

A CRITICAL ANALYSIS OF THE TAX IMPLICATIONS OF THE 2010 FIFA WORLD CUP IN SOUTH AFRICA

by

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SUMMARY

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The FIFA World Cup, to be hosted in South Africa in June 2010, is approaching and the South African Revenue Service has included additional legislation for taxing the entities and individuals involved in the event on various revenue streams.

As South Africa has had limited experience in both hosting such events and implementing the tax concessions laid down, this study focuses on providing a comparison between current tax legislation and the legislation that will apply during the World Cup event in order to expand on the differences that arise as a result of the Revenue Laws Amendment Act (20/2006). The concessions cover sections of income tax, value added tax and customs and excise duties. The exemptions or tax concessions are then further distinguished according to their application to various entities/individuals and locations, and for limited periods.

This study aims to elucidate on a topic on which no or minimal academic research has been done in the past; it has been conducted through purely conceptual research in the form of a literature review. Several differences in legislation have been identified and highlighted and revenue streams identified. Administrative and other effects have been discussed.

Keywords:

FIFA World Cup 2010

Taxation

Tax free bubble

OPSOMMING

'N KRITIESE ANALIESE VAN DIE BELASTING GEVOLGE VAN DIE 2010 FIFA WERELD BEKER IN SUID AFRIKA

deur

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Die FIFA Wereld Beker, aangebied in Suid Africa in Junie 2010, kom vinnig nader en die Suid Afrikaanse Inkomste Diens (SAID) het addisionele wetgewing ingestel vir die belas van entiteite en individue betrokke by die toernooi in verskillende inkomste strome.

Omdat Suid Afrika beperkte ondervinding in die aanbied van so 'n toernooi, asook die implementering van die belasting konsessies neergele het, fokus hierdie studie om 'n vergelyk te tref tussen die belasting wetgewing neergele voor en gedurende die Wereldbeker. Fokus word geplaas op die verskille in wetgewing as gevolg van die Wysigingswet op Inkomstewette (20/2006). Die konsessies handel met gedeeltes van Inkomste belasting, Belasting op Toegevoegde Waarde en Doeane en Aksyns belasting. Die vrystellings of belasting konsessies word verder onderskei op grond van die toepassings op entiteite/individue, geografiese gebiede, asook die tyds beperking daarvan.

Hierdie studie beoog om lig op 'n andersins onbekende onderwerp te werp, waarop min of geen akademiese navorsing in die verlede gedoen is. Die studie is deur die nasien van literatuur uitgevoer. Verskeie verskille in wetgewing, asook inkomste strome is geïdentifiseer en beklemtoon. Administratiewe en ander gevolge word ook bespreek.

Sleutelwoorde:

FIFA Wereld Beker 2010
Belasting

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A CRITICAL ANALYSIS OF THE TAX IMPLICATIONS OF THE 2010 FIFA WORLD CUP IN SOUTH AFRICA

1 CHAPTER 1: INTRODUCTION TO THE STUDY

1.1 BACKGROUND

Mr Thabo Mbeki, former President of South Africa, said, in October 2008:

We want, on behalf of our continent, to stage an event that will send ripples of confidence from the Cape to Cairo – an event that will create social and economic opportunities throughout Africa. We want to ensure that one day, historians will reflect upon the 2010 World Cup as a moment when Africa stood tall and resolutely turned the tide on centuries of poverty and conflict. We want to show that Africa’s time has come (Anon, 2010 FIFA World Cup South Africa).

On 15 May 2004, South Africa (RSA) was successfully awarded the opportunity of hosting the 2010 FIFA World Cup. As the tournament commencement date approaches, the RSA is preparing to meet the requirements laid down by the *Federation Internationale de Football Association* ('FIFA'). These preparations extend beyond the construction of football stadia and other infrastructure, obtaining corporate sponsorships and the co-ordination of sporting logistics, to preparations of a more specialised nature in the area of taxation.

In conjunction with the bid to host the event, the government of the RSA issued several guarantees that they would comply with certain requirements set out by FIFA for World Cup hosts (Wilson, 2008:1). These include, inter alia, the provision of taxation relief for qualifying individuals and entities. Trevor Manuel, former Minister of Finance, included certain provisions in the 2006 Revenue Laws Amendment Act (20/2006) ('Amendment Act'), to give effect to FIFA's requirements.

The Amendment Act (20/2006) introduced the tax benefit, or tax-free bubble, as it is commonly known. Some of the most significant tax implications of this new legislation are

that it will result in: certain goods being sold free of VAT; goods receiving in some cases an exemption from income tax in the hands of the entity or individual; and imports been exempt in certain other cases from customs duties/excise taxes.

Tax relief will be given on specific goods and services for qualifying taxpayers or individuals, as defined in the Income Tax Act 58/1962 (Wilson, 2008:1), in accordance with certain conditions. This relief system will be governed by a supplementary abuse paragraph in the legislation in order to limit any loss that may be suffered by the South African Revenue Service ('SARS').

Several impacts, positive and negative, which will arise from hosting such a major international event, are discussed below. The competition amongst countries to host this mega-event is driven largely by the resultant international publicity and global recognition, according to Jeong and Faulkner (Bohlmann, 2006:5). Previous host countries have ignored the negative impacts of such events (Bohlmann, 2006:5), perhaps because of the perception that the benefits far outweigh the costs. "The gross benefit of this event is the wealth created in the country as a result of the event" (Grant Thornton, 2003:1). This benefit arises from several factors, such as promotion of tourism and small business.

When South Africa won the bid, it was predicted that the 2010 FIFA World Cup would contribute an estimated R51.1 billion to South Africa's gross domestic product (GDP) between 2006 and 2010 (Anon, 2010 FIFA World Cup South Africa).

Amongst the positive economic effects experienced by Germany when that country hosted the 2006 FIFA World Cup was the increased revenue in the tourism and hospitality industries, 185 000 people being registered for employment in Germany as a direct result of the event. The gross domestic product (GDP) rose by 2.4% and capital expenditure totalled six billion Euros (Swart & Daniels, 2008:29).

A study performed by Grant Thornton Kessel Feinstein on the economic impact of the 2010 World Cup to be held in the RSA concluded that an additional R7.2 million would be paid to government in taxes (Grant Thornton, 2003:3).

The inclusion of the new tax measures contained in the Amendment Act (20/2006) gives rise to a variety of advantages, disadvantages and practical considerations. SARS will have to take these into account if it is to contribute to the effective running of the 2010 World Cup and post-World Cup tax collection.

An extensive review of local and international electronic and manual databases, as well as discussions held with SARS officials (2009) and leading tax professionals at Deloitte and Touche (2009), revealed that minimal academic research has been conducted and documented to specifically address the 2010 World Cup tax provisions as contained in the Amendment Act (20/2006) and the implications of these provisions. This study is therefore aimed at addressing this research gap to some extent.

Further, this study will serve to provide an understanding of the difficulties faced by SARS and other entities involved with the World Cup when it comes to implementing the tax regulations, carrying out their duties in terms of the legislation and overseeing compliance with legislation. It will investigate whether any inconsistencies in current legislation and past case law exist, and will discuss areas in which the tax relief provided for certain entities could prove problematic for SARS and the other entities.

1.2 PROBLEM STATEMENT

The main purpose of this study is to critically analyse the new 2010 FIFA World Cup taxation amendments in comparison with current taxation legislation in order to highlight significant changes. The study will consider the various parties involved and their classification into entity levels. It will also analyse the legislation per entity level. In addition, it will consider the SARS revenue streams, and the practical and administrative implications of the recently-enacted legislation for all parties involved. The study will also consider the potential advantages and disadvantages for the various entity levels that could result from the new legislation. In conclusion, there will be a brief discussion on some points that could be considered by SARS relating to the effective implementation of the 2010 FIFA World Cup tax amendments.

1.3 RESEARCH OBJECTIVES

The study will be guided by the following research objectives:

- To summarise the requirements set out in the Amendment Act (20/2006) in order to qualify for the tax-free bubble provisions referred to in the introduction and discussed below, and to compare them with the current normal taxation legislation. Examples of relevant, available case law covering disagreements between SARS and the taxpayer are also discussed.
- To determine, by analysing the 2010 FIFA World Cup Amendment Act (20/2006) provisions, the advantages and disadvantages to the consumer and suppliers of goods and services, as well as the impact on SARS in the areas of value added tax (VAT), income tax and customs and excise duties.
- To consider the administrative and logistical structures that are being implemented by SARS for the effective operation of the relief measures.
- To provide an international comparison with other similar sporting events previously held, such as the 2006 FIFA World Cup held in Germany, and the 2012 Olympic Games to be held in London, England.

