from the Katz Commission.

The first phase of the reforms included a reduction in the number of tax brackets and 'harmonised' schedules where taxpayers were classified as individual income tax payers or corporate income tax payers; the introduction of transfer pricing and capitalisation rules; the introduction of fringe benefits tax; and a tax amnesty to ensure all eligible taxpayers are registered, thus increasing the tax base (Riba, 2017). The second phase of the reforms was characterised by convergence to international tax laws and included: changing from source-based to residence-based tax; the introduction of the concept of public-benefit organisation; the abolishment of child rebates; annual adjustments of tax brackets and thresholds in line with inflation; and a second amnesty for violators of exchange control regulations (ibid).

This phase of the reforms is dominated by work being done by the Davis Tax Committee which was appointed in 2013 to study the tax regime and recommend further reforms that may be required immediately and in the near future to broaden the tax base further, while still ensuring a progressive and appropriate tax system in line with emerging global trends in the sector.

As a result of the work done by the Katz Commission under the first phase, there were wide-ranging institutional and policy changes made to ensure the tax regime was more effective (Manuel, 2002). The Katz Commission was given a relatively wide scope and terms of reference to look into and recommend a comprehensive and systematic framework for tax reform in South Africa that would enable the country to adhere to internationally established standards and criteria necessary for a modern tax system - one that is also responsive to national economic and socio-economic development imperatives (Katz Commission, 1995). The main aims of the Katz Commission at the time were to improve tax collection and administration; improve the neutrality of the tax base; reduce government borrowing; close

loopholes in the tax system; re-evaluate equity aspects of many taxes; and most important, bring the South African tax system in line with changing international tax practices (Ndofula, 2014). According to Ajam & Aron (2007), extensive tax reforms and more efficient tax collection systems have expanded revenue in the country, permitting lower tax rates for both individuals and companies, and personal tax relief.

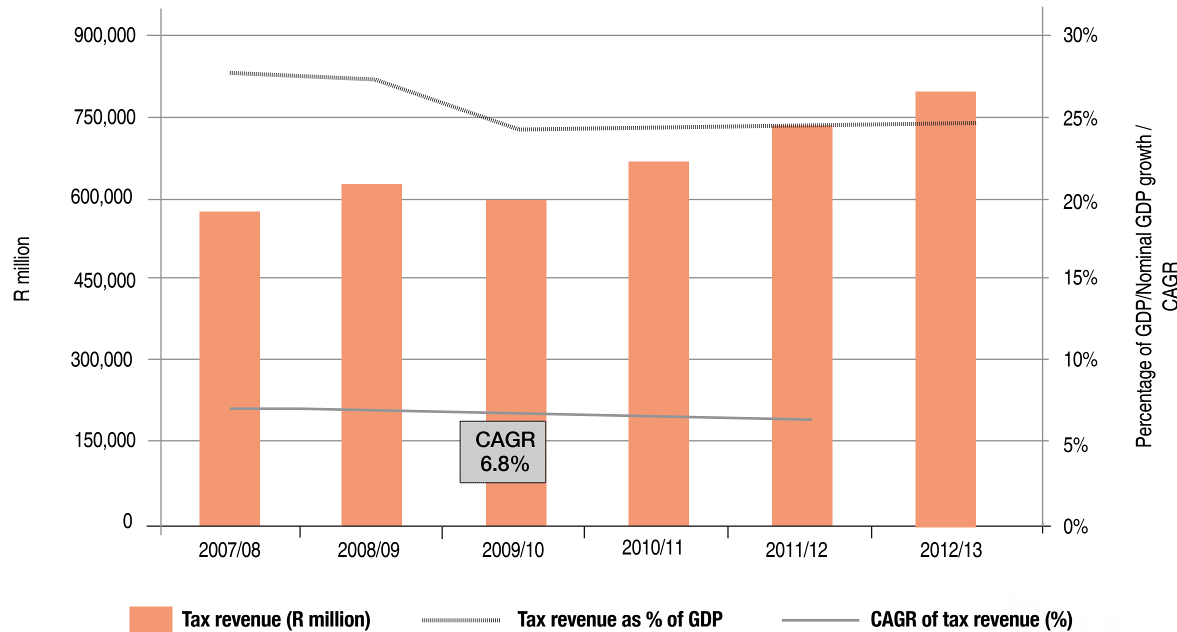
Due to its broad mandate, most of the reports produced by the Katz Commission do not necessarily have relevance to illicit transfers. Out of the nine Reports that the commission submitted, the first, third and fifth reports are of direct relevance. However, the Commission's recommendations provided a relatively solid foundation on which to build subsequent tax reform efforts in the country (see Aaron & Slemrod, 1999). According to DTC (2017), the Katz Commission noted that it had received numerous submissions to the effect that tax administration in South Africa was weakened by an outdated management structure, an on-going attrition of qualified staff, and the inflexibility of public sector personnel administration systems. Its mandate is specifically to collect revenue and administer the tax laws in South Africa. This included the need to centralize tax policy and administration through dissolving and amalgamating tax administrations of the independent homelands of the then Transkei, Bophuthatswana, Venda, and Ciskei and addressing the loss of skills post-1994 as predominantly white tax officials took voluntary severance packages or resigned. Thus, a single autonomous South African Revenue Service (SARS) was established on 1st April 1996, from the two branches of the then Department of Finance, Inland Revenue and Customs and Excise, with better audit, investigation, tax evader prosecution and debt recovery capability (ibid).

As a result of these reforms SARS was removed from the Public Service Commission to operate independently (Katz, 2015). In terms of section 2 of the SARS Act, SARS was created as an organ of the State within the public administration, but as an institution outside the civil service. SARS was therefore, established in 1997 as an institution outside the civil service and was given independent status in an attempt to enhance its administrative efficiency (Ajam & Aron, 2007). This restructuring gave Pravin Gordhan, then the newly appointed Deputy Commissioner (and later on Commissioner), the responsibility of transforming the organisation, and the freedom to innovate without the constraints normally imposed on government departments (Aaron & Slemrod, 1999).

Several scholars argue that the establishment of SARS has not only set the foundation for better compliance and administration of tax laws and tax collection to the point of broadening the tax base and improving compliance, it has also enabled SARS to achieve significant efficiency gains during and after the reform years due to better compliance and administration of tax laws (Charalambous, 2012; Ndofula, 2014). Indeed, the transformation of a fragmented revenue administration created by the apartheid regime turned out to be one of the most important reforms introduced by the government of South Africa after 1994 (Katz, 2015). In comparative terms, the dramatic increase in the amount of tax revenue collected after the establishment of SARS provides sufficient evidence of the positive results achieved (see SARB, 2015).

SARS also significantly increased its capacity to audit, investigate and prosecute suspected tax offenders (Manuel, 2002). For comparison, OECD countries saw an average tax collection rate of 34% of GDP in tax in 2011 while South Africa recorded a credible 27.3% (see Tax Justice Network-Africa, 2014). Figure 2 displays the trends in tax revenues collection in South Africa between 2007 and 2013. The trend is mainly one of improving tax collection outcomes over the period under consideration.

Figure 2: Trends in Tax Revenues Collection in South Africa



Source: RSA National Treasury, 2013

Among some of the key recommendations made by the Katz Commission, was the stipulation that there be greater co-ordination between relevant government departments and the tax authorities when determining their policy priorities to avoid contradictions (DTC, 2014). The Commission also recommended that the fixing of a ceiling for the tax burden as a percentage of GDP at 25% be further evaluated as well as the economic implications of higher or lower rates (Katz Commission, 1995). Closer analysis reveals that most of the Katz Commission's recommendations were subsequently implemented even well after it had finished its assignment in 1999. Some of the important aspects of reform emphasized by the Katz Commission include:

- The need to ensure that the reforms were extensive enough to ensure effectiveness;
- The need to determine the legal framework and draft the appropriate legislation;
- The imperative of harnessing expertise, including international assistance;
- A clear management plan, including recruitment of skilled staff, provision of training and the requisite equipment; and
- The need to bring in expertise in change management to assist in changing prevailing negative attitude towards reform in the sector (ibid).

