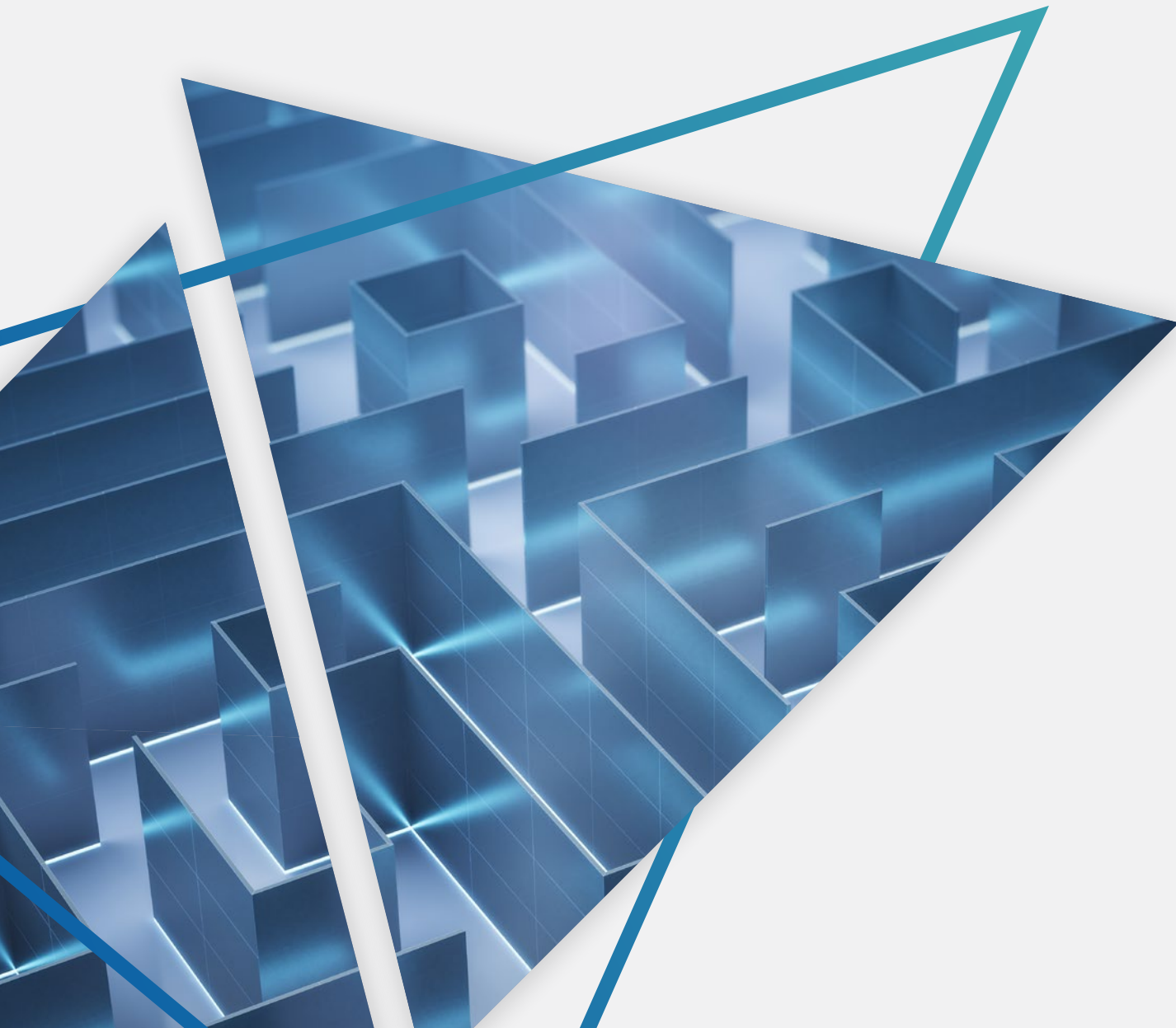


# Tax & Exchange Control

ALERT | 8 February 2024



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## For the love of the game: Tax planning and compliance considerations for the South African sports and entertainment industries

South Africa's sports teams, sportspeople, and entertainers have made the country proud over the last few months for their exploits on the international stage. In November 2023, the Springboks became the first team to win the Rugby World Cup four times. The South African cricket team made it to the semi-finals of the ICC Cricket World Cup where they narrowly lost to Australia, and Bafana Bafana made it to the semi-finals of the 2023 Africa Cup of Nations tournament for the first time in more than 20 years. On the individual front, Dricus du Plessis became the first South African to hold an Ultimate Fighting Championship belt, and a few days ago, Tyla won the Grammy for the Best African Music Performance, with artist Musa Keys also having been nominated in that category. Kgothatso Montjane also won the women's wheelchair doubles titles at the French Open and US Open in 2023 and made it to the women's wheelchair singles final at Wimbledon.

These achievements will motivate many young South Africans to pursue dreams of becoming stars on the world stage. But to borrow from the old saying, the one thing that these teams, sportspeople, and entertainers – including young aspiring

South Africans – won't be able to do, is escape taxes. In our previous Tax and Exchange Control Alerts, we have discussed some of the things that any person or company earning income can do to ensure that they comply with their South African tax obligations. Many, if not all, of these principles and considerations apply equally to the South African sports and entertainment industries. In this article, we briefly look at some of these principles and considerations and their importance for participants in these sectors.