1.4 IMPORTANCE AND BENEFITS OF THE PROPOSED STUDY

The RSA is required to institute tax relief measures with respect to the FIFA Soccer World Cup. This study is aimed at making the following valuable contributions:

- It will provide an academic understanding of the relief provisions offered to qualifying taxpayers in light of the RSA's current and 2010 FIFA World Cup tax legislation. It will also highlight considerations that SARS should take into account to enable the proper implementation of the tax-free bubble during the 2010 FIFA World Cup.
- It will provide an academic comparison with previous local cases dealing with similar tax benefits or exemptions.
- It will provide an academic comparison with similar international events held or to be held in the near future.

- It will discuss the tax effects for all relevant parties including SARS, South African companies and individuals, FIFA and all related entities and tourists.
- It will analyse the overall impact that the legislation will have on the revenue streams receivable by SARS from the various forms of taxes.

This research proposal has been compiled in several parts. First, the assumptions and delimitations on which the study is based are discussed. Secondly, a list of definitions and a literature review are provided. Finally, the research design and methods used are considered.

1.5 DELIMITATIONS OF THE STUDY

This study has been conducted in the South African context, taking into account current South African tax legislation and circumstances. The focus will be primarily on FIFA and SARS and other qualifying individuals as defined in the Amendment Act (20/2006).

The effects of the legislation post the 2010 FIFA World Cup have not been considered.

The effect of the 2010 FIFA World Cup provisions on Customs and Excise legislation and air passenger taxes has not been considered in detail in this research paper. The focus is on the income tax and VAT implications, with only a limited consideration of other related taxes.

1.6 ASSUMPTIONS OF THE STUDY

This study has been performed and the legislation analysed on the assumption that no further amendments to the 2010 taxation legislation will be made on or after 31 August 2009.

It is also assumed that FIFA will not exercise its right to amend any parties designated as FIFA associates.

1.7 DEFINITION OF KEY TERMS

The following key concepts are used in this study, and are all defined in either the Income Tax Act (58/1962), the Revenue Laws Amendment Act (20/2006) or the Value Added Tax Act (89/1991).

Championship means “all matches and ceremonies of the 2009 Confederations Cup and the 2010 FIFA World Cup and other directly related events, including draws, galas, conferences and cultural events”.

Championship duration means “the period commencing one week before the opening ceremony and terminating immediately after the closing ceremony of the 2009 Confederations Cup and the 2010 FIFA World Cup respectively”.

Entertainer or sportsperson’ in terms of 47A of the Income Tax Act (58/1962), includes any person who, for reward—

- i) performs any activity as a theatre, motion picture, radio or television artiste or a musician;
- ii) takes part in any type of sport; or
- iii) takes part in any other activity which is usually regarded as being of an entertainment character.

Gross Income, as defined in the Income Tax Act (58/1962) “in relation to any year or period of assessment, means:

- i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident, or
- ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within or deemed to be within the Republic, during such year or period of assessment, excluding receipts or accruals of a capital nature.”

Input tax is defined in the VAT Act (89/1991) in relation to a vendor as...“tax charged under section 7 and payable in terms of that section... where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of section 17) that the goods or services concerned are acquired by the vendor for such purpose.”

A **permanent establishment** is described in the Income Tax Act (58/1962) as “defined from time to time in Article 5 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development (OECD)”. The OECD Model defines a permanent establishment as “the carrying on of the business of the enterprise through this fixed place of business”.

Qualifying person in terms of the Revenue Laws Amendment Act (20/2006) means -

- (i) FIFA and FIFA subsidiaries;
- (ii) FIFA national associations;
- (iii) FIFA confederations;
- (iv) Media representatives;
- (v) Commercial affiliates;
- (vi) Merchandising partners;
- (vii) Licensees;
- (viii) FIFA Flagship Store Operator;
- (ix) FIFA designated service providers, including the pitch importer, concession operators, hospitality service providers, design servicers, events management and marketing operations servicers and office suppliers; and
- (x) The host broadcaster, broadcasters and broadcast rights agencies.

Resident as defined in section 1 of the Income Tax Act (58/1962) is:

“(a) natural person who is—

- (i) ordinarily resident in the Republic; or

(ii) not at any time during the year of assessment ordinarily resident in the Republic, if such person was physically present in the Republic-

(aa) for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the three years of assessment preceding such year of assessment; and

(bb) for a period or periods exceeding 549 days in aggregate during such three preceding years of assessment”

Provided that—

(A) for the purposes of items (aa) and (bb) a day shall include a part of a day; and

(B) where a person who is a resident in terms of this subparagraph is physically outside the Republic for a continuous period of at least 330 full days immediately after the day on which such person ceases to be physically present in the Republic, such person shall be deemed not to have been a resident from the day on which such person so ceased to be physically present in the Republic; or

(b) person (other than a natural person) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic (but excluding any international headquarter company).”

Specified activity means any “personal activity exercised in the Republic or to be exercised by a person as an entertainer or sportsperson, whether alone or with any other person or persons in terms of 47A of the Income Tax Act (58/1962).”

Tax-free bubble in the context of this study, is the commonly known term relating to the tax benefit resulting from the FIFA World Cup 2010 legislation, in which goods will be sold free of VAT and goods may be exempt from income tax in the hands of the vendor and certain imports may be exempt from customs duties/excise taxes.

The abbreviations used in this document are set out in the table below:

Table 1: Abbreviations used in this document

Abbreviation	Meaning
DTA	Double Taxation Agreement
FIFA	<i>Federation Internationale de Football Association</i>
OECD	Organisation for Economic Co-operation and Development
RSA	Republic of South Africa
SAFA	South African Football Association
SARS	South African Revenue Service
SDL	Skills Development Levy
UIF	Unemployment Insurance Fund
VAT	Value Added Taxation

2 CHAPTER 2: LITERATURE REVIEW OVERVIEW

2.1 INTRODUCTION

This literature review presents pure conceptual research based on available literature.

Each year, with the announcement of the budget speech, the Minister of Finance makes amendments to the then current South African taxation legislation. These amendments are stated in the Revenue Laws Amendment Act (20/2006), which is then approved and promulgated by publication in the *Government Gazette*. These changes are introduced into the legislation to cater for any new or changing circumstances affecting the country and its economy.

2.2 EVENT BACKGROUND

The 19th FIFA World Cup will be hosted in South Africa, and is scheduled to take place between 11 June and 11 July 2010. In order to be able to host this event, FIFA has stipulated 17 guarantees that are required of any host country. Meeting these requirements is the responsibility of various South African government departments and is overseen by the South African national government.

The 17 guarantees cover financial concerns, intellectual property and marketing rights, safety and security, healthcare services, transport, entry into and travel within the RSA, and telecommunications (Anon, 2010 FIFA World Cup South Africa).

Guarantees are stipulated by FIFA as being applicable to various government departments, including the Ministries of Home Affairs, Communications, Transport, Finance, Environmental Affairs and Tourism, to name a few (Anon, 2010 FIFA World Cup South Africa).

The guarantees were introduced by Parliament in September 2006 through the Special Measures Act (12/2006), as per FIFA requirements (Anon, 2010 FIFA World Cup South

Africa). This was followed by the signing of a Memorandum of Understanding between the Minister of Finance and the President of FIFA on 27 October 2006. This Memorandum covers tax matters resulting from the hosting of FIFA events and forms the basis for certain amendments to the Value Added Tax Act (VAT Act), the Income Tax Act and the Customs and Excise Act (Anon, 2010 FIFA World Cup South Africa).

The Amendment Act (20/2006) has introduced new provisions into South African legislation to cater for the 2010 FIFA World Cup. This Amendment Act (20/2006) was promulgated and notice thereof was placed in *Government Gazette*, No 29603 on 7 February 2007.

This literature study will focus on certain significant provisions contained in paragraphs 89, 106 and Schedule 1 of the Amendment Act (20/2006), which serve to amend the VAT Act (89/1991) and Income Tax Act (58/1962) catering for the FIFA World Cup.

