



Legislative reform proposed for the incorporation of corporate social investment expenditure into the South African taxation framework.

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This thesis is devoted to You.

ABSTRACT

Key concepts: Taxation framework, definitions, corporate social responsibility (CSR), corporate social investment (CSI), corporate philanthropy (CP), corporate social investment expenditure (CSIE), Income Tax Act 58 of 1962, CSR model, concept legislation.

In the last few years, the South African government has requested the private sector's help to address socio-economic and infrastructural problems. One way companies can get involved is through CSI. However, it was found that many South African companies do not engage in CSI at all. It was further determined that companies expect a return on their CSI investment. Generally, JSE-listed companies make use of section 18A of the *Income Tax Act (ITA(SA))* deduction for qualifying donations (of a philanthropic nature) and/or the benefits of being compliant with the *B-BBEE* legislation, - Code, and – scorecard provisions. Only two sections of the *ITA(SA)* (sections 37C and 37D) considered relate to CSI specifically the conservation of land for the public interest. No other income tax incentives or deductions are available for expenditure relating to the broad definition of CSI (CSIE) incurred. It was determined that a government can use taxation legislation, either tax incentives or a tax, to incentivise or force a company to act in a certain manner. Key findings highlight the inadequacies of the *ITA(SA)* in incentivising CSIE. Three countries implemented CSR legislation compelling CSR financial contributions.

The research question guiding this study is: "How can the South African taxation framework be reformed to incorporate corporate social investment expenditure?" The study's primary objective is to propose legislative changes that integrate CSIE into the taxation framework. Several secondary objectives were identified to address this question, including defining core concepts (CSR, CSI, CP, CSIE). No universally applicable definitions could be found for any of these concepts. Specific key events shaped the development of CSI as a concept in the South African context. It was also found that CSR and CSI are often used interchangeably. The last time any authoritative document defined CSR and CSI in South Africa was with the publication of the King III Report in 2009. An essential step before any legislation can be drafted

is to design clear and distinguishable definitions hence the secondary objective indicated.

A doctrinal reform-orientated method was followed, scrutinising primary and secondary resources to answer the main and secondary objectives. The research adopts a systematic literature review, using Atlas.ti 23, and an inductive reasoning process to draft definitions for the individual concepts (CSR, CSI and CP). This process culminated in the development of Preston's Integrated Sustainable CSR Model. This model reimagines sustainable CSR as dynamic, regarding each responsibility (economic, ethical, legal, environmental, and societal) as equally important. Each element also demonstrates the CSI component of CSR.

Using the secondary objectives to guide the study, potential tax incentives and tax levies (to promote CSI) of South Africa (the *ITA(SA)*), Mauritius, India and Seychelles were scrutinised. Lessons from the named countries regarding their mandatory CSR legislation, the management of funds, and other tax incentives were considered in the drafting of taxation legislation for CSI incorporating the deduction of CSIE under the *ITA(SA)*.

This research contributes to legal scholarship by proposing new universal definitions for each of the concepts, Preston's Integrated Sustainable CSR Model in place of Carroll's CSR Pyramid, and drafting legislative reforms that leverage corporate resources in the form of CSIE to address national challenges. By combining theoretical analysis with practical recommendations, the study underscores the necessity of public-private collaboration for sustainable socio-economic and infrastructure development, laying the groundwork for a more inclusive and effective taxation framework.

PUBLICATIONS AND CONFERENCE PRESENTATION

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LIST OF ABBREVIATIONS

B-BBEE	Broad-Based Black Economic Empowerment
B-BBEE Code	B-BBEE Codes of Good Practice
BCR	Binding class ruling
BPR	Binding private ruling
BRICS	Intergovernmental organisations comprising of the countries Brazil, Russia, India, China, South Africa, Iran, Egypt, Ethiopia and the United Arab Emirates
CAPSI	Centre on African Philanthropy and Social Investment
CBO	Community-based organisations
CCMA	Commissioner for Conciliation, Mediation and Arbitration
CFP	Corporate financial performance
CIT	Corporate (company) income tax
CO ₂	Carbon dioxide
CO ₂ e	Carbon dioxide emissions
CO ₂ T	Carbon tax
CP	Corporate philanthropy
CS	Corporate sustainability
CSI	Corporate social investment
CSIE	Corporate social investment expenditure
CSR	Corporate social responsibility
CSR Tax Act	Corporate Social Responsibility Tax Act 17 of 2013
CTA	Carbon Tax Act 15 of 2019
EE	Energy efficient
EEA	European Environment Agency
EME	Exempted micro-enterprise
ESG	Environment, social and governance

EU	European Union
FDI	Foreign direct investment
FTSE	FTSE Russell Indices
GDP	Gross domestic product
GHG	Greenhouse gas
GRI	Global Reporting Initiative
ICSI	The Institute of Company Secretaries of India
IJDS	International Journal of Development and Sustainability
IJLHHS	International Journal of Law, Humanities & Social Science
IJLRHSS	International Journal of Health Research in Humanities and Social Science
IJSSHS	International Journal of Social Sciences and Humanity Studies
IMF	International Monetary Fund
INR (₹)	Indian rupee
IPASA	The Innovative Pharmaceutical Association South Africa
ITA(IND)	Income-Tax Act, 1961 – India
ITA(MAU)	Income Tax Act 16 of 1995 – Mauritius
ITA(SA)	Income Tax Act 58 of 1962 – South Africa
ITID report	Investment Tax Incentives Database 2022 update: Tax incentives for sustainable development
ITJEMAST	International Transaction Journal of Engineering Management & Applied Sciences & Technologies
J Int'l Com. L & Tech	International Journal of Law and Information Technology
JMPD	Johannesburg Metropolitan Police Department
J. Publ. Aff.	Journal of Public Affairs
JSE	Johannesburg Stock Exchange
King Report	The King Report on Corporate Governance

MICH. J. INT'L L	Michigan Journal of International Law
MIMBAR HUKUM	Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada
MITD	Mauritius Institute of Training and Development
MNE	Multinational enterprise
MRA	Mauritius Revenue Authority
MUR (Rs)	Mauritian rupee
NBI	National Business Initiative
NDDC Act	Niger-Delta Development Commission Act
NEMBA	National Environmental Management: Biodiversity Act
NEMPA	National Environmental Management: Protected Areas Act 57 of 2003
NGO	Non-government organisation
NPAT	Net profit after tax
NPO	Non-profit organisation
NSF	National Solidarity Fund (Mauritius)
NSIF	National Social Inclusion Foundation
OECD	The Organisation for Economic Co-operation and Development
PAIs	Priority areas of intervention
PBO	Public benefit organisation
RE	Renewable (green) energy
R&D	Research and development
SAIIA	South African Institute of International Affairs
SA Merc LJ	SA Mercantile Law Journal
SAMJ	SA Medical Journal
SANEDI	South African National Energy Development Institute
SARS	South African Revenue Service

SCR (SRe)	Seychelles rupee
SED	Sustainable economic development
SDG	Sustainable development goal
SIC	The ability of a firm to identify, act on and profit from the opportunity to improve stakeholder relationships through CSR
SROI	Social return on investment
SSB	Sugar-sweetened beverage
TBL	Triple Bottom Line (theory)
UIF	Unemployment Insurance Fund
UN	United Nations

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CHAPTER 1 INTRODUCTION AND PROBLEM STATEMENT

1.1 Context of the research

Companies and their actions, especially their impacts on the environments and the communities in which they operate, will always be under scrutiny.¹ According to Esser² companies are either regarded as good or evil, responsible or irresponsible. However, a company is expected to act responsibly.³ Society in general expects companies⁴ to take into consideration the impacts that their actions may have on stakeholders⁵ and the environment.⁶ By incorporating sustainable practices into their operations and taking responsibility for their decisions and their impacts on the environment and society at large, companies are integrating corporate social responsibility (CSR) policies into their governance practices.⁷

However, companies also have a responsibility towards their shareholders to ensure that profits are generated.⁸ When doing strategic and operational planning, the challenge for company management is to find a balance between the interests of all stakeholders.⁹

There is an increasing sense of resistance to Western dominance, especially when Western companies operate in developing countries without engaging in CSR initiatives or exclusively benefit a small, privileged elite. Many communities in

¹ Esser 2011 *South African Mercantile Law Journal (SA Merc LJ)* 317.

² Esser 2011 *SA Merc LJ* 317.

³ Esser 2011 *SA Merc LJ* 318-319.

⁴ The word company will be used in the general sense to indicate a business operating with the main objective of making profit/income for its shareholders, members, etc., and will refer to legal entities, inclusive of trusts.

⁵ The term 'stakeholders' can be defined as "any individual or groups who can affect, or is affected by, the achievements of the firm's objectives". This is according to Freeman (1984). (As quoted by Wan-Jan 2006 *J. Publ. Aff.* 181). This will include not only the shareholders of companies but also (among others) the members of the community and the environment in which they operate. Stakeholders will include shareholders, the government, and society in general.

⁶ Alavi, Habek and Cierna 2016 *MM Science Journal* 1122.

⁷ Institute of Directors in Southern Africa *King Report on Governance for South Africa 2009* 11; also refer to Jamali, Safieddine and Rabbath 2008 *Corporate Governance: An International Review* 443.

⁸ Kraaijenbrink 2019 <https://www.forbes.com/sites/jeroenkraaijenbrink/2019/12/10/what-the-3ps-of-the-triple-bottom-line-really-mean/#677cd65e5143>; also refer to Elkington 2018 <https://hbr.org/2018/06/25-years-ago-i-coined-the-phrase-triple-bottom-line-heres-why-im-giving-up-on-it>.

⁹ Hinson and Ndhlovu 2011 *Social Responsibility Journal* 333.

developing countries feel neglected by companies believed to be there only to exploit natural resources.¹⁰ The world has moved beyond the point where the question was asked whether a company has a choice regarding the question of 'to what extent' the company should mitigate its impact and be involved in the community and society at large. The second question relates to 'how' this corporate social investment (CSI)/involvement should look.¹¹

Governments are reckoned to be stakeholders in terms of the Stakeholder Theory.¹² Over the past few years, the South African government has consistently urged the private sector to collaborate in addressing society's socio-economic and developmental needs. These calls are made annually during the State of the Nation Address and the Budget Speech, encouraging greater private sector involvement.¹³ Wirba¹⁴ stresses that collaboration between a government and the corporate world is vital regarding CSR and the responsibility for core issues that need to be addressed. Collaboration between companies and stakeholders (therefore the government, too) is also crucial for the company in creating value.¹⁵ The government has an equally important role in promoting CSR, especially if it wants to drive the sustainability agenda.¹⁶ The debate of how this should be done is ongoing,¹⁷ but over the last decade, more and more governments of developed and developing countries have resorted to the regulation of CSR, to some extent, by hard law.¹⁸ Taxation is one of the most effective instruments in the hands of a government to

¹⁰ Wirba 2024 *Journal of the Knowledge Economy* 7449.

¹¹ Esser 2011 *SA Merc LJ* 317.

¹² Freeman and Dmytriyev 2017 *Symphonya Emerging Issues in Management* 10-11. Also refer to Chapter 3, Paragraph 3.2.2.1.

¹³ Preston and Peeroo 2023 *De Jure Law Journal* 301.

¹⁴ Wirba 2024 *Journal of the Knowledge Economy* 7428, 7447.

¹⁵ Refer to Chapter 3, Paragraph 3.2.2. The value for the company would be economic/financial in nature. In the case of an employee, for example, "a company may provide incentives for its employees to acquire specific human capital, which will increase the employees' productivity and create value for the firm as a whole". (Argandoña *Stakeholder Theory and Value Creation* 2,4).

¹⁶ Wirba 2024 *Journal of the Knowledge Economy* 7428, 7447.

¹⁷ Sheehy *et al* 2023 *European Business Organization Law Review* 693.

¹⁸ Refer to Chapter 5, introduction, for a review of some countries that have already made CSR mandatory; Chapter 6 discuss to some extent different forms in which CSR is regulated by hard law. The focus of this thesis is, however if the research question proposed in Paragraph 1.3 is considered, on the regulation of CSI, and more specifically CSIE with hard law, incorporating it using taxation legislation. Refer to Chapter 7; Also refer to Goel and Rathee "CSR Policies in Different Countries: A Comparative Analysis" 1-16.

influence CSR behaviour or force CSR-related contributions.¹⁹ This can be done using tax incentives²⁰ or taxes (either in the form of a tax, a tax levy or penalties).²¹ Mauritius, for example, made a financial CSR contribution compulsory, using their *Income Tax Act*²² as a legislative vehicle.²³ The South African government had not yet implemented any CSR-specific legislation.²⁴

1.1.1 Defining CSR and CSI

Before advocating that CSR be regulated by hard law, it is necessary to determine what is understood when referring to CSR and the related concepts.²⁵ The notion of CSR has developed over the past 60 years.²⁶ Numerous definitions of CSR exist, it would appear that no single comprehensive definition is available,²⁷ and the same is true for South Africa.²⁸ Although the various *King Reports on Governance for South Africa* do not have any legislative authority, there have been cases in which courts in South Africa considered the principles contained in these documents.²⁹ In 2009 the Institute of Directors in Southern Africa published the *King Report on*

¹⁹ Preston and Kloppers 2018 *International Journal of Social Sciences and Humanity Studies (IJSSHS)* 150.

²⁰ For a comprehensive discussion on the meaning of tax incentives, refer to Chapter 4, Paragraph 4.1

²¹ Preston and Kloppers 2018 *IJSSHS* 150.

²² 16 of 1995.

²³ Mauritius incorporate CSR into their *Income Tax Act* 16 of 1995 (*ITA(MAU)*), with the inclusion of ss 50K and 50L. However, India used their corporate law, the Companies Act of 2013, to mandate CSR contributions by including s 135.

²⁴ Kloppers 2013 *Potchefstroom Electronic Law Journal (PER)* 166; also refer to SARS Taxation in South Africa i.

²⁵ For an introductory discussion on the meaning of hard – versus soft law, refer to Paragraph 1.1.2. A comprehensive discussion on the meaning of CSR The success of legislation greatly depends on the clarity and accuracy of the words in which it is framed, for example, which can be clarified through supplying definitions. "The use of definitions in an exact way: Definitions are specifications of the meaning intended by the legislator to understand what the phrase means. Definitions should only be used when the term's meaning is crucial to the comprehension and application of the proposed legislation or if the term is used frequently in the legislation. When defining a given term, the legislator should refer to the definitions in pre-existing laws." (Ezzerouali and Chami 2023 *Mazahib Jurnal Pemikiran Hukum Islam* 37, 41).

²⁶ Carroll 1999 *Business & Society* 268.

²⁷ Sheehy 2015 *Journal of Business Ethics* 625, 628-630, 643; Jacobs *The Tax Deductibility of Corporate Social Responsibility Expenditure (The Tax Deductibility of CSR Expenditure)* 6.

²⁸ Marx 1999 *Nonprofit and Voluntary Sector Quarterly* 195; Van Den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 13; Jacobs *The Tax Deductibility of CSR Expenditure* 6, Preston and Kloppers 2018 *IJSSHS* 152.

²⁹ CDH 2024 <https://www.cliffedekkerhofmeyr.com/export/sites/cdh/practice-areas/downloads/King-IV-Information-Brochure.pdf>.

Governance for South Africa 2009 (King III Report).³⁰ The King Committee supplied a definition of CSR and CSI in this document for the first (and only time). The King III Report defined CSR as:

[t]he responsibility of the company for the impact of its decisions and activities on society and the environment, through transparent and ethical behaviour that: contributes to sustainable development, including health and the welfare of society; takes into account the legitimate interests and expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the company and practised in its relationships.³¹

The King Committee defined CSI as:

Corporate social investment is one manifestation of Corporate Responsibility. In the narrow sense it refers to donation and other kinds of financial assistance (made for an altruistic purpose), and in the broader sense, includes different kinds of contributions beyond just financial assistance. Whilst Responsible Investment is an important aspect of Corporate Responsibility, it should be an integral component of a broader economic, social, and environmental (sustainable) strategy.³²

These two definitions show that CSR is a broad concept that includes CSI but is not limited to it. It can be deduced from the definition of CSI that it has two legs, one that relates to philanthropic giving and another that goes beyond this involvement.

One of the most famous definitions of CSR arose from Carroll's work.³³ Carroll³⁴ later expressed this definition visually as Carroll's Pyramid.

³⁰ Institute of Directors in Southern Africa *King Report on Governance for South Africa 2009* (King III Report).

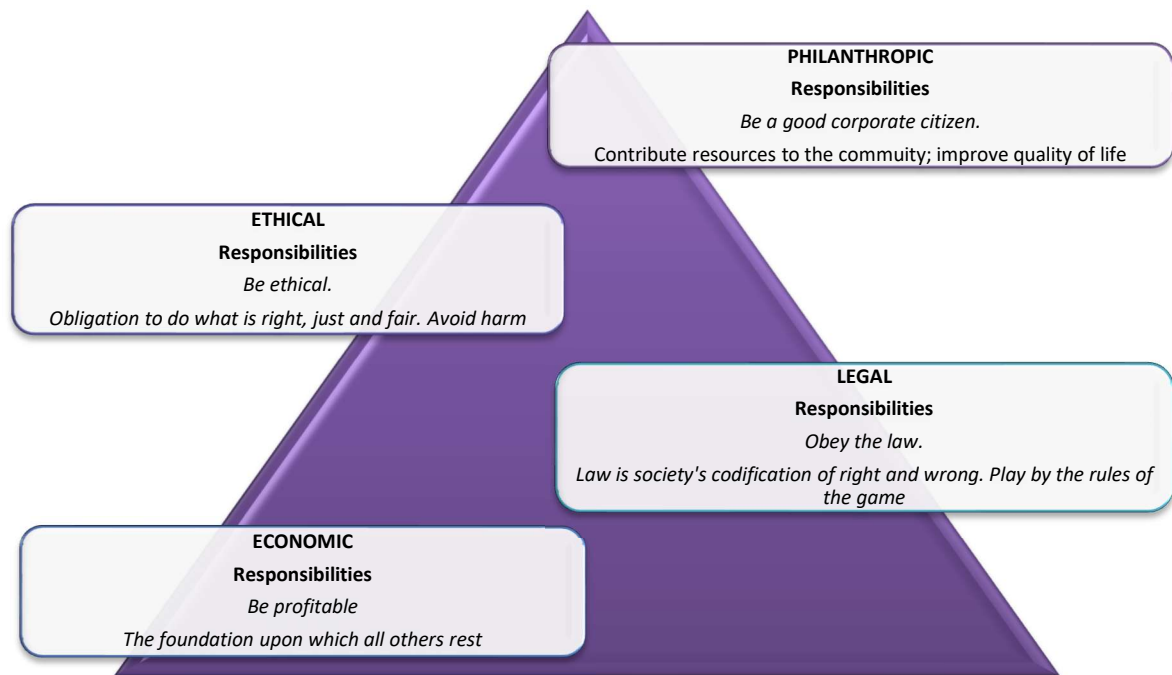
³¹ King III Report 118.

³² King III Report 118.

³³ Carroll 1979 *Academy of Management Review* 499; Masoud 2017 *International Journal of Corporate Social Responsibility* 2; Ntoutoume AGN "Challenges of CSR in Africa: Assessing the Practice Under the Voluntary and Mandatory Provisions" 5.

³⁴ Carroll defined the concept of CSR and wrote extensively about its meaning. Refer to Schwartz and Carroll 2003 *Business Ethics Quarterly* 504; Carroll 1999 *Business & Society* 268-295; Carroll 2016 *International Journal of Corporate Social Responsibility* 4-5.

Figure 1-1: Carroll's (1991) Pyramid of Corporate Social Responsibility³⁵



The expectations of the different stakeholders are incorporated in the different tiers of the pyramid. Two of these tiers/responsibilities are of particular importance for this study. The first is, in fact, the last tier in the pyramid, namely 'philanthropy', which relates to the expectation of stakeholders that companies should "be a good corporate citizen".³⁶ It should be noted that Carroll was very clear that this element is largely discretionary, a desire of the community, and not necessarily a responsibility resting on the company.³⁷ The second essential building block is 'obey the law'.³⁸ According to Carroll³⁹ a company should operate "in a manner consistent with the expectations of government and law."

To date Carroll has not adjusted his pyramid model to incorporate any express sustainable element. However, the ethical element states that it includes the idea

³⁵ Carroll 1991 *Business Horizons* 42.

³⁶ Anon 2019 <https://www.tutor2u.net/business/reference/carrolls-csr-pyramid>; also refer to Schwartz and Carroll 2003 *Business Ethics Quarterly* 504; Carroll 1999 *Business & Society* 268-295.

³⁷ Carroll 1991 *Business Horizons* 42.

³⁸ Anon 2019 <https://www.tutor2u.net/business/reference/carrolls-csr-pyramid>; also refer to Schwartz and Carroll 2003 *Business Ethics Quarterly* 504; and Carroll 1999 *Business & Society* 268-295.

³⁹ Carroll 1991 *Business Horizons* 40.

that a company should do no harm, if the explanation given for each responsibility is considered.⁴⁰ It is necessary to determine whether this responsibility of his definition includes the more comprehensive concept of CSI and whether it is related only to philanthropic acts.

With these in mind and the two definitions quoted above, the following deserve to be emphasised: firstly, CSR is a very extensive and comprehensive concept, which is supposed to be an integral part of the management practices of companies, among other things. Secondly, companies are expected to engage in or contribute to societal development unrelated to business activities. Thirdly, it can be expected that companies should be law-abiding persons. Lastly, it can be expected that companies would in turn for the social investment, like to benefit in one way or another.⁴¹ A matter that needs to be addressed is the relationship between CSR, CSI and sustainability.

Both Manchidi⁴² and Kuta⁴³ stress that CSI is but one of the components of CSR. According to Manchidi,⁴⁴ CSI could be linked with the last building block of Carroll's CSR pyramid, which is the element of philanthropy, and it will therefore be

⁴⁰ Carroll 1991 *Business Horizons* 40-41. In 2024, Camilleri and Carroll supplied a model indicating CSR's environmental, social and governance elements. Unfortunately the full article could not be obtained. See Camilleri and Carroll "Corporate Social Responsibility". Chapter 2, Paragraph 2.4.2 will discuss this model in more detail.

⁴¹ According to Esteban-Sanchez *et al*/evidence was found that indicated that good and responsible behaviour and relations with the community in which they operate had led to increased levels of corporate financial performance during the 2008 world financial crisis. See Esteban-Sanchez *et al* 2017 *Journal of Cleaner Production* 1108; CSI-Solutions list a few advantages for companies that are willing to engage in corporate social investment strategies, namely: (i) that such investment can improve the company's ability to attract investors and clients, (ii) can augment credibility, as it reveals the "heart" of the organisation, (iii) supports brand awareness, "align your company with industry charters: Social Responsibility Index and Global Reporting Index", (iv) enhances corporate image and "ultimately return on investment", etc. (CSI-Solutions date unknown <http://www.csisolutions.co.za/why-csi.php>). Another benefit, which will be discussed in more detail later in this document, is the availability of deductions against taxable income.

⁴² Manchidi *Corporate Social Investment; A guide to Creating a Meaningful Legacy* xv-xvii.

⁴³ Kuta 2018 <https://bizfluent.com/about-4676602-what-corporate-social-investment.html>.

⁴⁴ Manchidi *Factors Necessary to Enhance the Effective Implementation of Corporate Social Investment (CSI) in South Africa* 20.

discretionary in nature. Finding a universal definition for CSI proved just as difficult as for CSR. Trialogue⁴⁵ defines CSI as a:

company's financial and non-cash contributions – beyond its commercial operations – to disadvantaged communities and individuals for the purpose of social upliftment and welfare. While CSI programmes do not operate in isolation of other CSR considerations, CSI is only one way in which companies fulfil their social responsibility obligations and, as such, is only one element of the broader CSR agenda.

CSI-Solutions, a South African Company, agrees with this definition by Trialogue and emphasises that CSI projects will mainly be driven by the "need for development and also the improvement of communities."⁴⁶ The difference between CSI and corporate philanthropy (CP) is to be found in these words. CSI is in theory much more than an act of philanthropy.⁴⁷ Many views on the meaning of CP exist,⁴⁸ but most researchers agree that CP, as with CSI, is only one component of CSR.⁴⁹ CP typically involves donating money, goods or time to charitable or societal causes run by non-profit organisations (NPO) or foundations.⁵⁰ In contrast to just getting involved with NPOs and or foundations, CSI can, for example, include projects that will "improve the living conditions of your employees, their families and the communities in which you (the company) operate."⁵¹ CSI-Solutions lists the following projects as examples of CSI: adult basic education and training, health,

⁴⁵ Trialogue 2009 <https://www.trialogueknowledgehub.co.za/index.php/csi-resources/what-is-csi>; Trialogue is a South African company, which among other things helps companies to plan and make their CSI practices more effective.

⁴⁶ CSI-Solutions date unknown <http://www.csisolutions.co.za/why-csi.php>.

⁴⁷ Makka and Nieuwenhuizen 2018 *Social Responsibility Journal* 838.

⁴⁸ Gautier and Pache established that researchers in general have not attempted to define CP themselves. (Gautier and Pache 2015 *Journal of Business Ethics* 361, 344). It was found that some researchers had quoted the definition by Godfrey, namely that philanthropy is "an unconditional transfer of cash or other assets to an entity or a settlement or cancellation of its liabilities in a voluntary nonreciprocal transfer by another entity other than the owner" (Godfrey 2005 *The Academy of Management Review* 778); also refer to Mei and Wang 2021 *International Journal of Management Reviews* 377; Farooq *et al* 2020 *Corporate Social Responsibility and Environmental Management* 2452.

⁴⁹ Yang and Babiak 2021 *European Sport Management Quarterly* 2; Kubičková 2018 *Acta Oeconomica Pragensia* 70.

⁵⁰ Gautier and Pache define CP as "voluntary donations of corporate resources to charitable causes." (Gautier and Pache 2015 *Journal of Business Ethics* 344). Sulek researched the evolution of the term "philanthropy". Sulek, among others, compared the definitions of Webster and the OECD and highlighted the fact that philanthropy will include "active efforts to promote human welfare" through "generous donations of money to good causes." (Sulek 2010 *Nonprofit and Voluntary Sector Quarterly* 200); Optimy 2017 <https://wiki.optimy.com/corporate-philanthropy/>; Kubičková 2018 *Acta Oeconomica Pragensia* 70.

⁵¹ CSI-Solutions date unknown <http://www.csisolutions.co.za/why-csi.php>.

infrastructure, job creation and sports development.⁵² It is essential to note that such CSI initiatives undertaken and expenditures incurred by the company will fall outside the everyday business practices of that company and that no general tax deduction or tax benefit will be available. It is also important to note that CSI will not necessarily have any direct financial benefit for companies but will likely place a financial burden on them.⁵³ Many theories exist on the topic of CSR and its benefits for companies. One of these is the 'Business Case for CSR' theory, which implies that a company can expect to observe an improvement in its corporate financial performance if it is known for its ethical conduct and if its shareholders are on board and support its CSR policies.⁵⁴ Littlewood and Holt,⁵⁵ and Ndlovu⁵⁶ emphasised that companies operating in South Africa cannot ignore the benefits the *B-BBEE* legislation and *B-BBEE* Code may hold financially, especially if the company would like to do business with the Government.

More than 25 years ago Elkington⁵⁷ formulated the Triple Bottom Line theory (people, planet, profit) to demonstrate how particular behaviour can lead to sustainable practices. Elkington developed this theory to encourage businesses to change their behaviour and to start to listen and adhere to the growing demands of society.⁵⁸ This theory gained popularity over time, and it "has become part of the everyday language" of doing business.⁵⁹ But in the words 'everyday language' lies the crux of the problem. Elkington⁶⁰ stated that CSR is still considered mainly an accounting practice rather than a real act for the benefit of people and the planet.

⁵² CSI-Solutions date unknown <http://www.csisolutions.co.za/why-csi.php>.

⁵³ This statement is in agreement with the opinion of IPASA; IPASA date unknown <http://ipasa.co.za/Downloads/Corporate%20social%20investment/CSI%20initiatives.pdf>; Also refer to Kuta 2018 <https://bizfluent.com/about-4676602-what-corporate-social-investment.html>.

⁵⁴ Refer to Paragraph 3.3.3.

⁵⁵ Refer to Paragraph 3.3.3.

⁵⁶ Refer to Paragraph 3.3.3.

⁵⁷ Elkington 1998 *Environmental Quality Management* 37-51.

⁵⁸ Elkington 2018 <https://hbr.org/2018/06/25-years-ago-i-coined-the-phrase-triple-bottom-line-heres-why-im-giving-up-on-it>.

⁵⁹ Kraaijenbrink 2019 <https://www.forbes.com/sites/jeroenkraaijenbrink/2019/12/10/what-the-3ps-of-the-triple-bottom-line-really-mean/#677cd65e5143>.

⁶⁰ Elkington 2018 <https://hbr.org/2018/06/25-years-ago-i-coined-the-phrase-triple-bottom-line-heres-why-im-giving-up-on-it>.

This statement appears to be substantiated by the data published by Trialogue⁶¹ and the above observation by the author. On average, companies that had indeed budgeted for CSI expenditure and reported on it had set aside only one per cent of their net profit after tax for this cause.⁶²

The question is therefore whether the time has not come for all CSI financial contributions and the consequent reporting thereof to be regulated, to force more companies to contribute to CSI.

1.1.2 Types of regulation

The regulation of CSR could take the form of soft law regulations (for example, codes of conduct or indirect regulation) as well as hard law/legislation.⁶³ Most countries' stance on CSR regulation is that it should be voluntary and that the decision to partake should remain with the company.⁶⁴ However, the governments of Mauritius, India and the Seychelles deemed it necessary to implement hard laws that compel companies to contribute financially towards CSI. The following paragraphs will briefly consider soft law and hard law pertaining to CSR.⁶⁵

1.1.2.1 Soft law

Traditionally the rule of law is considered to be 'hard' since it is compulsory to adhere to it.⁶⁶ If this is not the case, such 'law' is simply not law and therefore does not

⁶¹ Trialogue *Business in Society Handbook 2021* 40.

⁶² Trialogue *Business in Society Handbook 2021* 40.

⁶³ Some examples of soft law and hard law regulations of CSR are discussed in Paragraphs 1.1.2.1 and 1.1.2.2 as well as Chapter 5. For example, the Institute of Directors in Southern Africa *King Report on Corporate Governance for South Africa 2016* (King IV Report) is a set of soft law regulations for companies encouraging amongst others "transparent and meaningful reporting to stakeholders." (Institute of Directors in Southern Africa *King Report on Corporate Governance for South Africa 2016* (King IV Report) 22); Abbott and Snidal 2000 *International Organizations* 421-424.

⁶⁴ EU Comm. 2001 *Green Paper* http://europa.eu/rapid/press-release_DOC-01-9_en.htm 26; McBarnet *et al* 2007 *Cambridge University Press* 3; EU Comm. 2011 [https://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com\(2011\)0681/_com_com\(2011\)0681_en.pdf](https://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2011)0681/_com_com(2011)0681_en.pdf) 3 and 6; Johnston 2017 *Washington and Lee Law Review* 1027-1030, 1035-1036; Preston and Kloppers 2018 *IJSSHS* 153; Pillay *The Changing Nature of Corporate Social Responsibility; CSR and Development in Context – The Case of Mauritius (CSR – The Case of Mauritius)* 166. EU Comm. 2019 *document 34963* <https://ec.europa.eu/docsroom/documents/34963>.

⁶⁵ It should be remembered that CSI is a component of CSR.