The Katz Commission went on to suggest that the oversight function by a proposed statutory board should ensure that the board would have a series of broad responsibilities and powers including: (a) ensuring that tax laws are enforced with the highest degree of integrity; (b) ensuring that revenue departments coordinate and share information where appropriate; (c) establishment of an overall pay and job classification structure; (d) provision of guidance in internal resource allocation; (e) ensuring that appropriate personnel and programme

management practices are in place; (f) recommending legislative and other changes needed in the interest of improved tax administration to the Minister of Finance; (g) establishment of an internal audit function within the tax administration; (h) provision of revenue estimates on existing and proposed tax measures to the Minister of Finance; and (i) establishment of a written code of conduct for employees of revenue departments and the board (see Katz Commission, 1995).

The Commission also noted that the SARS Commissioner must have the ability, flexibility and freedom to employ competent and experienced staff and to use suitable equipment, facilities and buildings which are inherent in a modern tax administration. Of critical importance is not so much the number of staff which must be employed by the revenue authorities but their levels of skill and experience (ibid). The Government implemented most of these recommendations with the level of seriousness that the reforms deserved. Thus, the SARS Act 34 of 1997 was passed to create the South African Revenue Service as an organ of State within the public administration system but as an independent institution operating outside the confines of the mainstream public service. Its mandate is specifically collect revenue and administer the tax laws in South Africa. For instance, Section 3 of the SARS Act of 1997 provides that SARS' objective is the efficient and effective collection of revenue as well as the control over the import, export, manufacture, movement, storage or use of certain goods. It is also important to note that a stepwise incremental approach to tax reform was recommended and adopted rather than a comprehensive tax reform introduced in one package. This enabled the development of an explicit transition strategy, including improvements in tax administration. SARS raised its auditing capabilities through the introduction of computerised systems, enhanced capacity to investigate and prosecute tax evaders, and improved debt recovery procedures (see Ajam & Aron, 2007).

Several double tax treaties with foreign jurisdictions were concluded, and there was also a move from source- to residence-based taxation. The institutional reforms governing revenue collection and expenditure management bore fruit in the following fiscal years from 1999/2000, the latter strengthened by the passing of the Public Finance Management Act in 1999. By 2002/3, the national tax deficit had fallen to its lowest level since the start of the reforms (at 1.1% of GDP) (ibid). Katz (2015) points out that after the restructuring, SARS achieved spectacular success. It broadened the tax base from 1.7 million registered taxpayers in 1994 to 16.8 million in 2014. Over the same period, it increased revenue collection eightfold from R114 billion to nearly R900 billion, even as corporate and personal income-tax rates were reduced. SARS also achieved a fundamental organizational transformation—in terms of demographics, capabilities, performance culture, and the use of technology (ibid). SARS remains an example of excellence, cited across the world (Charalambous, 2012; Ndofula, 2014; SARB, 2015). The defining characteristic of the transformed SARS is competence (Katz, 2015).

The Katz Commission also argued that appropriate anti-avoidance measures are necessary to prevent illicit flows through re-characterization of taxable income into non-taxable dividends or the deferral of taxation by accumulating passive income abroad (Katz Commission, 1999). The Commission proposed that anti-avoidance measures should strike a common-sense balance between effectively curbing material abuse, and not burdening the system with complexity which will lead to failure. The South African income tax system should continue to tax active income on the source basis. This includes expanding the anti-avoidance provisions to ensure that all forms of passive income are taxed on a worldwide tax basis (ibid). However, in spite of the increased administrative efficiency since the establishment of SARS, the extent of tax evasion and avoidance by individuals and companies is still very high and has become more sophisticated (National Treasury, 2010; Ndofula, 2014). More extensive anti-avoidance measures may become necessary given the subsequent relaxation of foreign currency exchange controls and more integration of the South African economy with the global economy.

In 2003, the Reserve Bank and National Treasury of South Africa implemented a controversial exchange

control amnesty with accompanying tax measures that was intended to provide an opportunity for South Africans to regularise illegal offshore income and assets (South African Reserve Bank, 2017). The specific objectives of the amnesty were to:

- Broaden the tax base and increase future revenue collections through the disclosure of assets;
- Enable SARS to regularise taxpayers' affairs without them being prosecuted;
- Provide SARS and the Reserve Bank with details of foreign assets; and
- Facilitate the repatriation of foreign assets to South Africa without fear of recrimination.

Amnesty applicants could disclose or repatriate offshore amounts, subject to prescribed levy payments of 10 per cent or 5 per cent respectively, with an additional 2 per cent for accompanying domestic tax violations (ibid). The amnesty has been criticized for aiding those engaged in illicit transfers to go unpunished. Indeed, regularising capital flight for it to become legal could have the effect of scuppering any attempts to adopt more progressive and interventionist economic policies (Transparency International, 2015). It was also argued that the Reserve Bank's use of the term 'regularisation' disguises the extent to which individuals and companies have not only broken the law with regard to exchange controls but have also evaded taxation in so doing (ibid). A newspaper opinion piece by Jeff Rudin on 22 June 2014 stated that:

> *"What is even more incomprehensible is that the South African Reserve Bank and the government have made it easier for capital to leave our shores both legally and illegally. Signalling that the escape of capital was not taken seriously, the central bank's Voluntary Disclosure Programme of 2010 gave amnesty to illegal capital flight. A flat rate fee of 10 percent of the value of illegally expatriated assets voluntarily disclosed was the only penalty. Moreover, the confession allowed the criminals to keep illicit assets offshore. It was estimated in 2010 that if only a quarter of these offshore assets was invested in sub-Saharan Africa, the region would leap from trailing to leading other developing areas in terms of domestic investment. Subsequent amendments to the Exchange Control Regulations have been designed to make capital flight easier by making the abscondment increasingly legal".*

The Reserve Bank has since tried to defend its decision by arguing that it is important to balance the need to punish offenders with the priorities for local investment, and therefore, allowing the offenders to easily repatriate their proceeds back into South Africa without serious consequences to them would promote local investment and growth.

3.3 The Davis Tax Committee

After several years of implementing the recommendations of the Katz Commission, the need for further tax reforms was identified. This led to the establishment of the Davis Tax Committee (DTC) in 2013. The establishment of this committee was mainly motivated by the realization that the South African tax system had changed significantly since the recommendations of the Katz Commission. These changes included the establishment of an independent tax and customs administration body, namely, SARS; the broadening of the tax base; and the lowering of marginal tax rates.

Thus, on 17th July 2013, the then Minister of Finance, Mr. Pravin Gordhan, announced the establishment of a follow-up Tax Review Committee that was chaired by Judge Dennis Davis as well as the Committee's Terms of Reference (DTC, 2014). The Committee was mandated to carry out an inquiry into the role of South Africa's tax system in the promotion of inclusive economic growth, employment creation, development and fiscal sustainability. It was also tasked with improving the tax system and reducing the scope of tax avoidance and evasion. This includes addressing problems arising from tax base erosion and profit shifting by large corporations (Ndofula, E. 2014).

The DTC is expected to take into account recent domestic and international developments and, in particular, the long term objectives of the National Development Plan (World Bank, 2015).