The RSA was obliged to provide FIFA with various forms of incentives or guarantees. One of these is the formation of a tax-free bubble. Tax-free bubble, in the context of this study, is the commonly-known term relating to the tax benefit resulting from the FIFA World Cup 2010 legislation, in which goods will be sold free of VAT and goods may be exempt from income tax in the hands of the vendor, as well as certain imports being exempt from customs duties/excise taxes. The tax-free bubble has been provided as a guarantee to FIFA (Wilson, 2008:1), and applies to residents and non-residents alike. A resident is defined in the Income Tax Act (58/1962) as set out below.

Resident

A 'resident' has been defined in section 1 of the Income Tax Act (58/1962) as a

“(a) natural person who is—

- (i) ordinarily resident in the Republic; or
- (ii) not at any time during the year of assessment ordinarily resident in the Republic, if such person was physically present in the Republic-
 - (aa) for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods

exceeding 91 days in aggregate during each of the three years of assessment preceding such year of assessment; and

(bb) for a period or periods exceeding 549 days in aggregate during such three preceding years of assessment.”

The tax free bubble legislation will, however, be restricted to ‘qualifying persons’ when trading within the FIFA-designated sites which have been pre-determined for the purposes of the Amendment Act (20/2006). This term is defined as follows:

Qualifying person in terms of the Amendment Act (20/2006) means-

- (xi) FIFA and FIFA subsidiaries;
- (xii) FIFA national associations;
- (xiii) FIFA confederations;
- (xiv) Media representatives;
- (xv) Commercial affiliates;
- (xvi) Merchandising partners;
- (xvii) Licensees;
- (xviii) FIFA flagship store operator;
- (xix) FIFA designated service providers, including the pitch importer, concession operators, hospitality service providers, design servicers, events management and marketing operations servicers and office suppliers; and
- (xx) The host broadcaster, broadcasters and broadcast rights agencies.

The result of the 2010 legislation is that certain transactions, individuals and taxes receivable by SARS will be treated differently, and in certain cases the taxes ordinarily due to SARS will be forfeited. Advocate Meyerowitz (2007:1) laments that "the fact that SARS may choose not to tax many transactions is hardly satisfactory in that thereby the entire area of planning with clarity will have been replaced by the ability of SARS to act as it pleases".

It is Meyerowitz’s (2007:1) view that the legislation has been put in place through a long process of formalisation and legalisation, and SARS’ exclusion of certain taxes and

transactions would undermine both the legislative process as well as the rules that SARS had originally put in place. Furthermore, it would complicate the tax collection process, as will be discussed later.

If an entity is exempt from tax, or the specific service or sale of goods is exempt, it means that no tax is payable by that entity on the services or goods. According to Mthembu (in *SJ & A*, 2007:1, these tax provisions create the concept of a tax-free bubble with respect to income tax, VAT and customs and excise duty.

The creation of the tax-free bubble is a new area of tax which will introduce new considerations for SARS in the RSA. Such an extensive range of exemptions has not been allowed in the past, as is evident in the lack of previous legislation on the subject. The only duty-free area that currently exists in South Africa can be found at airport duty-free stores.

2.3 CONCLUSION

This study will consequently look at the possible resulting implications and effects of the 2010 FIFA World Cup taxation legislation on FIFA-related entities and individuals, and SARS. In order to do this, the stipulations and requirements of the existing legislation will be discussed first. The actual impact of the tax-free bubble will then be established by comparison with existing legislation and its actual effect on the entities involved. The collection of taxes by SARS can then be highlighted.

3 CHAPTER 3: TAXATION LEGISLATION (BEFORE 2010 AMENDMENTS)

3.1 INTRODUCTION

Before the introduction of the 2010 FIFA World Cup amendments to RSA taxation legislation, the legislation noted and discussed below was applicable to all entities, and remains applicable to all entities which are not categorised as 'qualifying persons' as defined in the Amendments Act (20/2006). All income which does not qualify for exemption is also subject to the normal rules set out in the current Income Tax Act. Only relevant extracts of the applicable taxation legislation have been discussed here in order to facilitate comparison later in the document.

The applicable legislation will now be discussed in respect of each of the following taxes:

- VAT
- Income tax
- Employees' tax
- Import taxes.

3.2 VAT LEGISLATION

VAT is a consumer tax and is charged on supplies in terms of section (7) of the VAT Act (89/1991).

- **Section 7 : Charging section (VAT Output)**

Section 7 of the VAT Act (89/1991) states that "there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax"

"a) on the **supply** by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;

- b) on the **importation** of any goods into the Republic by any person on or after the commencement date; and
- c) on the supply of any **imported services** by any person on or after the commencement date, calculated at the rate of **14 per cent** on the value of the supply concerned or the importation, as the case may be.”

The VAT Act also entitles a purchaser (registered as a VAT vendor) to certain claims for VAT paid on purchases. The VAT Act (89/1991) also caters for different VAT rates and certain exemptions. Thus VAT is chargeable by a vendor on goods sold to the consumer and is payable by the said vendor to SARS.

- **Section 11 Zero Rating and Section 12 Exemptions**

VAT is charged at a rate of 14% unless the goods or services qualify for zero rating or VAT exemption.

Goods which are zero-rated as stipulated in section 11 of the VAT Act (89/1991) are taxable supplies, but they will attract VAT at a rate of 0%. As they are still considered taxable supplies, the vendor will still be entitled to an input tax deduction, as the expenses incurred were in the course of making taxable supplies (refer to the input tax section below).

Section 12 contains a list of items that are exempt from VAT.

- **Input tax**

Input tax is defined in the VAT Act (89/1991) in relation to a vendor as “tax charged under section 7 and payable in terms of that section... where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of section 17) that the goods or services concerned are acquired by the vendor for such purpose”.

Thus entities responsible for paying output VAT are entitled to claim an input VAT deduction based on the requirements set out in the VAT Act (89/1991) as long as they are (along with certain other requirements) making taxable supplies and they have paid input VAT on the purchase of the goods.

- **Tax relief allowable to certain diplomats and diplomatic and consular missions**

Section 68 makes allowance for the Minister of Finance, with the concurrence of the Minister of Foreign Affairs, to grant relief, by way of a refund in respect of VAT paid by persons enjoying diplomatic immunity in terms of the Diplomatic Immunities and Privileges Act (37/2001).

3.3 INCOME TAX LEGISLATION

Section 5 of the Income Tax Act (58/1962) states that income tax will be levied on all persons (defined in section 1 as including an insolvent estate, deceased estate and any trust) and a company in respect of taxable income received.

Income tax is tax payable by such qualifying persons or company to SARS on gross income received after allowing for certain deductions. These deduction provisions are all contained within the Income Tax Act (58/1962) and the relevant sections and definitions are discussed below.

- **Gross Income**

Gross income, defined in the Income Tax Act (58/1962) in relation to any year or period of assessment, means:

- i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident, or

- ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within or deemed to be within the Republic, during such year or period of assessment, excluding receipts or accruals of a capital nature.

Thus, whether a person is a resident or non-resident, income from a South African source is taxable in RSA (ignoring any double taxation agreements) and payable to SARS.

- **Section 11 and section 23 General deduction formula and prohibited deductions**

The general deduction formula contained in section 11 of the Income Tax Act (58/1962) states that “there shall be allowed as deductions from income of such person so derived, expenditure and losses actually incurred in the production of the income”.

- **Permanent establishment**

Permanent establishments play a pivotal role in several international tax provisions in the Income Tax Act (58/1962) as well as in Double Tax Agreements (‘DTA’). Without DTAs, individuals and entities would have to pay taxation in two countries.

A permanent establishment is not directly defined in the Income Tax Act (58/1962). The Income Tax Act (58/1962) does, however, mention the definition as used “from time to time in Article 5 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development (OECD)”. The OECD Model defines a permanent establishment as “the carrying on of the business of the enterprise through this fixed place of business”.

Two double taxation treaties, which were amongst the first of the new treaties negotiated in the "New South Africa", i.e. post the election of the 1994 democratic government and which were formally ratified, are the double taxation agreements with France and Romania. These agreements can therefore be used to provide an indication

of the terms which will be contained in other similar treaties presently being negotiated and signed by SARS (Deloitte & Touche, 1996:1).

Article 5, a very important article in the double taxation treaty, deals with the taxation of business profits. It provides that “an enterprise of one state will not be subject to tax in the other state, unless its activities are conducted through a “permanent establishment” in that other state”. Thus a foreign company which complies with a DTA with the RSA will not be taxed in the RSA unless profits are earned through a permanent establishment in the RSA, and only to this extent.