⁶⁶ Abbott and Snidal 2000 *International Organization* 421.

exist, or at least that is the opinion of many jurists.⁶⁷ Dupuy⁶⁸ states that jurists tend to ignore this process of normative creation because they feel uncomfortable analysing it. Dupuy⁶⁹ is also of the opinion that the so-called 'soft' law is part of the contemporary law-making process. Guzman and Meyer,⁷⁰ who agree with Dupuy, define soft law as:

non-binding rules (instruments) that interpret or inform our understanding of binding legal rules or represent promises that, in turn, create expectations about future conduct.

Skjærseth *et al*⁷¹ add that these non-binding rules "still have legal relevance, located in the twilight between law and politics." They also believe that soft law is usually the precursor of hard law.⁷²

Companies operating in South Africa are not subject to formal legislation regulating CSR or more specifically CSI. The King II Report⁷³ and the King III Report⁷⁴ advisory codes on corporate governance are examples of soft law which specifically mention CSR. The King IV Report built on the King III Report. It acknowledged that companies are an inherent part of society and that an "interdependent relationship between the organisation and its stakeholders"⁷⁵ exists. Although the King IV Report does not explicitly refer to CSR as a concept, it encapsulates the spirit of *ubuntu*⁷⁶ with the acknowledgement of the interdependent relationship between companies and their stakeholders.⁷⁷ The King II and III Reports were "written with the purposes to promote the highest standards of corporate governance in South Africa"⁷⁸ but not necessarily to encourage CSI involvement.

⁶⁷ Dupuy 1990 *Mich. J. Int'l L* 420.

⁶⁸ Dupuy 1990 *Mich. J. Int'l L* 420.

⁶⁹ Dupuy 1990 *Mich. J. Int'l L* 420.

⁷⁰ Guzman and Meyer 2010 *Journal of Legal Analysis* 174.

⁷¹ Skjærseth *et al* 2006 *Global Environmental Politics* 104.

⁷² Skjærseth *et al* 2006 *Global Environment Politics* 104.

⁷³ The Institute of Directors in Southern Africa *King Report on Corporate Governance for South Africa 2002* (King II Report).

⁷⁴ The Institute of Directors in Southern Africa *King Report on Governance For South Africa 2009* (King III Report).

⁷⁵ King IV Report 24.

⁷⁶ "*Ubuntu* and *Botho* imply that there should be a common purpose to all human endeavours (including corporate endeavours) which is based on service to humanity." (King IV Report 24).

⁷⁷ King IV Report 24.

⁷⁸ Preston and Kloppers 2018 *IJSSHS* 153.

With the release of King II, two significant regulatory changes were observed. Firstly, the JSE changed its listing requirements, compelling companies to "include in their annual report a narrative statement as to how they had complied with the principles set out in King II."⁷⁹ The other significant change came with the enactment of the *Companies Act* 71 of 2008.⁸⁰ The Act makes provision that the Minister may prescribe, in certain cases, that a company must appoint a social and ethics committee.⁸¹ Clearly the King Committee and the Institute of Directors South Africa regard CSR as an integral part of corporate governance and believe that companies have a responsibility to society.⁸²

1.1.2.2 Hard law

Esser states that with the publication of the King III Report and the enactment of the 2008 *Companies Act*, CSR is now part of the statutory law, that the act recognises the interest of stakeholders, and that directors may even be in breach of their fiduciary duties if they are not compliant with the King Reports.⁸³ "Certain CSR aspects like directors' duties and specifically the protection of stakeholder interests is now, in my view, correctly regulated in Company legislation."⁸⁴

As previously stated, soft law proved in many instances to be the precursor of 'hard' law, which can be defined as

the legal framework that is legally binding and enforceable through the courts, which include[s] domestic statutes, common law, regulations and international treaties.⁸⁵

⁷⁹ King III 2009 6-7.

⁸⁰ *Companies Act* 71 of 2008 (South Africa) (2008 *Companies Act*). For an in-depth discussion regarding the impact the 2008 *Companies Act* had on CSR, and the related social and ethics committee, refer to Esser 2011 *SA Merc LJ* 325-327.

⁸¹ Section 72(4) of the 2008 *Companies Act*; also refer to Calkoen 2011 <http://www.werksmans.com/wp-content/uploads/2013/04/The-Corporate-Governance-Review-FINAL-web.pdf>.

⁸² Section 7 of the 2008 *Companies Act* states that "the purpose of the act includes to 'promote compliance with the *Bill of Rights* as provided for in the Constitution' and it 'reaffirms the concept of the company as a means of achieving economic and social benefits.' Further support for the idea of corporate citizenship is offered by the obligation in the Companies Act for certain companies to establish a social and ethics committee."; King IV Report 25.

⁸³ Esser 2011 *SA Merc LJ* 334-335.

⁸⁴ Esser 2011 *SA Merc LJ* 335.

⁸⁵ Yan 2019 *Northwestern Journal of International Law & Business* 61.

Hard law will generally be employed to force companies to adopt certain forms of conduct or compliance which they "would not otherwise want to do or refrain from doing something [they] would otherwise do."⁸⁶ Environmental laws are examples hereof because they "prohibit certain forms of conduct such as [the] harmful disposal of waste."⁸⁷ According to Knudsen⁸⁸ and McBarnet *et al*,⁸⁹ some governments are prepared to introduce legislation indirectly forcing companies to adopt CSR policies. These laws relate mainly to disclosure rules and regulations and were introduced by countries such as the United Kingdom, Australia, Belgium and Germany.⁹⁰ Several countries have implemented hard law compelling specific categories of companies to report on non-financial (CSR) matters in their annual financial reports.⁹¹ Some countries have enacted legislation regarding CSR due

⁸⁶ Yan 2019 *Northwestern Journal of International Law & Business* 61.

⁸⁷ Yan 2019 *Northwestern Journal of International Law & Business* 61.

⁸⁸ Driver and Thompson indicate that many European countries implemented hard law for CSR in the following forms, namely facilitation policies as well as mandate policies. When in the form of hard law, mandate policies were in general "through non-financial reporting legislation" (Driver and Thompson 2018 *Corporate Governance in Contention* 284-285).

⁸⁹ McBarnet *et al* 2007 *Cambridge University Press* 3.

⁹⁰ McBarnet *et al* 2007 *Cambridge University Press* 3; Driver and Thompson 2018 *Corporate Governance in Contention* 284. For example, France transposed the Corporate Sustainable Reporting Directive into national law. The legislation requires, amongst other things, that the company report on its impact on the environment or society, and economy, the "material financial impact of sustainability on the company (e.g, the company's development, performance, and position)". (Latham & Watkins 2024 <https://www.lw.com/admin/upload/SiteAttachments/France-Transposes-Corporate-Sustainability-Reporting-Directive-Into-Law.pdf> 1-2). Denmark also included in its *Financial Statement Act* that companies of a specific size must disclose, regarding their CSR practices, their "CSR policies, including standards, guidelines, and principles; their plan of action to translate CSR policies into results, including all planned procedures and systems; and their evaluation of CSR achievements in the current financial year, as well as expected results of future plans" (Thacker 2019 <https://theCSRjournal.in/csr-policies-around-the-world/>). .

⁹¹ All EU member countries must adhere to the 2014/95/EU and 2013/34/EU directives. (Peters and Raes 2019 <https://iclg.com/practice-areas/corporate-governance-laws-and-regulations/belgium>). Some EU member countries have their own additional legislation regulating CSR reporting. These countries include Denmark: *Danish Financial Statement Act* of 2008 (Lyck and Fisher 2018 <https://iclg.com/practice-areas/corporate-governance-laws-and-regulations/denmark>); Sweden (Worldfavor date unknown <https://blog.worldfavor.com/swedish-legislation-on-sustainability-reporting-what-it-is-about-and-how-to-approach-it>). In 2005 China changed their company law to specifically state that companies have no choice but to engage in CSR activities. (Section 5 of the *Company Law of the People's Republic of China* 42 of 2005); also refer to Hung *et al* "Mandatory CSR Disclosure and Information Asymmetry: Evidence from a Quasi-Natural Experiment in China." 1-58; Lin 2020 *American Journal of Comparative Law* 576. Indonesia can also be added to the list of countries that have enacted legislation making CSR reporting mandatory (Andrini 2016 *Mimbar Hukum* 512). For a more comprehensive discussion regarding the legislation of specific countries, refer to Chapter 5, introduction.

diligence and governance structures.⁹² Germany, for example, enacted the *Act on Corporate Due Diligence Obligations in Supply Chains*⁹³ on 1 January 2023, placing an ethical obligation on specific categories of companies. It is therefore clear that different governments are driving the enforcement of CSR behaviour.

Watch,⁹⁴ however, believes that CSR is still treated by top management as an add-on. This means that regulations (whether in the form of hard or soft law) compelling reporting by companies might not be enough to ensure that CSR takes priority and that talk will, by implication, turn into action.⁹⁵ Companies can report that no CSR policies exist and that they still abide by the law. Welford⁹⁶ is, however, of the opinion that once companies realise the long-term benefits of CSR and sustainable practices, there will be no need for government interference in the form of regulations and hard laws.

The governments of Mauritius, India and the Seychelles were not persuaded that companies would willingly partake in CSI. From 2009 to 2014 these countries implemented legislation compelling companies to contribute financially to CSR funds. In 2009 the Mauritian government implemented its version of a CSR tax. This step was taken after many years of debate and much resistance from the corporate sector.⁹⁷ Many reasons prompted the Mauritian government to enact the amendments to the *Income Tax Act* 16 of 1995,⁹⁸ of which the desire to stimulate

⁹² S 72(4) of the 2008 *Companies Act* (South Africa) prescribes that a social and ethics committee should be appointed by all companies as determined by the Minister. These companies are state-owned enterprises, listed companies and certain private companies that scored above 500 points in the past two years on their public interest scorecard. The committee must monitor the "company's performance in: Social and economic development (including the United Nations Global Compact Principles, the Organisation for Economic Co-operation and Development recommendations regarding corruption, the Employment Equity Act and the Broad-Based Black Economic Empowerment Act); • Good corporate citizenship; • Environment, health and safety; • Consumer relationships; and • Labour and employment." (Pandor *A Guide to Implementing Social and Ethics Committee Requirements* 3-4).

⁹³ July 16, 2021 (hereafter referred to as the *Supply Chain Act*).

⁹⁴ Watch 2011 <https://germanwatch.org/sites/germanwatch.org/files/announcement/10649.pdf>.

⁹⁵ Watch 2011 <https://germanwatch.org/sites/germanwatch.org/files/announcement/10649.pdf>.

⁹⁶ Welford 2015 <https://www.eco-business.com/opinion/why-governments-should-stay-out-of-csr/>; Also refer to Esteban-Sanchez *et al* 2017 *Journal of Cleaner Production* 1108; For some benefits refer to footnote 15.

⁹⁷ Pillay *CSR – The Case of Mauritius* 161, 278-279.

⁹⁸ Sections 50K and 50L of the *Income Tax Act* 16 of 1995 (of Mauritius).

economic growth and development were two.⁹⁹ Ramdhony¹⁰⁰ and Pillay¹⁰¹ believe that the inaction of Mauritian companies greatly influenced their government's decision to implement the CSR tax legislation. Most of these companies were family-owned and profit-driven, with CSR involvement limited mainly to *ad hoc* activities. With the effective date of 1 July 2009, sections 50K and 50L were incorporated into the *Income Tax Act* 16 of 1995. The main provisions of these sections are that all companies, regardless of size, should spend at least two per cent of their book profits as a CSR tax levy.¹⁰²

Seychelles followed in the footsteps of Mauritius and implemented its *Corporate Social Responsibility Tax Act* 17 of 2013¹⁰³ on 1 January 2014. The CSR tax is applicable to certain companies only.¹⁰⁴ This act obliges these companies to pay a CSR tax of zero point five (0.5) per cent of their turnover.¹⁰⁵ One of the objectives of the legislation was to "promote the sense of social engagement and partnership by all national stakeholders in assisting the country to [meet its] socio-economic goals."¹⁰⁶

India was the third country to implement a compulsory CSR contribution.¹⁰⁷ Pressing matters like economic inequality, slow economic growth, poverty etc. forced the Indian government to implement its version of a CSR tax.¹⁰⁸ On 1 April 2014 section 135 of the 2013 *Companies Act*¹⁰⁹ came into force. Certain categories of companies are obliged to spend at least two per cent of their average profits during each year of assessment on the achievement of their CSR policy. It should be noted that there

⁹⁹ Pillay *CSR – The Case of Mauritius* 161, 278-279.

¹⁰⁰ Ramdhony 2018 *Theoretical Economics Letters* 433.

¹⁰¹ Pillay *CSR – The Case of Mauritius* 161, 278-279.

¹⁰² Sections 50K and 50L of the *ITA(MAU)*.

¹⁰³ *Corporate Social Responsibility Tax Act* 17 of 2013 (*CSR Tax Act*) (of Seychelles).

¹⁰⁴ Section 4(1) of the *CSR Tax Act*.

¹⁰⁵ First schedule to the *CSR Tax Act*.

¹⁰⁶ Seychelles Revenue Commission *CSRT guidelines January 2017* <https://www.src.gov.sc/resources/Guides/CSRTaxGuidelinesJanuary2017.pdf>.

¹⁰⁷ Many authors claim that India was the first country to implement a CSR tax. However, if the dates on which the different laws were published and became enforceable is considered, then Mauritius definitely was the first country to implement its CSR tax legislation.

¹⁰⁸ Sydlowski *Mandatory Corporate Social Responsibility in India: Motivations and Effectiveness* 2-3; Van Zile 2012 *Asian-Pacific Law & Policy Journal* 269-272.

¹⁰⁹ Section 135 of the *Companies Act* of 2013 (of India).

are vast differences between the legislation of Mauritius and India, even though a two per cent compulsory CSR levy is applicable in both of these countries.

Developed countries appear to be prepared to regulate CSR practices through different soft law options. Where the developed countries implemented hard law, the legislation mainly regulated CSR reporting. On the other hand, three developing countries had chosen not only to compel companies to report on CSR practices but also to contribute financially to CSI. This study will include, in Chapter 5, a comparative study of the CSR tax legislation of the three countries mentioned.

The following paragraph will explore the hard law options for regulating CSI through taxation.

1.1.3 The use of tax incentives or tax levies

The current economic situation of South Africa is, at face value, very similar to that of Mauritius and India some 10 years ago. Our economy is in dire need of reformation that will stimulate economic growth and development.¹¹⁰ It is public knowledge that the South African government in the past years has faced a huge challenge in allocating its already limited financial resources.¹¹¹ The COVID-19 pandemic took a further toll on the already depleted fiscus.¹¹² Public-private

¹¹⁰ Treasury 2020
https://www.google.com/search?q=government+on+economic+reforms+in+south+africa&rlz=1C1CHBD_enZA884ZA923&sxsrf=ALeKk00S4J9KrpCev365slXld_TLWv2Z5A:1619578881824&source=Int&tbs=qdr:y&sa=X&ved=2ahUKEwjO876_Z_wAhURYsAKHZSuBDAQpwV6BAgBECU&biw=1536&bih=666&dpr=1.25; Treasury 2019
http://www.treasury.gov.za/comm_media/press/2019/Towards%20an%20Economic%20Strategy%20for%20SA.pdf; For a comprehensive list of challenges and the comparison between Mauritius and South Africa, refer to Preston and Peeroo 2023 *De Jure Law Journal* 298-301.

¹¹¹ Preston and Kloppers 2018 *IJSSHS* 155; 2021 Budget Speech
<https://www.gov.za/speeches/minister-tito-mboweni-2021-budget-speech-24-feb-2021-0000>;
 2020 Budget Speech
<http://www.treasury.gov.za/documents/national%20budget/2021/speech/speech.pdf>; 2018
 2018 Budget Speech
<http://www.treasury.gov.za/documents/national%20budget/2018/speech/speech.pdf>; Anon
BusinessTech <https://businesstech.co.za/news/government/105087/9-ways-government-has-failed-south-africa/>; Himbara *The Africa Report* <https://www.theafricareport.com/35378/south-africa-a-sophisticated-failing-state/>; Sguazzin *Moneyweb*
<https://www.moneyweb.co.za/news/south-africa/sa-heading-toward-becoming-a-failed-state-group-says>.

¹¹² Treasury 2020
https://www.google.com/search?q=government+on+economic+reforms+in+south+africa&rlz=1C1CHBD_enZA884ZA923&sxsrf=ALeKk00S4J9KrpCev365slXld_TLWv2Z5A:1619578881824&

partnerships (PPP), where the government and the private sector take hands to make available more funding for projects such as infrastructure and socio-economic development projects, is but one of the options available for the private sector to assist government in addressing some of the public's needs.¹¹³ These partnerships may prove to be very expensive for both parties.¹¹⁴

Currently South African tax legislation does not allow CSIE to be a deduction against taxable income.¹¹⁵ The primary reason for this is that these expenses do not meet the requirements of section 11(a), read with the section 23(g), specifically the trade and the in the production of income criteria.¹¹⁶ For a general expense to be deductible against taxable income, it should meet the provisions of section 11(a) read with section 23(g),¹¹⁷ or should be specifically allowed under section 11¹¹⁸ of the *Income Tax Act* 58 of 1962 (*ITA(SA)*). Two of the elements of section 11(a) are that the expense should relate to the trade practised by the business and should be in the production of income (or closely related to the income-earning operation of the business).¹¹⁹ Expenses incurred in favour of a recognised public benefit organisation¹²⁰ will be allowed as a deduction against taxable income to the maximum of 10 per cent of the taxable income of a company if it complies with the requirements of section 18A of the *ITA(SA)*.¹²¹

source=Int&tbs=qdr:y&sa=X&ved=2ahUKEwjO876_-
Z_wAhURYsAKHZSuBDAQpwV6BAgBECU&biw=1536&bih=666&dpr=1.25;

¹¹³ Preston and Kloppers 2018 *IJSSHS* 155-159; also refer to the 2019, 2020 and 2021 budget speeches; and see South African Government <https://www.gov.za/national-budget-0>.

¹¹⁴ Romero *The Guardian* <https://www.theguardian.com/global-development/2015/jul/10/true-cost-private-sector-involvement-development-finance-summit-ppp>.

¹¹⁵ Section 11 of the *Income Tax Act* 58 of 1962 (South Africa) (*ITA(SA)*).

¹¹⁶ Preston and Kloppers 2018 *IJSSHS* 155-159. Also refer to Claassen and Van Heerden "General Deductions" 135. For a comprehensive discussion of this legislation refer to Chapter 6, Paragraph 6.1.2.1.

¹¹⁷ Section 11(a) and 23(g) of the *ITA(SA)*.

¹¹⁸ Refer to ss 11 and 23 of the *ITA(SA)*.

¹¹⁹ Claassen and Van Heerden "General Deductions" 135.

¹²⁰ A non-profit organisation is referred to as a public benefit organisation in the *ITA(SA)*.

¹²¹ Section 18A of the *ITA(SA)*. It is noteworthy that s 18A of the *ITA(SA)* and s 80G of the Indian *Income Tax Act* 1961 (*ITA(IND)*) are very similar. S 80G regulates the deduction of amounts donated to certain funds or institutions against the taxpayer's taxable income. A notable difference between the two sections is that the *ITA(IND)* also refers to government relief funds, etc., and not only NPOs, allowing for more CSI opportunities.

According to reports published by Trialogue,¹²² 79 per cent of the CSIE incurred by companies for the 2020 financial year were awarded to non-profit organisations (NPOs) or public benefit organisations (PBOs), as they are referred to in the *ITA(SA)*.¹²³ For the 2018/2019 financial year this number was slightly higher at 83 per cent. As explained above, companies would receive a section 18A¹²⁴ deduction against taxable income for these CSIE incurred. This may be a strong indication that companies are willing to incur CSIE only if some benefit is available to them, such as a reduction of their taxable income.

One cannot deny the fact that many South African companies do take CSI and CP seriously, but the statements of Elkington¹²⁵ and Watch¹²⁶ above indicate that it may be time to introduce tax incentives and/or CSI tax legislation to encourage more CSIE by companies. What is then the solution? According to Preston and Kloppers¹²⁷

[o]ne of the most effective instruments at a government's disposal in framing a CSR policy is the use of fiscal incentives such as taxes. Through the use of taxes governments are in a position either to punish social irresponsibility or to reward and incentivise socially responsible practices.

Fiscal incentives could take the form of tax incentives, kickbacks, or even allowing additional deductions against taxable income.¹²⁸ Tax incentives include "incentive schemes to stimulate diversity and equal opportunity by granting tax relief schemes."¹²⁹ A South African example of tax incentives or tax relief schemes is the *Employment Tax Incentive Act* 26 of 2013.¹³⁰ Under this Act the employer can deduct a portion of the employee's Pay-As-You-Earn tax (PAYE) against the PAYE due and payable to SARS.¹³¹ Another example is the tax allowance available under section 11D of the *ITA(SA)* for companies that engage in research and development.¹³²

¹²² Trialogue *Business in Society Handbook* 2020. For more updated statistics, refer to Paragraph 1.2

¹²³ Section 18A read with s 30 of the *ITA(SA)*.

¹²⁴ Section 18A of the *ITA(SA)*.

¹²⁵ Elkington 2018 <https://hbr.org/2018/06/25-years-ago-i-coined-the-phrase-triple-bottom-line-heres-why-im-giving-up-on-it>.

¹²⁶ Watch 2011 <https://germanwatch.org/sites/germanwatch.org/files/announcement/10649.pdf>.

¹²⁷ Preston and Kloppers 2018 *IJSSHS* 153. Also refer to Kloppers 2012 *Improving Land Reform through CSR* 218.

¹²⁸ Preston and Kloppers 2018 *IJSSHS* 153.

¹²⁹ Driver and Thompson 2018 *Corporate Governance in Contention* 286.

¹³⁰ *Employment Tax Incentive Act* 26 of 2013 (*ETI Act*).

¹³¹ Section 7 of the *ETI Act*; also refer to Preston and Kloppers 2018 *IJSSHS* 166.

¹³² S 11D of the *ITA(SA)*.

Fiscal incentives are much more 'positive' than tax levies, and companies may be encouraged to incur more CSIE willingly, not only relating to PBOs. The expansion of the current tax incentive legislation or legislation allowing deductions of CSIE against taxable income should therefore be researched.

The opposite of an incentive is to force particular behaviour through the implementation of a tax levy, as seen in Mauritius, the Seychelles and India.¹³³

As illustrated, many reasons exist for considering legislative options to regulate CSI and CSIE by hard law. The main reasons, in the South African context, are to ensure that more companies actually get involved in CSI and that they not only report on CSR matters but also contribute financially. This might in turn ease the financial burden on the government with regard to the public's social needs.

1.2 Motivation

As has been indicated, governments worldwide have moved towards making CSR mandatory. Most of this legislation relates to the reporting of CSR practices. Some of the legislation implemented intends to ensure that companies act in an ethical manner and apply due diligence. Goel and Rathee,¹³⁴ however, indicate that although environmental, social and economic concerns are on the agendas of most countries, the CSR agenda is still mostly influenced by the country's history, policies, laws and preferences.

It has been proven that most companies in South Africa plan their CSI activities according to the legislation. The *B-BBEE* legislation and related *B-BBEE* scorecard points play a definite role in CSI.¹³⁵ The data published by Trialogue confirms this.¹³⁶ The majority (75 per cent) of the 68 participants in Trialogue's interviews and questionnaires indicated that they use government policies to inform their CSI strategy.¹³⁷ The following are some of the statistics published.

¹³³ Preston and Kloppers 2018 *IJSSHS* 153.

¹³⁴ Goel and Rathee "CSR Policies in Different Countries: A Comparative Analysis" 1.

¹³⁵ Merham and Skinner 2016 *Society and Business Review* 113; Cheruiyot-Koech and Reddy 2022 *Sustainability* 10.

¹³⁶ Trialogue *Business in Society Handbook 2023*.

¹³⁷ Trialogue *Business in Society Handbook 2023* 45.

Only 100 of the more or less 400 JSE (Johannesburg Stock Exchange)-listed companies published data regarding their CSI involvement.¹³⁸ These companies contributed an estimated R11.8 billion to CSR. This amount increased in real terms by only one per cent from the previous year.¹³⁹ Sixty-eight per cent of the 68 participating companies indicated that they align their business strategies with the company's environmental, social and governance (ESG) issues.¹⁴⁰

Forty-seven per cent of the participants indicated that the main reason for being involved in CSI was 'because it is the right thing to do'. Twenty-one per cent indicated that their main motivation relates to the 'licence to operate' theory. For 10 per cent of the participants the main motivation was the *B-BBEE* legislation and *B-BBEE* scorecard, and for six per cent of the participants 'reputational impact' was the main motivation.¹⁴¹

If the breakdown of the R11.8 billion expended on CSI is considered, then the amount was spent on activities for which a company might qualify for a section 18A of the *ITA(SA)* deduction.¹⁴² Forty-eight per cent of the corporate social investment expenditure (CSIE) went towards education. Thirteen per cent was spent on the *B-BBEE* scorecard activity, 'social and community development'. Because it relates to the *B-BBEE* legislation, this CSIE will not benefit society at large, but only a specified group. Only three per cent of the CSIE (about R354 million) went towards environment-related projects.¹⁴³ It can be concluded that companies will incur CSIE only if they can benefit to some extent. Furthermore, spending on sustainable social-economic development and the environment, which will impact society at large, has yet to be established as a CSI practice.

Barnett¹⁴⁴ stresses that if firms expect that addressing social problems comes at a cost, companies rationally are unlikely to do so, especially repeatedly or in significant numbers. Thus, societal issues are unlikely to be resolved through this means.

¹³⁸ Trialogue *Business in Society Handbook 2023* 1.

¹³⁹ Trialogue *Business in Society Handbook 2023* 30.

¹⁴⁰ Trialogue *Business in Society Handbook 2023* 43.

¹⁴¹ Trialogue *Business in Society Handbook 2023* 44.

¹⁴² For a comprehensive discussion of s 18A of the *ITA(SA)* and related legislation, refer to Paragraphs 2.2 and 6.1.1.

¹⁴³ Trialogue *Business in Society Handbook 2023* 50.

¹⁴⁴ Barnett 2019 *Business and Society* 185-186.

However, if companies expect to profit from alleviating social ills, then knowledge of such win-win scenarios ought to spur widespread and ongoing corporate action to better society.¹⁴⁵ If the financial benefits relating to taxation legislation are considered, then there is not much motivation for companies to incur CSIE. Apart from the possible section 18A¹⁴⁶ deduction against taxable income, a company has no tax benefits to gain from incurring CSIE.¹⁴⁷

South Africa faces challenges similar to those faced by Mauritius before implementing its CSR legislation.¹⁴⁸ These challenges include, amongst others, high unemployment rates, a poor economic outlook and growth, deteriorating and a lack regarding the development of infrastructure, a high budget deficit and excessive government debt.¹⁴⁹ It was indicated above that the South African government has urged companies in the past few years to assist in addressing the socio-economic challenges experienced by the country.

Sheehy *et al*¹⁵⁰ demonstrate that hard law "is able to generate a significant response among businesses for social and environmental care." Their study further confirms that hard law can effectively motivate organisations to incur CSIE, as in the case of Indonesia.¹⁵¹

It is therefore believed that the time has come to consider regulating CSI in South Africa, specifically CSIE, with hard law.¹⁵² As was seen in Mauritius, the *ITA(MAU)* was employed as a legislative vehicle for regulating CSR. An adjustment of the *ITA(SA)* to make provision for CSI is considered. This step would firstly, as stated

¹⁴⁵ Barnett 2019 *Business and Society* 185-186.

¹⁴⁶ *ITA(SA)*.

¹⁴⁷ For a comprehensive discussion regarding this topic, refer to Chapter 6.

¹⁴⁸ Preston and Peeroo 2023 *De Jure Law Journal* 303.

¹⁴⁹ Preston and Peeroo 2023 *De Jure Law Journal* 298-300.

¹⁵⁰ Sheehy *et al* 2023 *European Business Organization Law Review* 715.

¹⁵¹ Sheehy *et al* 2023 *European Business Organization Law Review* 715. Although Indonesia does not have specific legislation indicating the amount a company must spend on CSI, Law 40 of 2007 on *Limited Liability Company*, Indonesian companies are required to implement a CSR scheme as determined by the board of directors. See Putri and Yusuf 2024 [https://www.mondaq.com/shareholders/1482202/general-overview-of-corporate-social-responsibility-in-indonesia#:~:text=In%20general%2C%20the%20legal%20obligations,\(%22Company%20Law%22\).](https://www.mondaq.com/shareholders/1482202/general-overview-of-corporate-social-responsibility-in-indonesia#:~:text=In%20general%2C%20the%20legal%20obligations,(%22Company%20Law%22).)

¹⁵² This view is shared by Ngoepe-Ntsoane 2023 *International Journal of Research in Business and Social Science* 1-13.

by Fig,¹⁵³ ensure that those companies that "remain outside the net of commitment" would be encouraged (either by way of an incentive or mandatory contributions/tax) to contribute to "better social and environmental practice."¹⁵⁴ Mandatory CSI would therefore strengthen the sustainability agenda.¹⁵⁵ Lastly, it would enhance the role of the government in promoting CSI.¹⁵⁶

However, before proposing specific legislative reform it will first be necessary to propose universal definitions for CSR, CSI, CP and CSIE.¹⁵⁷

1.3 Research question

The previous discussions emphasised that more South African companies must invest in CSI. Given the above background, alternative solutions must be explored to encourage all or most South African companies to participate in CSI.

The following research question for this thesis is therefore proposed:

How can the South African taxation framework be reformed to incorporate corporate social investment expenditure?

1.4 Research objectives

To address the research question, the following primary and secondary research objectives are set:

The primary objective is to propose legislative changes to the South African taxation framework which will incorporate corporate social investment expenditure (CSIE) by introducing tax incentives and/or by introducing a compulsory tax.

The following secondary objectives are formulated in support of the primary objective but will also guide the study through each respective chapter:

¹⁵³ Fig 2005 *International Affairs* 599.

¹⁵⁴ Fig 2005 *International Affairs* 599.

¹⁵⁵ Serfontein-Jordaan and Dlungwane 2022 *Communitas* 1-20 confirm that the mining companies (included in their study) use CSR projects to contribute to "economic, social and environmental sustainability within their host communities."

¹⁵⁶ Wirba 2024 *Journal of the Knowledge of Economy* 7428-7454.

¹⁵⁷ As was previously indicated, this is an essential step in the drafting of any legislation. See Ezzerouali and Chami 2023 *Mazahib* 37-64.

1. To investigate the historical development of CSI in South Africa
2. To propose universal definitions for the terms CSR, CSI, CP and CSIE for the South African context.
3. A natural consequence of formulating new definitions would be to re-evaluate Carroll's Pyramid model and if possible to adopt it.
4. To determine theoretical and South African-driven reasons for companies to get involved in their host communities through CSI.
5. To determine to what extent tax incentives or taxes can encourage CSI.
6. To scrutinise international mandatory CSR legislation to find possible solutions for incorporating CSIE into the South African taxation framework.
7. To determine to what extent and how CSIE is incorporated in the current South African taxation framework.
8. To propose legislative reform of the South African taxation framework to incorporate CSIE.

1.5 Central guiding arguments

This study is grounded in the following assumptions and guiding arguments:

- The social and economic needs of South African society are insatiable, and it is financially impossible for the government alone to provide for them.
- Companies are considered to have obligations towards their stakeholders and general society to assist the government in addressing the country's socio and economic needs.
- The South African government must create an environment that will enable CSI.
- Corporate Social Responsibility (CSR) is a well-established area of research, but its definition and those of corporate social investment (CSI) and corporate philanthropy (CP) remain ambiguous, with no clear guidelines available to the private sector either.

1.6 Hypothesis

It is hypothesised that the South African taxation framework is inadequate with reference to CSIE. The South African taxation framework needs to be reformed to achieve the primary objective, which is the incorporation of CSIE into the taxation framework by introducing tax incentives and/or by introducing a compulsory tax.