Among other things, and in line with local and international priorities at that time, there was an articulated need to address concerns about tax base erosion and profit shifting in the context of corporate income tax as identified by the OECD and G20 (DTC, 2014b). The need for further tax reforms was also informed by reflections on the findings of the OECD report (1998) entitled *Harmful Tax Competition: An Emerging Global Issue*. The report acknowledged that globalization and technological innovation have further enhanced the movement of funds across international borders, and hence the need to counter harmful tax practices linked to international mobility of finance whilst curbing illicit financial flows (see OECD, 2014). Some of the major items listed on the DTC's terms of reference include:

- To inquire into the role of the tax system in the promotion of inclusive economic growth, employment creation, development and fiscal sustainability;
- To evaluate the South African tax system against international tax trends, principles and practices, as well as international initiatives to improve tax compliance and deal with tax base erosion.
- To review the corporate tax system with special reference to:
  - the efficiency of the corporate income tax structure;
  - tax avoidance (e.g. base erosion, income splitting and profit shifting, including the tax bias in favour of debt financing);
  - tax incentives to promote developmental objectives; and
  - average (and marginal) effective corporate income tax rates in the various sectors of the economy.

The DTC Report (2017) points out that on 29 July 2016, the DTC received additional terms of reference from the Minister of Finance, some of which speak directly to the issue of illicit financial transfers and effectiveness of the tax administration agencies:

(i) Inquire whether the government and accountability model for SARS as set out in the report of the Katz Commission of inquiry remains appropriate for South Africa in 2016 and make proposals on an appropriate governance and accountability model;

(ii) Inquire whether the present structure and operations of SARS is congruent with the detailed tax policy recommendations the DTC has made to date, including SARS' ability to deal with the various BEPS proposals, assistance for small and medium, enterprises (SME's) and the present structures regarding the collection of corporate tax and tax on high net worth individuals;

(iii) Evaluate the current mechanisms within SARS to deal with illicit flows from a tax and customs perspective, and the relevance of the current model of integrating both taxation and customs activities, rather than splitting them.

Among other findings articulated in its interim reports, the DTC has since recommended the need for further examination of all the relevant legislation affecting the running of SARS, which together are fundamental to the invariably delicate relationship between SARS and the taxpayer (see DTC, 2014b). For this reason the committee considered that a separate inquiry is required to examine the interrelationship between:

1) The Constitution of the Republic of South African Act 108 of 1996
2) The Public Finance Management Act 1 of 1999
3) The South African Revenue Service Act 34 of 1997
4) The Tax Administration Act 28 of 2011
5) Customs Duty Act 30 of 2014

The main objective of this kind of study would be to ensure that this legislation fits together and that no one piece of legislation is incongruent with another and also

that, when read together, this legislation will prompt optimum levels of good governance in SARS (ibid). The DTC has also produced several interim reports with specific recommendations on how to minimize or prevent illicit transfers. For instance, the DTC Interim Report (2014) argues that curtailing BEPS requires reforming the international tax system and coming up with anti-tax avoidance measures at the national level, while curtailing illicit financial flows requires criminal sanctions. In addition, transfer pricing legislation is required to curtail transfer pricing schemes. In this regard, adoption of a unitary taxation framework for MNEs would be one of the viable options.

This is the taxation of the worldwide income of a multinational enterprise, using a formulary apportionment method, which allocates income to the relevant jurisdictions based on a percentage of the MNE's world-wide profits (see Kerrie, 2001). This means treating each MNE as a single unit, regardless of the geographical and juridical location of the individual subsidiaries; calculating profit and loss on a group-wide basis; and then allocating the taxing rights on this consolidated profit between the jurisdictions with which the group has a nexus, according to the extent of actual economic activity (Cobham &Loretz, 2014).

This would directly restrict tax-motivated relocation of MNE profits. Other advantages that the unitary taxation model has over the existing arm's length model include: (i) Where MNEs are highly integrated, unitary taxation has greater consistency with economic reality; (ii) Greater certainty is provided to taxpayers; (iii) Unitary taxation conforms to the aim of efficient operations within the MNE; (iv) unitary taxation enables establishment of an equitable split of profits between the jurisdictions and this should ultimately be the overall aim of any tax regime (Kerrie, 2001).

Among the range of studies that have considered the application of formulary apportionment within national borders, Mintz & Smart (2004) found that apportionment between Canadian provinces results in substantially less income shifting. Clausing (2014) who assessed the experience of deploying unitary taxation in the US established that it has the potential to reduce income-shifting incentives without necessarily generating accompanying large tax responses in economic activity such as employment and investment. According to Picciotto (2016), a number of the proposals in the final OECD package for BEPS seem to push for a shift towards treating taxation of MNEs as unitary firms, although this is not made explicit. The major achievement in this regard is the formulation of agreed templates for country-by-country reports and for transfer pricing documentation which provides all interested tax authorities with a clear overview of MNEs as a whole, as well as details of the relationships between the different parts (ibid).

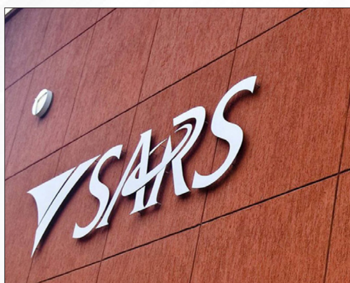
Overall, in this paper we recommend that more research be done in this field to enable more conclusive empirical evidence that clarifies the applicability, strengths and weaknesses of unitary taxation for MNEs operating in developing countries such as South Africa. In the interim, cautious optimism is advised when specific MNE taxation formulas are selected by each country. It is also ultimately within South Africa's interest as a country aspiring to be the gateway for investment into Africa to use its membership of the G20 and OECD BEPS sub-committee to set the tone on the continent around key OECD recommendations on BEPS and to also play a key role to ensure a consistent African view on BEPS issues (DTC Interim Report, 2014). Indeed, designing tax rules to prevent BEPS requires that those rules comply with the principles of a good tax system i.e. equity, efficiency, certainty, and simplicity. It is also important for SARS to continue building its administrative capacity by recruiting and maintaining high quality staff if it is to ensure compliance with the principles of a good tax system because a tax administration is only as good as its staff (ibid).

3.4 Impact of Tax Reforms in South Africa

Overall, the available literature shows that South Africa's national taxation system is considered as being comparatively competitive and one of the better-performing ones in Africa (the DTC, 2014; World Bank, 2015). An assessment by the Tax Justice Network-Africa (2014) established that South Africa and Kenya are generally considered the most efficient tax collectors in sub-Saharan Africa. Now South Africa is well-known for its relatively strong tax authority, namely, the SARS, and its high level of tax collection for the region, though the rate is still significantly below the OECD average (ibid). According to Katz (2015), since its creation in 1997, SARS has had remarkable success in improving and modernising tax administration and stepping up enforcement. This has led to reduced tax evasion and tax avoidance, as well as increased tax collections, and enabled corporate and individual tax rates to be progressively lowered. SARS has worked hard to bring more (individual and corporate) taxpayers inside the tax net and made it harder to move outside the net (ibid). The Tax Administration Act (TAA) of 2011 has simplified tax administration for both SARS and taxpayers. While seeking to further recognise taxpayers' rights, the TAA also grants significant additional powers to SARS. These include greater powers around requests for information from taxpayers and third parties; the power to call individuals to SARS offices for interviews regarding their tax affairs; and greater search and seizure powers (DTC, 2017).