- **Withholding tax**

Section 35 of the Income Tax Act (58/1962) states that “any person (other than a resident or a controlled foreign company) shall be liable for tax, to be known as the withholding tax on royalties which are of use or right of use in the Republic, which shall be levied and paid for the benefit of the National Revenue Fund at a rate of 12 per cent of such amount”.

This rule is applicable subject to the fact that the individual is not a resident and does not have a permanent establishment in the Republic.

- **Withholding tax – Foreign entertainers and sportspersons**

Section 47B of the Income Tax Act (58/1962) states that a tax of 15% will be levied on foreign entertainers and sportspersons, in respect of any amount received by or accrued to any person (being an entertainer or sportsperson) who is not a resident. This tax will be levied in respect of any specified activity (as defined in the Act) exercised or to be exercised by that person or any other person who is not a resident.

However, the rules do not apply to an employee of an employer who is a resident; and is physically present in the Republic for a period or periods exceeding 183 full days

in aggregate during any 12-month period commencing or ending during the year of assessment in which the specified activity is exercised.

This tax is to be withheld by the payer in the form of a withholding tax and is to be deducted from the gross amount paid to the individual.

3.4 EMPLOYEES' TAX

The Fourth Schedule of the Income Tax Act (58/1962) states that “every employer who is a resident, or representative employer in the case of any employer who is not a resident, whether or not registered as an employer under paragraph 15, who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount...by way of employees' tax an amount which shall be determined...in respect of the liability for normal tax of that employee”.

3.5 IMPORT TAXES (CUSTOMS AND EXCISE DUTIES)

The Customs and Excise Act (RSA, 1964) includes provisions for tax imports and exports of goods and services into the Republic. Because FIFA is an international organisation, and the international media and sponsors will be bringing items for the championships into the RSA, it is crucial for this study to consider import taxes.

3.6 CONCLUSION

The above overview of the legislation sets out the normal rules which currently exist in the South African taxation legislation and which will continue to apply to entities not categorised as ‘qualifying persons’ or to income that does not qualify as exempt income.

4 CHAPTER 4: 2010 WORLD CUP TAXATION LEGISLATION

4.1 INTRODUCTION

The 2010 FIFA World Cup taxation legislation will now be discussed and compared with the normal rules cited above in order to gain a better understanding of the 2010 FIFA World Cup taxation legislation. This comparison will be discussed below.

The Amendment Act (20/2006) introduced the following legislation, which will override the current legislation with respect to qualifying individuals and/or qualifying income and expenses. For the purpose of the new legislation, the appropriate level or tier of an entity must first be identified, because different rules apply to different levels. The different levels are defined as follows:

- Level 1 – Entities exempt from all taxes, duties and levies;
- Level 2 - Other entities affiliated with FIFA;
- Level 3 – Non-resident individuals;
- Level 4 – Resident individuals working for FIFA.

The parties qualifying under each of these levels are set out below.

Level 1 - Entities exempt from all taxes, duties and levies

This applies to FIFA, its subsidiaries and all participating National Associations (other than the South African Football Association (SAFA)). For purposes of this study, these will be referred to as 'Level 1 Entities'.

In general, these entities receive total exemption as far as taxes are concerned. The exemptions are applicable to these entities to the extent that their activities are related to the championships.

Level 2 - Other entities affiliated with FIFA

These entities include 'Commercial affiliates' (being FIFA partners, FIFA World Cup sponsors, national sponsors and branded licensees), licensees, host broadcasters, broadcasters or broadcast rights agencies, merchandising partners, FIFA-designated service providers, concession operators, hospitality service providers and the nominated FIFA flagship store operator. For purposes of this study these will be referred to as 'Level 2 Entities'.

In general these entities may receive some exemptions provided that they adhere to certain conditions, or the tax exemptions may only be applied with respect to the sale of certain goods. The exemptions applicable to these entities are applicable to the extent that the sales take place in official FIFA sites.

Level 3 - Non-resident individuals

These are individuals who are not South African residents. Certain exemptions discussed below apply to the receipts and accruals of non-resident staff of entities exempt from taxes (level 1 entities) or those affiliated with FIFA (level 2 entities). For purposes of this study these individuals will be referred to as 'Level 3 Entities'.

However, this does not include SAFA officials and directors and staff of the Local Organising Committee (even if they are not resident in RSA) or soccer team members, for whom a withholding tax in terms of section 47B will remain in place.

Level 4 - Resident individuals working for FIFA

This group includes South African individuals who are employed in the RSA by FIFA. The 2010 FIFA World Cup tax legislation has stipulated different rules applying to this group of individuals. This is discussed in sections 5.3.1 and 5.3.2 below. For purposes of this study, these individuals will be referred to as 'Level 4 Entities'.

The rules applying to each type of tax as mentioned under point 5.2 (that is, VAT, income tax, employees' tax and import taxes) will now be considered as they refer to each of the above groups.

4.2 VAT LEGISLATION

- **Level 1 Entities - Entities exempt from all taxes, duties and levies**

These entities will be regarded as diplomatic or consular missions as stated in section 68(1) (b) of the Value-Added Tax Act (89/1991) for purposes of obtaining a refund for VAT on transactions concluded directly in connection with the Championship. This implies that goods sold at Championship sites will be zero-rated, i.e. charged with VAT of 0%; purchasers will thus not pay VAT on goods acquired, which will render them cheaper.

- **Level 2 Entities - Entities affiliated with FIFA**

These entities must levy VAT at the zero rate on all supplies that relate to the sale of goods or services at a Championship site. They will also be liable to pay VAT on vatable purchases and claim these VAT inputs, as they are making taxable supplies at a zero rate.

- **Level 3 Entities - Non-resident individuals**

Individuals not carrying on an enterprise are generally not registered as VAT vendors, so there are no VAT implications for these individuals to the extent that they are working under salaried employment. Their involvement with VAT is limited to VAT levied on goods and services purchased from South African vendors by the non-resident individual at either 0% or 14%. This can be claimed back at the airport on leaving the country, subject to further limits and requirements (refer to point 5.6.2).

- **Level 4 Entities - Resident individuals working for FIFA**

Resident individuals who are working under salaried employment are not required to pay or charge VAT on their earnings. There are no VAT implications for these individuals to this extent.

4.3 INCOME TAX

- **Level 1 Entities - Entities exempt from all taxes, duties and levies**

General taxation requirements

An exemption is awarded covering all taxes, duties, levies and other amounts imposed in terms of the Acts administered by the Commissioner, except for those stated below. This is awarded to the extent that the activities of the entities are related to the Championship for the Championship period i.e. these activities will in some way contribute to the hosting of the FIFA World Cup.

The above regulation is based on the definitions of two important terms, 'Championship' and 'Championship duration', as defined above. These definitions include defined events relating to the 2009 Confederations Cup and the 2010 FIFA World Cup and other directly-related events, including draws, galas, conferences and cultural events, from the opening ceremony until the closing ceremony of the respective events.

The general exemption does not apply to certain taxes, including: fuel taxes; excise duties; plastic bag levy; air passenger departure tax; unemployment insurance contribution, skills development levies, local government and provincial taxes. These taxes are governed by their own acts and have not been discussed in detail in this study.

Permanent establishments

These level 1 entities are also deemed not to have permanent establishments in the RSA as a result of any activities carried on in the RSA relating to the Championships. As the 2010 FIFA World Cup legislation excludes FIFA from a permanent establishment, FIFA cannot be taxed in the RSA in terms of the South Africa–

Switzerland double taxation agreement. It also means that FIFA has no concerns as to whether it would qualify as a permanent establishment or not.

Withholding tax

Any person who is liable to pay any amount to FIFA, its subsidiaries and participating National Associations (other than SAFA) is not required to withhold any amounts in the form of withholding taxes for income which would otherwise be subject to this tax as detailed in the Income Tax Act (58/1962) in terms of:

- i. section 35 (withholding tax on royalties);
- ii. section 35A (withholding tax on payments to non-resident sellers of immovable property); and
- iii. section 47A – 47K (taxation of foreign entertainers and sportspersons).

- **Level 2 Entities - Entities affiliated with FIFA**

General taxation requirements

Any receipt or accrual by these affiliated entities is excluded from gross income, to the extent that it is derived by that person from the sale of any consumable or semi-durable goods, or from any service rendered by that entity, provided that:

- i. it is intrinsic to the staging of the World Cup;
- ii. it is utilised or partially utilised at a designated site;
- iii. it is restricted to certain days relevant to certain sites.

If these requirements are met, the income received by or accrued to these entities will effectively be tax-free.