1.7 Research methodology

This study is primarily qualitative and will, amongst other things, scrutinise foreign and local tax legislation.

A doctrinal reform-orientated method will be followed.¹⁵⁸ This entails first locating relevant and the most recent primary and secondary sources.¹⁵⁹ A systematic literature review will assist with the document analysis¹⁶⁰ and thematic analysis¹⁶¹ process, especially for addressing the secondary objective of proposing definitions for the various terms.

The primary and secondary sources will extend beyond legal literature. These sources will include legislation, government publications and rulings, academic journal articles, reports by global organisations (for example, published by the OECD¹⁶²) and other internet sources. The taxation legislation and government publications of India, Mauritius, the Seychelles and South Africa will specifically be

¹⁵⁸ Doctrinal research is a research approach generally associated with legal research. It is an approach that "describes, interprets and criticises the underlying doctrines developed in authoritative practice-based documents of a field of enquiry." (Coetzee and Buys 2018 *South African Journal of Higher Education* 71).

¹⁵⁹ Duncan and Hutchinson 2012 *Deakin Law Review* 101, 110. The reformation orientated method will dictate the extent to which the data are analysed and interpreted.

¹⁶⁰ Document analysis is "various procedures involved in analysing and interpreting data generated from the examination of document and records relevant to a particular study." (Cath *et al* 2017 <http://www.drcath.net/toolkit/document-analysis> as quoted by Preston "Research Methodologies Applied in Tax Law and Taxation Research over the past decade" 249).

¹⁶¹ Thematic analysis is "similar to cluster analysis, but 'patterns of meaning (themes)' are identified across datasets. These themes should be 'judged' on the hand of the research topic and – question. For example, to group similar tax legislation of different countries together." (Preston "Research Methodologies Applied in Tax Law and Taxation Research over the past decade" 249; Also refer to Braun *et al* "Thematic Analysis" 843-860).

¹⁶² OECD: "The Organisation for Economic Co-operation and Development (OECD) is an international organisation that works to build better policies for better lives. ...Together with governments, policy makers and citizens, we work on establishing evidence-based international standards and finding solutions to a range of social, economic and environmental challenges." <https://www.oecd.org/about/>.

considered. The reasons for considering the legislation of these three foreign countries are: firstly, the fact that all three had already implemented legislation mandating financial CSR contributions and secondly, the fact that these countries are considered to be developing countries, like South Africa.

All of the research material used in this study will be publicly available.

1.8 Research framework

The following chapter structure will address the research question and accompanying research objectives logically and coherently. The content of this thesis is structured and discussed in seven chapters.

Chapter 1: Introduction

Chapter 2: Framing the relevant definitions of CSR, CSI, CP and CSIE

This chapter will investigate the historical development path of CSI in South Africa. The history and other literature will be analysed using a systematic literature review (SLR) and an inductive research process to draft novel definitions for the relevant concepts. Other CSR models will be scrutinised to extract ideas that might be useful in designing a new CSR model. The data collected and the definitions and conclusions drawn from other CSR models will be incorporated to design a new CSR model.

Chapter 3: CSI involvement in theory and in South Africa

It has been stated that companies need to become more involved through CSI in their host communities and society at large. This chapter will investigate the theoretical grounds for this statement. As a secondary objective the 'practical reason' that has to do with everyday experiences of South African citizens will be investigated as motivation for companies to get involved through CSI in the society at large.

Chapter 4: The relationship between CSI and taxation legislation

It was indicated that governments can use taxation to influence taxpayers (in the context of this research, the taxpayers will be companies). The first objective will

be to define the related tax terms, setting the background for the rest of the chapter and Chapters 5 and 6. Secondly, this chapter will investigate how different tax incentives and levies can impact on CSR/CSI.

Chapter 5: Mandatory CSR (foreign legislation)

In this chapter the different mandatory CSR legislation of foreign jurisdictions will be scrutinised, especially those of Mauritius, India and Seychelles, with the primary objective to determine legislative measures that might find application in the drafting of new CSI legislation for South Africa.

Chapter 6: The deductibility of CSIE under the *Income Tax Act* of South Africa

This chapter is devoted to determining the extent of the tax deductibility of CSIE. A secondary objective will be to determine whether any current sections can be adjusted to incorporate CSIE.

Chapter 7: Conclusion and recommendations

This chapter will summarise the findings, critically reflect thereon, and if necessary (depending on the findings of Chapter 6) propose a new CSI tax model for South Africa to incorporate CSIE.

1.9 Relevance for the research unit

It has already been established that no universal, (also in South Africa) definitions are available for the terms CSR, CSI and CP. This study would be the first, as far as could be confirmed, to propose new definitions, making use of SLR and an inductive approach as research methods.¹⁶³ Further, as far as could be established the South African government had made no formal, thorough attempts to implement any hard law to regulate CSR and/or CSI, specifically incorporating CSIE in taxation legislation.

The aim of the Research Unit for Law, Justice and Sustainability of the North-West University is

¹⁶³ Refer to Paragraph 2.2.2.

to utilise juridical science and the law to find innovative solutions for challenges of justice and sustainability in South Africa.¹⁶⁴

This study aims to find a legislative solution that would incorporate and regulate CSIE, which in turn would encourage companies to incur social investment expenditure. The result would be that additional funds would be channelled towards socio-economic development and sustainable practices.

1.10 Ethical considerations

An application for ethical clearance was submitted to and granted by the Ethics Committee of the Faculty of Law. This study will have no human participants and will not use any questionnaires or structured or semi-structured interviews. All research material consulted in this study will be sourced from online public sources.

¹⁶⁴ NWU Research unit: Law, Justice and Sustainability 2020 <http://law.nwu.ac.za/law-justice-and-sustainability/Home1>.

CHAPTER 2 **FRAMING THE RELEVANT DEFINITIONS OF CSR, CSI, CP AND CSIE**

A growing body of literature, especially concerning corporate social responsibility (CSR) and corporate philanthropy (CP), is to be found both in academic journals (whether in hard-copy format or on the internet) and other internet webpages. South Africa saw a rise in the number of consulting firms that specialise in providing companies with corporate social investment (CSI) expertise, assisting them with planning and implementing their respective CSI programmes.¹⁶⁵ Numerous foundations in South Africa are involved in sourcing and managing funds for the greater good of disadvantaged communities.¹⁶⁶ In 2020 the Centre on African Philanthropy and Social Investment (CAPSI) was established. CAPSI brought together researchers in this specific field.¹⁶⁷ Unfortunately, none of these researchers, foundations or institutions proposed South Africa-specific definitions for any of these concepts.¹⁶⁸

Before the research question of this study, namely "How can the South African taxation framework be reformed to incorporate corporate social investment expenditure?"¹⁶⁹ can finally be answered in Chapter 7, it is necessary to address the problem that no South Africa-specific definitions for any of the relevant terms exist. The primary objective of this chapter is therefore to clearly distinguish and define each of the terms CSR, CSI, CP and corporate social investment expenditure (CSIE)

¹⁶⁵ The following are a few of the many consulting firms (in South Africa) specialising in the CSI (the list is not necessarily complete): Adams and Adams, CSI Solutions, Philanthropic Centre (FNB), Tshikululu Social Investment, BCX, Musizi, Next Generation, Trialogue, BDO, Coronation, Medu Capital and Ipasa.

¹⁶⁶ Examples of foundations are the Kay Mason Foundation, the Re/Max Foundation, the Telkom Foundation, the Vodacom Foundation, the Spur Foundation, the JP21 Foundation, MOT SA, etc.

¹⁶⁷ "In 2014, the Southern Africa Trust (a member of APN) and the University of the Witwatersrand collaborated to establish the first Chair on African Philanthropy, drawing insights and lessons from researchers, think tanks, academics, foundations, NGOs, and private sector practitioners across Africa and beyond ... The Centre was established, among other things, to teach, research, and train on philanthropy in Africa in general and African Philanthropy in particular." (CAPSI date unknown <https://capsi.co.za/about/>).

¹⁶⁸ Marx 1999 *Nonprofit and Voluntary Sector Quarterly* 195; Van Den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 13; Jacobs *The Tax Deductibility of Corporate Social Responsibility Expenditure* 6, Preston and Kloppers 2018 *IJSSHS* 152.

¹⁶⁹ Refer to Chapter 1, Paragraph 1.3.

for the South African context. A natural result of achieving this objective would be the development of a model that would visually represent these definitions.

This chapter is thus divided into three parts. Firstly, the historical development of CSI in South Africa is assessed, especially considering the influences our apartheid past has had on it. Secondly, the different definitions and meanings of CSR, CP, CSI and CSIE as concepts are explored, and new definitions are explicitly proposed for the South African context. Lastly, the design of a new model,¹⁷⁰ which will be a visual representation of these definitions, was set as a secondary objective for this chapter.

The following paragraph considers the historical development of the concept of CSI in South Africa from the early 1970s to the present.

2.1 The historical development of CSI as a component of CSR in South Africa

In 2005 Fourie¹⁷¹ stated that CSI evolved

from a 'feel-good' charitable side-show to an industry that is large, strategic, and integral to South Africa's transformation effort. The tactical value of CSI is increasingly reorganised by development specialists, government, and corporate executives alike, and our successful CSI programs are leading edge in world development terms. Now, as CSI becomes part of formal transformation frameworks and attracts even greater attention, we can be confident of reaching the highest ground. The future of CSI looks good.

It is necessary initially to define the concepts of CSR and CSI to create a basis for further discussion. In 2009 the Institute of Directors South Africa published the King Committee on Governance's¹⁷² so-called King III Report. It defined the concepts of CSR and CSI for South Africa for the first time:

Corporate social responsibility is the responsibility of the company for the impacts of its decisions and activities in society and the environment, through transparent and ethical behaviour that: contributes to sustainable development, including health and the welfare of society; takes into account the legitimate interests and expectations of stakeholders; is in compliance with applicable law and consistent

¹⁷⁰ The Integrated Sustainable CSR Model.

¹⁷¹ Fourie *Corporate Social Responsibility – Evaluating Three South African Companies Initiatives* 8.

¹⁷² Institute of Directors in Southern Africa *King Report on Governance for South Africa 2009* (King III Report) 118.

with international norms of behaviour; and is integrated throughout the company and practised in its relationships.

Corporate social investment [i]s one manifestation of Corporate Responsibility. In the narrow sense it refers to donations and other kinds of financial assistance (made for an altruistic purpose), and in the broader sense, includes other kinds of contributions beyond just financial assistance. Whilst Responsible Investment is an important aspect of Corporate Responsibility, it should be an integral component of a broader economic, social, and environmental (sustainable) strategy.

Not much information exists on any CSR or CSI practices before 1973. In 1972 the first scholarly work on CSR was delivered in the form of Professor Feldberg's inaugural speech. Before 1972 one of the earliest recorded cases of a company's social involvement was that of Anglo American. In 1917 Ernest Oppenheimer established Anglo American, one of South Africa's leading mining companies.¹⁷³ He built the company on the principle of "creating lasting, sustainable value for all stakeholders" and it was therefore not only profit-driven.¹⁷⁴ The long-term vision for the company was formally detailed by Ernest Oppenheimer in 1954:

The aims of this Group are, and will remain, to make profits for our shareholders, but to do so in such a way as to make a real and lasting contribution to the communities in which we operate.¹⁷⁵

During the early 1970s CSI started to take form as a concept in South Africa. At that point and still today the larger companies dominated the world of CSR activities and practices.¹⁷⁶ Most of the CSR initiatives in those early days were driven by the "banking, mining, and oil industries",¹⁷⁷ especially the mining industry. In general, society at large became more involved, mainly because of the shortcomings of the apartheid regime.¹⁷⁸ A further result was the birth of the so-called non-government organisations/non-profit organisations (NPOs), which also played an integral role in socio-economic upliftment and development.¹⁷⁹ During the period that extends from

¹⁷³ Anglo America 2017 <https://www.angloamerican.com/about-us/history#/EN/category-complete-history/detail-we-open-our-doors>; Construction and civil engineering News 2020 <https://cceonlinenews.com/2020/07/06/list-of-leading-mining-companies-in-south-africa/>.

¹⁷⁴ Anglo America 2017 <https://www.angloamerican.com/about-us/history#/EN/category-complete-history/detail-we-open-our-doors>.

¹⁷⁵ Anglo American 2017 <https://www.angloamerican.com/about-us/our-stories/100-years-of-anglo-american>.

¹⁷⁶ Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 282.

¹⁷⁷ Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 282.

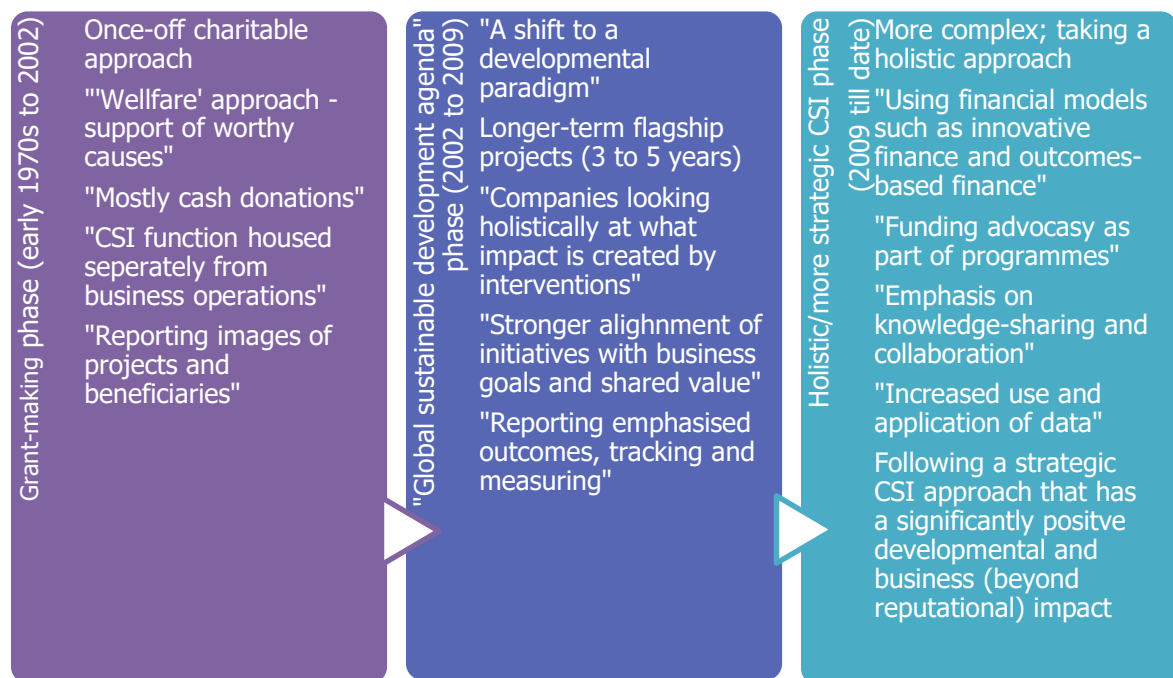
¹⁷⁸ Fourie *Corporate Social Responsibility – Evaluating Three South African Companies Initiatives* 14.

¹⁷⁹ Fourie *Corporate Social Responsibility – Evaluating Three South African Companies Initiatives* 14. Trialogue *Business in Society Handbook* 2022 26.

1973 to the present day it has been observed that CSI practices moved from being mainly in the form of CP, "charitable donations to non-profit organisations, to the complexity of bringing about systemic change".¹⁸⁰

The evolution of CSI in South Africa since 1917 can be divided into three broad phases.

Figure 2-1: The evolution of CSI in South Africa – three phases¹⁸¹



Certain key events impacted the South African CSI landscape in each phase. Figure 2-2 summarises the key events for the first two phases. Paragraphs 2.1.1 and 2.1.2 provide a more detailed discussion of each key event.

¹⁸⁰ Trialogue *Business in Society Handbook 2022* 26.

¹⁸¹ Based on Trialogue *Business in Society Handbook 2022* 26; Concerning phase three; "Strategic CSI is defined as CSI that has a positive developmental impact, as well as a significantly positive impact on the business, beyond reputational impact." (Trialogue 2023 https://trialogue.co.za/strategic-csi-awards/#:~:text=Strategic%20CSI%20is%20defined%20as,Trialogue's%20CSI%20positionin%20matrix%2C%20below.)).

Figure 2-2: Key events impacting CSI in South Africa in the first two phases



These key events will now be discussed in more detail.

2.1.1 The grant-making phase: early 1970s to 2002

The first phase of CSI development in South Africa was mainly characterised by *ad hoc* philanthropic giving, which mostly lacked strategic intent.¹⁸²

One of the first significant events that impacted on the development of CSI in South Africa was when an academic named Professor Feldberg encouraged corporate community giving in his inaugural speech in 1972. He called on "South Africa's economic actors",¹⁸³ specifically the corporate sector, to get involved in giving to the communities. He urged them to take up broader responsibilities and "to serve a wider range of human values",¹⁸⁴ which would positively address the needs of the greater society. These actions would have brought the activities of the South African business in line with those of their counterparts in the United States of America.¹⁸⁵

Two of the biggest mining houses in South Africa did just that. Anglo American and De Beers, who had the same chairman, jointly established the so-called Chairman's Fund in 1974. This was soon followed by the establishment of the Urban Foundation in 1976.¹⁸⁶ The Chairman's Fund was the first CSI fund established in South Africa with a dedicated management team.¹⁸⁷ Initially the fund had provided established welfare organisations with mainly financial contributions as and when called upon. Since then, it has become an organisation that proactively plans and budgets for sustainable projects and provides for and donates to deserving organisations and projects. Most of the fund's total budget is, however, distributed to non-governmental organisations (NGOs) and is therefore used primarily for philanthropic

¹⁸² Trialogue *Business in Society Handbook 2022* 27.

¹⁸³ Van den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 83.

¹⁸⁴ Van den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 83.

¹⁸⁵ Van den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 83; Also refer to Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 283; Meuller-Hirth "Corporate Social Responsibility and Development in South Africa: Socio-Economic Context and Contemporary Issues" 57; Duff 2018 <https://trialogue.co.za/csi-and-collective-change-in-south-africa/>.

¹⁸⁶ Babarinde 2009 *Thunderbird International Business Review* 360; Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 282; Meuller-Hirth "Corporate social responsibility and development in South Africa: Socio-economic context and contemporary issues" 57.

¹⁸⁷ Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 282; Anglo American 2017 <https://www.angloamerican.com/about-us/history#/EN/category-complete-history/detail-chairman-s-fund-the-heart-of-our-business>.

purposes.¹⁸⁸ The fund is, however, also a partner in "capital building projects and large-scale service-delivery programmes".¹⁸⁹

The main objective of the Urban Foundation (which from 1995 has been referred to as the National Business Initiative (NBI)) was to improve the living conditions of the Black population through financial assistance for housing projects, the building of schools, and the training of schoolteachers.¹⁹⁰ In the 18 years in which the Urban Foundation has been operating, more than 350 companies have been involved in raising funds for housing and education projects.¹⁹¹ Currently the NBI focuses on sustainable development, with the two main programmes tasked with social and environmental sustainability working with stakeholders to address some significant challenges in South Africa, including generating sustainable growth and development.¹⁹²

From the early 1970s to the mid-1990s many others followed in Anglo American's footsteps, and many more such charitable trusts or foundations were established. These trusts or foundations were established to further a particular cause or benefit specific sections of a community. Often tertiary institutions were to benefit from them the most. These trusts or foundations were also vehicles to expand social investment, which at the time qualified for a tax deduction.¹⁹³

Another significant milestone in the development of CSI practices in South Africa was the adoption of the so-called 'Sullivan Principles' by many United States of

¹⁸⁸ Staff reporter *The Mail & Guardian* <https://mg.co.za/article/2002-01-01-ngos-give-anglo-report-top-rating/>.

¹⁸⁹ Anglo-American date unknown <https://www.angloamerican.com/about-us/history#/EN/category-complete-history/detail-chairman-s-fund-the-heart-of-our-business>.

¹⁹⁰ Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 282; Meuller-Hirth "Corporate Social Responsibility and Development in South Africa: Socio-Economic Context and Contemporary Issues" 57.

¹⁹¹ Kuljian *Philanthropy and Equity: The Case of South Africa* 21, 23, 27; Trialogue *Business in Society Handbook 2022* 27.

¹⁹² NBI 2018 <https://www.nbi.org.za/wp-content/uploads/2018/03/NBI-Brochure.pdf>; Trialogue *Business in Society Handbook 2022* 28; Du Plessis and Grobler conducted a study in 2014 to determine how "strategically driven CSR in the retail sector can improve social and environmental well-being" and therefore achieve long-term sustainability. Three retail sectors were included in the study, the researchers found that all three retailers incorporated sustainable considerations in their decision-making processes. The CSR decisions are implemented "through the CSR activities of their foundations/trust contributed to social and environmental sustainability." Du Plessis and Grobler 2014 *Public Relations Review* 267, 276.

¹⁹³ Van den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 84.

America-registered companies doing business in South Africa.¹⁹⁴ These principles encouraged companies to treat their African and American employees equally¹⁹⁵ and to

develop and enforce a policy of non-segregation and non-discrimination in the workplace. Additionally, the code of conduct offered ... CSI policy guidelines...¹⁹⁶

These employees' immediate families also benefit from the Sullivan Principles. The sixth principle states that the company should improve

the quality of employees' lives outside the work environment in such areas as housing, transportation, schooling, recreation, and health facilities.¹⁹⁷

The principles also required these American companies to invest some of their profits in community development projects, with the result that many other trust funds were founded with the primary objective of "contributing to social causes".¹⁹⁸

South Africa's apartheid past played a significant role in the development of CSR in the country, and one cannot ignore the effect thereof on,¹⁹⁹ and the unique understanding of CSI in South Africa.²⁰⁰ The general belief was that the

business community contributed to and benefitted from apartheid rule, and played an active, albeit behind-the-scenes role in the eventual demise of the apartheid regime.²⁰¹

Society, therefore, expected the business community to contribute to "righting' the wrongs of the past".²⁰² Companies operating in South Africa had to introspect and consider their position on CSR and the "values of social, economic and political

¹⁹⁴ Babarinde 2009 *Thunderbird International Business Review* 360; Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 282-283; Meuller-Hirth "Corporate Social Responsibility and Development in South Africa: Socio-Economic Context and Contemporary Issues" 57.

¹⁹⁵ Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 282-283.

¹⁹⁶ Babarinde 2009 *Thunderbird International Business Review* 360.

¹⁹⁷ Post 2002 *Business Ethics Quarterly* 269.

¹⁹⁸ Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 283.

¹⁹⁹ The promulgation of the *Broad-based Black Economic Empowerment Act* 53 of 2003 (*B-BBEE*) was but one significant result of South Africa's apartheid past.

²⁰⁰ Van Den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 83; Ndhlovu 2011 *J. Afr. Bus.* 73; Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 282; Meuller-Hirth "Corporate Social Responsibility and Development in South Africa: Socio-Economic Context and Contemporary Issues" 56.

²⁰¹ Babarinde 2009 *Thunderbird International Business Review* 359.

²⁰² Babarinde 2009 *Thunderbird International Business Review* 359.

justice", especially considering the global rise in CSR awareness and practices. By applying the Sullivan Principles companies were able to "bring some formality [and structure] to their corporate giving in the form of nascent CSI programmes."²⁰³ Ndhlovu²⁰⁴ believes that this was the birth of CSI in South Africa and that CSI as a concept is in fact a "South African phenomenon".

In those early days corporate giving and therefore the CSI programmes primarily consisted of acts of philanthropy and grant-making, lacking the strategic intent that is a feature of CSI today.²⁰⁵ According to Van Den Ende,²⁰⁶ the CSR landscape between the mid-1970s and the mid-1980s was characterised by organisations setting up

charitable trusts, partly to accommodate expanded community investment, but also for tax purposes. Tertiary institutions were the main beneficiaries of these funds. Attempts were also made to establish more formal networks between organisations involved in social responsibility in the 1980s, but these did not succeed.

Barbarinde²⁰⁷ stated that while these attempts and the money channelled through trust funds and foundations were commendable, the donations were not necessarily voluntarily made, because companies were under international pressure to "mitigate the manifest increase in the political risk of doing business in South Africa at the time". The reasons for their engaging in CSI initiatives after 1994 may even have been in anticipation of

government legislation that might require the business community to enhance their CSI profile, or to behave in a certain way.²⁰⁸

In 1992, fifteen large companies, four political organisations, three trade unions, two black business associations, and the National Education Coordinating Committee came together and formed a partnership in the form of the NPO named

²⁰³ Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 282; Trialogue *Business in Society Handbook* 2022 27.

²⁰⁴ Ndhlovu 2011 *J. Afr. Bus.* 73.

²⁰⁵ Kabir, Mukuddem-Petersen and Petersen 2015 *Problems and Perspectives in Management* 282; Trialogue *Business in Society Handbook* 2022 27.

²⁰⁶ Van den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 84.

²⁰⁷ Barbarinde 2009 *Thunderbird International Business Review* 360.

²⁰⁸ Barbarinde 2009 *Thunderbird International Business Review* 360.

the Joint Education Trust.²⁰⁹ This trust's main objective was to utilise funds donated by the companies to fund 400 service providers tasked with education. There were five focus areas, all related to education.²¹⁰ The trust was later rebranded as JET Education Services (JET). As an NPO, JET attempted

to improve the quality of education and the relationship between education, skills development, and the world of work, particularly for disadvantaged communities in South Africa and Africa.²¹¹

Another significant milestone in this period came in the form of the first so-called King Report on Corporate Governance in South Africa. This report emphasised that companies should find a balance "between freedom to manage, accountability and the interests of the different stakeholders" beyond that of shareholders only.²¹² With the publication of the King I Report, South Africa became a world leader in corporate governance and reporting.²¹³

The 1990s were characterised by the introduction of a new political order following the first democratic elections in 1994. As the first democratically elected president, Nelson Mandela placed a high premium on "public-private partnerships to address developmental challenges".²¹⁴ He regarded the PPP Manual as a "powerful tool in South Africa's ongoing quest to tackle poverty and grow our economy".²¹⁵

The establishment of the Southern African Grantmakers Association in 1995 confirmed the above statement that many of the companies' CSI programmes were related to philanthropy. This organisation aimed to play "a public leadership and advocacy role" in generating the "funding of sustainable projects"²¹⁶ that "support positive social and economic change in previously disadvantaged communities".²¹⁷

²⁰⁹ Van den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 84; also refer to JET Education Services 2022 <https://www.jet.org.za/30th-anniversary>.

²¹⁰ JET Education Services 2022 <https://www.jet.org.za/30th-anniversary>.

²¹¹ JET Education Services date unknown <https://www.jet.org.za/>.

²¹² Siyobi *An Assessment of Corporate Social Responsibility in South Africa's Mining Industry: A Case Study of Anglo American Platinum's Corporate Social Investment Programmes in the Area of Education (An Assessment of CSR in South Africa's Mining Industry)* 22.

²¹³ Siyobi *An Assessment of CSR in South Africa's Mining Industry* 22; Fourie *Corporate Social Responsibility – Evaluating Three South African Companies Initiatives* 15.

²¹⁴ Siyobi *An Assessment of CSR in South Africa's Mining Industry* 21.

²¹⁵ PPP is the acronym for public-private partnerships. Siyobi *An Assessment of CSR in South Africa's Mining Industry* 21.

²¹⁶ Wiser Directory date unknown <https://wiser.directory/organization/southern-african-grantmakers-association-saga/>.

²¹⁷ Southern African Grantmakers Association date unknown <https://uia.org/s/or/en/1100003603>.

The Atlantic Philanthropies indicated that support for this institution would be an act of philanthropy towards non-profit organisations.²¹⁸ Sadly, this institution closed its doors in 2006 due to insufficient financing.²¹⁹

The National Business Initiative (NBI) was established by President Nelson Mandela in the same year (1995). The institution is

an independent and voluntary coalition of South African and multinational companies... that work together towards sustainable growth and development in South Africa.²²⁰

The main objective of the NBI was to address socio-economic challenges. According to Ndiweni and Sibanda,²²¹ the NBI mainly focused on building schools and teacher training.

A strong tendency towards expanding CSR and CSI programmes was also observed. Many of these were mainly related to the country's specific needs at that time.²²² Until 1996, many companies had incorporated the words "Reconstruction and Development Plan"²²³ into their CSI programs.

The government promulgated the *Non-Profit Organisations (NPO) Act*²²⁴ in 1997 to "create an enabling environment" in which such funds and other non-profit organisations (NPOs) could operate and thrive. Unfortunately, time has proven that various factors have restrained NPOs from fulfilling their role and providing the expected services. This led to the promulgation of the Nonprofit Organisations Amendment Bill in 2018.²²⁵

²¹⁸ The Atlantic Philanthropies 2002 <https://www.atlanticphilanthropies.org/grantees/southern-african-grantmakers-association>.

²¹⁹ Staff reporter *Alliance* <https://www.alliancemagazine.org/news/saga-to-close/>.

²²⁰ National Business Initiative (NBI) date unknown <https://www.nbi.org.za/>.

²²¹ Ndiweni and Sibanda 2020 *International Journal of Business Governance and Ethics* 372; by 2005 20 000 additional teachers had been trained.

²²² Van den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 85; Siyobi *An Assessment of CSR in South Africa's Mining Industry* 21.

²²³ Van den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 85; Siyobi *An Assessment of CSR in South Africa's Mining Industry* 21.

²²⁴ *Nonprofit Organisations Act* 71 of 1997; Also refer to *Nonprofit Organisations Amendment Bill*, 2018 in GG 46349 of 10 May 2022.

²²⁵ *Nonprofit Organisations Amendment Bill*, 2018 in GG 46349 of 10 May 2022.

The Investing in the Future Awards was created in 1988 "to heighten public, government, and business awareness about meaningful social investment" and to give praise where it is deserved.

Some ten years later, in 1998, the Tshikululu Social Investment Fund was created. The social investment fund manager advisor was established to work "alongside investors and other development partners to maximise the power of social investment",²²⁶ whether in the form of grant-making or impact investment.

In an amendment to the *Income Tax Act (ITA(SA))*²²⁷ in 2000, the term 'public benefit organisation' was introduced for tax purposes. This and other amendments were enacted to section 18A²²⁸

to further regulate the deductibility of donations made to public benefit organisations; to further regulate the exemption from income tax of the receipts and accruals of public benefit organisations; to further regulate the payment of air passenger tax; and to amend Schedule 1 to that Act to amend a definition; and to provide for matters in connection therewith.²²⁹

This first phase smoothly transitioned into the second development phase with the publication of the second King Report on Corporate Governance for South Africa (King II Report) in 2002.

2.1.2. The global sustainable development agenda phase: 2002 - 2009

The second phase of the CSI evolution in South Africa was inaugurated with the publication of the King II Report in 2002.²³⁰ It would prove to have a significant impact on the CSI landscape, as being the first

global corporate governance code to include a section on integrated sustainable reporting and requiring that businesses ... produce annual reports on the nature and the extent of its social, transformation, ethical, safety, health and environmental management policies and practices.²³¹

²²⁶ Tshikululu Social Investment date unknown <https://tshikululu.org.za/about/>.

²²⁷ Section 18A of the *ITA(SA)*.

²²⁸ Section 18A of the *ITA(SA)*.

²²⁹ Section 72(1) of the *Revenue Laws Amendment Act* 59 of 2000; also refer to *Dialogue Business in Society Handbook 2022* 27.

²³⁰ Institute of Directors in Southern Africa *King Report on Corporate Governance for South Africa 2002* (King II Report) 20.

²³¹ King II Report 20; *Dialogue Business in Society Handbook 2022* 29; Siyobi *An Assessment of CSR in South Africa's Mining Industry* 22.