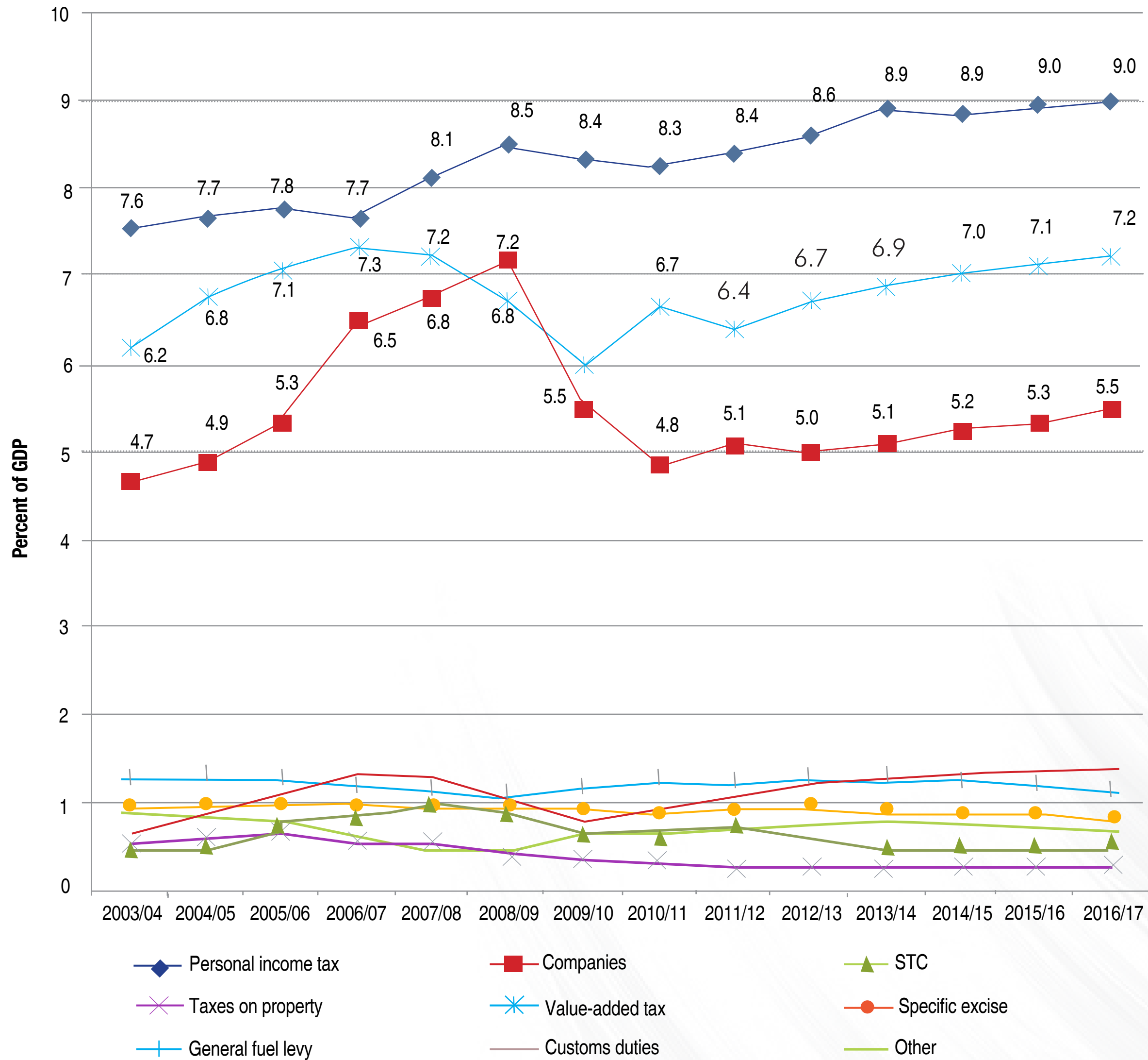
This perspective finds common ground with the assessment by the Tax Justice Network-Africa (2014) which concluded that SARS has made great strides in widening the tax base, reducing loopholes, and registering new taxpayers. From 6 million registered taxpayers in 2010 there are now 13.7 million registered individual taxpayers on its database. Also notable is that SARS set up the Large Business Centre in 2004 to focus on corporations and issues such as aggressive tax planning, transfer pricing, offshore arrangements and the use of trusts (ibid). According to Forslund (2016), "South Africa's legislation in this regard is comparable to many developed countries; in fact, in many respects South Africa has done better than many developed economies". PWC (2014) notes that the time taken for companies to compile and file their tax returns has been diminishing since e-filing was introduced in 2003.

A detailed study by Di John (2006) concluded that the highly successful income and overall tax collection capacity of the South African state since the 1960s is particularly instructive of the need to incorporate political analysis in an understanding of institutional and administrative reforms. In the period 1960-2000, South African tax collection as a percentage of GDP has consistently been the highest among middle-income countries. In the period 1997-2002, tax as a percentage of GDP in South Africa averaged over 25 per cent compared with the middle-income country average of 15 per cent of GDP (ibid). Figure 3, disaggregates total gross tax revenue (which included SACU payments) amounting to R43.4 billion in 2013/14) into individual tax handles as a percent of GDP (ibid).



According to Katz (2015), since its creation in 1997, SARS has had remarkable success in improving and modernising tax administration and stepping up enforcement.

Figure 3: Gross Tax Revenue Sources as a Percent of GDP, 2006/07 to 2015/16



Source: DTC, 2014b

It is clear from the details in figure 3 that the tax revenues contracted significantly in 2009/10 were most probably driven mainly by a significant reduction in corporate income tax yields, which declined from 7.2% in 2008/09 to 5.5% of GDP in 2009/10 and 4.8% of GDP in 2011/12, and took time to recover to its former levels. It remained at a low of 5.1 percent of GDP in 2013/14 and was projected to remain sluggish up until 2016/17. On the other hand, personal income tax as a percentage of GDP increased over the same period from 8.1 percent of GDP in 2008/09 to 8.9 in 2013/14.

Figure 2 also highlights the importance of personal income tax, corporate income tax and value-added tax which cumulatively generated about 80% of total gross tax revenues in 2013/14 while the fuel levy, excise taxes and customs duties accounted for a further 13.3% of total tax revenues.

When you compare South Africa to other countries on the continent and beyond, its consistency in tax collection is quite remarkable. Table 2 is illustrative in this regard.

Table 2: Non-oil Tax Revenue Trends in Selected SSA countries (2003-2013) - Tax / GDP ratio

Country	2003	2006	2007	2008	2009	2010	2011	2012	2013
Ghana	11.9	20.2	24.1	11.6	11.1	12.1	14.6	14.4	14.1
Kenya	18.2	18.7	19.6	20.4	20.7	19.0	20.1	20.1	19.5
Malawi	17	15.6	16.6	17.6	18.7	18.6	19.9	16.2	18.7
Nigeria	7.1	4.6	5.4	5.0	5.1	4.4	4.7	4.2	4.0
Sierra Leone	12.2	11.3	10.3	10.9	8.7	8.7	11.5	12.2	11.0
South Africa	22.7	25.7	26.4	25.9	26.8	27.0	27.3	27.5	27.4
Zambia	18	16.4	17.7	18.6	15.0	16.4	19.3	18.5	17.6
Zimbabwe	24	-	3.4	2.5	16.2	27.1	30	29.6	29.2

Source: Tax Justice Network-Africa, 2014

As shown in the table 2, South Africa and Kenya have the highest tax collection of this group, alongside Zimbabwe where tax collection recovered after the severe economic crisis that characterized the period between 2000 and 2008. Also relevant to note is that since 2007, tax revenue as a percentage of GDP in South Africa has remained relatively consistent when compared to the other countries that experienced significant volatility. Equally important to note is that the improvement in South Africa's revenue collection capability has enabled it to compete with OECD countries averaging 35%.