Withholding tax

The withholding tax exemptions applicable to level 1 entities will not apply to level 2 entities.

- **Level 3 Entities - Non-resident individuals**

General taxation requirements

Income generated by certain non-residents associated with FIFA is excluded from gross income, to the extent that it is derived from activities connected with the Championship.

This provision relates to receipts and accruals by non-residents who are:

- members of the FIFA delegation;
- Championship referees or assistant referees;
- officials of any participating national association;
- FIFA confederation officials;
- Media representatives;
- staff members of commercial affiliates/merchandising partners/FIFA designated service providers/host broadcasters/broadcast rights agencies/broadcasters.

Withholding tax – Foreign entertainers and sportspersons

Officials of SAFA, members of a team and any directors and staff members of the Local Organising Committee do not receive any withholding tax exemptions. Withholding taxes will be levied in respect of non-resident team members in accordance with international practice, so the relevant DTAs will be applicable.

As discussed above, non-residents will not be taxed on any income derived in South Africa. However, this relief does not extend to soccer team members, who will be subject to a withholding tax on foreign sports persons as contained in sections 47A to 47K of the Income Tax Act (58/1962).

- **Level 4 Entities - Resident individuals working for FIFA**

General taxation requirements

As FIFA is not registered as an employer and withholds no employees' tax, residents of the RSA are deemed to be provisional taxpayers in respect of the income received by them from FIFA (Anon, 2010 FIFA World Cup South Africa).

Withholding tax

No withholding tax is payable by resident individuals.

4.4 EMPLOYEES' TAX

- **Level 1 - Entities exempt from all taxes, duties and levies**

Employees' tax: Registration as an employer

Level 1 entities are not required to register as employers in terms of the Fourth Schedule to the Income Tax Act (58/1962) or to deduct or withhold any employees' tax.

The entity must provide the Commissioner with a list of names, identification numbers and addresses of all its employees who are residents of the RSA and in respect of whom the provisions of the Fourth Schedule to the Income Tax Act (58/1962) would, but for these special rules, apply.

The provisions of the Unemployment Insurance Contribution Act and Skills Development Levies Act are still applicable to all residents in the RSA in respect of any employees of these level 1 entities.

- **Level 2 - Other entities affiliated with FIFA**

Normal employees' tax regulations apply to these entities.

- **Level 3 - Non-resident individuals**

The members of a team do not receive any withholding tax exemptions as discussed above. They will also not be registered for employees' tax but will be required to register for provisional tax and be liable to pay it.

- **Level 4 - Resident individuals working for FIFA.**

As FIFA is not registered as an employer (refer discussion above) these individuals will not be paying employees' tax and should register as provisional tax payers.

The provisions of the Unemployment Insurance Contribution Act and Skills Development Levies Act are still applicable to all residents in the RSA in respect of any employees of FIFA.

4.5 IMPORT TAXES (CUSTOMS AND EXCISE DUTIES)

Imported goods under rebate of duty for sale, consumption or use in the 2010 FIFA World Cup South Africa will be duty-free if imported by qualifying persons as defined in the Amendments Act (20/2006).

4.6 CONCLUSION

This concludes the discussion of the 2010 FIFA World Cup taxation legislation. This legislation will now be compared with the normal taxation legislation to determine the advantages or disadvantages for consumers and suppliers of goods and to determine the impact that this new legislation will have on SARS.

5 CHAPTER 5: COMPARISON OF NORMAL LEGISLATION TO FIFA WORLD CUP LEGISLATION

5.1 INTRODUCTION

In order to identify the actual impact of the World Cup on tax streams, the current legislation and World Cup provisions discussed above need to be compared.

5.2 VAT LEGISLATION

During the 2010 FIFA World Cup, goods and services will be supplied in the stadia and the surrounding areas. These goods will be supplied by residents and non-residents in the furtherance of their enterprises. Assuming that all the VAT registration requirements are met, VAT should be levied by these vendors and paid over to SARS.

FIFA officials (Level 1 entities) may have to import goods and services in order to resell them and provide services related to the FIFA World Cup. According to section 7 of the VAT Act, VAT should be paid on the importation of these goods. The amendments in the Amendment Act (20/2006) mean that there is no VAT on the importation of these goods for resale, rendering of services or any other purpose that relates to hosting the FIFA World Cup. Furthermore, the amendments have deemed all these sales in the designated areas and by qualifying persons to be zero-rated, so the amount to be paid over to SARS is zero.

FIFA will, however, be treated as a diplomatic person entitled to inputs for all VAT paid by them in the RSA. This means that FIFA's effective expenditure will be the value excluding VAT, so its final costs will be lower and its final profits higher.

The disadvantage for SARS is that the zero-rated sales will not generate any income for SARS. This means that a portion of sales of consumables sold by qualifying persons to residents, which would otherwise have been taxable and which would have generated VAT at 14% for SARS at any other period in the year, will not generate any income for SARS during the World Cup. Moreover, as FIFA will be entitled to claim all inputs, the

most likely result will be a net refund position. SARS will therefore lose out on this VAT revenue.

VAT on supply of goods and services made within sites will be zero-rated, but vendors will be able to claim input tax. This will result in increased profits for vendors, as no output will have to be handed over to SARS. However, vendors will be able to claim the input VAT.

Tourists and residents alike who buy souvenirs should benefit, as vendors falling within the tax-free bubble should charge 'like-for-like' prices that are lower than those charged by vendors falling outside the bubble. However, this will be the case only if SARS ensures that vendors qualifying for the VAT exemption do not include the VAT component in their selling prices, which would result in a double benefit and would amount to going against the intention of the concessions.

On the issue of ticket prices, there will be no tax-relief, as all ticket sales will be subject to VAT at the standard rate of 14%. It should be remembered that taxable supplies made outside any of the designated sites will be subject to the normal VAT charge.

It is reasonable to conclude that tourism will be boosted by the championships, but this could also lead to a decrease in tourism generally, with potential customers avoiding South Africa. A study by Baade and Matheson (2006:284) shows that during the 2002 FIFA World Cup held in Korea, the increased total of European tourists to South Korea was higher than normal, but this increase was offset by an equivalent decrease in the usual visitors and business travellers from Japan. These tourists and businessmen avoided South Korea on account of the increased movement of tourists and FIFA World cup 'hype' (Baade & Matheson, 2006:284). The result was a loss of VAT income generated by the revenue authorities due to the loss of regular 'vatable' sales which would have otherwise taken place.

Apportionment of VAT

The fact that certain requirements must be met with respect to qualifying persons, the location of the enterprise, the overall period and the specific dates on which the

exemptions apply means that certain sales by qualifying individuals may be entitled to the exemption, whereas other sales made by these individuals may not. These individuals will have to keep accurate records if SARS wishes to be certain that all VAT due to them is collected and paid. Logistically, there are few existing measures enabling SARS to retain control over this process, which could lead to a loss of revenue.

There are no implications for input VAT deductions, as zero-rated supplies still qualify as taxable supplies. Thus, whether the goods are sold subject to 14% or 0% VAT, inputs are fully claimable, because they are used in the process of making taxable supplies. No apportionment rules are necessary.

Accounting for VAT

Another implication that will have to be considered is the VAT accounting for residents who sell goods in the designated areas. Most accounting software packages or systems currently used by businesses automatically calculate VAT on sales and record this as an amount owing to SARS, and not as revenue. Accounting systems will have to be altered, as the sales which would ordinarily attract VAT would have to be recorded net of VAT. If the systems were left unchanged, the result could be the understatement of revenue, seeing that the systems would automatically reduce the VAT-free sales amount with the tax fraction of 14 %.

5.3 INCOME TAX LEGISLATION

General taxation requirements

When applying the Gross Income definition, one would ordinarily include the income earned by FIFA, which is a non-resident, and all other entities in Gross Income, as the revenue will be earned from a South African source unless a specific DTA exists. This income would thus be taxable. The amended legislation specifically exempts the qualifying entities from being taxed on this income.

The general deduction formula

For level 1 entities, which qualify as FIFA World Cup 2010 exempt entities, expenditure which they incur will not be deducted as there will be no income against which to deduct the expenditure, the income being exempt.

The income of qualifying individuals will not be subject to tax.

Section 12 of the Revenue Amendment Act (60/2006) states that 'an amount received by or accrued to a person who is not a *resident of the Republic* is deemed not to be from a source in the *Republic* for purposes of the *Income Tax Act, 1962*, if that amount-

- (a) is derived as a result of that person's sponsoring or broadcasting of the *Championship*; and
- (b) is received or accrued from any goods sold for foreign consumption or services rendered outside the *Republic*.