Although the report did not refer to CSI directly, it did state that companies should be

open to institutional activism, and there must be greater emphasis on the sustainable or non-financial aspects of its performance. Boards must apply the tests of fairness, accountability, responsibility, and transparency to all acts or omissions and be accountable to the company but also responsive and responsible towards the company's identified stakeholders.²³²

The non-financial sustainability aspects are those CSI practices which allow communities to prosper. This was also emphasised in the report.

Sustainability can be seen therefore to focus on those non-financial aspects of corporate practice that, in turn, influence the enterprise's ability to survive and prosper in the communities within which it operates, and so ensure future value creation. This, in turn, represents the essence of corporate social responsibility – or corporate citizenship...²³³

The Rubicon for CSI had been crossed, prompting companies to rethink their CSI strategies and aligning their CSI programmes and strategies with their core values. Trialogue²³⁴ indicated that more focused projects characterised this phase. Companies invested in one or two specific segments of the CSI landscape, which were usually linked with a particular community (as stakeholders) and were not necessarily beneficiaries of a specific non-profit organisation. Flagship projects with long-term management and investment plans of up to five years were set up. Dedicated and formula-based CSI budgets were drafted for these projects.²³⁵

Two other significant changes followed the publication of the King II Report. The first was that the Johannesburg Stock Exchange Limited (JSE) changed its reporting requirements in 2003. Companies listed with the JSE were required in future reports as part of their annual financial integrated statements to explain how and to what extent they were compliant with the "principles set out in the King II".²³⁶ After that, the reporting requirements for each publication by the King committee concerning corporate governance changed.²³⁷

²³² King II Report 20.

²³³ King II Report 92.

²³⁴ Trialogue *Business in Society Handbook 2022* 27.

²³⁵ Trialogue *Business in Society Handbook 2022* 27.

²³⁶ Greyvenstein *Earnings Management on the JSE before and after King II 2*; King III Report 6-7.

²³⁷ Giles 2017 <https://www.michalsons.com/blog/jse-listing-requirements-king-iii-iv/11545>.

Just one year later, in 2004, the JSE became the first emerging market bourse to develop and establish a sustainability index, called the JSE Socially Responsible Investment Index (SRI), for its top 106 listed companies.²³⁸ This index aimed to promote "sustainable and transparent business practices".²³⁹ One of the objectives of the SRI was to identify companies which integrate Elkington's triple-bottom-line principles.²⁴⁰ According to Sonnenberg and Hamann,²⁴¹ the SRI generally increased listed companies' awareness of their obligation to implement sustainable business practices, including those "that otherwise would have had limited exposure to sustainability issues", and their commitment to CSI.²⁴²

The *Broad-based Black Economic Empowerment Act* ²⁴³ was Gazetted on 21 April 2003. Although one cannot directly link the legislation to CSI, it placed black economic empowerment on the corporate agenda.²⁴⁴ One can undoubtedly express the concern that many corporate entities are engaged in ticking the quota box rather "than contributing constructively to transformation".²⁴⁵ Barnard ²⁴⁶ indicates that as time went by, meeting the quota targets became a significant feature of management practices, even being a performance management goal. But this said, at that stage *B-BBEE* was certainly seen by the Government as an economic solution for the country's social problems.²⁴⁷ The *B-BBEE* made provision for investment in the form of

²³⁸ Sonnenberg and Hamann 2006 *Development Southern Africa* 305; Skinner and Mersham 2008 *Society and Business Review* 246.

²³⁹ JSE date unknown <https://www.jse.co.za/services/indices/ftsejse-responsible-investment-index>.

²⁴⁰ Sonnenberg and Hamann 2006 *Development Southern Africa* 305; Van den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 92; the triple bottom line principles refer to companies' mindfulness of "people, planet, and profit". (Farooq *et al* 2021 *Corporate Social Responsibility and Environmental Management* 970). TBL relates to companies' attitudes towards the environment and the greater society and how they will benefit from sustainable development; also refer to Elkington 1998 *Environmental Quality Management* 37-51.

²⁴¹ Sonnenberg and Hamann 2006 *Development Southern Africa* 316; Also refer to JSE date unknown <https://www.jse.co.za/services/indices/ftsejse-responsible-investment-index>.

²⁴² Ndiweni and Sibanda 2020 *Int. J. of Business Governance and Ethics* 376.

²⁴³ *Broad-based Black Economic Empowerment Act* 53 of 2003 (*B-BBEE*). It should be noted that the legislation came into operation only on 25 October 2014. Parliamentary Monitoring Group 2015 <https://pmg.org.za/committee-meeting/21297/>.

²⁴⁴ Also refer to Van den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* 70; Skinner and Mersham 2008 *Society and Business Review* 245.

²⁴⁵ Barnard 2021 *Critical Discourse Studies* 621.

²⁴⁶ Barnard 2021 *Critical Discourse Studies* 631.

²⁴⁷ Barnard 2021 *Critical Discourse Studies* 621.

Investment in enterprises that are owned or managed by black people;²⁴⁸
Promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people to achieve sustainable development and general prosperity;²⁴⁹

The *B-BBEE* was therefore initially focused on seven areas that would address imbalances created by our apartheid past and "promote social investment and empowerment of communities".²⁵⁰ One consequence of the seven areas identified was the drafting of the 'Code of Good Practice' (*B-BBEE* Code) by the Department of Trade and Industry.²⁵¹ The *B-BBEE* Code had been finalised and Gazetted in 2007 but came into effect only on 1 May 2015.²⁵²

This Code of Good Practice [intends] to address the prevention, elimination, and management of all forms of harassment that pervade the workplace.²⁵³

CSI was included in the *B-BBEE* Code as one of the "seven key transformation elements" – the "residual element".²⁵⁴ With the implementation of the so-called *B-BBEE* scorecard,²⁵⁵ a 10 per cent weight was assigned to the residual element, advising that companies spend at least 3 per cent of their after-tax profits on:

Industry initiatives to facilitate the inclusion of black people in the sector and industry-specific initiatives to promote BEE

and CSI initiatives.²⁵⁶

²⁴⁸ Section 1(f) of the *B-BBEE*.

²⁴⁹ Section 2(e) of the *B-BBEE*.

²⁵⁰ Ndiweni and Sibanda 2020 *International Journal of Business Governance and Ethics* 373; also refer to Esser and Dekker 2008 *J. Int'l Com. L. & Tech.* 157.

²⁵¹ The *B-BBEE* Code links closely to the *B-BBEE Act* and clarifies certain principles of this act. It describes the application of the *B-BBEE* Code in general "and the basis [and methods] for measurement under the Codes" of companies' performance in implementing the requirements under the *B-BBEE. Codes of Good Practice on Black Economic Empowerment* in GG 36928 of 11 October 2013.

²⁵² *Codes of Good Practice on Black Economic Empowerment* in GG 29617 of 9 February 2007 (*B-BBEE* Code).

²⁵³ GG 46056 of 18 March 2022 4.

²⁵⁴ Skinner and Mersham 2008 *Society and Business Review* 245.

²⁵⁵ The *B-BBEE* scorecard is a measurement system that determines the company's B-BBEE compliance status. It works on a point system, measuring specific criteria, which includes "ownership, management control, skills development, enterprise and supplier development, and socio-economic development." (Edgetraining *B-BBEE Explained: A Guideline for Business Owners in South Africa* 5).

²⁵⁶ The *B-BBEE* scorecard, 10 per cent weight and 3 per cent after-tax profit, is evenly distributed between industry initiatives and CSI. Skinner and Mersham 2008 *Society and Business Review* 245.

The result was that CSI became "a performance-driven pursuit among businesses seeking to improve their overall BEE scores."²⁵⁷ However, Mueller-Hirth expressed the opinion that the *B-BBEE* legislation, along with the *B-BBEE* Code "and other sector-specific charters," provided a "significant driver for CSI activity".²⁵⁸ She further stressed that "socio-economic development must be addressed as part of companies' corporate social responsibility".

In parallel with the *B-BBEE* Code the Institute of Directors in Southern Africa released the Practice Note on Broad-Based Black Economic Empowerment and King III in 2010. The goal was to guide companies' social and ethics committees and management on "how to integrate BEE and social transformation into its sustainability considerations".²⁵⁹

The second significant change resulting from the publication of the King II Report came in the form of the enactment of the new *Companies Act* in 2008.²⁶⁰ The significance of this Act in relation to CSR is found in section 72(4).²⁶¹ According to this section and the related regulations, the Minister may determine and prescribe that specific categories of companies should constitute a "social and ethics committee" which is mainly tasked with monitoring the company's actions and performance concerning socio-economic development matters.²⁶² This legislation also introduced the "non-profit company", replacing the so-called Section 21 company provided for in the repealed *Companies Act* 61 of 1973.²⁶³ Companies of this type will be incorporated for the benefit of the public.²⁶⁴

²⁵⁷ Skinner and Mersham 2008 *Society and Business Review* 245.

²⁵⁸ Mueller-Hirth "Corporate Social Responsibility and Development in South Africa: Socio-Economic Context and Contemporary Issues" 57.

²⁵⁹ King II Report 20; also refer to Kloppers 2013 *PER* 174.

²⁶⁰ *Companies Act* 71 of 2008; also refer to King II Report 62.

²⁶¹ Section 72(4) of the *Companies Act* 71 of 2008.

²⁶² Erasmus *The Companies Act: The Social and Ethics Committee and the management of the Ethics Performance of the Company* 2.

²⁶³ Section 21 of the *Companies Act* 61 of 1973; Sections 1, 8, 10, etc. of the *Companies Act* 71 of 2008 and schedule 1 to the *Companies Act* 71 of 2008.

²⁶⁴ "The primary objective of an NPC is to benefit the public, not to make a profit. The income and property may not be distributed to a non-profit company's incorporators, members, directors, or officers, except as reasonable compensation for their services. All of a non-profit company's assets and income must be used to advance its stated objectives, as set out in its Memorandum of Incorporation (MOI)." (South African Government date unknown <https://www.gov.za/services/register-business-or-organisation/register-non-profit->

With the publication of the "King Report on Corporate Governance for South Africa 2009"²⁶⁵ (King III Report) the second phase had largely been completed. The so-called King III Report, however, also initiated the third phase.

In conclusion, the "global sustainable development agenda" phase facilitated "long-term relationships and strong branding opportunities". The observation was that companies tend to focus on one or two flagship projects with a long-term investment vision of three to five years. CSI in general and the flagship projects had increased in importance to such an extent that the need to appoint a CSI team arose. This specialised team and dedicated staff would include, amongst others, CSR officers, community managers and sustainability executives. They might even include experts such as social workers, all employed to address a specific function in this team.²⁶⁶ Collaboration with other stakeholders, including civil society and government, had a more significant impact on sustainability and development.²⁶⁷ Companies generally emphasised the need to comply with advisory codes such as the King Codes of Corporate Governance and regulatory requirements such as the *B-BBEE Code*.²⁶⁸

2.1.3 The holistic/more strategic phase: 2009 to date

While the second phase was "characterised by greater investment in communities and stakeholders, rather than just beneficiaries", the third (and current) phase is characterised by a "more holistic approach to development".²⁶⁹ Cross-sector engagement is also on the increase.²⁷⁰ Companies recognise the complexity of development needs and must collaborate with other stakeholders, such as the government, if they wish to achieve a meaningful, sustainable impact.²⁷¹

company#:~:text=About%20registering%20a%20non%2Dprofit%20company&text=The%20primary%20objective%20of%20an,for%20services%20rendered%20by%20them).

²⁶⁵ Institute of Directors South Africa *King Report on Corporate Governance for South Africa 2009* (also referred to as King III Report).

²⁶⁶ Anagnostopoulos, Byers and Shilbury 2014 *European Sport Management Quarterly* 261; Pillay *CSR – The Case of Mauritius* 335.

²⁶⁷ Trialogue *Business in Society Handbook 2022* 27.

²⁶⁸ Trialogue *Business in Society Handbook 2022* 27; also refer to Barnard 2021 *Critical Discourse Studies*.

²⁶⁹ Trialogue *Business in Society Handbook 2022* 27.

²⁷⁰ Trialogue *Business in Society Handbook 2022* 27.

²⁷¹ Trialogue *Business in Society Handbook 2022* 27.

Central to a holistic approach to socio-economic development is the concept of sustainability.²⁷²

A holistic [approach to] economics means that the well-being of the Earth and future generations is an integral part of economic thinking.²⁷³

In Paragraph 2.1.2 it was indicated that the publication of the King III Report was the link between the second and third phases. The King III Report also emphasised a holistic approach to governance.²⁷⁴ This holistic approach would consider "economic, social and environmental issues" and would take into consideration each of the principles addressed in the King III Report. The King Committee expressed the opinion that such a holistic approach would be the only approach that would allow for effective "management of business opportunities and risks associated with corporate citizenship."²⁷⁵

The following Figure 2-3 illustrates the different factors (or, as Bhutan refers to them, the nine pillars) that should be considered in this holistic approach.

²⁷² "Sustainability means meeting our own needs without compromising the ability of future generations to meet their own needs. In addition to natural resources, we also need social and economic resources. Sustainability is not just environmentalism. Embedded in most definitions of sustainability we also find concerns for social equity and economic development." (University of Alberta date unknown <https://www.mcgill.ca/sustainability/files/sustainability/what-is-sustainability.pdf>).

²⁷³ Great Transition Stories 2021 <https://greattransitionstories.org/emerging-stories/transitioning-to-holistic-economics/>.

²⁷⁴ King III Report 17.

²⁷⁵ King III Report 22.

Figure 2-3: Bhutan's GNH holistic and sustainable approach to development²⁷⁶



The Fifth King of Bhutan regarded these pillars as fundamental to the pursuit of economic growth.²⁷⁷ The nine pillars were broadly grouped into four main pillars: sustainable development, cultural values, natural environment and good governance.²⁷⁸ A clear, likeminded train of thought exists between the holistic approach of the King III Report (good governance, social, economic and environmental considerations) and the four main GNH pillars.

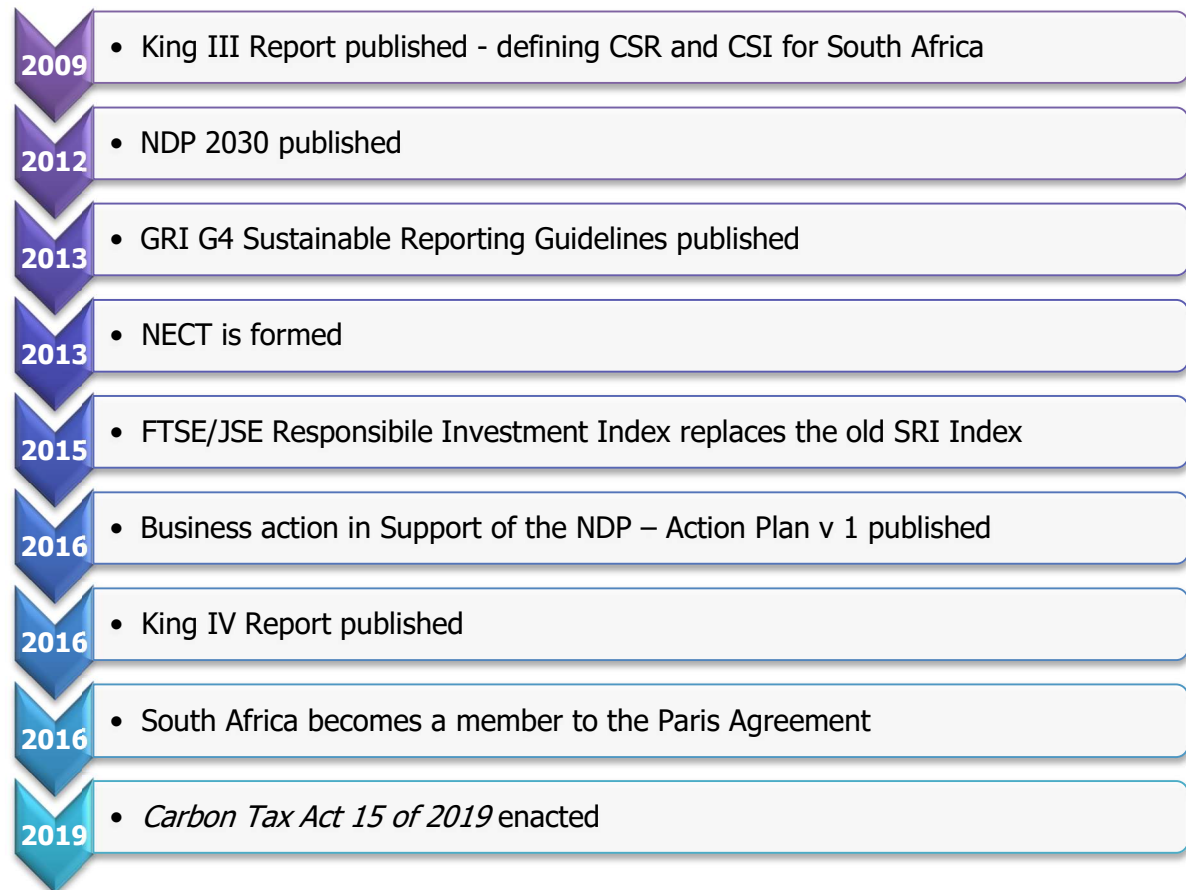
²⁷⁶ Bhutan is a small South Asian country that received recognition for this model from the United Nations (UN). GNH refers to "Gross National Happiness", which, according to Bhutan, is more important than measuring the gross domestic product. GNH "is a holistic paradigm that emphasises sustainability, equity, human values, ecological resilience and good governance. Once we know what we wanted, choosing the means would not have been as difficult as it might otherwise have been. All our policies and projects are now cleared only after being passed under a GNH lens to examine their GNH value to society." (UN 2012 <https://sdgs.un.org/statements/bhutan-14192>; Friends of Bhutan Association, Austria 2015 <https://austria-bhutan.org/en/about-bhutan/gross-national-happiness-gnh>).

²⁷⁷ UN 2012 <https://sdgs.un.org/statements/bhutan-14192>; Friends of Bhutan Association, Austria 2015 <https://austria-bhutan.org/en/about-bhutan/gross-national-happiness-gnh>.

²⁷⁸ Boyreau 2016 <https://blogs.worldbank.org/endpovertyinsouthasia/bhutans-gross-national-happiness-gnh-and-world-bank>.

The third phase saw the following key events, which are discussed in more detail below:

Figure 2-4: Key events impacting CSI in South Africa in the current phase



As previously noted, the King III Report represents the link between the second and third phases. According to Ramlall²⁷⁹ the Report was drafted in anticipation of the new South African *Companies Act* and changes in international governance. The core philosophy of the King III Report "centres around leadership, sustainability and corporate citizenship."²⁸⁰ The King III Report attempts to define CSR and CSI for the first time and directly advises companies on their corporate social responsibilities. The following important remarks are made (although some of these remarks relate to foreign CSR legislation and regulations):

²⁷⁹ Ramlall 2012 *Social Responsibility Journal* 281.

²⁸⁰ Ramlall 2012 *Social Responsibility Journal* 281.

Directors [should] consider in their decision-making, the impact of the company's operations on the community and the environment.
[C]ompanies should demonstrate that their decisions have taken CSR into account in an effective way.²⁸¹

Central to the holistic approach to development is the South African government's implementation of the National Development Plan 2030 (NDP) of 15 August 2012.²⁸² The plan consists of "a range of goals that aim to create an improved, positive and sustainable future for the South African People", which companies could use as guidelines for their CSI programmes.²⁸³ The NDP acknowledges that

South Africa belongs to all its people and the future of our country is our collective future. Making it work is our collective responsibility ... The National Development Plan is a plan for the country to eliminate poverty and reduce inequality by 2030 through uniting South Africans, unleashing the energies of its citizens, growing an inclusive economy, building capabilities, and enhancing the capability of the state and leaders working together to solve complex problems.²⁸⁴

Once again, the necessity for sustainable development is emphasised.

One of the outcomes of the NDP was the establishment of the National Educational Collaboration Trust (NECT) on 16 July 2013.²⁸⁵ Civil society, which includes companies and related foundations, and the Government are working through this Trust towards achieving the targets set for education in the NDP. Civil society is expected to accelerate the pace of the implementation of the recommendations

²⁸¹ King III Report 11.

²⁸² National Planning Commission *National Development Plan 2030 Our Future – make it work* (NDP).

²⁸³ Anglo American 2014 <https://www.angloamerican.com/our-stories/communities/making-south-africas-national-development-plan-a-reality>.

²⁸⁴ NDP 1; Each year Government incorporates the NDP into its administration and planning processes using the "Medium Term Strategic Framework (MTSF)". (NBI *Business Action in Support of the NDP – Action Plan v1 1*). The latest version of the MTSF was approved and published in October 2019 and implemented after the 2020 State of the Nation Address. The MTSF 2019-2024 "is both a five-year implementation plan and an integrated monitoring framework. The plan focuses on the seven priorities and related interventions of the sixth administration of government, and the integrated monitoring framework focuses on monitoring outcomes, indicators and targets towards the achievement of the priorities." (Department of Planning, Monitoring and Evaluation 2019 <https://www.dpme.gov.za/keyfocusareas/outcomesSite/Pages/mtsf2021.aspx>).

²⁸⁵ National Educational Collaboration Trust date unknown <https://nect.org.za/>; also refer to National Association of Social Change Entities in Education date unknown <https://nascee.org.za/membership/members/national-education-collaboration-trust#:~:text=The%20National%20Education%20Collaboration%20Trust,well%20as%20national%20priorities%2C%20which>.

relating to education. It is therefore not surprising to learn that many companies are involved in educational programmes as one of their CSI initiatives.²⁸⁶

As early as 2008 Skinner and Mersham²⁸⁷ advised that companies should align their CSI programmes with national policies, priorities and goals. According to Trialogue, this is indeed the case. Companies use the NDP, together with other sources,²⁸⁸ to plan and develop their "CSI strategies and practices".²⁸⁹ Aligning their CSI programmes with the

government priorities may "lead to the necessary leverage and to effective follow-through in respect of development projects."²⁹⁰

Soon after the publication of the NDP, the world saw the publication of the so-called GRI G4 Sustainable Reporting Guidelines.²⁹¹ The G4 Sustainability Reporting Guidelines were developed by the Global Reporting Initiative (GRI) to provide a comprehensive framework for companies to report on their sustainability practices and impacts.²⁹² While the guidelines are not specifically targeted at South African companies, they have impacted sustainability reporting practices in South Africa.²⁹³ The GRI G4 guidelines have helped to align sustainability reporting practices in South Africa with international best practices and have helped to drive a shift towards integrated reporting. They have enabled companies to report their sustainability impacts more effectively and to communicate this information to stakeholders. In addition to the JSE requirements of integrated reporting, the JSE now also incorporates the GRI G4 guidelines in its sustainable disclosure guidelines.²⁹⁴

²⁸⁶ Refer to paragraph 3.4.3, Chapter 3.

²⁸⁷ Skinner and Mersham 2008 *Society and Business Review* 247.

²⁸⁸ These sources are, amongst others, government documents and policies, and local and global codes and standards (for example, SA8000 standard, ISO 26000 Guidance on social responsibility, the UN *Sustainable Development Goals* 2020 <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>, etc.).

²⁸⁹ Trialogue *Business in Society Handbook* 2022 27.

²⁹⁰ Ndhlovu 2011 *Journal of African Business* 84.

²⁹¹ Global Reporting Initiative (GRI) *GRI G4 Guidelines and ISO 26000:2010 How to use the GRI 4 Guidelines and ISO 26000 in conjunction (GRI G4 guidelines)* 2; Vos and Reddy "The use of Environmental Sustainability Reporting by South African Companies to Promote Environmental Sustainability" 802.

²⁹² *GRI G4 guidelines* 2.

²⁹³ Herbert and Graham 2022 *South African Journal of Accounting Research* 26.

²⁹⁴ JSE date unknown
<https://www.jse.co.za/sites/default/files/media/documents/JSE%20Sustainability%20Recomm>

On 12 October 2015 the JSE adopted the FTSE Russell ESG Rating and Data Model. The FTSE/JSE Responsible Investment Top 30 Index replaced the old SRI index. This index rates companies on their performance concerning the environment, sustainability practices, and governance (or environment, social and governance - ESG), and lists only the top 30 ESG-rated companies.²⁹⁵ This step was a further initiative to promote sustainability practices among companies.²⁹⁶

In 2016 the NBI²⁹⁷ published its "Business Action in Support of the NDP – Action Plan v 1". This plan and the NDP formed the basis for developing the "business-oriented action plan".²⁹⁸ The top five actions²⁹⁹ were to:

[S]trengthen partnerships between the private sector and local government, partner with municipalities to address wastewater treatment, enhance the relationship between the TVET college sector and industry, support nation-building and social cohesion, incorporate a greater share of gas in the energy mix.

A vital component of the implementation of this plan is the participation of the 87 NBI members, together with the formal and informal engagement of the private sector. The NBI also partnered with the World Business Council for Sustainable Development to achieve its sustainability goals.³⁰⁰

Under the central umbrella of the NBI the member companies made a considerable impact in several development areas.³⁰¹ These areas include, but are not limited to:

(i) Education and training

ended%20Disclosures%20and%20Metrics_FA_.pdf 3; Ngorima *Drivers of sustainability reporting quality among JSE listed firms in South Africa: a stakeholder perspective* 87.

²⁹⁵ JSE 2015 <https://www.jse.co.za/services/indices/ftsejse-responsible-investment-index>; For further information on the ESG Rating and data model, please refer to <https://research.ftserussell.com/products/downloads/ESG-ratings-overview.pdf?987>.

²⁹⁶ Trialogue *Business in Society Handbook 2022* 31.

²⁹⁷ The National Business Initiative (NBI) "is a voluntary coalition of South African and multinational companies, working towards sustainable growth and development in South Africa and the shaping of a sustainable future through responsible business actions." (NBI *Business Action in Support of the NDP – Action Plan v1* 1).

²⁹⁸ NBI *Business Action in Support of the NDP – Action Plan v1* 4-16.

²⁹⁹ NBI *Business Action in Support of the NDP – Action Plan v1* 20-21.

³⁰⁰ Whether the member companies are committed to and implementing the plan is arguable since no proof of this could be found in the literature.

³⁰¹ NBI 2019 <https://www.nbi.org.za/membership/>.

- (ii) Climate change
- (iii) Energy efficiency
- (iv) The fight against crime

The following are but four examples of the impact made by the members of the NBI in each of these areas:

[The NBI] introduced the anti-hijack Gauteng-Highway Patrol ... [by donating] 100 BMW vehicles.

[The NBI members] partnered with school leaders and teachers from 450 disadvantaged schools to focus on professional development in English, Maths, Science and Technology to the benefit of over 2.5 million learners.

The Energy Efficiency Accord: The successes of the Accord led to its formalisation under the banner of The Energy Efficiency Leadership Network (EELN) as signed and agreed upon at COP17.

The Western Cape Drought Task Force: The NBI recruited the involvement of over 20 companies to the Task Force with a focus on continuity for business and schools, as well [as] practical preparation for Day Zero. The achievements of the Task Force led to the Gauteng Government approaching the NBI for a similar initiative in Gauteng aimed at proactive water management and water security. The Western Cape Drought Task Force is in the process of being redesigned to focus on drought and flood management, water management, water stewardship and water security as a result of reduced water shortage threats in the Western Cape.³⁰²

Another momentous event in 2016 came in the form of the *King IV Report on Corporate Governance for South Africa 2016* (King IV Report). The significance of this publication for CSR and therefore for CSI³⁰³ too is encapsulated in abolishing the 'apply or explain' approach followed in the King III Report by replacing it with the 'apply and explain' approach.³⁰⁴ The implication is that in matters concerning CSR-related legislation and the implementation of CSR practices companies

³⁰² NBI 2019 <https://www.nbi.org.za/membership/>.

³⁰³ In paragraph 2.2 hereunder, the relationship between CSR and CSI is discussed in more detail. CSI is that component of CSR that relates to the external responsibilities of being a good corporate citizen, which, therefore, does not relate to the day-to-day core business of a company.

³⁰⁴ Institute of Directors Southern Africa 2016 *King IV Report on Corporate Governance for South Africa 2016* 7 (King IV Report).

no longer have the option of explaining non-compliance with the recommended principles, and they are now required to apply the recommendation of the Report in all its material ramifications.³⁰⁵

The King IV Report also stressed that stakeholders' expectations are much higher than in the past.³⁰⁶ The Millennial stakeholders, those born between 1980/1981 and 1996,³⁰⁷ expect companies to integrate the so-called 'six-capital'³⁰⁸ with their business plans and financial reporting. One of these is 'human social relationship capital', which companies are expected to invest in and report on.³⁰⁹ Companies are expected to value their "relationships with other peoples, society in general and other organisations." The expectations of the "customers, suppliers, society and the impact that [they] have" should be considered. The human capital refers to investment in the well-being, training, etc. of a company's own employees.³¹⁰ Companies following this six-capitals model are expected to produce

holistic and actionable reports and, when integrated into an organisation's investment decision-making processes, provide Sustainable Development as a behaviour as well as an aspirational set of goals.³¹¹

The next important event came in the form of the South African government's signing of the Paris Agreement on 22 April 2016. The event introduced a new period in the fight against global warming and climate change.

The Agreement is a comprehensive framework which will guide international efforts to limit greenhouse gas emissions and to meet all the associated challenges

³⁰⁵ Anwana 2020 HTS *Theologiese Studies/Theological Studies* 4.

³⁰⁶ King IV Report 3.

³⁰⁷ Dimock 2019 <https://www.pewresearch.org/short-reads/2019/01/17/where-millennials-end-and-generation-z-begins/>; "Millennials have shown that they are concerned about the global environmental crunch much more than the global financial crises. They are consequently attracted to companies who have integrated the six-capitals into their business models." (King IV Report 3).

³⁰⁸ The International Integrated Reporting Council (IIRC) categorised the six-capitals as "financial, manufactured, intellectual, human social and relationship, and natural". A business that invests capital in these areas should afterwards show/report how the capital invested in these activities was transformed into outputs. See IFRS Foundation date unknown <https://www.integratedreporting.org/what-the-tool-for-better-reporting/get-to-grips-with-the-six-capitals/>; Also refer to King IV Report 3.

³⁰⁹ The so-called six-capitals were explained by the International Integrated Reporting Council's (IIRC) *Integrated Reporting Framework*. These capitals are financial, manufacturing, human, intellectual, natural, social, and relationship capital. King IV Report 3; also refer to Anwana 2020 HTS *Theologiese Studies/Theological Studies* 4.

³¹⁰ Marsh date unknown <https://www.sweco.co.uk/insights/blog/what-are-the-6-capitals-of-integrated-reporting/>.

³¹¹ Marsh date unknown <https://www.sweco.co.uk/insights/blog/what-are-the-6-capitals-of-integrated-reporting/>.

posed by climate change. ... The main objective of the Agreement is to limit the global temperature increase to well below 2 degrees Celsius while pursuing efforts to limit the increase to 1.5 degrees. The recognition of the 1.5-degree target is of central importance to South Africa as an African and developing country that is highly vulnerable to climate change.³¹²

With the signing of this agreement the South African government committed itself to "adopt [and incorporate] the agreement within their own legal system."³¹³ The enactment of the *National Greenhouse Gas Emissions Reporting Regulations*³¹⁴ on 3 April 2017, as well as the *Carbon Tax Act*,³¹⁵ with an effective date of 1 July 2019, was a direct result of the Paris Agreement. The *Climate Change Bill*,³¹⁶ published on 18 February 2022, emphasised that environmental considerations are becoming more pertinent and should play a vital role in CSI planning. South African companies are therefore required to adhere to the above legislation and all related regulations. Adhering to legislation is but one element of CSR.