Another key feature that marked the success of SARS in tax collection capacity was the high degree of administrative cooperation within the state, particularly between SARS, the Finance Ministry, and the Central Bank (DTC, 2017). Such cooperation allowed for exchange in information that improved budget planning and tracking tax evasion. In sum, the mutually supportive ministerial relationships improved the overall resource mobilisation capacity of the state (ibid). It is also important to note that South Africa has signed *'mutual administrative assistance agreements'* with the customs administrations of several other countries. These agreements cover aspects such as the exchange of information, technical assistance, surveillance, investigations and visits by officials. As at 12 December 2006, South Africa had mutual administrative assistance agreements in place with Algeria, China, France, Netherlands, the United

Kingdom and the United States (see Ogutu, 2009). Agreements of this nature have also been ratified with the DRC, the Czech Republic, Iran, Mozambique, and Zambia. Similar agreements have been negotiated, but not yet signed with Angola, Brazil, Israel, Malawi, Nigeria, Tanzania, Uganda, and Zimbabwe (ibid). In the long-run, entering into these agreements could help South Africa obtain the necessary information to curb any harmful tax practices that companies in some of these countries may be involved in.

In 2004, SARS set up a Large Business Centre to focus on corporations and issues such as aggressive tax planning, transfer pricing, offshore arrangements and use of trusts. SARS also employed additional experts to try and unravel tax schemes and provide voluntary disclosure opportunities for non-compliant tax entities (Tax Justice Network-Africa, 2011). A presentation by the Reserve Bank in May 2017 shows that the Bank has already been grappling with efforts to curb illicit transfers. The menu of interventions implemented include:

- Recognising cross-border illicit financial flows as a strategic focal area for its financial surveillance; and
- Increasing the South African Reserve Bank's Financial Surveillance Department's (FinSurv) ability to detect, deter and disrupt illicit financial flows through a number of measures, including:
    - Enhanced pro-active mining of cross-border foreign exchange data for possible illicit transfers;
    - Enhanced due diligence process for large importers;
    - Engagements with other key stakeholders such as SAPS, FIC, SARS and AFU;
    - Awareness training;
    - Increased enforcement action under Exchange Control Regulations & FICA; and
    - Focused attention on identified high-risk areas such as freight payments, advance payments for imports, and unauthorised dealers in foreign currency.

As a result of these interventions, from January 2015 to December 2016, at least 145 bank accounts (amounting to approximately R307 million) were "frozen" in response to suspected illicit financial flows (ibid). The South African tax regime also relies on the "arm's length" international approach to dealing with illicit transfers and mispricing i.e. that a transaction should have the substantive financial characteristics of a transaction between independent parties, where each party will strive to get the utmost possible benefit from the transaction (DTC, 2014). Deployment of this principled approach is intended to enable SARS to determine whether or not there is suspicion of mispricing in various transactions involving international movement of funds. All these interventions demonstrate that some progress is being made to curb illicit transfers, even though more still needs to be done.

3.5 The mining and Extractives Sector

In the context of deliberations on tax reforms and illicit transfers, the mining and extractives sector in South Africa receives special attention in theory, policy and practice. This is mainly due to the fact that the economy of South Africa was built on mining and has greatly benefited from

As a result of these interventions, from January 2015 to December 2016, at least 145 bank accounts (amounting to approximately R307 million) were "frozen" in response to suspected illicit financial flows

its rich deposits of platinum, gold, diamonds and coal (see Curtis, 2009). In addition, the sector is frequently accused of deliberately engaging in tax evasion and illicit transfers. For instance, Le Billon (2011) argues that despite a lack of studies that prove in very definite terms the correlation between higher dependency on natural resource extraction and higher levels of illicit flows, there are grounds to believe extractive industries' revenues provide a large contribution to illicit flows.

South Africa is home to the world's largest mineral deposits that are estimated at around US$2.5 trillion and mining is and has been the backbone of South Africa's economy since the 1800's (Citi Group, 2011).

The country is so well-endowed with mineral resources to the extent that it has been called the country of "geological superlatives" (ibid). The mining industry accounts for a third of South Africa's market capitalisation and contributes about 8% of the GDP and nearly 20% of direct corporate taxes. For example, a nominal mining GDP contribution of R288.2 billion was recorded in 2013, up from R267.3 billion in 2012 (see RSA Chamber of Mines, 2016). Table 3 shows an overview of the trends in contribution of mining to GDP.

Table 3: Trends in Contribution of Mining to GDP in South Africa

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Average
GDP in Million Rand	157,672	197,643	200,824	230,350	261,575	267,344	288,085	286,163	284,012	304,362	247,803
As a % of GDP	7.5	8.3	8.0	8.4	8.7	8.2	8.1	7.5	7.0	7.0	7.9

Source: RSA Chamber of Commerce, 2016

It is clear from table 3 that the mining industry's contribution to the economy (and by extension, to the national taxation base) is quite significant. Between 2007 and 2016, it was quite consistent in this contribution (averaging 7.9% of GDP). Mining is also a significant provider of jobs in the country. It directly employs approximately 500 000 employees, with a further 500 000 employed indirectly in other sectors whose value-chains are linked to mining such as agriculture, manufacturing (e.g. steel), finance and banking (e.g. interest paid and insurance), and construction through purchase of various goods and services (Citi Group, 2011; RSA Chamber of Commerce, 2016). Various policies and statutory instruments have been crafted over the years to promote and govern the sector and these have enabled the government to tax and monitor the sector in a way significantly different than other business corporations.

The South African government's objective of increasing the developmental impact of South Africa's mineral sector has found expression in a number of key public policy initiatives, most notably through the promulgation of the Mineral and Petroleum Resources Development Amendment Act of 2008. The government also commissioned a comprehensive review of the sector in 2012. Our analysis of developments in the mining sector enabled identification of two major thematic areas of concern. These are:

(i) The need for effective tax administration to ensure efficient collection and equitable use of revenue from mining enterprises; and

(ii) The need for effective administration to ensure compliance with the taxation regime, prevent tax evasion and illicit transfers, sustainable environmental conservation and responsible corporate practices.

The enactment of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) was precisely designed to address these concerns. The MPRDA enabled the National Treasury and the then Department of Minerals and Energy (DME) to initiate the development of legislation that imposes royalties on the extraction of the country's mineral and petroleum resources, in addition to the ordinary corporate tax paid by all large companies (ibid). The MPRDA of 2002 is supported by a host of other policies, regulations, and strategies that are intended to enable realization of the spirit behind the Act. For instance, the Mineral and Petroleum Resources Royalty Act 28 of 2008 (MPRRA) operationalizes the payment of royalties by the mining companies. Previously, private corporations only made payment to the State in certain cases, for instance, where mining took place on State land. With the coming into force of MPRRA in 2008, the mining of all minerals and petroleum resources in South Africa now require consideration of mineral and petroleum resource royalties that are payable to the State (ibid). In accordance with the MPRRA, the royalty period runs in parallel with the company's year of assessment for Income Tax purposes. The royalty regime is administered by SARS.

Various analysts are now agreed that the South African taxation regime is quite generous to private companies operating in the mining and extractives sector mainly due to the fact that its capital investment is heavily subsidized (see Foreign Investment Advisory Service, 2006; World Bank, 2015). Curtis (2009) states that remittances to the South African government remain low since mining companies are able to deduct 100 percent of most of their capital expenditures against tax while gold mining companies pay a corporate tax rate according to a formula that they select depending on their circumstances. This is much more favorable than in the manufacturing industry, which has a 40 percent write-off in the first year and 20 percent in the subsequent three years (Foreign Investment Advisory Service, 2006). There are also no restrictions on repatriation of profits by companies operating in the mining and extractives sector.

4.0 Main Lessons from the South African Experience

Progress made in reforming the tax regime in South Africa and eventually realizing substantial benefits in terms of the efficiency and effectiveness of the tax collection administrative infrastructure has put the spotlight on the country, particularly regarding lessons of experience and best-practices. A clear lesson arising from the South African experience is that tax reforms should be implemented based on credible data and evidence and also supported by lasting political will and commitment to reform. The commissioning of different tax reform committees by the government over the years since 1994 and serious consideration of the committees' recommendations, demonstrates this kind of commitment.