This means that revenue earned is not 'income' as defined. As mentioned above, regular tourism in Korea decreased, with the concomitant decrease in taxable sales. This would lead to a reduction in revenue for SARS, as there would be a reduction in what would have been a taxable income source were it not for the tax amendments.

As discussed above, only deductions for expenditure and losses actually incurred in the production of the income will be allowed. Sales outside the designated sites will be subject to normal income tax rules which means that FIFA could be liable for tax if they engaged in sales outside the championship sites or beyond the championship period.

This raises another issue. When certain individuals are exempted from paying income tax on certain items but not others, this means that they are incurring expenditure partly for producing taxable income and partly for producing exempt income. This means that an apportionment of deductions will have to be made.

Several cases exist that result from discrepancies arising from the deduction of expenses allowed for income tax. These cases could lead to debates with FIFA and its associates.

In *Commissioner for Inland Revenue vs. Standard Bank*, 47 SATC 179, it was held by Corbett JA that "in deciding whether moneys outlaid by a taxpayer constitute expenditure incurred in the production of income, important and sometimes overriding factors are the purpose of the expenditure and what the expenditure actually effects; and in this regard the closeness of the connection between the expenditure and the income-earning operations must be assessed". This close connection could be questionable when the entity is supplying both taxable and non-taxable goods.

In ITC 1627, 60 SATC 26 and ITC 1727, 64 SATC 275, SARS used a different approach to determine whether a deduction was allowable, but the outcomes of both cases imply that SARS would seek to disallow deductions on the basis that the expenditure was not in the production of income.

In ITC 1589, the Zimbabwe Special Court was faced with making a decision on how to apportion a taxpayer's expenses between those incurred in the production of taxable income and those incurred in the production of non-taxable dividends i.e. income that did not qualify as income. The court held that, in cases dealing with apportionment, the objective is to reach a fair and reasonable solution, taking the applicable circumstances into account. It was further held that the onus to establish a fair and reasonable apportionment method would rest on the taxpayer.

The case law cited above is evidence that the accurate application of the tax legislation insofar as apportionment rules and the related required documentation would be greatly facilitated if SARS were to communicate pre-emptively to all relevant parties before the 2010 FIFA World Cup.

Withholding tax

One of the benefits of the amendment laws is that any entity, which would ordinarily have had to withhold tax for amounts that would have been paid by FIFA had it been subject to tax, will not need to withhold this tax. However, this is applicable only to level 1 entities.

5.4 EMPLOYEES' TAX

Employees' tax should be deducted from the remuneration paid to all South Africans in terms of the Fourth Schedule of the Income Tax Act. Consequently, all employers in the RSA should register for employees' tax. As FIFA will not be required to do this, the provisions will not apply to anyone working for FIFA. These individuals will therefore have to register as provisional tax payers.

FIFA will not be required to register as an employer, which will save time and effort as far as registration administration and employees' tax deduction calculations for the limited time period during which FIFA operates in the RSA are concerned. Furthermore, non-resident employees of FIFA will not be subject to employees' tax. This corresponds with the other amendment to the Act, which states that qualifying non-resident employees will not be subject to tax.

In ITC 1718, 64 SATC 43, an employer failed to withhold employees' tax on amounts paid to an employee on the basis that he was an agent or independent contractor. The case raised the question of whether an employer is absolved from liability by following a tax directive to withhold no tax or tax at a lower rate. The amount of employees' tax to be paid is determined by paragraphs 9-12 of the Fourth Schedule to the Income Tax Act (58/1962). The employer is required, in terms of paragraphs 9-12, to comply with any directive or assessment issued by the Commissioner. Judgement in ITC 1718, 64 SATC 43 concluded that, in circumstances where a directive has been obtained, the employer will not incur a liability for additional PAYE. This directive could be likened to the amended legislation, so FIFA will not be held liable for any employees' tax.

However, a potential complication could be that, if FIFA employed resident individuals, no employees' tax would be deducted from their earnings. As these individuals would not be exempt from tax because residents are taxed on worldwide income and SARS has granted authority to the contrary by including the exemptions in the 2010 FIFA World Cup legislation, they would be liable to pay tax in their own capacity in their annual assessment.

SARS has introduced a solution to this problem: FIFA will still be required to submit details of resident individuals whom they employ, and these individuals will be required to pay provisional tax. This will increase the administrative burden for both the individual taxpayers and for SARS as it will require more follow-up in terms of registration, collection of taxes and investigating whether these residents were all aware of the new legislation.

5.5 IMPORT TAXES (CUSTOMS AND EXCISE DUTIES)

The main difference between the current legislation and 2010 legislation is that some goods that would otherwise have been subject to duties will be free of customs and excise duties in 2010.

5.6 SUMMARISING THE TAXES

The other differences discussed above are summarised in Table 2 and Table 3 below.

Table 2: Summary of the effect of the 2010 legislation on the different types of persons:

	INCOME TAX	
	Normal rules	2010 rules
Level 1 – FIFA	General taxation requirements A non-resident entity is taxed on income derived within the Republic or in terms of DTA.	General taxation requirements No permanent establishments. Exempt from all taxes and duties.
	Withholding taxes Withholding taxes to be paid i.t.o S35.	Withholding taxes Not liable for withholding taxes.

Level 2 – SAFA	General taxation requirements Taxed at corporate rate of 28% on taxable income. Withholding taxes Withholding taxes to be paid i.t.o S35.	General taxation requirements Taxed at corporate rate of 28% on taxable income. Withholding taxes Withholding taxes to be paid i.t.o S35.
Level 2 - Entities affiliated with FIFA	General taxation requirements Taxed at corporate rate of 28% on taxable income. Withholding taxes Withholding taxes to be paid i.t.o. S35.	General taxation requirements Qualifying income excluded from Gross Income. Withholding taxes Withholding taxes to be paid i.t.o. S35.
Level 3 - Non-resident individuals	General taxation requirements A non-resident individual is taxed on RSA sourced income. Withholding taxes Sportsmen subject to withholding tax at 15%.	General taxation requirements Qualifying income excluded from Gross Income. Withholding taxes Withholding tax of 15% still applies to sports persons.
Level 4 - Residents working for FIFA	General taxation requirements Resident individuals liable for employees' tax. Withholding taxes Provisions of Unemployment Insurance Act and skills development levy apply.	General taxation requirements Individuals are provisional taxpayers and not registered for employees' tax. Withholding taxes Provisions of Unemployment Insurance Act and skills development levy still apply.
	VAT	
	Normal rules	2010 rules
Level 1 – FIFA	VAT at 14% payable to SARS on goods and services (other than zero rated/exempt).	Treated as diplomatic missions. Zero rating applies. May deduct input VAT on these sales.
Level 2 - SAFA	VAT at 14% on goods and services (other than zero rated/exempt supplies).	VAT at 14% on goods and services (other than zero rated/exempt).

Level 2 - Entities affiliated with FIFA	VAT at 14% on goods and services (other than zero rated/exempt supplies).	VAT at 0% on goods and services within championship sites. May deduct input VAT on these sales.
Level 3 - Non-resident individuals	Individuals are not liable for VAT unless required to be registered as vendor.	Individuals are not liable for VAT even if required to be in terms of the normal VAT legislation.
Level 4 - Residents individuals working for FIFA	Individuals are not liable for VAT unless required to be registered as vendors.	Individuals are not liable for VAT even if required to be i.t.o the normal VAT legislation.
EMPLOYEES' TAX		
Level 1 – FIFA	Required to register as employer if it employs resident individuals.	No requirement to register as employer or deduct employees' tax. Must comply with UIF and SDL provisions.
Level 2 - SAFA	Required to register as employer if it employs resident individuals.	Required to register as employer if it employs resident individuals.
Level 2 - Entities affiliated with FIFA	Required to register as employer if it employs resident individuals.	Required to register as employer if it employs resident individuals.
Level 3 - Non-resident individuals	Not required to register for employees' tax but withholdings tax will be withheld by a resident.	Not required to register for employees' tax but withholdings tax will be withheld by a resident.
Level 4 - Residents individuals working for FIFA	Liable for employees' tax on salary earned.	As FIFA is not registered as an employer, no employees' tax will be deducted from individuals' salaries. These individuals will have to register as provisional taxpayers.