In the current phase companies tend to strategically identify, plan and budget for long-term CSI projects or programmes which are in coherence with their values, vision, aims and interests.³¹⁷ This is in line with the opinion of Anwana,³¹⁸ who suggested that companies should move away from

short-term reactive investment in social issues to more consistent long-term corporate interest in social justice and socio-economic development of communities in which they carry out their operations.

It can therefore be concluded that the current CSI landscape, and particularly the development part thereof, is extremely complex. Companies need to follow a holistic approach and strategically plan their CSI programmes to ensure that a significant,

³¹² Department of Forestry, Fisheries and the Environment 2016 <https://www.dffe.gov.za/mediarelease/southafricasignsparisagreementonclimate>.

³¹³ Department of Forestry, Fisheries and the Environment 2016 <https://www.dffe.gov.za/mediarelease/southafricasignsparisagreementonclimate>.

³¹⁴ Notice 275 of 2017 in GG 40762 of 3 April 2017; The regulations relate to the *National Environmental Management: Air Quality Act* 39 of 2004.

³¹⁵ 15 of 2019.

³¹⁶ *Climate Change Bill*. For a copy of the Bill, refer to https://www.parliament.gov.za/storage/app/media/Bills/2022/B9_2022_Climate_Change_Bill/B9_2022_Climate_Change_Bill.pdf.

³¹⁷ Trialogue *Business in Society Handbook 2022* 26. About phase three; "Strategic CSI is defined as CSI that has positive developmental impact, as well as a significantly positive impact on the business, beyond reputational impact." See Trialogue 2023 <https://trialogue.co.za/strategic-csi-awards/#:~:text=Strategic%20CSI%20is%20defined%20as,Trialogue's%20CSI%20positionin g%20matrix%2C%20below>.

³¹⁸ Anwana 2020 *HTS Teologiese Studies / Theological Studies* 8.

positive development impact is made. CSI programmes can no longer be planned and executed in isolation. Government policies, protocols, documents and relevant development plans, together with insights from other stakeholders, should inform their CSI strategies and practices.³¹⁹

2.1.4 Concluding remarks

The historical development of CSI as a concept in South Africa can be divided into three phases. These three phases have been discussed in detail above. It has been illustrated in the second phase that South Africa became part of the global drive for sustainable practices. This goal, namely the pursuit of sustainability, was confirmed in the third (the current phase) when South Africa signed the Paris Agreement in 2016. Another very strong theme emerged in the current phase, and that is to address past injustices incurred during apartheid. Many JSE-listed companies were 'forced' in this direction by the *B-BBEE* legislation, and it was found that they tend to pursue CSI practices prescribed in this legislation and the related *B-BBEE* Code.³²⁰

In Paragraph 2.2, the different concepts of CSR, CSI and CP will be defined, making use of data obtained through a systematic literature review (SLR) as well as an inductive research process. This process is followed in Paragraph 2.3 with the proposal of the new Integrated Sustainable CSR Model.

2.2 Defining the concepts of CSR, CSI, CP and CSIE for the South African context — Methodological approach

The Preamble of the South African *Constitution*³²¹ lays down four objectives for this important piece of legislation. One of these is "to improve the quality of life of all citizens". The term 'quality of life' and the interpretation thereof is decidedly subjective and will greatly depend on an individual's *weltanschauung* (interpretation). However, according to Britannica, the term relates to

the degree to which an individual is healthy, comfortable, and able to participate in or enjoy life events.³²²

³¹⁹ Trialogue *Business in Society Handbook 2022* 27.

³²⁰ Cheruiyot-Koech and Reddy 2022 *Sustainability* 11.

³²¹ *Constitution of the Republic of South Africa* 108 of 1996 (*Constitution*).

³²² Britannica 2023 <https://www.britannica.com/topic/quality-of-life>.

Higgs³²³ developed a framework to measure the quality of life of the people of South Africa. Included were benchmarks which measured the

socio-economic status (with special reference to poverty), urbanisation, health (nutrition, exercise, and fitness), stress/pressure, quality of [the] environment, satisfaction of human needs, connectivity, optimism, [and] subjective well-being.

Almost 30 years into democracy it still appears that the goal (to improve the quality of life of all citizens) is yet to be reached, a goal that we should be working to achieve in the years to come.³²⁴ According to the King III Report, companies should

ensure that their constitutional responsibility to respect and contribute to the realisation of human rights extends to [all] operations, [also those] beyond South Africa's borders.³²⁵

This recommendation by the King III Report can be achieved through the exercise of CSR programmes (amongst others) in and outside the work environment.

CSI in South Africa has distinct characteristics stemming largely from our apartheid past and is, therefore, arguably to some extent different from CSI in Europe, for example.³²⁶ CSI in South Africa, and to some extent CSR too, was also influenced by

³²³ Higgs 2007 *Social Indicators Research* 331.

³²⁴ During the height of the COVID-19 pandemic period, 2020 and 2021, "South Africa had to contend with a massive loss of life and livelihoods, increased hunger, poverty and inequality, and many other challenges." (Dialogue *Business in Society Handbook* 2021 1). In the last quarter of 2021 the official unemployment rate peaked at 35.3 per cent. On 1 June 2022 the official unemployment rate indicated that 34.per cent of adults are unemployed, with youth unemployment (for the age group 15 to 34) at a staggering 53 per cent. StatsSA 2021 <https://www.statssa.gov.za/publications/P0211/Media%20release%20QLFS%20Q1%202021.pdf>; It is further a well-known fact that South Africa is facing substantial infrastructure challenges. Amongst other much-needed projects, the Government needs to build 2,500 schools. Inside Education 2022 <https://insideeducation.co.za/2022/02/11/over-2-500-schools-still-needs-to-be-built-ian-south-africa-says-ramaphosa/>; Department: National Treasury (South Africa) 2021 <http://www.treasury.gov.za/documents/National%20Budget/2021/review/FullBR.pdf>.

³²⁵ King III Report 22.

³²⁶ Ndhlovu 2011 *Journal of African Business* 76.

the so-called *ubuntu* values (amongst other events discussed above).³²⁷ Ndiweni and Sibanda³²⁸ argued that the *Bill of Rights*,³²⁹ which encompasses the spirit of *ubuntu*,

brought about a significant shift in society's moral perception of companies and has become the foundation stone for CSR governance reforms.

One of the main secondary objectives for Chapter 2 is to delineate and define the concepts of CSR, CSI and CP specific to the South African context. It is well-known that many definitions for each of these concepts exist. The question can be asked as to the meaning of these concepts specific to the South African context.³³⁰ A few reasons can be given for wanting to define and clearly distinguish between these concepts for the South African corporate environment. Firstly, the proposed legislative changes³³¹ relate to South Africa's tax legislation. Secondly, as was indicated above in Paragraph 2.1, the CSR landscape and more specifically the CSI landscape in South Africa have seen many significant changes over the years, especially since 2009, as has the world. The world, including South Africa, became more concerned with global warming and advocated engagement in sustainable practices. Thirdly, the last time CSR and CSI were defined in a more authoritative (South African) document was in the King III Report, which was published almost a decade and a half ago in 2009. Lastly, because of the deductibility of certain CP contributions against taxable income (which will be discussed in more detail later), the need exists to attempt to define these concepts in such a way that they are distinguishable from one another.

³²⁷ "The philosophy of "ubuntu" [is] the idea of being one's brother's keeper." Skinner and Mersham 2008 *Society and Business Review* 251; Ndiweni and Sibanda believe that the meaning of *ubuntu* might differ from one Southern African country to another. They define *ubuntu* as "a philosophy that guides the lives of the Bantu people who are found mainly in the Southern African countries ... and constitutes the primary locus of the notion of human ontology and identity within the universe. ... [It] helps these people [to] understand their world". (Ndiweni and Sibanda 2020 *Int. J. Business Governance and Ethics* 365 – 366).

³²⁸ Ndiweni and Sibanda 2020 *Int. J. Business Governance and Ethics* 372.

³²⁹ Chapter 2 (*Bill of Rights*) of the *Constitution*.

³³⁰ Visser also asked this question in 2008, when he considered whether the general definition of CSR, for example, by Carroll, is "relevant to the African context". (Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 2).

³³¹ Regarding the research question and title, Paragraph 1.3.

2.2.1 *Establishing the meaning of the individual words 'sustainable development', 'corporate', 'social', 'responsibility', 'investment' and 'expenditure'*

The first step in defining these concepts, as well as the meaning of corporate social investment expenditure (CSIE), is to start by considering the meaning of the individual words 'sustainable development', 'corporate', 'social', 'responsibility', 'investment' and 'expenditure'.

2.2.1.1 Establishing the meaning of 'sustainable development'

Sustainable development, as indicated above, played an important role in the development of CSI as a concept in South Africa, especially during the second phase. Sustainable development can be defined as

development that meets the needs of the present without compromising the ability of future generations to meet their own needs.³³²

According to Van Dyk and Fourie,³³³ sustainable development embodies three functions, or spheres of development, which are "interdependent [of] and reinforce each other". These functions or spheres of development are economic, social, and environmental. The authors refer to Grossman³³⁴ who explains that a strong sustainability objective will exist only if "business [is] embedded within society, which is, in turn, part of the bigger ecology". The King IV Report accentuates that sustainable development, in relation to these three functions, is not supposed to be

³³² International Institute for Sustainable Development date unknown <https://www.iisd.org/mission-and-goals/sustainable-development#:~:text=Sustainable%20development%20is%20development%20that,to%20meet%20their%20own%20needs>; "The United Nations Brundtland Commission defined sustainability as 'meeting the needs of the present without compromising the ability of future generations to meet their own needs.'" (UN date unknown <https://www.un.org/en/academic-impact/sustainability>); The Global Reporting Initiative (GRI) "is an independent, international organisation that helps businesses and other organisations take responsibility for their impacts, by providing them with the global common language to communicate those impacts." The GRI organisation endorse this definition. However, they also indicated that the terms *sustainability* and *sustainable development* are often used interchangeably. GRI *GRI Standards Glossary 2022* 18; Also refer to King IV Report 18.

³³³ Van Dyk and Fourie 2015 *Communicatio* 110.

³³⁴ Van Dyk and Fourie 2015 *Communicatio* 110 referred to Grossman, who published a document titled "Redefining the relationship between the environment, society and the economy" in 2011 on the webpage of *Environment + Energy Leader*.

confined only to internal matters of the company, such as the economic viability of the company. The company should rather apply an

an integrated approach that includes these and other considerations as represented by the triple context and the capitals [as referred to above].³³⁵

The increasing awareness of the social, economic and environmental problems being experienced worldwide led the United Nations (UN) to officially introduce a charter comprising 17 Sustainable Development Goals (SDGs) "as a common global agenda until the year 2030".³³⁶ The 17 SDGs³³⁷ are guidelines for governments, but also for companies committed to sustainable development. The objectives of these SDGs are:

1. To reduce poverty at least by half. ("No poverty")
2. To eradicate hunger. ("Zero hunger")
3. To target (amongst other things) HIV as an epidemic, and substance abuse. ("Good Health and Well-being")
4. To supply "quality education".
5. To strive for "gender equality".
6. To provide "clean water and sanitation".
7. To supply "affordable and clean energy".
8. To promote "decent work and economic growth" through policies, for example.
9. To supply "quality, reliable, sustainable and resilient infrastructure". ("Industries, Innovation and Infrastructure")
10. To "reduce inequalities".

³³⁵ King IV Report 18.

³³⁶ UN 2015 <https://sdgs.un.org/goals>; Raith and Siebold 2018 *Journal of Business Models* 71.

³³⁷ UN 2015 <https://www.unodc.org/roseap/en/sustainable-development-goals.html>.

11. "To protect and safeguard the region's cultural and natural heritage". ("Sustainable Cities and Communities")
12. By 2030, to "achieve the sustainable management and efficient use of natural resources." ("Responsible Consumption and Production")
13. "To take urgent action to combat climate change and its impact." ("Climate Action")
14. "To conserve and sustainably use the oceans, seas and marine resources for sustainable development." ("Life below water")
15. To promote the implementation of sustainable management programmes, and conservation of ecosystems, biodiversity, forests, natural habitats, etc. ("Life on Land")
16. To promote "peace, justice and strong institutions".
17. To strengthen global partnerships for sustainable development. ("Partnerships for the Goals")

Although these SDGs are not legally binding, the 193 UN member states, of which South Africa is one,³³⁸ agreed to incorporate them into local policies.³³⁹ For companies operating in South Africa this in general means that together with the South African Government, etc. they should strive for sustainable development, which would improve the quality of life of all, those of us alive now and also future generations. It can arguably be deduced that sustainability is an important factor in CSR and CSI actions and is supposed to be taken into consideration in the CSR and CSI programmes of companies. This statement will be elaborated on in the paragraphs to follow.

2.2.1.2 Establishing the meaning of 'corporate'

A corporate body is defined as

³³⁸ UN date unknown <https://www.un.org/en/about-us/member-states>.

³³⁹ Raith and Siebold 2018 *Journal of Business Models* 71; UN date unknown <https://www.un.org/en/about-us/member-states>.

an organization formed with state governmental approval to act as an artificial person to carry on business (or other activities), which can sue or be sued, and (unless it is non-profit) can issue shares of stock to raise funds with which to start a business or increase its capital.³⁴⁰

In the *ITA(SA)*, most 'artificial persons', as referred to above, will resort under the definition of a company.³⁴¹ This definition is very wide, and includes amongst others things, any association incorporated or registered in South Africa,³⁴² any association incorporated and registered outside South Africa, but which is carrying on a "business or has an office or place of business" in South Africa,³⁴³ and "any association ... formed in the Republic to serve a specific purpose, ..." ³⁴⁴

It is important to note that local as well as offshore collective schemes, which also include both offshore and onshore trusts involved in such schemes, are included in the collective term company.³⁴⁵ The *ITA(SA)* further specifically classifies companies to include private companies and public companies, as well as close corporations.³⁴⁶ Although trusts, in the context of the *ITA(SA)*, are defined as legal relationships "for the benefit of specified persons",³⁴⁷ and not specifically included in the definition of a 'company' as discussed above, the *ITA(SA)* incorporates trusts within its definition of a 'person'.³⁴⁸ In South Africa, many a business is conducted through a business trust so-called.³⁴⁹

It is therefore concluded for the purpose of this study and in a South African context that the terms corporate and company will refer to any legal entity, whether incorporated and registered in South Africa or not, as well as a trust, which conducts business within the borders of South Africa.

³⁴⁰ ALM Law.com Dictionary date unknown
<https://dictionary.law.com/Default.aspx?selected=358#:~:text=n.,business%20or%20increas,e%20its%20capital.>

³⁴¹ Section 1 definition "company" paragraphs (a) to (d) of the *ITA(SA)*.

³⁴² Section 1 definition "company" paragraph (a) of the *ITA(SA)*.

³⁴³ Section 1 definition "company" paragraph (b) of the *ITA(SA)*.

³⁴⁴ Section 1 definition "company" paragraph (d) of the *ITA(SA)*.

³⁴⁵ SAICA 2007
https://www.saica.co.za/integritax/2007/1536_Meaning_of_company_as_defined.htm.

³⁴⁶ Section 1 definition "company" *ITA(SA)*; Van der Zwan "Companies and dividends tax" 734-735.

³⁴⁷ Section 1 definition "company" *ITA(SA)*; Stark and Stiglingh "Trusts" 959-960.

³⁴⁸ Section 1 definition "company" *ITA(SA)*; Stark and Stiglingh "Trusts" 959-960.

³⁴⁹ SME South Africa date unknown [https://smesouthafrica.co.za/what-is-a-business-trust/.](https://smesouthafrica.co.za/what-is-a-business-trust/)

2.2.1.3 Establishing the meaning of 'social'

The next term to be discussed is 'social'. As an adjective it refers to people "living together in an organised way".³⁵⁰ This definition can also be linked to the word 'community'. Mutch³⁵¹ suggested that the term 'community' relates to the

populations, organizations, and markets located in a geographic territory and sharing, as a result of their common location, elements of local culture, norms and identity.

A more formal synonym of the word social is societal, which, in its adjectival form indicates that it is "related to or involving society".³⁵² Mutch's definition links very closely with the word societal.

Linking the above to CSR and CSI, one could consider the definitions of 'social' as described in the King Reports. In the context of the AA1000 Stakeholder Engagement Standard, social refers to the "impact of the organisation's behaviour on its stakeholders".³⁵³ The King IV Report³⁵⁴ specifically defines 'society' as the broader community in which the company operates. Society is inclusive of both internal and external stakeholders of the company.

It is therefore concluded that corporate social relates to the impact of the behaviour of a legal entity (including that of a trust that is conducting business within the borders of South Africa) on its stakeholders, including the local community with which it shares a geographical territory.

2.2.1.4 Establishing the meaning of 'responsibility'

It is not easy to define the term 'responsibility' as the accuracy of the definition will greatly depend on the context in which the term is used.³⁵⁵ In the context of South

³⁵⁰ <https://dictionary.cambridge.org/dictionary/english/social>.

³⁵¹ Mutch 2021 *Organization Theory* 7.

³⁵² <https://dictionary.cambridge.org/dictionary/english/societal>.

³⁵³ King II Report 249. The organisation's stakeholders refer to "those groups who affect and/or are affected by the organisation and its activities" and which will include, amongst others, "owners, trustees, employees and trade unions, customers, members, business partners, suppliers, competitors, government and regulators, the electorate, non-governmental organisations (NGOs)/not-for-profit organisations (NPO), pressure groups and influencers, and local and international communities". (King II Report 250); Also refer to Van den Ende *Corporate Social Responsibility in South Africa: Fact or Fiction* iii.

³⁵⁴ King IV Report 17.

³⁵⁵ Bergsteiner "Responsibility Concepts" 2024-2026.

Africa, and in particular in the business environment, it may be observed that companies seem to be uncomfortable with the term responsibility, possibly because it may be thought to have pejorative or negative connotations rooted in the country's past. Kloppers and Fourie³⁵⁶ and Jacob³⁵⁷ express the opinion that the word responsibility implies that the company has to "offer redress for the human rights violations under the apartheid regime".

But responsibility is so much more than the obligation to make amends for the past. Bergsteiner³⁵⁸ assigned six different definitions to the word responsibility based on the actions or behaviour of an entity. In the context of business and the role corporations play in society, the following summarises the ideas behind five of the different definitions. The first is a responsibility linked to the social role of the entity and implies a duty or obligation stemming from the "proper performance of the role or task".³⁵⁹ The second is the 'normative responsibility'³⁶⁰ which pertains to adhering to legal, ethical, and normative standards governing actions, decisions and behaviours.³⁶¹ On the other hand, the 'moral responsibility'³⁶² which closely links to the ethical behaviour of an entity centres on aligning one's actions with personal and shared values, where the shared values often give rise to ethical and legal guidelines.³⁶³ The fourth responsibility, as per Bergsteiner, is the 'causal responsibility'.³⁶⁴ Causal responsibility involves evaluating the extent to which a specific action contributed to or caused a particular outcome. The nature of the specific outcome, for instance whether it is desirable or not, will then indicate whether remedial action is required. The fifth type, namely 'judged responsibility',³⁶⁵ links very closely with the fourth responsibility. Judged responsibility has to do with the opinion of other role players based on the consequence (causal contribution) arising from the fulfilment of the role or execution of its normative duties by the

³⁵⁶ Kloppers and Fourie 2013 *African Journal of Agricultural Research* 3419.

³⁵⁷ Jacobs *The Tax Deductibility of Corporate Social Responsibility Expenditure* 15.

³⁵⁸ Bergsteiner "Responsibility Concepts" 2024.

³⁵⁹ Bergsteiner "Responsibility Concepts" 2025.

³⁶⁰ Bergsteiner "Responsibility Concepts" 2025.

³⁶¹ Bergsteiner "Responsibility Concepts" 2025.

³⁶² Bergsteiner "Responsibility Concepts" 2025.

³⁶³ Bergsteiner "Responsibility Concepts" 2025.

³⁶⁴ Bergsteiner "Responsibility Concepts" 2025.

³⁶⁵ Bergsteiner "Responsibility Concepts" 2025.

entity judged. If linked to jurisprudence, the opinion will be the verdict. Bergsteiner's advice is to not regard the meaning of the word responsibility in isolation.³⁶⁶

The International Organization for Standardization (ISO)³⁶⁷ endorses Bergsteiner's definitions to some extent by linking a corporate's responsibility to its role as an employer and a member of the community, as well as the tasks performed (operations and processes), and the impact (causal responsibility) on the environment and all stakeholders. The ISO refers to this as a social responsibility, which in turn it defines as

the responsibility of an organisation concerning the impact of its decisions and activities on society and the environment, through transparent and ethical behaviour that contributes to sustainable development; including the health and well-being of the society; takes into account the expectations of stakeholders; complies with applicable law while being consistent with international standards of behaviour; is integrated throughout the organisation and implemented in its relationships.³⁶⁸

The King IV Report summarises the above ideas on the meaning of the word responsibility by stating that it is the "taking of ownership of a duty, obligation or liability".³⁶⁹

2.2.1.5 Establishing the meaning of 'investment'

The act of investing is defined in the Cambridge Dictionary as

the act of putting money, effort, time, etc. into something to make a profit or get an advantage...³⁷⁰

³⁶⁶ Bergsteiner "Responsibility Concepts" 2028.

³⁶⁷ American Society for Quality (ASQ) 2023 <https://asq.org/quality-resources/iso-26000#:~:text=Many%20quality%20professionals%20believe%20that,released%20its%20standard%2C%20ISO%2026000.>

³⁶⁸ Quality & EHS Management in the Digital Age 2022 <https://www.blog-qhse.com/en/iso-26000-a-pillar-of-corporate-social-responsibility-csr#:~:text=ISO%2026000%20defines%20social%20responsibility,of%20the%20society%3B%20takes%20into.>

³⁶⁹ King IV Report 16.

³⁷⁰ Cambridge Dictionary date unknown
<https://dictionary.cambridge.org/dictionary/english/investment.>

An investor would, therefore, most likely expect to receive a return on its investment. Perrie³⁷¹ suggests that companies are unlikely to get involved in social investment initiatives unless such initiatives benefit them in one way or another.³⁷²

Considering the responsible behaviour expected from companies, as was discussed above, the King IV Report links this behaviour to responsible investment and indicates that this is

an approach to investing that aims to incorporate environmental, social and governance factors into investment decision-making, to better manage risk and generate sustainable long-term returns.³⁷³

What the King IV Report refers to in this statement is the so-called social return on investment (SROI). The New Economics Foundation³⁷⁴ developed the SROI methodology, which measures the company's profits, the monetary returns of social and environmental returns, and the economic cost. According to this foundation, these 'profits' of social and environmental outcomes "change the world for the better".³⁷⁵

The King IV Report further suggests that the returns may not be in the form of cash or profit but may instead link to the six-capitals³⁷⁶ on which companies should report, and in turn relate to sustainable practices.³⁷⁷

Therefore companies can rightly expect a return on their investment in the form of profit, but also in the form of non-cash returns measured as SROI, relating to the outcomes of projects pertaining to society and the environment.

³⁷¹ Perrie *Understanding Corporate Social Investment Practices in South Africa* 17.

³⁷² The form/examples of these returns fall outside the discussion framework of this paragraph but will be addressed in Chapter 3.

³⁷³ King IV Report 16.

³⁷⁴ NEF Consulting date unknown <https://www.nefconsulting.com/what-we-do/evaluation-impact-assessment/sroi/>.

³⁷⁵ NEF Consulting date unknown <https://www.nefconsulting.com/what-we-do/evaluation-impact-assessment/sroi/>.

³⁷⁶ Refer to Paragraph 2.1.3. The return companies can expect on their investments will be discussed in more detail in chapters to follow.

³⁷⁷ King IV Report 3.

2.2.1.6 Establishing the meaning of 'expenditure'

The meaning of the term 'expenditure' is considered lastly. The reason for considering the meaning of the word is embedded in the title of this thesis and the research question, and therefore closely links to the South African taxation framework.

Section 11(a)³⁷⁸ is but one section of the *ITA(SA)* which allows a person 'carrying on a trade' to deduct "from the income of such person ... expenditure and losses actually incurred in the production of income".³⁷⁹ These 'expenditure' normally relate to the expenses incurred in the day-to-day running of the business. The *ITA(SA)* also makes provision³⁸⁰ for other incentives, allowing a taxpayer a deduction for the amount incurred which relates to a specific type of expense.³⁸¹ One such example is section 17A,³⁸² which allows the lessor of land (being the taxpayer) a deduction for expenses incurred in respect of soil erosion work done on farming land.

The normal meaning of the word expenditure according to the Merriam-Webster dictionary is "the act or an instance of expending", and the expense is the cost, "financial burden or outlay" relating to this act.³⁸³

It can therefore be concluded that expenditure will be an amount incurred as an expense or cost, financial burden, or outlay, by a taxpayer while operating a business/trade.

2.2.1.7 Conclusion

The main secondary objective of this paragraph of Chapter 2 is to define the concepts of corporate social responsibility (CSR), corporate social investment (CSI), corporate philanthropy (CP), and lastly corporate social investment expenditure (CSIE).

³⁷⁸ Section 11(a) of the *ITA(SA)*.

³⁷⁹ Section 11 of the *ITA(SA)*.

³⁸⁰ Such as ss 11E, 12J, 17A, etc. of the *ITA(SA)*.

³⁸¹ For a comprehensive discussion of this topic refer to Paragraph 6.1.2.

³⁸² Section 17A of the *ITA(SA)*.

³⁸³ Merriam-Webster dictionary date unknown <https://www.merriam-webster.com/dictionary/expense>.

Paragraph 2.2 sets the South African context in which each of these concepts is used. The first step to reach the secondary objective was to establish the meanings of each word 'describing'/included in the respective terms, such as 'corporate'. Because sustainability plays such an important role in CSR, the meaning of this term was also considered. To conclude this paragraph, the meanings of each of these terms are briefly summarised.

Sustainable development is an integrated approach practised throughout the whole of the business world, its purpose being to "meet the needs of the present without compromising the ability of future generations to meet their own needs."³⁸⁴

The terms 'corporate' and 'company' refer to any legal entity, whether incorporated and registered in South Africa or not, as well as a trust, which conducts business within the borders of South Africa. The term company will be used in this study but it will include, per implication, the legal entities described above.

The third word examined for its meaning was 'social'. To align it with the context of the study, the combined significance of the phrase 'corporate social' was investigated. This relates to the impact of a legal entity's behaviour on its stakeholders, including the local community with which a geographical territory is shared.

Next, the meaning of 'responsibility' was explored in the concept of CSR. Although it was indicated that the South African corporate world shows resistance to the use of the word responsibility, the King IV Report still used and defined it as the "taking of ownership of a duty, obligation or liability".³⁸⁵

The word 'investment' implies that a return can be expected. Over and above the fact that social investment might influence the company's profit, there will also be returns in the form of SROI, measurable as a monetary value.

³⁸⁴ International Institute for Sustainable Development date unknown
<https://www.iisd.org/mission-and-goals/sustainable-development#:~:text=Sustainable%20development%20is%20development%20that,to%20meet%20their%20own%20needs.>

³⁸⁵ King IV Report 16.

Lastly, the word 'expenditure' and its meaning were considered. It was concluded that expenditure will be an amount incurred as an expense or cost, financial burden, or outlay, by a taxpayer in the course of operating a business/trade.

In the paragraphs to follow, the South Africa-specific definitions of each of the concepts (CSR, CSI, CP and CSIE) are drafted. The methodological approach followed to draft these definitions will be discussed in Paragraph 2.2.2.

2.2.2 Methodological approach followed

The objective of the inclusion of this paragraph is to explain the process followed in drafting the definitions for the South African corporate world.

2.2.2.1 Methodology

The literature rarely discusses methodological approaches relating to South African legal research.³⁸⁶ Legal research will, in general, resort within the group of sciences referred to as social and human sciences.³⁸⁷

A research methodology is a scientific approach followed by a researcher to "better understand a complex situation"³⁸⁸ and to answer a specific research question or problem.³⁸⁹ The approach employed by a researcher will normally be either qualitative or quantitative, or less often it might be a combination of the two.³⁹⁰ Quantitative research often "focuses on the quantification of observations", intending to "analyse the generated data to test hypotheses and theories".³⁹¹ Qualitative research on the other hand has the objective to "understand and interpret the meaning, experiences, and social realities of people in their natural settings."³⁹² Although quantitative research methods are normally found in the hard

³⁸⁶ Kroeze 2013 *Potchefstroom Electronic Law Journal* (PER) 3.

³⁸⁷ Kroeze 2013 *PER* 1.

³⁸⁸ Stumke *Development of An Integrated Information and Communications Technology Competency Framework for Prospective Accounting Professionals*. 103.

³⁸⁹ Mishra and Alok *Handbook of Research Methodology* 1.

³⁹⁰ Atlas.ti date unknown <https://atlasti.com/guides/qualitative-research-guide-part-1/qualitative-research-methods>; also refer to Stumke *Development of An Integrated Information and Communications Technology Competency Framework for Prospective Accounting Professionals*. 151.

³⁹¹ Hecker 2023 <https://atlasti.com/research-hub/quantitative-software>.

³⁹² Atlas.ti date unknown <https://atlasti.com/guides/qualitative-research-guide-part-1/qualitative-research>.

sciences such as medical research, one does find that both quantitative and qualitative research are done in the social as well as the behavioural sciences.³⁹³

Although this study employs quantitative methods to some extent, for the greater part it is qualitative in nature. The qualitative data collected were analysed with the final objective to

understand the intricate nature of phenomena [for example the concept of CSR], uncovering the 'why' and 'how' rather than the 'how much'.³⁹⁴

The research design and the methods which would be applied in the data collection and analysis process were determined in such a way as to achieve this goal.

2.2.2.2 Research design and document selection process

Distinguishing between the research design, methodology, methods, and data analysis techniques is crucial. The research design is intricately tied to the research question or problem and plays a pivotal role across all stages of the research process.³⁹⁵

[A] research design is a plan for collecting and analysing evidence that will make it possible for the investigator to answer whatever he or she has posted. The design of an investigation touches almost all aspects of the research, from the minute details of data collection to the selection of the technique of data analysis.³⁹⁶

The initial phase involves selecting a method for gathering the pertinent data. In this study a systematic literature review (SLR) was chosen as one of the two methods to be employed. An SLR refers to

a literature review associated with a formulated research question [or problem] that uses systematic explicit methods to identify, select, and critically appraise relevant research from previously published studies related to the question [problem] at hand. The systematic review process employs literature review methods to select only those studies that meet specific criteria which reasonably confirm the rigour of the "evidence" produced by a previously published study. The

³⁹³ Atlas.ti date unknown <https://atlasti.com/guides/qualitative-research-guide-part-1/qualitative-research-methods>.

³⁹⁴ Atlas.ti date unknown <https://atlasti.com/guides/qualitative-research-guide-part-1/qualitative-research-methods>.

³⁹⁵ Flick *An Introduction to Qualitative Research* 97.