It has enabled the country to reflect on its resource mobilization capacity in relation to its economic development trajectory and implement appropriate interventions. It is apparent that the various reforms implemented since 1994 have enabled the responsible tax administrative agencies to take action that broadens and protects the country's tax base. More recently, it has introduced in the legislation the requirement that multinational corporations' report to the tax authorities on a country-by-country basis with a view to limiting base erosion and profit shifting opportunities (see Tax Justice Network, 2018). A broad assessment of the country's tax system against criteria for a good tax system by the DTC (2014b) yielded a relatively positive profile as shown in Table 4.

Table 4: Overall Assessment of the South African Tax System

A Good Tax System	Overall SA Tax System
Neutrality The tax system must produce sufficient income for the state, with minimum distortions to the economy	Not enough empirical evidence on behavioral responses to ascertain whether the South African tax system is neutral.
Simplicity As far as possible, tax procedures should be simple and should be collected in a timely and convenient manner	Tax reforms have made the system simpler and somewhat reduced loopholes. Simplicity, ease of administration and lower compliance costs are important and must be enhanced. Tax policy simplification should attempt to integrate the small business tax systems within the general tax system.
Stability The tax system must stay stable to support macroeconomic stability	In good times, tax levels rise while in bad times they fall, providing an automatic stabilizer to the economy. It is important to ensure that the tax system contributes towards the counter-cyclical fiscal policy framework. However, the tax system tends to be cyclical because of the high proportion of company taxes in the tax system.
Revenue Adequacy The tax system must raise sufficient revenues to meet Government's expenditure needs and foster a stable macroeconomic environment.	Tax revenue as a percentage of GDP (Tax/ GDP ratio) has remained steady, averaging 25% between 2010/11 and 2012/13. This is, nevertheless, significantly lower than the percentage achieved before the global financial crisis when the Tax/ GDP ratios exceeded 27%. The revenue raising potential of the tax system must not be compromised.

Source: DTC, 2014b

Before making their own recommendations, the tax review committees commissioned by the government in South Africa since 1994 have first studied and gained full understanding of international tax reform commitments and models deriving therefrom such as from the African Union, G20, and OECD. They have then made efforts to customize these recommendations to the local circumstances in South Africa. For instance, the interpretation of the OECD tax reform recommendations by the DTC makes it clear that South Africa cannot afford to adopt those recommendations in wholesale fashion without considering its own realities on the ground (see DTC, 2014). Thus it is crucial to avoid standardization while tailoring international tax reform best-practices to a country's specific circumstances.

While there were many important inputs from various quarters during the tax reform process in South Africa, the main architect of the reforms was the then SARS Commissioner Mr Pravin Gordhan who worked relentlessly at the national and international level to make tax reform part of the development agenda. This suggests that tax reform in any country may require a cohort of committed champions to push the agenda forward. Gordhan emphasized the importance of political will to create a culture of tax compliance as well as the need for a comprehensive philosophical reorientation in public attitudes towards tax, particularly within the corporate community which still treated tax as an expense rather than a contribution towards provision of public services that all companies enjoy (see Gordhan, 2016). The setting up of a large business centre by SARS to focus on corporations and issues such as aggressive tax planning and transfer pricing suggests that in tax reforms there is need for a dedicated sub-unit that deals exclusively with illicit transfers. This enhances chances of success in this terrain.

An important aspect of tax reform and illicit transfer reduction that comes out of the South African case study relates to the need for close coordination among the relevant agencies to ensure alignment and harmonization of policies and specific interventions. Lack of coordination could lead to unwanted contradictions across the agencies. Thus, SARS, the National Treasury and the Reserve Bank of South Africa have been working together in a closely coordinated fashion to optimize their impact. Also key to the successful implementation of tax reforms in South Africa, has been the recruitment, training and retention of suitably qualified personnel at SARS and its sister agencies such as the National Treasury and the Reserve Bank. This directly speaks to the need to have staff members with the skills required to deal with the complex issues that give rise to base erosion profit shifting and illicit transfers. There have been a lot of persistent calls from various experts in the sector for efforts in that direction to be continued. This is crucial in the light of the fact that with increasing digitization, the international finance systems are opening up new avenues for illicit transfers that were not previously available.

From the available evidence, one can deduce that successful tax reforms are also hinged on addressing both the policy and administrative infrastructure (hard and soft) required for effective implementation. In this regard, South Africa has been able to craft the necessary policies and institutional structures, leading to the establishment of SARS as a semi-autonomous tax administration body which is independent from government and capacitated to make lasting changes to the whole tax regime.

Indeed, in most of the analytical work in this domain, the independence of SARS from the mainstream public service delivery machinery emerges as a key factor that enabled meaningful reforms to be designed and implemented with the level of seriousness and urgency required.

Subsequent amendments to the legislation and the promulgation of new statutory instruments has enabled SARS and its sister institutions to gain the legitimacy needed in implementing specific aspects of the reforms. The tax compliance regime is also largely dependent on the existence of clear rules and regulations that are understandable to the tax payers. In this regard, various statutory instruments crafted in South Africa to address complexities encountered in governing taxation in the mining and extractives sector are a strong reflection of the deployment of this approach.

Since 1994, the tax administrative bodies in South Africa have also worked tirelessly to simplify the tax returns submission processes for individuals and companies by using both hard copies and electronic systems. This seems to have significantly enhanced the submission rates and the amount of total revenues collected by SARS after the reforms were implemented.

Therefore, the need to simplify tax compliance processes emerges as another key component of the reform process. The published literature also cites this as crucial in motivating compliance among tax payers.

Notwithstanding the reforms to the taxation regime implemented in South Africa since 1994, the available evidence shows that IFFs continue to prevail in the country. While these unpleasant practices were also prevalent during the apartheid era, several scholars argue that the sheer volumes of money transferred in this way in the post-apartheid economy is particularly staggering in a country with a huge deficit in terms of addressing evident inequalities in its society (see Ashman et al., 2011; Transparency International, 2011; Fotoyi, 2016; Haynes, 2016). This has made it imperative for transfer pricing, corruption, illicit capital flight and other forms of tax malpractices to become an ongoing strategic area of focus for SARS, the National Treasury, and the Reserve Bank. Indeed, illicit transfers and tax malpractices have formed a core component of these tax administration bodies' compliance programmes. More effort and innovative solutions to the challenge are still required.

With increasing digitization, the international finance systems are opening up new avenues for illicit transfers that were not previously available.

5.0 Conclusion and Recommendations

5.1 Conclusion

This study set out to review the available literature, paying special attention to the relevant policies and key stakeholders in the illicit transfers and tax reform landscape in South Africa, with a view to identifying key attributes that can make the tax regime more effective. From the review done, it is clear that taxation matters for the growth, development and transformation of the South African economy. While it may have its shortcomings as already elaborated in this paper, overall, the country's tax administration regime appears consistent with global best-practice. However, it is also clear that the battle against illicit transfers is far from over and therefore, future reform efforts have to take this into account more seriously than ever before. The massive amounts of IFFs articulated in most of the available literature suggest that national resources are being diverted from their most efficient socio-economic use in the country and are likely to be significantly affecting national resource mobilization.

It is encouraging to note that since 1994, South Africa has already been treating tax reform and illicit transfers as a major economic development issue for the country. More effort should continue to be channelled in that direction. More research is also required to advance understanding and generate more effective solutions in the relatively complex terrain of tax reform and illicit transfers.