### **Why the importance of tax planning and compliance for these industries?**

Over the past few years, there have been various news reports, both locally and abroad, about sportspeople and entertainers who have allegedly fallen foul of the tax laws of a specific country. While in the context of football, the issue of image rights and its tax treatment has often been in dispute, the matter of a person's tax residency, and which country that is in, has been in dispute in other instances. Over the years, there have also sadly been reports of South Africans who have allegedly fallen foul of their tax obligations to the South African Revenue Service (SARS).

While it is important to note that revenue authorities, including SARS, will always ask questions and are entitled to do so, the most important thing that any sportsperson, sports team, or entertainer can do is to ensure that they do things correctly from the beginning. It is often tax planning or tax compliance mistakes made early in a person's career that are the cause of unhappiness and problems later on. While such mistakes can always be fixed later, it is often more expensive to do so.

## For the love of the game: Tax planning and compliance considerations for the South African sports and entertainment industries

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**Tax 2023 Rankings**

**Tax & Exchange control practice is ranked in Tier 1.**

**Leading Individuals:**  
Gerhard Badenhorst | Emil Brincker

**Recommended Lawyers:**  
Petr Erasmus | Howmera Parak  
Ludwig Smith | Stephan Spamer

**Next Generation Lawyers:**  
Jerome Brink

As a starting point, participants in the sports and entertainment industries, like any other professional people, should get tax advice early on, whether they do it themselves or with the help of the teams and agents around them. The same applies to sports teams, although teams that have good structures in place will generally be able to manage their tax obligations.

Good tax planning and tax compliance go hand in hand – if there was proper planning at the early stage of a person's career, any tax issues that are detected or arise later can be dealt with more easily. Where the need for compliance takes the form of SARS auditing someone, it is much easier to address any of SARS' questions if proper planning was done upfront. In this context, it is always better to be proactive rather than reactive. Given that a career in the sports or entertainment industry is often not forever, proper planning and compliance are even more important.

### Tax residency and the concomitant tax liability

This is where it all begins. If a person is a South African tax resident, which must be determined with reference to the so-called ordinarily resident and physical presence tests, the person will be subject to tax on their worldwide income. In other words, all income, irrespective of the source of the income, will as a general rule be subject to income tax in South Africa. Should a person wish to cease their South African tax residence and become a tax resident in another country, they would have to consider the possible application of South Africa's exit tax provisions. In a nutshell, the exit tax provisions state that there is a deemed disposal of all a person's assets, subject to certain exceptions, when

they cease South African tax residence and a potential capital gains tax liability may arise from this. Where a South African tax resident earns income for performances abroad, it would also be prudent to understand whether there is a double tax agreement (DTA) between South Africa and the relevant foreign country. The DTA would likely deal with, amongst other things, the right of taxation of the source country, being the country where the performance or event takes place, and the country of residence, South Africa in this case.

In the case of people who are not South African tax residents (non-residents), they will only pay tax in South Africa to the extent that their income is earned from a South African source. We discussed some of the principles applicable to non-residents in our [Tax and Exchange Control Alert](#) of 9 September 2021.

### Proof: Keep a paper trail

An issue that taxpayers can easily get tripped up on is keeping the supporting documentation to prove that an amount of income was earned or that a taxpayer was entitled to a deduction. As such, it is important to keep supporting documentation for at least five years, as required under South Africa's tax legislation, although it is better to rather keep this information for as long as possible, including storing it digitally if need be. A lack of proof can cause problems on the tax compliance side when SARS starts asking questions.

# For the love of the game: Tax planning and compliance considerations for the South African sports and entertainment industries

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## Tax structuring: Important for the long term

While earnings for services rendered, such as playing in a match or performing for a crowd, are taxable in accordance with the marginal income tax tables and can likely not be reduced through tax structuring, the same does not apply to investment income earned with these earnings. Investment income is generally taxed at a lower rate. For example, dividends from a South African resident company are generally taxed at the dividends tax rate of 20% and exempt from income tax, while for individuals, capital gains are currently taxed at a maximum effective rate of 18%. These rates will remain the same unless an increase is announced in the 2024 Budget that will be presented in the coming weeks. It is in this respect that good tax planning can work in one's favour.

## Exchange control

South Africa's exchange control rules regulate the flow of funds into and out of South Africa and impose obligations on South African residents, subject to exceptions, as to the possible repatriation and use of such funds. Exchange control laws are separate from tax laws and must be considered and complied with separately from tax laws. One of the main purposes of exchange control laws is to protect South Africa's balance of payments, which is important for the South African economy.

Understanding the exchange control rules is important for people who wish to ply their trade or perform abroad and for those who are considering investing abroad.

Income earned abroad may, under certain circumstances, be retained abroad and is not subject to the general requirement that it must be repatriated to South Africa and converted into Rand within 30 days. From an investment perspective, an individual can transfer up to R1 million abroad annually without SARS or South African Reserve Bank (SARB) approval (single discretionary allowance); an additional R10 million abroad annually if they obtain a tax compliance certificate from SARS (foreign capital/investment allowance); and in excess of these allowances if they obtain a tax compliance certificate and prior SARB approval.

## A final note – don't score an own goal

SARS has issued a guide on the Taxation of Professional Sports Clubs and Players, Issue 2 of which was published on 21 October 2020. Although it is a good starting point to assist and help understand the tax obligations of sports clubs and sports persons in various contexts, given the potential risk at stake, it is better for participants in the sports and entertainment industries to get professional tax advice early on. Once the initial groundwork is in place, it is much easier to ensure tax compliance and efficiency going forward and will avoid the risk of scoring a (tax) own goal as it were.

**Louis Botha**

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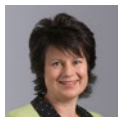
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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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