³⁹⁶ Flick *An Introduction to Qualitative Research* 128.

primary characteristic of a systematic review is that it uses a rigorous set of criteria by which to appraise the reliability and validity of previously published research.³⁹⁷

As explained above, the first step in the SLR process is to source those documents which meet the criteria/search terms explained hereunder. In sourcing the documents (mainly scholarly works) the main objective of this paragraph, namely to develop contemporary definitions for the concepts investigated, was kept in mind. To achieve this, specific search terms/specific criteria, such as 'define corporate social responsibility', 'define corporate social investment', 'define corporate philanthropy', and 'define philanthropy,' were utilised. These terms were expected to appear in document titles, keywords or abstracts. The search spanned documents dating from 2009, aligning with the publication date of the King III Report, to the present day.³⁹⁸ Documents were selected based on their relevance to South Africa, South African companies, India, or Mauritius.³⁹⁹ India and Mauritius were included because their legislation mandates corporate contributions toward Corporate Social Responsibility (CSR) external to normal business, potentially offering relevant definitions. Additionally, seminal works by notable authors like Carroll⁴⁰⁰ (known for the four-part definition of CSR), Elkington⁴⁰¹ (creator of the triple bottom line theory) and Lideikyte-Huber⁴⁰² (a prolific writer on philanthropy and tax implications), among others, were incorporated. Subsequently, documents specifically pertinent to South Africa were added.⁴⁰³ The last step of this phase was the validation step to ensure that the documents were relevant and represented at least the most notable authors.⁴⁰⁴

³⁹⁷ Baloyi 2016 *Health SA Gesondheid* 120.

³⁹⁸ Google Scholar was used as a search engine. Number of 'hits': CSR 880, CSI 3, CP 45.

³⁹⁹ South Africa had 161 documents, of which 23 were most relevant; Mauritius six, but only three could be used (one was a textbook which could not be imported into Atlas.ti 23); India 329, of which seven were most relevant.

⁴⁰⁰ Carroll 1991 *Business Horizons* 39.

⁴⁰¹ Elkington 2018 <https://hbr.org/2018/06/25-years-ago-i-coined-the-phrase-triple-bottom-line-heres-why-im-giving-up-on-it>.

⁴⁰² Lideikyte-Huber 2018 *Expert Focus in Fiscalité* 20; Lideikyte-Huber "An Act of Love? Tax Aspects of Corporate Philanthropy" 529.

⁴⁰³ These works included, amongst others, the *Business in Society Handbook(s)* issued by Trialogue, the King Reports, and definitions by consulting firms such as CSI Solutions, Deloitte Consultants, Next Generation, and Trialogue. For a comprehensive reference list please refer to Annexure 2.

⁴⁰⁴ Dr JJ Swart validated the process followed. He was affiliated to the North-West University and had supervised several studies which employed SLR as a research method.

ITA(SA) since they are not recognised in the Ninth Schedule. Additionally, such expenses are not deductible under section 11(a) of the *ITA(SA)* either as they do not pertain to income production.

The first step in the coding and analysis process, making use of Atlas.ti 23, was the creation of the initial main code groups, and the creation of codes under the main code group CP (using the main activities listed in Part II of the Ninth Schedule of the *ITA(SA)* as the basis). The main activities and assigned codes were as follows:

- 1) Welfare and humanitarian (Atlas.ti code WH)
- 2) Health care (Atlas.ti code HC)
- 3) Education and development (Atlas.ti code ED)
- 4) Conservation, environment, and animal welfare (Atlas.ti code CEAW)
- 5) Land and housing (Atlas.ti code LH)

The ensuing steps led to the coding and analysis of the acquired data, a process that is elaborated upon in the succeeding paragraph.

2.2.2.3 The coding of documents and data analysis processes

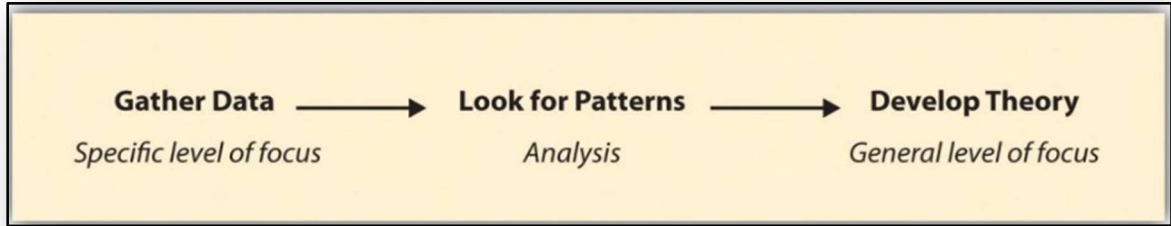
In conjunction with the SLR, an inductive approach was followed as a second research method. The inductive research process has its roots in Grounded Theory and is a tool

which enables you to seek out and conceptualise the latent social patterns and structures of your area of interest through the process of constant comparison. Initially, one will use an inductive approach to generate substantive codes from your data, later your developing theory will suggest to you where to go next to collect data and which, more-focussed, questions to ask. This is the deductive phase of the grounded theory process.⁴¹⁰

This method is summarised in Figure 2-5.

⁴¹⁰ Scott 2009 <https://www.groundedtheoryonline.com/what-is-grounded-theory/>.

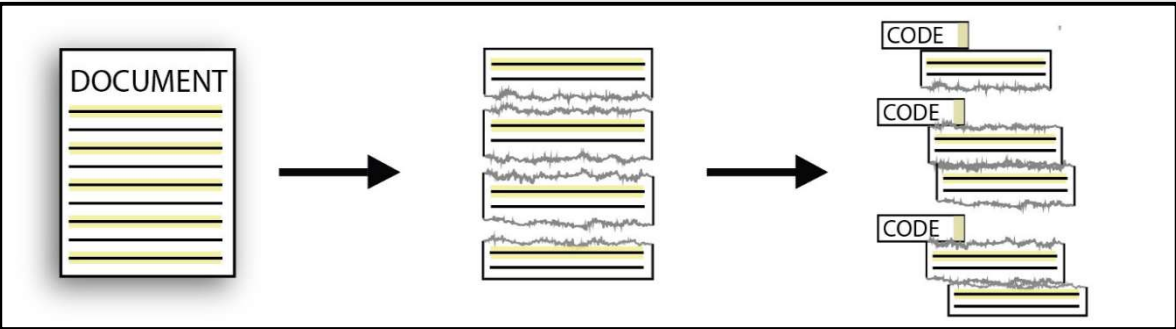
Figure 2-5: The inductive research process⁴¹¹



The process first involves the collection of data. Once the data is collected the researcher will take a 'bird's eye view' of the data collected to identify patterns or themes. Hereafter the themes are grouped to be employed to "develop a theory that could explain those patterns [themes]", or in the context of this study, the definitions.⁴¹²

The data collection process first involved the application of "open coding".⁴¹³ The three major code groups (CSR, CSI, and CP) were created in Atlas.ti 23, as well as the codes which resorted under CP. Thereafter the chosen documents were imported into the software programme. Each document underwent careful examination, and the relevant information was coded or tagged with the designated code. The visual representation below illustrates this process.

Figure 2-6: The open coding process⁴¹⁴



64 documents were coded with the following initial codes.

⁴¹¹ DeCarlo "Scientific Inquiry in Social Work" 154.

⁴¹² DeCarlo "Scientific Inquiry in Social Work" 154-155.

⁴¹³ Delve date unknown
<https://delvetool.com/blog/openaxialselective#:~:text=Axial%20coding%20in%20grounded%20theory,you%20developed%20in%20open%20coding.>

⁴¹⁴ Delve date unknown
<https://delvetool.com/blog/openaxialselective#:~:text=Axial%20coding%20in%20grounded%20theory,you%20developed%20in%20open%20coding.>

Table 2-1: Initial codes applied in the open coding process⁴¹⁵

CP	Code Group Corporate Philanthropy
CEAW	Conservation, Environment and Animal Welfare
ED	Education and Development
HC	Health Care
LH	Land and Housing
WH	Welfare and Humanitarian Services
CSR	Code Group Corporate Social Responsibility
CSI	Code Group Corporate Social Investment
Other codes were created as the coding process progressed.	
Business impact on society and environment	
Catalytic philanthropy	
Infrastructure development	
Job creation	
More than what is required by law	
Socially responsible investment	
Strong development approach	
Strategic CSI	
Sustainable development	
Not directly for the purposes of increasing company profit	
Mitigate negative environmental impact	
Conduct business ethically	
Corporate citizenship	
Donation of grant	

If a passage read related, for example, to CSR, it was highlighted/selected, and the code CSR applied to that passage. Such a highlighted passage is referred to as a quotation in the software. The following are examples of such quotations:

⁴¹⁵ These codes are original, were created by the researcher and have not previously been used by other researchers.

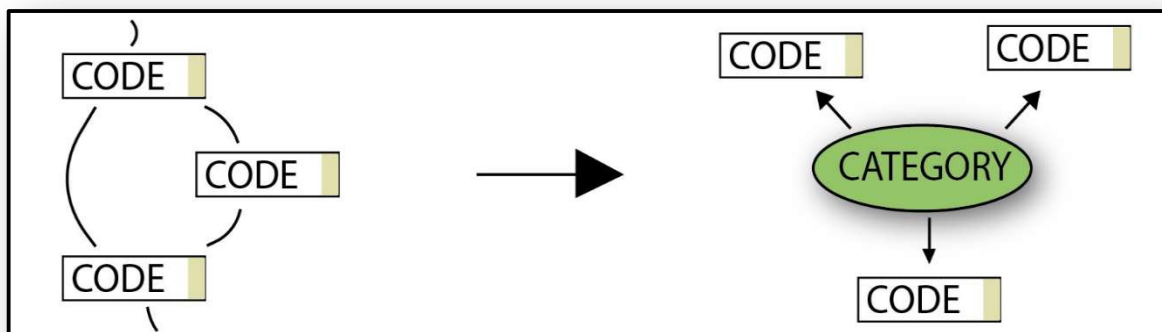
Figure 2-7: An extract with Atlas.ti 23 quotation manager

ID	Document	Quotation Content	Codes
68:13	10-1108_17465680810907314	Charitable giving. Here, companies make cheque-book style donations to an ad hoc range of causes. This method is not easy to track either for its overall impact or its effectiveness as part of a corporate strategy.	CSI CP CSI
72:13	thesis_com_2020_per rie david	were synonymous, referring to the philanthropic activities that companies exercised in communities in the form of spending money or time to benefit these communities.	CP CSI CSR

The result was 631 quotations.

Hereafter the researcher followed a process referred to as "axial coding".⁴¹⁶ The coded data obtained by way of the open coding process were exported into a worksheet using Microsoft Excel Spreadsheet Software. Connections between the coded data were identified and grouped as different themes, or as referred to hereunder in Figure 2-8, categories.

Figure 2-8: The axial coding process⁴¹⁷



All 631 quotations were worked through, the frequency (F), indicating how many times the character trade/similar statement was repeated, was counted, and they were grouped under a theme. The theme explained an 'action'/characteristic of the main group, for example, CSR. The following table (Table 2-2) provides some visual insight.

⁴¹⁶ Delve date unknown
<https://delvetool.com/blog/openaxialselective#:~:text=Axial%20coding%20in%20grounded%20theory,you%20developed%20in%20open%20coding.>

⁴¹⁷ Delve date unknown
<https://delvetool.com/blog/openaxialselective#:~:text=Axial%20coding%20in%20grounded%20theory,you%20developed%20in%20open%20coding.>

Table 2-2: Examples of themes identified through axial coding

Themes / Characteristics of CSR	F
Addressing social issues (consider the impact on the wider community/improve the quality of life (community and workforce) (social beneficial activities/social expectations)	71
Doing business responsibly and ethically (all decision-making, policies/practices/programmes and actions.) (Governance)	45
Environment/mitigate pollution	36
Themes / Characteristics of CSI	F
Improve the quality of life/community upliftment/development (needs)/engagement with.../ impact on society at large	20
Sustainable socio-economic development and growth/socio-economic deficiencies/sustainable development/ills	18
A more focused version of CSR (sub-set of CSR)	14
Themes / Characteristics of CP	F
Education/scholarships and bursaries/(early childhood development, adult basic)	14
Monetary and non-cash contributions (socially orientated resource-based actions – including employee volunteering)	14

These themes/categories were employed to refine the initial codes, which consisted only of the three main code groups, and the codes under the main code CP. New codes could now be created for the code group CSR, as well as CSI in the Atlas.ti 23 project. 185 new codes were created of which CSIENVIR (environmental/ecological concerns) is for example one code that was created for the code group CSI.

Hereafter the coding process repeated itself in Atlas.ti 23. This process is referred to as 'selective coding'.⁴¹⁸ This time 58 documents were coded.⁴¹⁹ Six of the initial documents considered in the open coding process proved to have no relevance to defining the concepts and were therefore not considered in the selective coding process. Each document was meticulously reviewed. If a document provided a comprehensive definition, such as for CSR, the entire definition was selected and tagged with the code CSRdef. Alternatively, if a particular passage or wording addressed CSI's environmental impact mitigation, that specific passage was coded

⁴¹⁸ Delve date unknown
<https://delvetool.com/blog/openaxialselective#:~:text=Axial%20coding%20in%20grounded%20theory,you%20developed%20in%20open%20coding.>

⁴¹⁹ A list of the final 58 documents coded is included in the bibliography under Annexure 2.

as CSIENVIR. There were instances where passages related to CSR but did not correspond to a specific code within the CSR code group. In such cases the passages were coded solely as CSR. Examples of coded passages along with their corresponding assigned codes, are presented below.

Figure 2-9: An extract from Atlas.ti 23 quotation manager

ID Document	Quotation Content	Codes
1:6 Corporate social responsibility - CSR - Definition - Next Generation	creates jobs	CSR Job creation
1:14 Corporate social responsibility - CSR - Definition - Next Generation	human rights practices	CSRHUMRIGHT
1:16 Corporate social responsibility - CSR - Definition - Next Generation	conducting businesses ethically	CSRETH
1:18 Corporate social responsibility - CSR - Definition - Next Generation	mitigating negative environmental impacts	CSRENV

A sum of 2218 coded quotations emerged from the coding process of the last 58 documents. These quotations, once categorised into code groups and their respective codes, underwent further scrutiny. The subsequent phase involved identifying codes within each group that appeared with a frequency count of 10 or more.⁴²⁰

Table 2-3: Codes with a frequency count of 10 or more

Code	Description	F
CP		
CP	Corporate Philanthropy	88
CPED	Education/scholarships and bursaries/(early childhood development, adult basic)	76
CPHea	Health care (HIV, TB, etc.)/counselling	55
CP def	Definition of Corporate Philanthropy	49
CPHum	Humanitarian programmes/people in need	20
CPAL	Altruistic/love for humanity (meet needs and wants)/philanthropic donations	18
CPPartCSI	Part of CSI	18
CPComGood	For the common good/benefit greater society/promote human welfare/for the well-being of others.	17
CPMON	Monetary and non-cash contributions (Socially orientated resource-based actions – including employee volunteering)	17
(Code)	(Description)	(F)

⁴²⁰ The coding process was validated by Dr JJ Swart. A 10 per cent sample of the documents was selected and the coding was assessed for correctness and completeness. The complete data set can be requested from the researcher.

Code	Description	F
(CP)		
CPHou	Housing	17
CPDon	Donations to NPOs	14
CPEra	Eradication of poverty	13
CPTax	Tax-deductible	12
CSI		
CSI	Corporate Social Investment	155
CSIHEALTH	Health care/safety	52
CSIEDUC	Education (early childhood development, scholarships and bursaries)	51
Strategic CSI	Strategic CSI	47
CSIENVIR	Environment/ecological concerns	46
CSICOMDEV	CSI: Involvement with Community Development	39
CSICPPHIL	Philanthropic giving/finance to organisations/donations	39
CSISUSDEV	Sustainable socio-economic development & growth/socio-economic deficiencies /Sustainable development/ ills	39
CSI Def	Defining Corporate Social Investment	36
CSISOSECDEV	Socio-economic development	33
CSiPartCSR	CSI is one part of the greater CSR	28
CSIPOVERTY	Poverty and inequality	27
CSIIMP	Improve the quality of life/community upliftment/development (needs)/engagement with/impact society at large.	26
CSIART	Arts and culture/religion	24
CSIEMPLOYEEWELL	Employee welfare and working environment/living conditions/quality of life	24
CSIBBBEE	CSI linked to <i>B-BBEE</i>	23
CSIMUTUALBEN	Mutual benefit (company and society)	23
CSIPPP	Public-private partnerships	20
CSISTRATEGISBUS	Strategic business/intent	20
CSICPCITIZEN	Corporate citizen	19
CSIDEVPERSP	Developmental perspective/approach (strong)	19
CSIBUSGRANTS	Small business grants/entrepreneurship development	16
CSICOMMONGOOD	Common good	16
CSIFOODSEC	Food security/agriculture	16

(Code)	(Description)	(F)
(CSI)		
CSISKILLDEV	Skills development and training	16
CSIGOVERNMENTINEF	Government inefficiency	14
CSIPASTINJUST	Alleviating past injustices/more inclusive society/more equitable/diversity	14
CSISTRATEGCP	Strategic philanthropy	14
CSICHANGE	Meaningful change	13
CSICOMRESOURCES	Resources for the community	12
CSICONTRIBUTIONS	Company's financial and non-cash contributions – beyond its commercial operations	12
CSIINFRASTDEV	Infrastructure development and improvement	12
CSISUSINV	Sustainable investment	12
CSISPORT	Sports initiatives and development	11
Sustainable development	Sustainable development	11
CSIEXTERNALCSR	External CSR/additional to normal business	10
CSIGOVERNANCE	Governance	10
CSIJOB	Job creation	10
CSR		
CSR	Corporate social responsibility	139
CSR Def	Defining CSR	63
CSRETH	Doing business responsibly and ethically (all decision-making, policies/practices/programmes, and actions.) (Governance)	37
CSRENV	Environment/mitigate pollution	32
CSR3BOT	Triple bottom line but broader	25
CSRSUSTAIN	Sustainability	24
CSRENGSTAKEHOLDERS	Engaging with all stakeholders	20
CSRIMP	Addressing social issues/impact on the wider community/improving quality of life (community and workforce)/social beneficial activities/social expectations	19
CSRLAW	More than abiding by the law/meet legal and moral obligations	19
CSRHUMRIGHT	Human rights	17
CSRPROFIT	The company should make money/Carrol Pyramid: Economic responsibility)	17
CSRCPPHIL	Corporate charity/philanthropy	14
CSRSUSINV	(Sustainable) Community investment/development	13

(Code)	(Description)	(F)
(CSR)		
CSRSOSECDEV	Socio-economic development	12
CSRECONDEV	Economic (sustainable economic development)	10
CSRIMPACT	Impact on customers	10

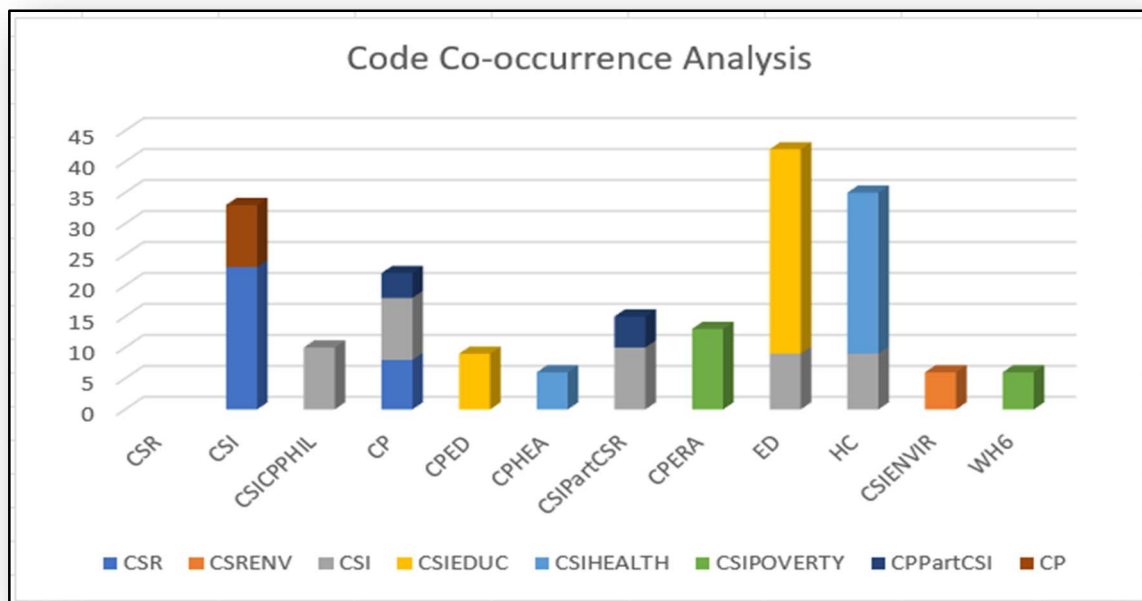
The final process involved examining the frequencies of the use of each code to discern patterns and connections. Utilising deductive reasoning along with the gathered data and frequency counts of the various codes, the point was reached where the data obtained were used to draft the definitions for each of the concepts, completing the inductive research process (refer to Figure 2-5 above).

2.2.2.4 Other findings

The analysis of the data led to other important findings. Atlas.ti 23 facilitated a co-occurrence analysis⁴²¹ on codes surpassing a frequency of 5. The software systematically examined all quotations and their textual content, comparing the assigned codes. When two codes were applied to overlapping quotations, this counted as a single co-occurrence for both codes. The analysis indicated relationships between codes, with higher values signifying stronger connections. These connections between code meanings and text were instrumental in the development of the theory presented in Figure 2-10 below. The following graph illustrates relationships with a co-occurrence value exceeding 5.

⁴²¹ "Co-occurrence analysis focuses on analysing counts of co-occurring entities within a collection of units. Typical data in co-occurrence analysis is the co-occurrence matrix, where the items form row and column headings, and the intersection of the row and column represents the co-occurrences." (Zhou *et al* 2022 *Journal of Biomedical Informatics* 1); Also refer to Atlas.ti 23 date unknown
<https://doc.atlasti.com/ManualWin.v22/CodeCooccurrence/CodeCoOccurrenceTable.html#:~:text=If%20a%20single%20quotation%20is,table%20in%20the%20Quotation%20Reader.>

Figure 2-10: The relationship between the different codes⁴²²



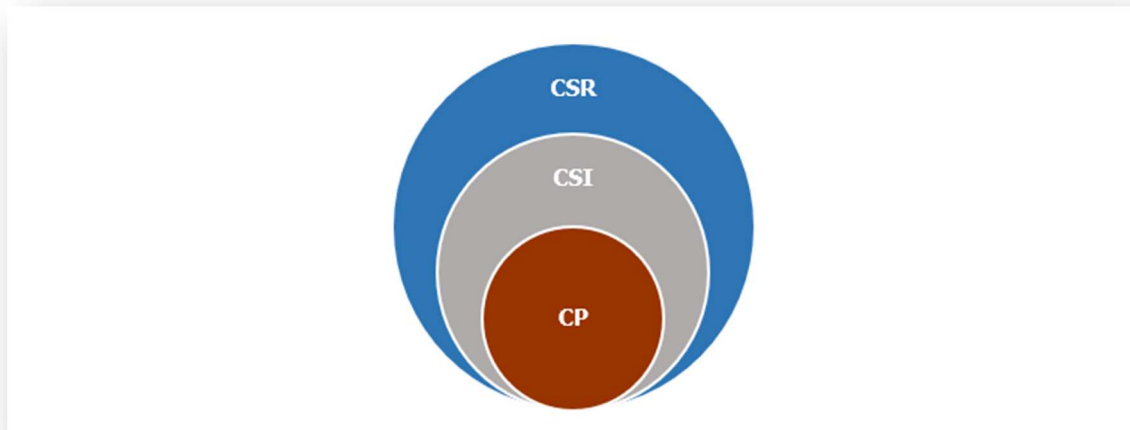
The first bar in the chart (referred to as CSI) indicates a very strong relationship between CSR, CSI and CP, but more so between CSI and CSR. This statement is confirmed if the sixth bar of the chart (referred to as CSIPartCSR) is considered.

The co-occurrence analysis further reveals that specific CP activities intersect with both CSR and CSI activities. These shared activities encompass, for example, education, healthcare, and initiatives addressing poverty and hunger.

The relationship between these concepts can therefore be illustrated as follows, indicating that CP is a component of CSI, which in turn forms a specific part of the greater concept of CSR.

⁴²² The pivot table utilises the co-occurrence data extracted with Atlas.ti 23.

Figure 2-11: CP is part of CSI, which is part of CSR



With this, Paragraph 2.2.2, which has included the coding and data analysis process, is concluded. The last and final step, namely the drafting of the respective definitions, will be discussed in more detail in Paragraphs 2.3.1, 2.3.2, and 2.3.3.

2.3 Definitions

The data collected and analysed, discussed above in Paragraphs 2.2.1, 2.2.2.3 and 2.2.2.4 will now be presented as the definitions, being the last step in the inductive research process.

2.3.1 Defining CSR for South African companies

The Institute of Directors Southern Africa released the King III Report in 2009, marking a significant milestone in the history of the development of CSR and CSI as concepts in South Africa. This report was the first and only of the King Reports to define CSR and CSI.⁴²³ The definition of CSR reads as follows:

Corporate social responsibility is the responsibility of the company for the impacts of its decisions and activities in society and the environment, through transparent and ethical behaviour that contributes to sustainable development, including health and the welfare of society; takes into account the legitimate interests and expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the company and practised in its relationships.⁴²⁴

⁴²³ King III Report 118.

⁴²⁴ King III Report 118.

In 1991 Carroll⁴²⁵ stated:

For CSR to be accepted by a conscientious businessperson, it should be framed in such a way that the entire range of business responsibilities is embraced.

If the data collected as well as the analysis thereof are considered, then the King III Report's definition of CSR lacks "the entire range of business responsibilities" it should embrace.

For the data contained in Table 2-3 above, it is necessary to explain the adjustments made to the original definition.

- Over and above the fact that stakeholders expect ethical behaviour from the company, the data indicated that business should be conducted responsibly and that all governance policies should reflect this.
- The data indicated that CSR is wider than the 'Triple Bottom Line' accounting and measurement system introduced by Elkington.⁴²⁶ Per implication, it suggests that it should be more than just another measuring and reporting system, but that companies should have to consider that the environmental resources used, such as "water, energy, and raw materials",⁴²⁷ are dealt with sustainably. Social resources include, over and above "employees' time and talents", the "infrastructure provided by governmental agencies",⁴²⁸ among other things.
- As indicated earlier in this chapter, sustainability and sustainable management practices are very important and are still increasing in importance if the frequency count in Table 2-3 is considered. Savitz and Weber⁴²⁹ describe this responsibility in detail.

They are accountable not only for their activities, but for those of their suppliers, the communities where they are located, and the people who use their products.

⁴²⁵ Carroll 1991 *Business Horizons* 40.

⁴²⁶ Elkington 1998 *Environmental Quality Management*. The Triple Bottom Line concept is an accounting tool which measures, over and above the profits and return on investment, also the impact the company has on the "broader economy, the environment, and the society in which they operate." Savitz and Weber *The Triple Bottom Line: How Today's Best-Run Companies are Achieving Economic, Social, and Environmental Success—And How You Can Too*. (The TBL — How You Can Too) 4.

⁴²⁷ Savitz and Weber *The TBL — How You Can Too* 5.

⁴²⁸ Savitz and Weber *The TBL — How You Can Too* 5.

⁴²⁹ Savitz and Weber *The TBL — How You Can Too* 5.

They are being called to account not only by investors and shareholders but also by politicians, whistleblowers, the media, employees, community groups, prosecutors, class-action lawyers, environmentalists, human rights advocates, public health organizations, and customers.

- Closely linked to the Triple Bottom Line concept (also referred to as profit, people planet, or the PPPs)⁴³⁰ is the social impact which should be considered. The data indicated that the company should address social issues found in the wider community. The quotes coded with the code CSRIMP indicated that stakeholders expect companies to ensure that their workforce and the community in which they operate see an improvement in their quality of life. The social expectation also exists that the company will engage in 'socially beneficial activities'.
- The data also indicated that human rights (CSRHUMRIGHT) should play an important role in the CSR programmes of a company. This code (CSRHUMRIGHT) included the protection of the human rights of the workforce as well as the community, especially considering the provisions of the *Bill of Rights* as incorporated in the *Constitution*. The company should strive for inclusive practices, its activities should be non-discriminatory and it should encourage diversity.
- The message of development was clearly conveyed in the data. The following codes represented a frequency count of 10 and higher.
 - Sustainable community investment and development (CSRSUSINV)
 - Socio-economic development (CSRSOSECDEV and CSRECONDEV)

Thus, if the frequencies contained in Table 2-3 above and the co-occurrence analysis discussed in Figures 2-10 and 2-11 are considered, an adjusted version of the King III Report CSR definition is suggested. The changes to the King III definition are written in bold.

Corporate social responsibility is the **all-inclusive** responsibility of the company to consider the impacts of its decisions and activities on society and the environment

⁴³⁰ Slaper and Hall 2011 *Indiana Business Review* 4.

through **sustainable, responsible**, transparent and ethical **practices and** behaviour that contribute to sustainable **socio-economic investment** and development, **which will have a positive impact on the wider community and will, amongst other things, improve their quality of life**, including health and the welfare of society; **will consider and protect all human rights as contained in the *Constitution*, which include striving to be inclusive, practising equality, fairness and diversity, and not discriminating against any group; engages with** and takes into account the legitimate interests and expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the company and practised in its relationships.

CSR is therefore a broad responsibility that should be practised in all facets of the business including its interaction with society at large.

2.3.2 Defining CP for South African companies

Section 18A of the *ITA(SA)* allows a deduction of the value of a donation actually paid to all PBOs during a specific year of assessment. This amount is capped/limited at a maximum of 10 per cent of the taxable income of the South African taxpayers. These PBOs should provide a 'public benefit activity' or 'activities', as listed in Schedule Nine to the *ITA(SA)*.⁴³¹ For the activities listed in Part II of the Ninth Schedule a taxpayer will be allowed a deduction under section 18A of the *ITA(SA)*.⁴³² These activities served as a basis for the compilation of the initial codes used in the open coding process. A more comprehensive explanation of what activities/services would resort under each of the main activities/services provided is set out in Part I of the schedule. The main headings of Part II are:

- Welfare and Humanitarian (mainly relating to abandoned, abused, neglected, orphaned or homeless children, or other poor and needy persons)
- Health Care (for the poor and needy persons)

⁴³¹ Section 18A read with the Schedule Nine of the *ITA(SA)*. Also refer to *Interpretation Note 98* of 7 February 2018 4; and the *Basic Guide to Income Tax Exemptions for Public Benefit Organisations*.

⁴³² For a comprehensive discussion of this topic, refer to Paragraph 6.1.1.

- Education and Development (concerning the *South African Schools Act* 84 of 1996 as well as the *Higher Education Act* 101 of 1997)
- Conservation, Environment and Animal Welfare (protection, etc. of natural environment, including flora, fauna or the biosphere – but it is still important to note that the money should be received by a PBO primarily funded by donations)
- Land and Housing (for the poor and needy persons)

These activities/services, together with the data presented in Table 2-3 above, were considered in the drafting of the following definition for CP.

Corporate philanthropy is defined as a company's voluntary cash and non-cash altruistic contributions to registered PBOs involved in activities for public benefit, for which the company might qualify for a tax deduction, providing that the requirements of the *Income Tax Act* are met. The main goal of these contributions is to promote human welfare, especially that of those in need of humanitarian assistance, to eradicate poverty and hunger, and to provide basic health care and education to all.

If the co-occurrences analysis (Figure 2-10 and Figure 2-11) is considered, CP is the narrow interpretation of CSI.

2.3.3 Defining CSI for South African companies

The King III Report's definition of CSI reads as follows:

Corporate social investment is one manifestation of Corporate Responsibility. In the narrow sense it refers to donation and other kinds of financial assistance (made for an altruistic purpose), and in the broader sense, includes other kinds of contributions beyond just financial assistance. Whilst Responsible Investment is an important aspect of Corporate Responsibility, it should be an integral component of a broader economic, social, and environmental (sustainable) strategy.⁴³³

This definition confirms that CSI is a component of the bigger CSR picture. Furthermore, the reference to the narrower and broader interpretation indicates that CP is contained as a 'narrower component' in CSI (narrow definition of CSI),

⁴³³ King III Report 118.

consisting often of "donations and other kinds of financial assistance (made for an altruistic purpose)".⁴³⁴

One of the reasons for redefining CSI was to determine and frame the entire range of activities in such a way as to clearly distinguish between those activities included in CP, for which a company might qualify for a section 18A⁴³⁵ deduction, and those broader activities which will not qualify for a deduction.