5.2 Recommendations

A set of useful recommendations may be derived from the literature reviewed in this paper. In this regard, DTC (2014b) is quite informative. It outlines a set of key principles that must be observed and practised in designing tax policy to achieve the South African government's developmental objectives. Application of these principles may also help to reduce incidences of deliberate BEPS and illicit transfers. These key principles are efficiency, equity, simplicity, transparency, certainty, and tax buoyance. Unpacking the meaning of each of these and implementing them accordingly will enable tax administration agencies in South Africa to have more impact in the fight against illicit transfers. This will also require SARS and its sister agencies to establish a highly skilled team of experts on transfer pricing and tax evasion. Among others, this includes lawyers, accountants, business analysts and economists, who have an intimate understanding of commercial operations and international movement of funds. Deliberate measures should be taken to identify, employ and retain skilled personnel at the SARS Head Office as well as in the sub-regions or provinces. The use of Tax Administration Diagnostic Assessment tools to systematically assess the strengths and weaknesses of South Africa's tax administration regime is recommended as part of ongoing reforms. This helps in identifying the hard and soft infrastructure needed to optimize the tax regime.

Tax compliance can be significantly improved when there is a relationship of respect between taxpayers and the tax authorities. Provision of good taxpayer service (customer focus) and constructive dialogue between tax authorities, taxpayers and their advisors are some of the building blocks towards ensuring compliance. The adversarial relationship between tax authorities and taxpayers that has characterised the tax regime in South Africa and elsewhere in the past is counterproductive. It is therefore, critical that as more reforms are implemented in South Africa, deliberate attention be paid to this aspect with respect to taxation for both individuals and corporations. In this regard, tax administrators must find the right balance between the thin line separating customer-oriented good service and enforcement. In this way, they may be able to achieve reasonable levels of voluntary compliance by the tax payers.

By extension, this approach requires endorsement of the OECD principle of 'enhanced relationship' by the taxation authorities in South Africa. Deployment of this approach will improve the environment for engagement between government tax agencies and the corporate sector to agree on the best way to achieve national tax collection objectives. In addition to the foregoing, there is a definite and articulated need for SARS and its sister agencies to adopt emerging information technology systems and digital capabilities that will help it keep abreast with constantly evolving technology. Not doing so risks opening up new opportunities for poor compliance by tax payers and poor detection of tax malpractices.

There is an urgent need to revisit the immediate and long-term impacts of relaxing national exchange control regulations. Ordinarily, these regulations would ensure the timeous repatriation of foreign currency acquired by residents of South Africa into the country's banking system. They may also prevent or limit the loss of foreign currency through illicit transfers from South Africa. In principle, the regulations should prohibit any foreign exchange transactions that have not been granted specific exemptions by the National Treasury, Reserve Bank or other agencies authorised by the National Treasury to grant such an exemption. In this paper, we content that such exchange control regulations complement the existing tax legislation and act as a preventive mechanism against BEPS in South Africa, especially in the context of new avenues for illicit transfers made possible by advances in IT. It is therefore, critical that any further relaxation of the exchange control regulations be treated with the sensitivity and caution that it deserves, if not avoided completely.

In its fight against illicit transfers and tax base erosion, it is crucial that SARS and its sister agencies continue to focus relentlessly on high net worth individuals and the mining and extractives sector

Since FinSurv usually monitors movement of funds into and out of South Africa, it should be given the responsibility of receiving comprehensive reports from corporates, with financial statements of all their offshore entities, and should routinely share this kind of information with SARS and the National Treasury on a regular basis. Such cooperation will enable early and collaborative detection of possible illicit transfers. At the international level, South Africa should subscribe and make use of initiatives such as the Addis Tax Initiative. This is a multi-stakeholder partnership of development partners and countries that declare their commitment towards enhancing the mobilization and effective use of domestic resources and improving the fairness, transparency, efficiency and effectiveness of their tax systems. It is intended to facilitate broad-based capacity building of tax administration agencies to address the challenges in revenue collection that partner countries face. It also emphasizes the importance of improving policy harmonization and coherence, establishing strong domestic governance systems, and mobilizing the political will to drive forward tax system reforms in partner countries. This is the direction South Africa should be taking.

In its fight against illicit transfers and tax base erosion, it is crucial that SARS and its sister agencies continue to focus relentlessly on high net worth individuals and the mining and extractives sector. Most analyses indicate that these are the main perpetrators of illicit transfers and tax evasion. Although potentially costly, formation of a sub-unit specifically dedicated to ensuring full compliance with tax payers' obligations and addressing illicit transfers in the context of high net worth individuals, the mining and extractives sector and MNCs could be a game-changer. At present, MNCs are not required to do country-by-country reporting in their annual accounts for each country in which they operate. If they were required by law to do this, key stakeholders would get access to information sufficient to determine whether or not there is illicit transfer pricing taking place. We recommend that South Africa deliberates on this more intensely with a view to developing and implementing the requisite legislation in this regard.

If necessary, intensive recruitment and training of the needed expertise for monitoring MNC country-by-country reporting compliance should be done. This will obviously require more funding to be budgeted for and made available to the tax regime, lest a lack of sufficient funding derails the interventions.

Noting that South Africa has formally adopted the *arms-length principle* to address transfer pricing issues, there is need to revisit this aspect with a view to further strengthen the administrative system and enable customs officers to determine reference prices when insufficient information is available to assess whether companies are complying with the arm's length principles. This should be supported by the activities of well-established specialized transfer pricing units at SARS to monitor profitability, reported prices on intra-company trade and reporting on profit in other jurisdictions, with special focus on those MNCs operating in tax havens and offshore centres. Consideration of deploying the unitary taxation framework for MNCs should also be made in comparison with other existing frameworks. The deployment of this framework in developed countries seems to have simplified the taxation of MNCs and might turn out to be the game-changer South Africa needs at this stage. Nevertheless, irrespective of which framework is eventually adopted for taxing MNCs, care should always be taken to ensure that the policy interventions made do not discourage foreign investment into South Africa. This is a relatively delicate balancing act that should be executed carefully. Therefore, efforts at building trusting relationships with the high net worth individuals and the corporate sector should be part of the broader package of reforms. Constructive engagement with the high net worth individuals and the corporate sector to assist them in better understanding their tax obligations will be crucial.

It is quite difficult for South Africa (or any other country for that matter) to recover or reverse losses suffered through illicit transfers even though specific policy reforms could be helpful to some extent.

Therefore, the main goal of reform initiatives should be to address illicit transfers by adopting frameworks, strategies and tools that effectively prevent them. In this regard, customs agencies in South Africa must treat trade transactions involving tax-havens with the highest levels of scrutiny.

Other priority areas of attention in this regard include the removal of ad hoc exemptions from customs duties, streamlining clearance and document control procedures, and efficient computerization of payment and collection procedures in order to make procedures less cumbersome and more efficient. In addition, we recommend that South Africa actively participates in the worldwide movement towards the cross-country automatic exchange of tax information as endorsed by the OECD and the G20 countries. This obligation to reduce international illicit transfers should be backed by provision of relevant training to the responsible customs and taxation officials in order for them to be capacitated to more effectively detect intentional misinvoicing of trade transactions.

There is always the possibility that companies will try to abuse transfer pricing opportunities under different circumstances. SARS should be always alert and have the power to adjust income and expenses where under or overpricing between related companies has resulted in a lowering of taxable profit. South Africa will need to be more active in international platforms designed to enhance automatic exchange of information. The signing of MoUs and exchange of tax-related information with countries that have committed themselves to this agenda is crucial. Signing of disclosure treaties with well-known tax havens such as Singapore, Seychelles, Cyprus, Mauritius, Luxembourg and Malta, will also be helpful in terms of enabling South Africa to obtain information needed to counter the harmful tax competition that could be encouraged by these countries.

To detect illicit transfers and identify the perpetrators early on, it is vital that there is transparency regarding ownership and control of companies, trusts and other legal entities.