	CUSTOMS AND EXCISE DUTIES	
Level 1 – FIFA	Customs and excise duties on imports and exports to and from RSA.	Rebate items are duty free.
Level 2 - SAFA	Customs and excise duties on imports and exports to and from the RSA.	Customs and excise duties on imports and exports to and from the RSA.
Level 2 - Entities affiliated with FIFA	Customs and excise duties on imports and exports to and from the RSA.	Rebate items are duty free.
Level 3 - Non-resident individuals	Customs and excise duties on imports and exports to and from the RSA.	Rebate items are duty free.
Level 4 - Residents individuals working for FIFA	Customs and excise duties on imports and exports to and from the RSA.	Customs and excise duties on imports and exports to and from the RSA.

In essence, the above table shows that additional taxes will be received owing to the general nature of the sporting event, as well as the additional income, investment and tourism that it will bring. These taxes will be collected via normal income tax, employees' tax, provisional tax and, to a very limited extent, through VAT. On the other hand, several concessions will account for a decrease in some taxes. Overall it is envisaged that this event will yield R7.2 billion additional tax revenues (Gaffney, 2008).

5.7 ANALYSING REVENUE STREAMS FOR SARS

The FIFA World Cup legislation will result in additional inflows, outflows and forfeited revenue streams. It is estimated that SARS may forfeit approximately R3 billion in VAT owing to the zero-rating of FIFA merchandise sales (Gaffney, 2008:1). Inter alia, SARS will also forfeit income tax streams and customs and excise duties. These are set out below in Table 3.

It is difficult to determine the exact financial impact of these amounts on account of the uncertainties and variables involved. The exact number of tourists, ticket sales, costs and employees is unknown and difficult to predict. The exact effects and benefits to Japan and Korea, who hosted the World Cup in 2002, are still not determinable (Gaffney, 2008:1).

Table 3: Significant flows of funds for SARS

Inflow	
Revenue Stream	Discussion
VAT	SARS will receive increased VAT from vendors (excluding FIFA and affiliates) resulting from tourist purchases.
Provisional Tax (Income Tax)	FIFA affiliates will have to register for provisional tax on any other goods and services sold outside the championship areas for goods and services ancillary to the championships.
PAYE	The FIFA World Cup will generate jobs and residents will be subject to PAYE. SAFA officials and Local Organising Committee members will be subject to normal RSA tax provisions.
Withholding tax	Sports team members will be subject to 15% WHT for sports persons.
Air-passenger taxes	Air travel will result in increased air-passenger taxes.
Outflow	
VAT	Zero-rated supplies are still taxable supplies, so an input VAT claim on expenditure will be allowed for all expenditure incurred in supplying taxable goods and services. This will lead to cash refunds.
Forfeited revenue	
VAT	Zero rating of goods will result in forfeited revenue.
FIFA PE exemption	FIFA has been exempt from all income tax.
Excise Duties	Exemptions from Customs and Excise results in forfeited revenue.
Non-residents working for FIFA and affiliates	These employees will not be paying income tax.

5.8 CONCLUSION

It is evident to see that the legislation has vary aspects to be considered and each type of tax has different rules and exemptions relating to different parties. The overall impact on revenue for South Africa in the form of taxes is dependent on the tax type but overall, the

tax concession given to FIFA has resulted in a larger revenue stream in that it was a precondition for hosting of the World Cup.

6 CHAPTER 6: ANALYSING THE IMPACT OF THE 2010 WORLD CUP TAX LEGISLATION

6.1 INTRODUCTION

The experience gained from the Germany Soccer FIFA World Cup in 2006 provides a context for analysing the potential risks and benefits for the RSA (Meaning & Du Plessis, 2007:1) when they host the 2010 FIFA World Cup. As far as the RSA is concerned, a careful analysis might be even more urgent to ensure the effective operation of the FIFA World Cup and all related sectors of the economy, owing to the country's minimal past experience in hosting such events.

Several benefits are expected to accrue to the RSA in 2010. These include increased "taxes, contribution GDP, employment creation, social upliftment, morale improvements..." (Grant Thornton, 2003:3). It will, however, be essential for SARS to co-ordinate the tax administration with respect to all the different revenue streams.

FIFA sets out numerous regulations for the organisation of the event, which may have repercussions for the South African government's objectives, including that of using the 2010 FIFA World Cup for development and nation-building purposes.

The discussion below details possible benefits that both the event and the 2010 legislation will have for SARS, FIFA, consumers and South African tourism.

6.2 INTERNATIONAL COMPARISON

The effects of previous FIFA World Cups and similar events have not been fully disclosed or determined, such as the Japan/Korea 2002 FIFA World Cup (Gaffney, 2008). Research on these events shows various types of tax relief given by the host countries. In comparison, the tax relief to be provided by RSA and SARS appears to be more generous

than that of the 2008 Beijing Olympic Games, during which there was VAT and duty exemptions on imports and relief on goods sold by the Olympic Committee (Gaffney, 2008).

The Euro Soccer Championships held in 2008 provided a reduced VAT relief on ticket sales (Gaffney, 2008), but 2010 FIFA World Cup tickets will continue to attract VAT at the standard rate of 14% for SARS (Anon, 2010 FIFA World Cup South Africa).

The London 2012 Olympic Games will provide some income and corporate tax relief (Gaffney, 2008) and exemptions for overseas individuals participating in the games (Baldwin, May 2006). The tax concessions for the 2012 Olympics will exempt the Local Organising Committee of the Olympic Games from corporate tax, whereas the RSA will have no concessions for SAFA or the Local Organising Committee. The International Olympic Committee will also be exempt from corporate tax for the 2012 Olympics, much in the same way that FIFA is set to receive RSA tax exemption. Non-residents of the United Kingdom will not be taxed on their earnings. However, SARS has not exempted foreign team members from the withholding tax for sportspersons, as discussed above (Baldwin, March 2006).

The Amendment Act (20/2006) has established an anti-avoidance clause which addresses any abuse of the legislation. This is considered below.

6.3 ABUSE CLAUSE

The legislation guards against possible abuse. The Amendment Act (20/2006) states: "Where any person abuses one or more of the exemptions or concessions contemplated in this agreement by misrepresenting the purpose of an import, overstating sales within a tax-free bubble, understating purchases or expenses in respect of sales in a tax-free bubble or by any other method, SARS may withdraw that person's entitlement to any of the exemptions and concessions, in consultation with FIFA."

Included in the Income Tax Act (58/1962) are anti-avoidance and tax abuse provisions. In the FIFA World Cup abuse clause, SARS has committed to consulting with FIFA before taking any action. This goes directly against SARS' legislative provisions regarding its discretion to institute proceedings in the event of possible tax evasion. In allowing FIFA to have some discretion in the application of the tax provisions, SARS has relinquished its sole right to prosecute tax evasion and this could result in parties not adhering to the provisions in all respects with impunity. It could also lead to delayed investigations and proceedings against perpetrators, which would ultimately lead to a decrease in revenue for SARS.

6.4 STRATEGIC AND ADMINISTRATION CONSIDERATIONS

The tax-free bubble concession will vary according to different categories of the FIFA-designated sites, e.g. stadia, training sites and public viewing sites.

Another administrative factor to consider is the specific requirements which must be met before the concessions apply. The concessions will apply on match days only, in certain areas only and with application only to certain qualifying individuals. When it comes to FIFA flagship stores, the bubble will be effective for six months before the 2009 Confederations Cup and will end one month after the closing ceremony of the 2010 FIFA World Cup.

SARS will have to establish proper mechanisms to monitor adherence to all the requirements and to enforce corrective action in the event of contraventions. The anticipated volume of transactions will increase the administrative burden on SARS.

The benefits of the proposed legislation should be measured against the disadvantages, and proper planning in advance should help reduce costs and maximise collection of the taxable income.

As part of the normal tax collection process, SARS has established teams to oversee the collection of taxes and has implemented standard operating procedures. Specifically for

2010, SARS has put in place special teams to address all the administrative procedures and has extended its standard operating procedures, which will cover the administration and collection of taxes for 2010 administration. These are all communicated transparently and the information has been made available on the SARS website (www.sars.gov.za).

6.4.1 Benefits of winning the FIFA World Cup bid included guarantees of benefits to FIFA

The RSA was successful in its bid for the FIFA World Cup after agreeing to rules laid down by FIFA. These included guarantees to the organisation in several areas, including tax concession. The amendments in the tax legislation are part of the government's commitment to hosting the FIFA World Cup.