The CSI-related codes, as indicated in Table 2-3 above, can be divided into three main code groups: CSR, the greater CSI (which goes beyond CP), and CP itself.

Table 2-4: Table 2-3 data relating only to CSI

Code	Description	F
CSI within the greater CSR		
CSISOSECDEV	Socio-economic development	33
CSIPartCSR	CSI is one part of the greater CSR	28
CSIIMP	Improve the quality of life/community upliftment/development (needs)/engagement with/impact on society at large.	26
CSIEMPLOYEEWELL	Employee welfare and working environment/living conditions/quality of life	24
CSIBBBEE	CSI linked to <i>B-BBEE</i>	23
CSISTRATEGISBUS	Strategic business/intent	20
CSICPCITIZEN	Corporate citizen	19
CSIPASTINJUST	Alleviating past injustices/more inclusive society/more equitable/diversity	14
CSISTRATEGCP	Strategic philanthropy	14
CSICOMRESOURCES	Resources for the community	12
CSICONTRIBUTIONS	Company's financial and non-cash contributions – beyond its commercial operations	12
Broad non-CP CSI - not tax deductible⁴³⁶		
Strategic CSI	Strategic CSI	47
CSICOMDEV	Involvement with community development	39
CSISUSDEV	Sustainable socio-economic development & growth/socio-economic deficiencies/sustainable development/ills	39
CSIMUTUALBEN	Mutual benefit (company and society)	23

⁴³⁴ Ouma 2020 *International Review of Philanthropy and Social Investment Journal* 47.

⁴³⁵ Of the *ITA(SA)*.

⁴³⁶ For examples of related CSIE, refer to Annexure 8.

(Code)	(Description)	(F)
(Broad non-CP CSI - not tax deductible - continue)		
CSIPPP	Public-private partnerships	20
CSIDEVPERSP	Developmental perspective/approach (strong)	19
CSIBUSGRANTS	Small business grants/entrepreneurship development	16
CSICOMMONGOOD	Common good	16
CSIFOODSEC	Food security/agriculture	16
CSISKILLDEV	Skills development and training	16
CSIGOVERNMENTINE F	Government inefficiency	14
CSICHANGE	Meaningful change	13
CSIINFRASTDEV	Infrastructure development and improvement	12
CSISUSINV	Sustainable investment	12
Sustainable development	Sustainable development	11
CSIEXTERNALCSR	External CSR/additional to normal business	10
CSIGOVERNANCE	Governance	10
CSIJOB	Job creation	10
CSIHEALTH	Healthcare/safety	52
CSIEDUC	Education (early childhood development, scholarships and bursaries)	51
CSICPPHIL	Philanthropic giving/finance to organisations/donations	39
CSIPOVERTY	Poverty and inequality	27
CSIART	Arts and culture/religion	24

This representation (Table 2-4) of the data in Table 2-3 further supports the findings as detailed in Figures 2-10 and 2-11 above.

CSI can be defined in a broad or narrow sense. The following definition is therefore proposed for CSI.

Corporate social investment, in the broad sense, is a more focused version of CSR and, therefore an aspect of being a good corporate citizen. CSI is a company's cash as well as its non-cash investment in development projects to bring about meaningful change in the society at large, creating a measurable social return on investment and enhancing the company's strategic position. The investment projects will have as goals the responsible use of the Earth's resources, sustainable

socio-economic development and growth, improving infrastructure, the upliftment of society at large and the improvement of the quality of life of the company's employees (with an underlying purpose of addressing past injustices), contributing towards food security, the promotion of the arts, and the preservation of cultural heritage.

Corporate social investment in the narrow sense relates to philanthropic giving, whether contributions in cash or in kind, to PBOs and foundations, for which the company will most likely be allowed a tax deduction in terms of the *Income Tax Act*. The objective will be to create a more inclusive, equitable and diversified society.

2.3.4 Framing Corporate Social Investment Expenditure (CSIE)

The term expense or expenditure was discussed in Paragraph 2.2.1.6 above, and was summarised as follows:

Expenditure will be an amount incurred as an expense or cost, financial burden, or outlay, by a taxpayer in the course of operating a business/trade.

CSIE, however, will relate to those activities external to the business which are indicated in Table 2-4 above as 'Broad non-CP CSI - not tax deductible' activities. Companies will in general not be allowed a deduction against taxable income in terms of the ITS(SA) for these expenses.

2.3.5 Concluding remarks

In Chapter 2 the objective was to define CSR, CSI and CP in and for the South African context, considering our apartheid past, the development of CSI as a concept (which was divided into three broad periods), as well as tax legislation, with specific reference to sections 18A, 30 and the Ninth Schedule of the *ITA(SA)*. This objective has been met, the different definitions being drafted in Paragraphs 2.3.1, 2.3.2, 2.3.3 and 2.3.4 above.

In the last paragraph of this chapter the data collected and presented in Paragraph 2.2.2, together with the proposed definitions, will be considered and compared to Carroll's (1991) Pyramid to propose a new model in its place.

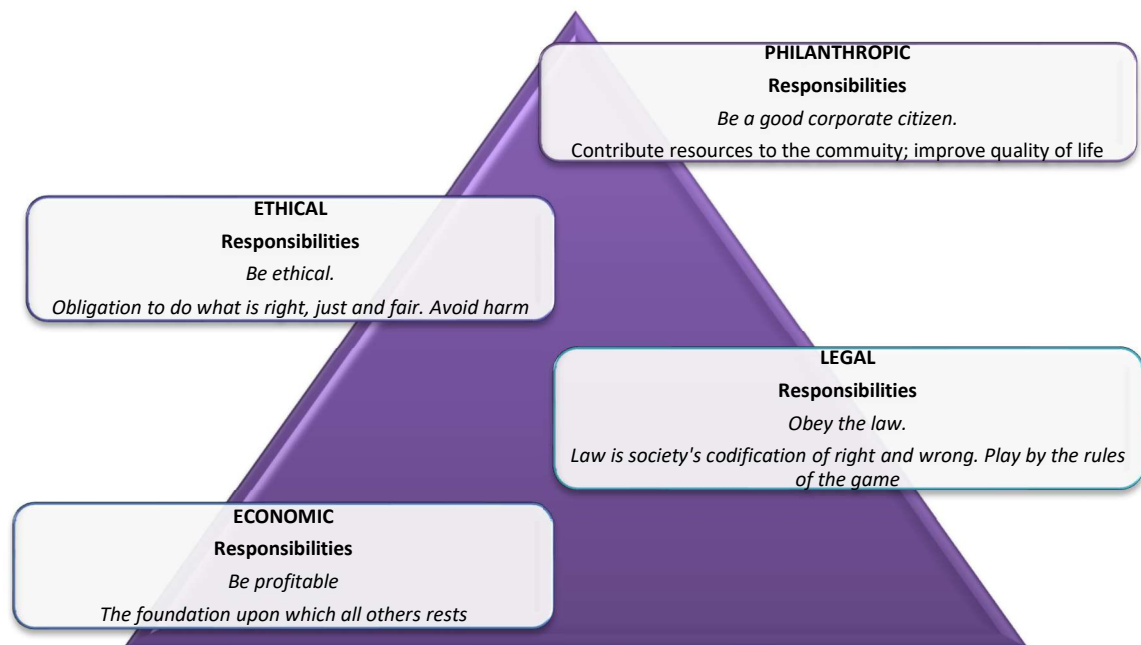
2.4 Proposing a new model CSR model

Carroll presented his four-part definition of CSR for the first time in 1979:⁴³⁷

Corporate social responsibility encompasses the economic, legal, ethical, and discretionary (philanthropic) expectations that society has of organizations at a given point in time.⁴³⁸

This was a very important attempt to close the gap between the profit expectations of owners/shareholders and those of the greater community.⁴³⁹ Carroll's efforts culminated in the creation of the 'CSR Pyramid', a visual representation of his definition of CSR.

Figure 2-12: Carroll's (1991) Pyramid of corporate social responsibility⁴⁴⁰



With the establishment of the schematic representation in the form of a pyramid, Carroll provided the following explanation for each of these tiers/responsibilities of CSR.

⁴³⁷ Carroll 1999 *Business & Society* 283.

⁴³⁸ Carroll 2016 *International Journal of Corporate Social Responsibility* 2.

⁴³⁹ Schwartz and Carroll 2003 *Business Ethics Quarterly* 503.

⁴⁴⁰ Carroll 1991 *Business Horizons* 42.

Table 2-5: Carroll (1991) Tiers of CSR⁴⁴¹

Tiers/Responsibilities				
	Economic	Legal	Ethical	Philanthropic
1	"It is important to perform in a manner consistent with maximising earnings per share."	"It is important to perform in a manner consistent with the expectations of government and law."	"It is important to perform in a manner consistent with expectations of societal mores and ethical norms."	"It is important to perform in a manner consistent with the philanthropic and charitable expectations of society."
2	"It is important to be committed to being as profitable as possible."	"It is important to comply with various federal, state, and local regulations."	"It is important to recognise and respect new or evolving ethical/moral norms adopted by society."	"It is important to assist the fine and performing arts."
3	"It is important to maintain a strong competitive position."	"It is important to be law-abiding corporate citizens."	"It is important to prevent ethical norms from being compromised to achieve corporate goals".	"It is important that managers and employees participate in voluntary and charitable activities within their local community."
4	"It is important to maintain a high level of operating efficiency."	"It is important that a successful firm be defined as one that fulfils its legal obligations."	"It is important that good corporate citizenship be defined as doing what is expected morally or ethically."	"It is important to provide assistance to private and public educational institutions."
5	"It is important that a successful firm be defined as one that is consistently profitable."	"It is important to provide goods and services that at least meet minimal legal requirements."	"It is important to recognise that corporate integrity and ethical behaviour go beyond mere compliance with laws and regulations."	"It is important to assist voluntarily those projects that enhance a community's 'quality of life'."

⁴⁴¹ Carroll 1991 *Business Horizons* 40-41.

It can comfortably be assumed that this definition and model⁴⁴² has been the most well-known and most commonly used since it was first published, and that is still so.⁴⁴³ All the responsibilities presented in Table 5 above are still valid, but many researchers have criticised this model and definition over the years, questioning (for example) its applicability to all business environments.⁴⁴⁴ One critique levelled against this model is that Carroll's CSR Pyramid creates the idea that one responsibility/tier of the CSR definition is more important than the next. For example, the economic responsibility/tier is more important than the legal responsibility/tier. Carroll⁴⁴⁵ himself confirmed this idea by stating that "philanthropy is highly prized but actually less important than the other three categories of social responsibility".

Since 1991, other models have been proposed to address the shortcomings of Carroll's CSR pyramid. Four visual representations of CSR as a concept will be considered in the following paragraphs.

⁴⁴² According to Mershon and Shvetsova, "[a] formal model in the social sciences builds explanations when it structures the reasoning underlying a theoretical argument, opens venues for controlled experimentation, and can lead to hypotheses. Yet, more importantly, models evaluate theory, build theory, and enhance conjectures. ... [M]odels enable theoretical replication, essential in the accumulation of knowledge." (Mershon and Shvetsova 2019 <https://press.umich.edu/Books/F/Formal-Modeling-in-Social-Science2#:~:text=A%20formal%20model%20in%20the,build%20theory%2C%20and%20enhance%20conjectures.>); Silva Junior *et al* considered the definitions of a 'model' as presented by Alves (2002) and Domingues (2002). Silva Junior *et al* concluded that "[a] model can be understood as an artefact construct by the scientist that permits the manipulation of reality in the sense of being able to think, analyse, decompose, understand and predict this reality. The model consists of an instrument of knowledge with the method, or means, to manipulate reality and, as such, is neither configured as a theory, although it presupposes it, nor as reality as such, although it refers to it". (Silva Junior *et al* 2023 *Social Responsibility Journal* 359).

⁴⁴³ Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 2); Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 236.

⁴⁴⁴ Amongst others by Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 237; Masoud 2017 *International Journal of Corporate Social Responsibility* 1-22; Silva Junior *et al* 2023 *Social Responsibility Journal* 358-376.

⁴⁴⁵ Carroll 1991 *Business Horizons* 42.

2.4.1 Considering other models proposed

2.4.1.1 Visser's 'Africa's Corporate Social Responsibility Pyramid'

Visser,⁴⁴⁶ whose work was widely considered and reflected on by researchers,⁴⁴⁷ considers the application of Carroll's Pyramid in the African context. He suggests that further studies into the application of this model in African countries should be conducted, mainly because the CSR landscape in America differs from that in Africa.⁴⁴⁸ According to Visser,⁴⁴⁹ culture plays an important role in the understanding of CSR.

Visser⁴⁵⁰ holds the opinion that Carroll's CSR Pyramid lacks "dynamism and is very simplistic". This model also is not able to address certain inherent issues found in developing countries, such as "How is it possible to reconcile job generation and environmental protection?".⁴⁵¹ Visser⁴⁵² stresses that the priorities or weight that businesses in Africa assign to the different tiers of Carroll's CSR Pyramid differ from those found in America. He is for example of the opinion that philanthropy is more important than obeying the law.

According to Visser⁴⁵³ the order of the different tiers should firstly be the "Economic" tier, then "Philanthropy", followed by the "Legal" tier, and lastly the "Ethical" tier.

⁴⁴⁶ Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 1-8.

⁴⁴⁷ Amongst others, by Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 1-8; Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 237; Masoud 2017 *International Journal of Corporate Social Responsibility* 1-22; Silva Junior *et al* 2023 *Social Responsibility Journal* 358-376.

⁴⁴⁸ Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 7. This was again confirmed by Ntoutoume "Challenges of CSR in Africa: Assessing the Practice Under the Voluntary and Mandatory Provisions" 15.

⁴⁴⁹ Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 2.

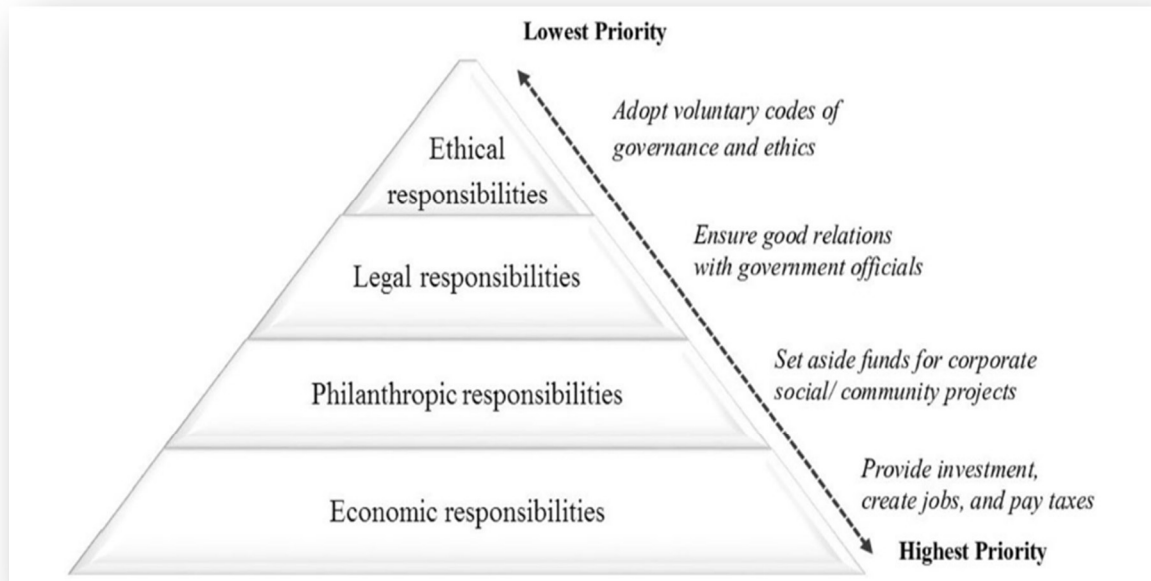
⁴⁵⁰ As indicated in Silva Junior *et al* 2023 *Social Responsibility Journal* 366.

⁴⁵¹ As indicated in Silva Junior *et al* 2023 *Social Responsibility Journal* 366.

⁴⁵² Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 2-6.

⁴⁵³ Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 6; also refer to Masoud 2017 *International Journal of Corporate Social Responsibility* 10.

Figure 2-13: Visser's "Africa's Corporate Social Responsibility Pyramid"⁴⁵⁴



Visser⁴⁵⁵ further expresses the opinion that the limitations of the pyramid model included "a lack of conceptual clarity". He further believed that the model is "very simplistic and static, failing to capture the complexity of CSR in practice." Lastly, he stated that the model fails to give a solution if "two or more responsibilities are in conflict."⁴⁵⁶

Visser⁴⁵⁷ does not suggest solutions for the above limitations and does not really propose a new model because the only difference between his "Africa's Corporate Social Responsibility" model and Carroll's CSR Pyramid is the changes in hierarchy

⁴⁵⁴ Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 6; also refer to Masoud 2017 *International Journal of Corporate Social Responsibility* 10.

⁴⁵⁵ Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 6.

⁴⁵⁶ Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 6.

⁴⁵⁷ Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 7.

with regard to the different tiers. He suggests that the "complexity theory"⁴⁵⁸ should be used instead of Carroll's Pyramid to "describe the reality of CSR" in Africa.⁴⁵⁹

It should be remembered that Visser wrote this opinion in 2005, almost 20 years ago. The legal landscape in South Africa, for example, has seen many changes that have impacted the CSI landscape, suggesting that the weight companies assign to the different tiers might have changed too.

2.4.1.2 Nalband and Al Kelabi 's 'Universal Model for CSR'

Only three studies since 2008 and Visser's study (apart from that of Carroll in 2016),⁴⁶⁰ that attempt to better or change the pyramid model of 1991, could be found.

In 2014 Nalband and Al Kelabi⁴⁶¹ use Visser's critique (as discussed above) to develop and present their "Universal Model of CSR".⁴⁶² Their model is based on Carroll's CSR pyramid and explains how CSR is supposed to be part of business operations and sustainability. They also use the pyramid form, as a "tribute to one of the oldest and most popular models", namely Carroll's CSR Pyramid model.

⁴⁵⁸ "Complexity theory provides an understanding of how systems ... grow, adapt, and evolve. It explains how the relationship between members of these systems gives rise to collective behaviour. ... Complexity [therefore] calls for attention to the behaviour of the whole system. ... Corporations are not viewed merely as complicated, static organisations, but as a complex set of self-organising components made up of employees, business units, resources and stakeholders." (Sammut-Bonnici "Complexity Theory" 1-2); Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 7.

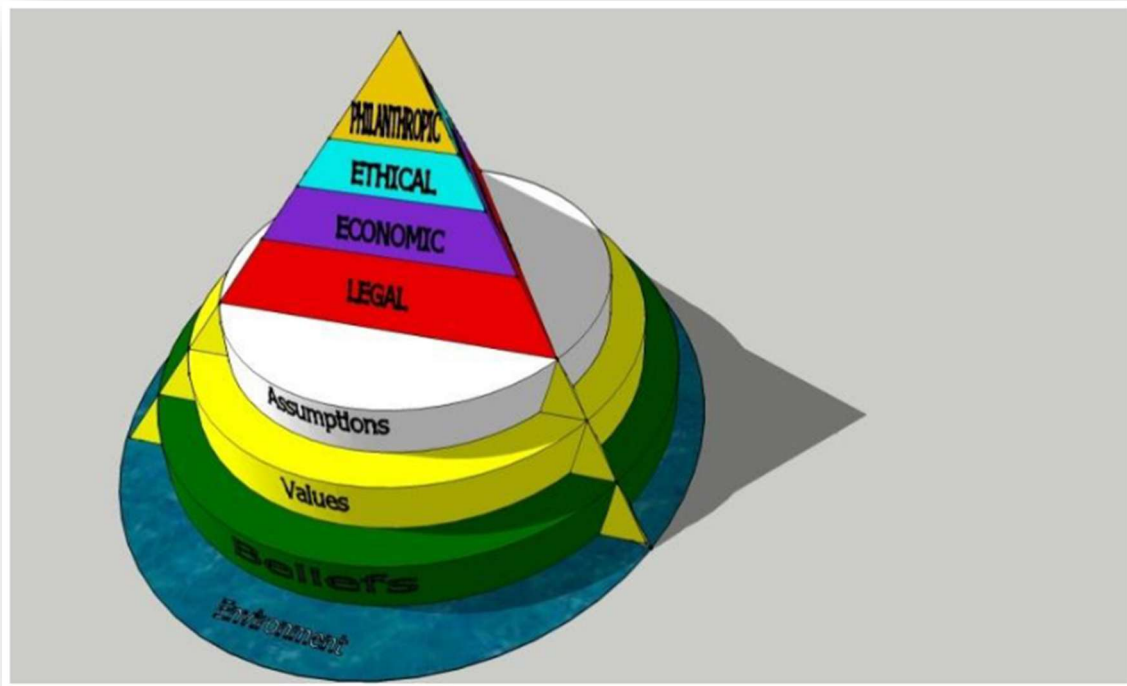
⁴⁵⁹ Visser "Revisiting Carroll's CSR Pyramid: An African Perspective" 7.

⁴⁶⁰ Carroll 2016 *International Journal of Corporate Social Responsibility* 1-8.

⁴⁶¹ Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 236-239.

⁴⁶² Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 237.

Figure 2-14: Nalband and Al Kelabi 's "Universal Model of CSR"⁴⁶³



Nalband and Al Kelabi⁴⁶⁴ rightly indicate that a company cannot do business in isolation. They suggest that the beliefs of the society/the immediate community and/or the environment (indicated as the blue base) (which is assumed to be the region) in which a company operates play an important role as they will influence the beliefs and values of the "promoters, stakeholders, [and] strategists".

These [beliefs and] values will be assimilated into assumptions and then into actions by the strategic decision-makers/influential group. ... The proposed model asserts that the beliefs, values, and assumptions of the people involved in the business and those in the environment of such business shall guide the company to follow (or not to follow) CSR for their sustainability both in business as well as in society. ⁴⁶⁵

The authors indicate that empirical evidence demonstrates that the perceptions or beliefs of managers (and if the above quote is considered of society too) will influence the weight they will assign to the different tiers of the pyramid and will, for example, be the deciding factor in whether a company will get involved in a

⁴⁶³ Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 237.

⁴⁶⁴ Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 237.

⁴⁶⁵ Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 237.

certain social issue rather than another.⁴⁶⁶ This ensures that the model, according to them, is dynamic and that the top three tiers in the model are flexible, and can change position as the weight assigned to each may change, because the value the company attached to it has changed.⁴⁶⁷

The authors keep the top tiers the same as that of Carroll's CSR Pyramid, but the order differs. They also hold the opinion that the 'legal' tier/responsibility is the most important one and should be addressed first. Their reason: if there is a conflict between the different responsibilities, the legal responsibility will be the one which should first be complied with.⁴⁶⁸

The authors therefore state that their model does not contain the same limiting features as Carroll's model, since their model is adjustable to "any environment at any given point of time".⁴⁶⁹

One critique against the Universal Model of CSR is that the model does not reflect sustainability as a tier/responsibility, although Nalband and Al Kelabi⁴⁷⁰ indicate that Carroll also missed the trend to incorporate sustainability, the "social, economic as well as environmental aspects of corporate responsibility."

2.4.1.3 Masoud's 'International Pyramid of CSR'

The second of the three models considered is the model proposed by Masoud,⁴⁷¹ who developed his "International Pyramid Model of CSR" in 2016.⁴⁷²

⁴⁶⁶ Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 237.

⁴⁶⁷ Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 238.

⁴⁶⁸ Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 237-238.

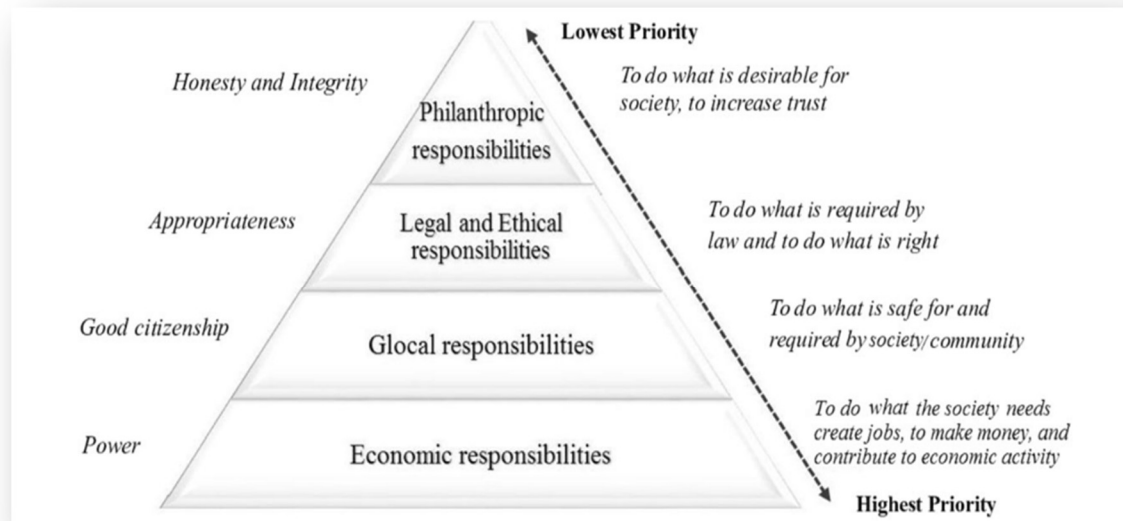
⁴⁶⁹ Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 238.

⁴⁷⁰ Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 238.

⁴⁷¹ Masoud 2017 *International Journal of Corporate Social Responsibility* 1-22.

⁴⁷² Masoud 2017 *International Journal of Corporate Social Responsibility* 12.

Figure 2-15: Masoud's "International Pyramid Model of CSR"⁴⁷³



Masoud found his model on those of Carroll and Visser because these models are well-known and easy for the reader to understand. In designing his model, he also considered the model of Nalband and Al Kelabi. Still, he believed that the Universal Model of CSR did not address the environmental issue apart from indicating that business is influenced by the environment (region and community) in which it is situated.

Although the International Pyramid Model of CSR still suggests that there are certain tiers of responsibilities in the pyramid, which are regarded to have a higher priority hierarchy, the authors express the opinion that their model is flexible and that tiers two and three can change places, depending on the context in which the business operates.⁴⁷⁴ According to their model, the economic responsibility will always remain the most important one, because if a business does not make money, it cannot survive and will consequently not be able to create jobs and will not be able to "discharge its overall social responsibilities".⁴⁷⁵

The feature that distinguishes this model from Carroll and Visser's respective models is the new tier added, namely the 'glocal responsibilities tier'. The word 'glocal' is a combination of global and local, suggesting that the global outlook is adjusted for

⁴⁷³ Masoud 2017 *International Journal of Corporate Social Responsibility* 12.

⁴⁷⁴ Masoud 2017 *International Journal of Corporate Social Responsibility* 11-12.

⁴⁷⁵ Masoud 2017 *International Journal of Corporate Social Responsibility* 13.

local conditions, or as Masoud states: "think global, act local".⁴⁷⁶ This responsibility is added as a second tier in their pyramid and represents the

obligation of corporate decision-makers to engage in actions which protect and improve the *environmental conditions* of society as a whole, whilst also acknowledging *socio-cultural aspects, uses of technology*, and the nature of *political rights*.⁴⁷⁷

The legal and ethical tiers merge these two concepts as the third responsibility. Included in this tier is the company's obligation to adhere to legislation, for example, which will include but is not limited to trade in general, the use of technology, employment-related legislation, and then also legislation relating to the environment. Masoud⁴⁷⁸ is of the opinion, however, that the ethical responsibility extends beyond the legal responsibility and will influence the company's "sustainable development strategy". The International Pyramid Model of CSR

allows for the legal and ethical responsibility to assume greater or lesser importance, being represented by either the third or the fourth tier, or even climbing to become the highest CSR priority.⁴⁷⁹

This flexibility is built in to allow for Visser's comment that in some cases legal and ethical considerations may be very low on the list of priorities in some African countries.⁴⁸⁰

The philanthropic responsibility remains 'purely discretionary' and involves the "investment in the protection of the internal and external community".⁴⁸¹ For example, the provision of aid to combat HIV/AIDS will benefit the community, but also the company's "medium- to long-term economic interest".⁴⁸² Because this priority is discretionary it is awarded the lowest priority in the pyramid and will be met by the company only after all other obligations (including that owed to the shareholders) are met.⁴⁸³

⁴⁷⁶ Masoud emphasised concepts in the text by italicising the words. Masoud 2017 *International Journal of Corporate Social Responsibility* 14.

⁴⁷⁷ Masoud 2017 *International Journal of Corporate Social Responsibility* 14.

⁴⁷⁸ Masoud 2017 *International Journal of Corporate Social Responsibility* 15.

⁴⁷⁹ Masoud 2017 *International Journal of Corporate Social Responsibility* 16.

⁴⁸⁰ Masoud 2017 *International Journal of Corporate Social Responsibility* 16.

⁴⁸¹ Masoud 2017 *International Journal of Corporate Social Responsibility* 16.

⁴⁸² Masoud 2017 *International Journal of Corporate Social Responsibility* 16.

⁴⁸³ Masoud 2017 *International Journal of Corporate Social Responsibility* 16.

Lastly, Masoud rightly comments that not all companies, especially in developing countries, will have the means to contribute to philanthropic activities.⁴⁸⁴

2.4.1.4 Silva Junior *et al*'s 'CSR Spinner' model

The most recent research and the most universally applicable model proposed is the 'CSR Spinner' by Silva Junior *et al*.⁴⁸⁵ The authors consider the models presented by Schwartz and Carroll in 2003,⁴⁸⁶ Visser's 'Africa's Corporate Social Responsibility Pyramid' (discussed above in Paragraph 2.4.1.1),⁴⁸⁷ the 'Universal CSR model' proposed by Nalband and Al Kelabi (discussed above in Paragraph 2.4.1.2),⁴⁸⁸ the 2016 version of the Carroll CSR pyramid,⁴⁸⁹ as well as the study conducted by themselves in 2018.⁴⁹⁰ According to them, it is clear that Carroll's CSR Pyramid is too static, and a CSR model should be able to consider "other factors to explain CSR that are not being represented"⁴⁹¹ by this model.

The authors have designed a model that they believe is more adaptable and which will result in "socially responsible political actions by organisations in the areas of human rights, global warming or deforestation."⁴⁹² The CSR Spinner model keeps the four responsibilities originally proposed by Carroll but places the ethical responsibility (or dimension as it is referred to by the authors) at the centre of the model.

⁴⁸⁴ Masoud 2017 *International Journal of Corporate Social Responsibility* 16.

⁴⁸⁵ Silva Junior *et al* 2023 *Social Responsibility Journal* 358-376.

⁴⁸⁶ Schwartz and Carroll 2003 *Business Ethics Quarterly* 503-530.

⁴⁸⁷ Visser 2009 "Corporate social responsibility in developing countries" 1-32.

⁴⁸⁸ Nalband and Al Kelabi 2014 *Journal of Advanced Management Science* 236-239.