In this regard, South African tax agencies should collect information on the identity of the ultimate beneficial owner and controller of each company. This information also needs to be updated regularly and made publicly available. This aspect of tax administration is particularly important where MNCs are involved because they are the ones that can easily benefit illegally from transfer pricing practices. Therefore, they should be made to publicly disclose their revenues, profits, losses, sales, taxes paid, subsidiaries, and staff levels on a country-by-country basis. Relevant legislation should be drafted to support implementation of such measures to ensure transparency. Table 5, in the annex, outlines some of the key features of effective tax administration that South Africa and other countries should put in place as they reform their systems.

To ensure good customer service and encourage voluntary compliance, it is vital for SARS to ensure that tax payers have access to updated, simple and straightforward information about tax filing and compliance. In this regard, the corporate sector in South Africa must be made aware of when and how data is to be submitted, when to rely on self-assessment, and what supporting data and documentation should be kept and for how long. Assistance to the companies should also be provided by competent officers who can provide further guidance and answers to any additional query, thus ultimately reducing the administrative burden on the tax authorities. In cases where there is misinterpretation and ambiguity of the data and procedures, the tax authority should provide timely rulings both at its own discretion and also on request to allow companies the opportunity to comply with the legislation.

The DTC (2017) recommends that South Africa should measure the scale and economic impact of BEPS and illicit transfers in order to determine their actual scale as well as their economic impact. In this paper, we concur with this view and stress that until the scale and wider impacts of the scourge are known, advocacy in this landscape will not find easy traction.

There is also need for SARS and its sister agencies to reinforce tax and exchange control rules as well as implementation of due diligence procedures by banks and other financial institutions. This will limit avenues for illicit transfers.

Where clear contravention of the tax laws is identified, it is important that the perpetrators are penalized heavily and even prosecuted if there is fraud, without exception. This should be used as a strategy to deter other would-be offenders in the foreseeable future. However, since not all cases of non-compliance warrant heavy penalties, it is also important to develop procedures that can resolve conflict without necessarily resorting to the application of penalties.

South Africa is a resource-rich country and the mining and extractives sector is generally considered as one of the main sources of illicit transfers in the country and beyond. Reforms to the tax regime should be designed with the specific intention to further promote transparency and accountability in this sector. However, in its current form, the mining and extractives industry tax regime in South Africa has been criticized for its secrecy and also for providing very generous and extensive tax concessions and incentives to the mining companies.

Where clear contravention of the tax laws is identified, it is important that the perpetrators are penalized heavily and even prosecuted if there is fraud, without exception.

In the process, this has significantly reduced proceeds that could accrue to the national fiscus through more equitable taxes in this sector. It is therefore, necessary for the country's mining tax regime to be reformed in a way that ensures that the South African government collects a fair share of mining rents whilst minimizing illegal transfers from this sector. More analytical studies will be required to determine how best the rates of royalties and other taxes in the mining sector could be meaningfully revised. The practice of negotiating tax breaks for individual companies in this sector should also be removed from the menu of incentives.

Inspite of substantive tax reforms and several initiatives introduced by various institutions in South Africa since 1994, with the express intention of curbing illicit transfers and related offences, the magnitude of the challenge has remained resiliently very high and seems to overwhelm these institutions' implementation capacities. While the success of SARS in tax collection has resulted in South Africa being considered as one of the leading examples of efficient tax collection in Africa, its success rate is based on calculations relating to the overall tax base in the country which does not necessarily reflect successful curbing of illicit transfers. Indeed, there are indications that IFFs from the country are still quite substantial. Therefore, more efforts are required to address this trend.

Source: Cape Town Magazine

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Table 5: Features of an Efficient Tax Administration System

Desirable Feature	Key Sub-Components
Clarity of policies, powers, and procedures	• Clear legislation that provides unambiguous taxing powers, consistent with government policy
	• Well-defined rules, methods of calculation, and administrative procedures are set out clearly in regulations, for example, for valuation of the bases on which royalties and/or other taxes are levied
	• Clear rules govern the exercise of legislative discretion by ministers or agencies
	• Minimal opportunities exist for tax avoidance and technical disputes
	• Good consultative procedures between policy and administration agencies ensure that policy development takes administration and compliance issues into account.
Stability and predictability	• Policies are stable over time, allowing businesses to invest with confidence
	• Procedures are stable over time, allowing businesses to develop standardized reporting systems
	• Good consultative procedures between businesses and government, at the ministerial and agency levels, allow proposed changes to policy or procedures to be foreshadowed and discussed so there are "no surprises"
	• Contractual stability agreements, where used, balance stability with the need for flexibility to adjust to changing circumstances over time if necessary or desirable
Equity and uniformity	• Policies and procedures apply, as far as possible, across all businesses in similar circumstances within the same industry sector
	• Coherent and harmonized procedures exist for administration of different government revenues

Transparency	• Policies and procedures are openly available, easily accessed, and understandable by the taxpayer and other stakeholders • Contractual stability agreements, where used, are accessible publicly • Systems are based on readily verifiable parameters such as LME prices, widely used indices, and the like • Adequate and regular auditing of company financial statements is undertaken by suitably experienced, independent, and certified auditors • Random (but planned) audits of self-assessed tax returns are performed • "Sunset" provisions exist on the confidentiality of company data • Timely and accurate reporting of government revenues, supported by efficient systems for providing the necessary data • Adequate and regular auditing of government receipts against industry payments (EITI) • Adequate and regular reporting of revenue administration performance against appropriate measurable performance indicators; • Effective internal and external audit of administration accounts and performance • National mining companies are limited to a commercial role and subject to fiscal regulation in the same way as other commercial companies
Enforcement	• Adequate statutory powers so that administrative requirements can be enforced effectively • Clear, proportionate, and progressive penalties for non-compliance, including appropriate penalties for tax understatements, and interest chargeable on all tax paid late for any reason attributable to the taxpayer • Effective application of audit and enforcement powers in practice • Clearly defined, timely, equitable, and effective dispute resolution procedures • Minimal need for ministerial or tax agency discretion

Efficiency	• Administrative agencies have function-based organizational structures; • Administrative systems avoid duplication of function and minimize the cost to government of effective regulation and the cost to industry of compliance • Taxation policies and systems balance economic efficiency with the capacity of government agencies to administer them and the capacity of businesses to comply with them • A self-assessment regime, subject to rigorous enforcement and effective risk-based audit • Effective information sharing between relevant government agencies in the mines and finance ministries to minimize duplication of data collection • Well-structured data collection, storage, and transfer systems
Adequately skilled and resourced administration	• Administrative agencies are adequately funded, resourced, and skilled to undertake the task assigned to them • Appropriate industry-based specialization • Effective recruitment, retention, and succession plans in place • Ongoing and progressive skills development training for staff • Appropriate and flexible use of external resources to allow affective administration while in-house capacity is being developed and/or to deal cost-effectively with peak load periods • Adequate and appropriate information technology (hardware and software) to support administrative functions and allow easy generation of both standard and custom reports, and data sharing between agencies

Appropriate agency-focused risk management systems	• Effective anti-fraud measures are in place
	• Effective anti-corruption measures are in place
	• No conflict exists between the roles government officers have as regulators and any other role they may have in relation to the industry or a company
	• Measures are in place to ensure appropriate confidentiality of company information is maintained, if required by law or contract
	• Regular archiving and secure storage of documents and data
	• Business continuity plans in place for both short-term (e.g., power failures) and long-term interruptions
Appropriate taxpayer-focused risk management systems	• Effective approaches to encourage and support compliance by businesses
	• Strategy and organization are tailored to different levels of compliance risks presented by different taxpayer segments
	• Processes are effective enough to identify, analyze, and rank compliance risks, at both issue and taxpayer levels, and treat the risks on a prioritized basis
	• A flexible suite of compliance products can be tailored to deal with causes of non-compliance

Source: Adapted from Guj et al., 2013

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