Events like the FIFA World Cup provide extensive media coverage, wide-reaching spectatorship and increased sales of memorabilia, which, together, have immense revenue potential (Cornelissen & Kamilla, 2006). As a result of winning the bid, the RSA will benefit from international exposure in social, recreational and financial markets owing to increased tourism, media coverage of the FIFA World Cup and international investors. This will assist South African economic development in the times leading up to and after the FIFA World Cup.

The income tax, excise duties and VAT rules allow for FIFA to increase investment in the country without being taxed for it, which will benefit the general population. Broadcasters will bring in goods free of tax, thus promoting increased international exposure of the RSA through media coverage.

In the long term, the anticipated indirect benefits for SARS post-the World Cup 2010 will be increased economic activity resulting in increased revenue for SARS in the form of, inter alia, income taxes, investment taxes and import duties.

The exemption and benefits received by FIFA and affiliated entities means that the funding ordinarily collected by SARS for government spending and operations will have to be

obtained elsewhere. Taxpayers will therefore partially fund the FIFA World Cup. This is confirmed in a written response from the National Assembly (National Assembly, 2004) stating that no specific additional tax measures are envisaged to cover costs associated with the RSA hosting the 2010 FIFA World Cup. However, it is envisaged that this event will yield R7.2 billion additional tax revenues (Gaffney, 2008). This increase can be attributed to tourists, increased local spending and taxes on individuals, such as team members.

The relief offered by SARS seems in some respects to be more generous when compared with other international events. This is discussed in the international comparison above.

6.4.2 The legislation allows for a reduction in administration on the consumer

Export Goods

Exported goods are zero-rated in terms of section 11(3) of the VAT Act if they relate to goods exported directly from the RSA to an address in a foreign country. The Act states that, where a rate of zero per cent has been applied by any vendor under a provision of this section or section 13(1) (ii), the vendor shall obtain and retain such documentary proof substantiating the vendor's entitlement to apply the said rate under those provisions as is acceptable to the Commissioner.

Current VAT legislation allows for VAT on indirect exports, which are items purchased in the RSA but not immediately consumed there, being taken to other countries to be claimed by non-residents on goods acquired by them. The refund is collected when leaving the country at the airport and other departure points or refunded by post. To claim a refund, the VAT Act requires a tourist to do the following:

- Obtain an original tax invoice reflecting all the following: the supplier's name, address, VAT number, invoice number, purchaser's name and full address, a full description of the goods, the cost of the goods in Rands and the amount of VAT charged or a clear statement that the price includes VAT.

- Completion of a VAT refund control sheet (VAT 255) obtainable at international airports.
- A foreign passport must be held.
- On leaving the RSA, all documents and the goods in question must be presented to one of the VAT Refund Administration Offices or Customs Offices situated in airports, harbours and at border posts.
- VAT refunds will be made only if the total value of the items in question exceeds R250.

The amendments for the 2010 FIFA World Cup imply that goods purchased by tourists that qualify as zero-rated, i.e. purchased at the designated sites, to be taken overseas will not include VAT, even though they cost less than R250. As no VAT will have been paid on these, these individuals will not have to go through the process and administration of claiming the VAT. Furthermore, the vendor will not have to retain any formal documentation as the zero-rating will automatically be applicable. However, to reiterate, this will apply only to goods sold by qualifying individuals or at championship sites. This means that if non-residents buy other goods in the RSA, they will still have to request refunds at the airport following the above procedure.

6.4.3 Promote tourism and small business

According to government publications, it is envisaged that the 2010 FIFA World Cup will contribute an estimated R51.1 billion to the RSA's Gross Domestic Product (GDP) between 2006 and 2010 (Anon, 2010 FIFA World Cup South Africa).

The reduction in VAT charged will make goods appear cheaper, which is expected to result in increased expenditure on the part of tourists. Mthembu (in SJ&A, 2007:1) says that SAFA will have to implement a fair, transparent and equitable system to ensure that emerging businesses also enjoy the tax benefits.

If the anticipated benefits are not tracked properly, the more significant portion will accrue to the foreign service-providers temporarily assisting FIFA in the RSA. Further, the

hospitality industry stands to benefit from the tax concessions for service providers (Wilson, 2008:1).

6.4.4 Numerous requirements and conditions set out in the Amendment Act

The Amendment Act (20/2006) sets definite requirements in terms of parties, periods, venues, dates and goods. Tracking these could prove challenging and SARS will have to rely on the integrity of all the parties concerned. Any possible disputes could prove costly and cases may be difficult to prove because of the numerous areas of compliance. For instance, the rules do not apply to tobacco, cosmetics and alcohol consumed on-site as per the Amendment Act (20/2006). The question thus arises as to how SARS is going to control this.

Moreover, the goods to which the amendments apply are 'consumable or semi-durable' goods imported by qualifying persons for sale at any site only during the Championship. This is something else that SARS will have to control, which is going to demand additional administration.

6.4.5 Import duty exemption

Goods imported into the Republic by qualifying persons for the purposes of the 2010 FIFA World Cup will not be subject to import taxes like customs duty and will not attract VAT for the duration of the championships. Businesses will have to anticipate their demand carefully in order to ensure that the supply of imported products does not exceed the demand, remembering the rule that vendors will have to pay previously-exempt VAT and customs duty if the goods are not sold within a pre-determined period of time (Mthembu, 2007, in SJ&A, 2007:1). The problem arises out of the current difficulty in anticipating the demands of the FIFA World Cup. Aspects of the South African environment, for instance, crime, the economy, resources, tourism and exchange rates will all affect the popularity of the RSA as a destination for tourists and spectators for the FIFA World Cup.

6.5 CONCLUSION

The tax legislation promulgated in 2006 was a pre-requisite for the successful bid for the chance to host the FIFA World Cup. The ultimate benefit of the World Cup extend beyond tax revenues and includes an inflow of tourism, improved infrastructure and improved morale of the South African population.

7 CHAPTER 7: RESEARCH DESIGN AND METHODS

7.1 INTRODUCTION

The conceptual analysis seeks to clarify the categories of taxes and persons to which the various revenue clauses apply and to reveal the link between the new and old legislation.

7.2 DESCRIPTION OF OVERALL RESEARCH DESIGN

This is a non-empirical study in the form of a conceptual analysis of the meaning of the words and concepts used in the sections of the Amendment Act (20/2006) which were introduced to provide the necessary guarantees to FIFA. The study elaborates on different dimensions of the legislation introduced and critically analyses the implications from the points of view of taxation, finance and administration.

A philosophical approach is used to analyse arguments in favour of and against the new legislation by highlighting the benefits and disadvantages.

7.3 CONCLUSION

This study discussed various taxes and the implication of the FIFA World Cup 2010 legislation by building on current principles understood by the current legislation and highlighting the differences.

8 OVERALL CONCLUSION

8.1 INTRODUCTION

The amendments to the tax legislation introduced to ensure the guarantees to FIFA will affect all the parties involved in hosting, participating, arranging and running the FIFA World Cup.

This study has served to highlight the significant differences between the current legislation for VAT, income tax, employees' tax and customs and excise duties and the legislation which has been introduced as a result of the Amendments Act (20/2006).

It also discussed the impact of the legislation on SARS' revenue streams and highlighted some experiences on the part of previous international event hosts. Several tiers of exemption exist for different classes of individuals.

It can be concluded that, with adequate monitoring by SARS and the implementation of documented processes and controls, the amended tax legislation, which affords many exemptions to FIFA, as well as other tax concessions to affiliates and individuals who meet certain requirements, will contribute to the successful hosting of the FIFA World Cup.

8.2 REVIEW OF RECENT LITERATURE

Limited literature has been written on the taxation implications of these events. Analysis of the legislation has served as the basis of this discussion.

8.3 SUGGESTIONS FOR FUTURE RESEARCH

After the completion of the FIFA World Cup in July 2010, the actual taxation effect should be quantitatively and qualitatively determined based on actual tickets sold, actual amounts received by SARS. This would serve to assist the host of future World Cups to accurately implement similar legislation.

8.4 CONCLUSION

Familiarity with the implications of the amended legislation by all involved is a key to a successful operation from the taxation perspective. Any revenue SARS expects to forfeit as a result of the implementation of the legislation will hopefully be compensated by the benefits brought by the FIFA World Cup, including increased investment in the RSA, increased tourism and growth in the South African economy. This is the start of endless possibilities for the country in the future.

9 CHAPTER 9 : LIST OF REFERENCES

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