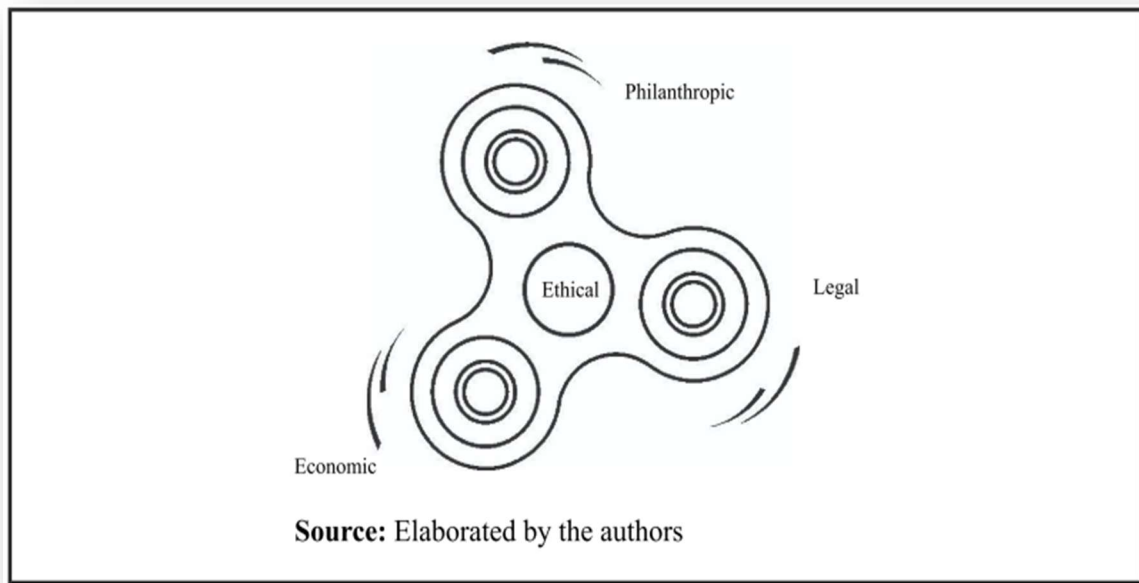
⁴⁸⁹ Carroll 2016 *International Journal of Corporate Social Responsibility* 1-8.

⁴⁹⁰ Silva Junior *et al* 2018 *Social Responsibility Journal* 50-72.

⁴⁹¹ Silva Junior *et al* 2023 *Social Responsibility Journal* 367.

⁴⁹² Silva Junior *et al* 2023 *Social Responsibility Journal* 367.

Figure 2-16: Silva Junior *et al* 's "CSR Spinner"⁴⁹³



The ethical dimension gives the model its dynamism, "defining the direction and speed in which the other CSR dimensions will rotate."⁴⁹⁴ The ethical dimension incorporates the national and organisational culture, which in turn are influenced by the values, morality and ethics associated with certain "cultural groups, societies and individuals".⁴⁹⁵ This dimension allows corporate management to consider the cultural, social, political and economic context at a specific moment and, accordingly, to determine "when more attention should be given to the economic or legal or philanthropic dimension and for what reason."⁴⁹⁶

The other dimensions and their respective roles directly relate to Carroll's CSR Pyramid and are kept as is.⁴⁹⁷ The role of the economic dimension is to "produce goods and services generating profit of the shareholder." They further define the legal dimension as "to act following a system of standards", in which they include both local legislation and global guidelines and standards. The philanthropic dimension is defined as contributions to increase "the quality of life of communities

⁴⁹³ Silva Junior *et al* 2023 *Social Responsibility Journal* 368.

⁴⁹⁴ Silva Junior *et al* 2023 *Social Responsibility Journal* 369-370.

⁴⁹⁵ Silva Junior *et al* 2023 *Social Responsibility Journal* 369-370.

⁴⁹⁶ Silva Junior *et al* 2023 *Social Responsibility Journal* 369-370.

⁴⁹⁷ Silva Junior *et al* 2023 *Social Responsibility Journal* 369, 373.

and society".⁴⁹⁸ The authors suggest that more dimensions can be added as 'lobes', should the need arise.⁴⁹⁹

Silva Junior *et al*/⁵⁰⁰ consider the strength of their model to lie in its

potential to operationalize the complexity and conceptual divergence characteristic of the notion of CSR.

This strength is embedded in the fact that the model simultaneously considers the relationship of the different dimensions amongst each other while also considering the context explained above.⁵⁰¹

According to Silva Junior *et al*,⁵⁰² their model also incorporates the notion of sustainability, but focuses "its attention on existing stakeholders, rather than future generations."

They conclude that their model is dynamic and flexible and

has the potential to overcome the limitations of the pyramid model, and deal with multiculturalism, a global agenda.⁵⁰³

It should be noted, however, that their model was not theoretically validated, and its adaptability for different countries/contexts has not yet been empirically tested.⁵⁰⁴

2.4.1.5 Conclusion

In reviewing the numerous contributions to the CSR debate, each model discussed above holds undeniable significance. They serve to broaden our general understanding of CSR as a concept, offering valuable insights. The objective of this discussion has not been to criticise each model for its shortcomings but rather to investigate as far as possible the new/positive contributions made by each of them.

Visser's contribution relates to the fact that the CSR landscape of African countries, therefore including South Africa, differs from that of America, and per implication of

⁴⁹⁸ Silva Junior *et al* 2023 *Social Responsibility Journal* 369.

⁴⁹⁹ Silva Junior *et al* 2023 *Social Responsibility Journal* 368.

⁵⁰⁰ Silva Junior *et al* 2023 *Social Responsibility Journal* 370.

⁵⁰¹ Silva Junior *et al* 2023 *Social Responsibility Journal* 370.

⁵⁰² Silva Junior *et al* 2023 *Social Responsibility Journal* 371-372.

⁵⁰³ Silva Junior *et al* 2023 *Social Responsibility Journal* 372.

⁵⁰⁴ Silva Junior *et al* 2023 *Social Responsibility Journal* 373.

Europe and other developed countries too. Carroll's CSR Pyramid can therefore not be used in the South African context because the different tiers (representing the different responsibilities of companies) might differ in importance. He also indicates that the culture of the community in which the company operates will play an important role in the priority assigned to the different tiers.

It is believed that Nalband and Al Kelabi, with their Universal Model of CSR, incorporated Visser's opinion that the context or community in which the business operates will influence the form CSR will take. Nalband and Al Kelabi incorporated the four bottom tiers, namely environment, beliefs, values, and assumptions. The environment refers to the community (or culture) in which the business operates. The beliefs, values, and assumptions are those of the community/society as well as the people influencing the CSR-related decisions in the company.

The opinion is held that Dyczewski and Sławik⁵⁰⁵ explain the relationship between values and culture excellently. They explain that every society holds shared values that form its core identity. These values serve as the cornerstone upon which social institutions and individuals build their actions. These values, often termed central or native values, play a crucial role in defining the quality and cultural uniqueness of a given society. Culture, which inherently possesses both social and individual traits, is maintained and concurrently evolved by social groups. Each successive generation inherits the legacy of its predecessors and adds new dimensions while staying bound to the established values. While these material values or behaviours evolve the whole time, the foundational values that shaped them persist, providing a continued impetus for new actions.

Moving on to Masoud's International Pyramid Model of CSR, the opinion is held that the value of this model lies in the addition of a new tier referred to as glocal responsibilities. With this tier Masoud incorporates environmental issues as well as those linked to society at large. This tier also acknowledges the impact certain aspects such as culture and the use of technology and political rights might have on this tier.

⁵⁰⁵ Dyczewski and Sławik 2016 *Politeja* 143.

The objective of Silva Junior *et al*'s CSR Spinner model is very similar to that of Masoud. Their objective is to ensure that their model represents "social responsible political actions by organisations in the areas of human rights, global warming or deforestation."⁵⁰⁶ It seems that the ethical dimension includes this objective and the culture, values, morality, and ethics of a certain cultural group/greater society and that of individuals. This ethical dimension will determine the priority of the other dimensions and when more attention would be paid to one or more of these (philanthropic, legal and economic) dimensions.

In the paragraph to follow, these contributions, together with the data discussed in Paragraph 2.2 above and the new definitions drafted, were used to design a new integrated model for CSR.

2.4.2 Proposing a new Integrated Sustainable CSR Model

2.4.2.1 Introduction

Silva Junior *et al*'⁵⁰⁷ refer to Dominique's⁵⁰⁸ definition of a "model", which will include "three interchangeable and non-exclusive meanings". These meanings will include:

An archetype of something.
A simulation, abbreviation and/or simplification of reality itself; and/or
An instrument that allows one to know some object or conduct research, without necessarily referring to reality as a whole or any of its aspects.⁵⁰⁹

Hartin and Wood's⁵¹⁰ definition of a 'conceptual model' is very practical, however. They explain it in plain, logical language. They define a conceptual model as

a way of describing and representing some type of real-world system or concept to make it easier to understand. Conceptual models are often visual representations of abstract concepts. ⁵¹¹

⁵⁰⁶ Silva Junior *et al* 2023 *Social Responsibility Journal* 367.

⁵⁰⁷ Silva Junior *et al* 2023 *Social Responsibility Journal* 359.

⁵⁰⁸ Domingues *Paradigmas e modelos das ciências humanas no século XX: as vias de e mile durkheim e max weber*.

⁵⁰⁹ Silva Junior *et al* 2023 *Social Responsibility Journal* 359.

⁵¹⁰ Hartin and Wood 2023 <https://study.com/academy/lesson/conceptual-models-definition-characteristics.html#:~:text=A%20conceptual%20model%20is%20a,This%20model%20represents%20working%20memory>.

⁵¹¹ Hartin and Wood 2023 <https://study.com/academy/lesson/conceptual-models-definition-characteristics.html#:~:text=A%20conceptual%20model%20is%20a,This%20model%20represents%20working%20memory>.

The proposed model will be explained by defining each element (which can also be regarded as a responsibility), as well as the function of that element.

Preston's Integrated Sustainable CSR Model will be presented in this paragraph. It is based on the contributions discussed in Paragraph 2.3.1, together with the data obtained with the SLR and the definitions drafted in Paragraph 2.2 as well as the valuable insight obtained from the research presented in Paragraph 2.4.

Visser advises that CSR in South Africa should preferably be analysed from the perspective of complexity theory. It is believed that the complexity theory can be applied to explain the dynamics of Preston's Integrated Sustainable CSR Model. Complexity theory can be employed to explain the relationship between a company and its stakeholders, which will include, amongst other things, the company management, the shareholders, the community in which the company operates, the company's clients, the company's suppliers, the state government, etc. Complexity theory also calls on all parties involved to consider the behaviour of the whole system and therefore the influence their actions will have on the behaviour or working of Preston's Integrated Sustainable CSR Model. It will further be able to explain how the culture of a community (which can also include the internal culture of the company), the fundamental values linked to that community, the beliefs and behaviour of influential parties, and the demands of stakeholders will impact each element in the CSR model. All of this will influence the company's CSR policies and programmes, thereby influencing the overall working of the model.⁵¹²

The importance of culture was highlighted by Visser, Nalband and Al Kelabi, as well as Silva Junior *et al.* Preston's Integrated Sustainable CSR Model acknowledges the fact that the inherent culture, values and ethics of the company, but also of the community in which the company operates, will dictate how each of the elements (or responsibilities) in the model will be perceived by influential parties in the company, and how they will be incorporated in company CSR policies and

⁵¹² As previously indicated the "complexity theory provides an understanding of how systems ... grow, adapt, and evolve. It explains how the relationship between members of these systems gives rise to collective behaviour. ... Complexity [therefore] calls for attention to the behaviour of the whole system. ... Corporations are not viewed merely as complicated, static organizations, but as a complex set of self-organizing components made up of employees, business units, resources and stakeholders." (Sammut-Bonnici "Complexity Theory" 1-2).

programmes. Anchoring Preston's Integrated Sustainable CSR Model in a value system makes it sensitive to the intricacies of the surrounding culture, national or organisational. This approach enables organisations, irrespective of their size — be they small, big, local or multi-national — to draft and implement CSR policies that cater for both local and global CSR landscapes. These policies serve as strategic responses to political pressures, addressing critical environmental and social challenges entwined with issues like environmental and social challenges, human rights, infrastructure needs, global warming etc.

Preston's Integrated Sustainable CSR Model therefore acknowledges the fact that the South African CSR environment is influenced by global political factors, global standards set for business behaviour, and global sustainable goals (because South Africa is an "important member of the international community").⁵¹³ Preston's Integrated Sustainable CSR Model, therefore, incorporates Masoud's 'glocal' domain concept, considering the influence of environmental issues, demands and issues of the greater society, as well as political rights, which are inclusive of human rights. Specific elements/responsibilities are, however, assigned to these issues in the model.

The proposed Integrated Sustainable CSR Model is in agreement to some extent with the Three-domain Model of CSR proposed by Schwartz and Carroll,⁵¹⁴ in that it acknowledges the fact that CSI (referred to as philanthropy in their model) will have an impact on the ethical and/or economic element of the model. The proposed Preston's Integrated Sustainable CSR Model in fact demonstrates that CSI has a footprint/place in each of the elements of the model. The integrated model also acknowledges the fact that certain activities, such as the provision of HIV/AIDS medical treatment for employees, will be related to the economic element/responsibility, but at the same time also to ethics, as well as CSI and philanthropy.

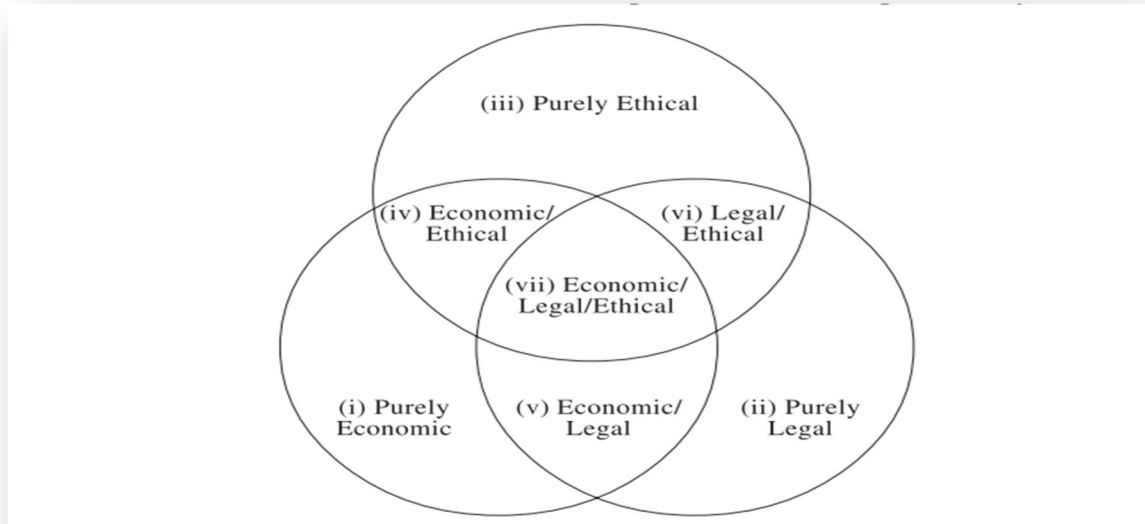
The Three-Domain Model of CSR illustrates how the different domains can influence one another. The seven categories illustrated in the diagram/model below indicate

⁵¹³ Lipton 2013 <https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp050813>.

⁵¹⁴ Schwartz and Carroll 2003 *Business Ethics Quarterly* 508.

the "overlapping nature of the domains" and how "CSR may be conceptualised, analysed and illustrated".⁵¹⁵

Figure 2-17: Carroll's "Three-Domain Model of CSR"⁵¹⁶



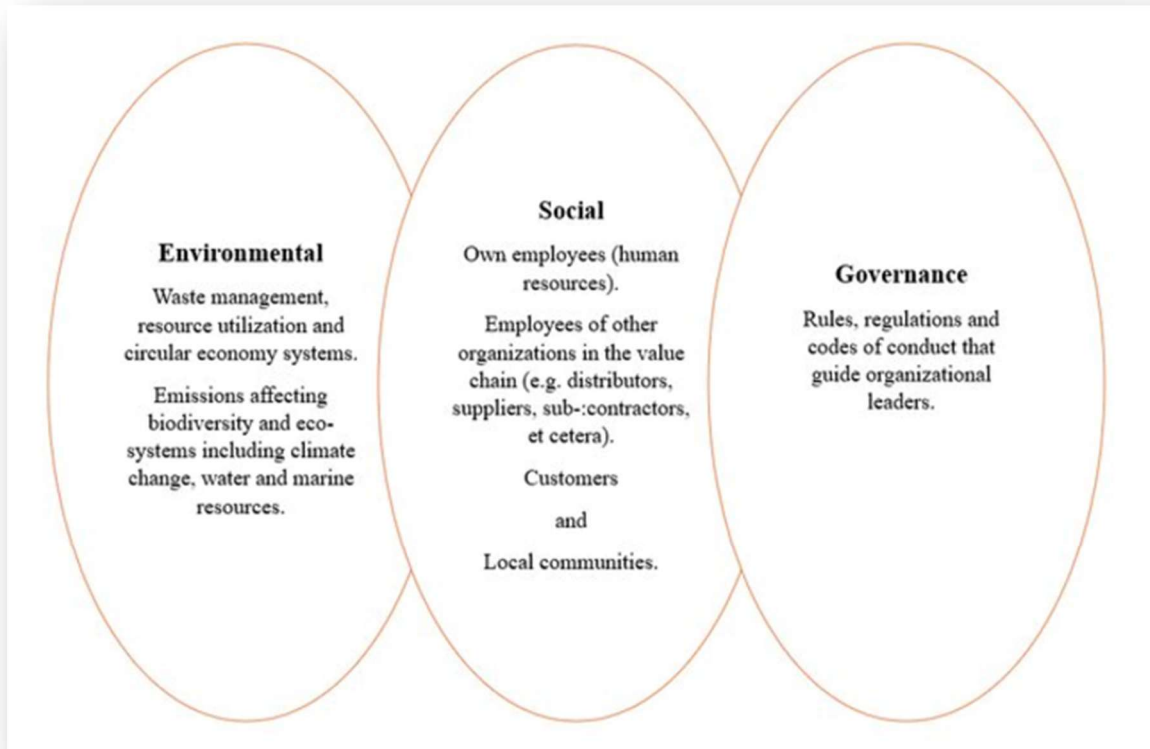
In 2024, Camilleri and Carroll⁵¹⁷ considered the rationale to incorporate environmental, social and governance (ESGs) considerations into CSR. They proposed a new model that illustrates the respective ESG dimensions of CSR.

⁵¹⁵ Schwartz and Carroll 2003 *Business Ethics Quarterly* 513.

⁵¹⁶ Schwartz and Carroll 2003 *Business Ethics Quarterly* 509.

⁵¹⁷ Attempts were made to obtain a copy of this chapter, but unfortunately, the efforts were not successful. Only the abstract and this figure could be obtained. See Camilleri and Carroll "Corporate Social Responsibility" (page unknown).

Figure 2-18: "The environmental, social and governance (ESG) dimensions of CSR" — Camilleri and Carroll⁵¹⁸



If the detail of the elements of Figure 2-18 is considered and compared with the data in Table 2-3, then there are clear points of agreement. Of the different 'characteristics' identified for CSI, the following closely link with the model presented in Figure 2-18. These are environmental/ecological concerns, employee welfare, sustainable development and governance. Those characteristics identified for CSR that closely link with the above are environment, sustainability, sustainable community investment, engaging with stakeholders, governance, abiding by laws, rules and regulations, and lastly, the Triple Bottom Line principles.

Lastly, South African CSR landscape is unique. Almost compelling emphasis is placed on the application of *ubuntu* values (humanity to others) and redressing past injustices. Cheruiyot-Koech and Reddy⁵¹⁹ confirm this statement and report that firms listed on the JSE promote and invest in CSI activities promoted by South

⁵¹⁸ Camilleri and Carroll "Corporate Social Responsibility" (page unknown).

⁵¹⁹ Cheruiyot-Koech and Reddy 2022 *Sustainability* 1.

Africa's black economic empowerment policy. These activities include enterprise development (in mainly black communities) as well as education and training.

Preston's Integrated Sustainable CSR Model will be presented in the next paragraph and each element will be explained.

2.4.2.2 Preston's Integrated Sustainable CSR Model

Theoretical and empirical evidence exists (as was demonstrated above and indicated by Silva Junior *et al*)⁵²⁰ justifying the refinement of Carroll's CSR Pyramid. Four of the attempts to adjust this model have been discussed above. Although Preston's Integrated Sustainable CSR Model keeps three of the original tiers or responsibilities of Carroll's CSR Pyramid, namely economic, ethical and legal, it does not apply any hierarchy or particular weighting to any of these elements/responsibilities. Two new elements are added. This model treats all elements equally, meaning that each element is equally important in fulfilling the goal of sustainable CSR, and no element can be disregarded. Preston's Integrated Sustainable CSR Model is dynamic in that it acknowledges the interaction and possible overlapping of responsibilities and activities normally associated with a specific element. For example, the local carbon tax levy and legislation⁵²¹ will have an impact on:

- The economic element, being a financial cost for the company, which will influence the profit of the company,
- The legal element, being specific legislation that should be adhered to over and above certain global goals and agreements, should be regarded as important, too. South Africa is part of a global trade community, which leaves us susceptible to and prompts us to adhere to global norms, standards and sustainability goals.
- The environmental element, which includes the responsibility to mitigate pollution,

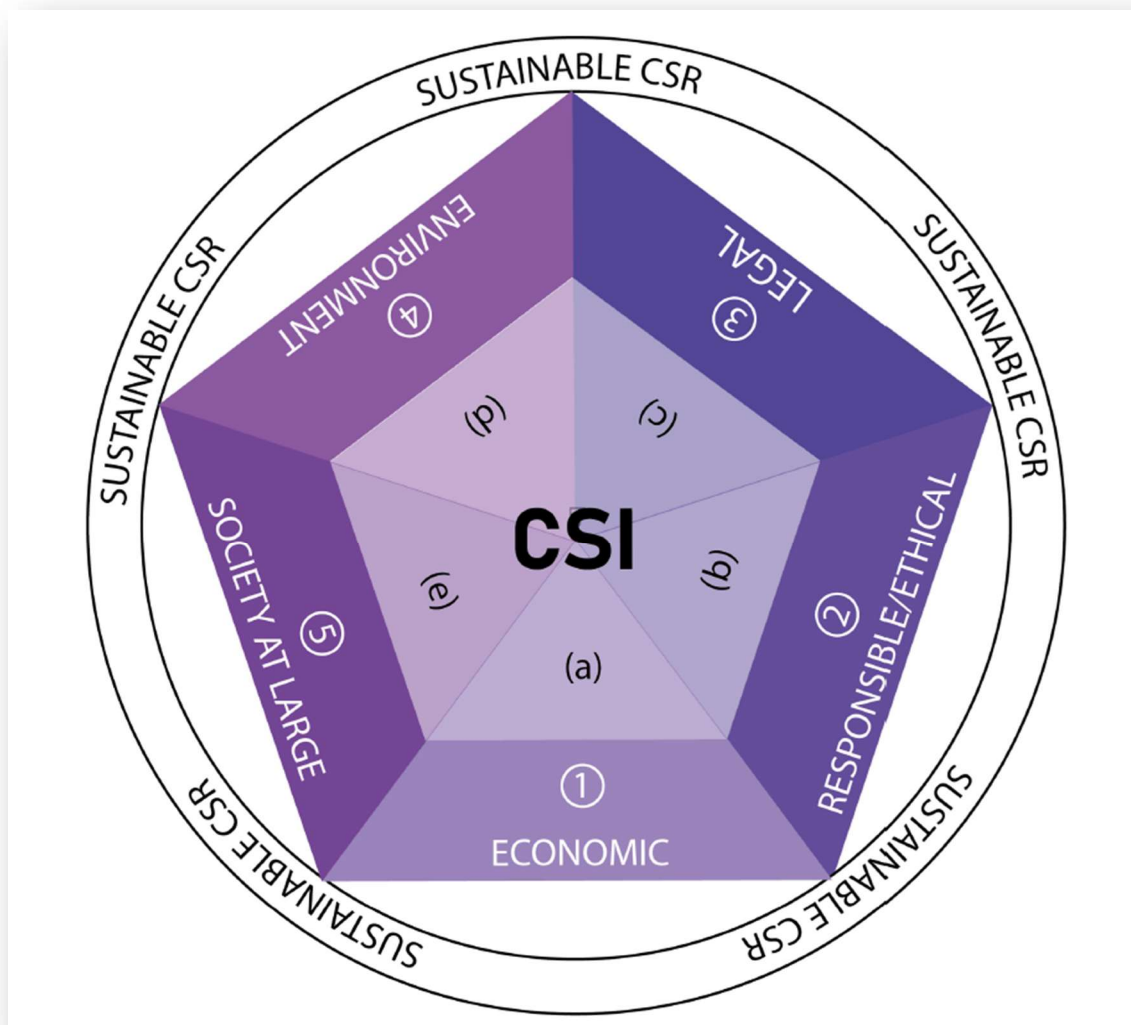
⁵²⁰ Silva Junior *et al* 2023 *Social Responsibility Journal* 367.

⁵²¹ *Carbon Tax Act* 15 of 2019.

- and lastly the responsible/ethical element, which compels company management to act responsibly and ethically.

Preston's Integrated Sustainable CSR Model is also dynamic in that further elements can be added in future. The pentagon can, per implication, be expanded to become a hexagon, etc. The possibilities are endless within the circle of sustainable CSR because the current layout and number of elements are not dependent on the specific context or culture in which a company operates, as discussed above. The specific context or culture might, however, influence the relationships between the different elements and the working of the model.

Figure 2-19: Preston's Integrated Sustainable CSR Model⁵²²



⁵²² Source: designed by researcher.

The following paragraphs will be devoted to the discussion of each element in the model. The explanations of each of the elements should be read in conjunction with the definitions drafted for the individual concepts above.

A) The outer circle: Sustainable CSR

Sustainable CSR is a holistic approach to CSR, which is inclusive of CSI as well as CP. As discussed in Paragraph 2.1.3, companies recognise the complexity of society's development needs and the importance of collaborating with other stakeholders (national as well as international). Sustainable CSR considers the impact of business on the environment and society. Sustainable CSR's goal is to make a meaningful/positive impact on the environment and society at large through responsible, ethical, and transparent behaviour and socio-economic investment. Included in sustainability, and per implication sustainable development, are three interdependent (but also supportive) functions, or spheres of development, namely the 'economic', 'social', and 'environmental'. In relation to these three functions, Sustainable CSR is not supposed to be confined only to the internal matters of the company, such as the economic viability of the company, but should consider other important issues as represented by the Triple Bottom Line concept as well as the six-capitals. Ultimately, sustainable CSR has as its objective the survival and growth of the company itself, but also "meeting the needs of the present without compromising the ability of future generations to meet their own needs".⁵²³ A company practising sustainable CSR will be a law-abiding corporate citizen.

The data discussed above clearly indicate that CSI is part of the greater CSR obligation, and CP, in turn, is the narrow, tax-deductible part of CSI. This relationship is demonstrated in Figure 2-11.⁵²⁴ Each of the five elements included in the pentagon has a core CSR responsibility, and then also a CSI-specific part, which will relate to CSI-specific actions/activities or sub-responsibilities. The five major/core CSR elements are indicated by a (1), (2), (3), (4) or (5), and the CSI-part of each core element by (a), (b), (c), (d) or (e).

⁵²³ Refer to Paragraph 2.2.1.1.

⁵²⁴ Refer to Paragraph 2.2.2.4.

B) Element 1: Economic

The economic element has to do with the company's core objective and responsibility: to supply goods and/or services while ensuring a profit for shareholders. According to Carroll⁵²⁵ a company should function in a manner that will

maximise earnings per share ... be committed to being as profitable as possible ... maintain a competitive position ... maintain a high level of operating efficiency ... [and] one that is consistently profitable.⁵²⁶

CSI-part (a):

The 'economic' responsibility should not be assessed by merely making use of an economic system of measurement but should also consider ecological and social contributions, thus demanding the adoption of a broader perspective that extends beyond economic rules to incorporate community functions.⁵²⁷

The contribution to CSI is part of being a good corporate citizen and will represent sharing profits with the community, responding to the greater society's needs and wants.⁵²⁸ This cost will be an investment in the community and will create value for company stakeholders.⁵²⁹ CSI holds a mutual benefit for both the company and the receiving stakeholders, which can be measured using the social return on investment calculator.⁵³⁰ The cost might, however, greatly relate to CSI in the broad sense, which will probably not be tax deductible.⁵³¹

⁵²⁵ Carroll 1991 *Business Horizons* 40-41; Refer to Table 2-5 above.

⁵²⁶ Carroll 1991 *Business Horizons* 40-41; Refer to Table 2-5 above.

⁵²⁷ Masoud 2017 *International Journal of Corporate Social Responsibility* 13.

⁵²⁸ Masoud 2017 *International Journal of Corporate Social Responsibility* 13.

⁵²⁹ Masoud 2017 *International Journal of Corporate Social Responsibility* 13; "Stakeholder theory posits that the essence of business primarily lies in building relationships and creating value for all its stakeholders." (Freeman and Dmytriiev 2017 *Symphony. Emerging Issues in Management* 10); also refer to Paragraph 2.2.1.5.

⁵³⁰ Refer to Paragraph 2.2.1.5.

⁵³¹ Refer to Paragraph 2.2.2.2 and Chapter 6.

C) Element 2: Responsible/Ethical

Stakeholders can expect a company to act in a reasonable, ethical and transparent manner.⁵³²

To act reasonably means that the company can be held accountable for its conduct or obligations or can be called upon to answer/defend its actions.⁵³³ To act responsibly will normally imply that the course of action and its consequences have been thoroughly considered and the best/most sensible option chosen. To act reasonably will build trust.⁵³⁴

The definition of ethical behaviour is "conforming to accepted standards of social or professional behaviour."⁵³⁵ Ethical behaviour speaks of a moral character, behaviour or actions which are "right in the moral sense – truthful, fair and honest."⁵³⁶

In addition to the above, Carroll⁵³⁷ suggests that it is important that a company prevent ethical norms from being compromised to achieve corporate goals ... [and] to recognise that corporate integrity and ethical behaviour go beyond mere compliance with laws and regulations.

It can be concluded that the core ethical element involves the company's dedication to engaging in practices and activities and making decisions that align with the moral values of society, emphasising fairness, honesty and correctness. This ethical practice will form part of the company's sustainable development policy and will extend beyond complying with legislative requirements.⁵³⁸

⁵³² The ISO 26000 standards provide "seven key underlying principles of social responsibility", of which "accountability, transparency, ethical behaviour, respect for international norms of behaviour" relate to the element 'Responsible/Ethical'. ASQ date unknown <https://asq.org/quality-resources/iso-26000>.

⁵³³ Merriam-Webster dictionary date unknown <https://www.merriam-webster.com/dictionary/responsible>.

⁵³⁴ Vocabulary.com date unknown <https://www.vocabulary.com/dictionary/responsibly#:~:text=Acting%20responsibly%20is%20important%20in,prove%20you%20can%20drive%20responsibly>.

⁵³⁵ Vocabulary.com date unknown <https://www.vocabulary.com/dictionary/ethical>.

⁵³⁶ Vocabulary.com date unknown <https://www.vocabulary.com/dictionary/ethical>.

⁵³⁷ Carroll 1991 *Business Horizons* 40-41; refer to Table 2-5 above.

⁵³⁸ Masoud 2017 *International Journal of Corporate Social Responsibility* 15.

CSI-part (b):

A company has an ethical obligation towards society.⁵³⁹ The company should avoid harm to its workforce, the community in which it operates, society at large and the environment.⁵⁴⁰

Carroll⁵⁴¹ suggests that it is important that a company "recognizes and respects new or evolving ethical/moral norms adopted by society."

D) Element 3: Legal

The company has the responsibility to comply with local legislative requirements and to respect international norms and guidelines.⁵⁴² The company should therefore respect the rule of law (which includes the *Constitution* as the supreme law of South Africa), act in a manner which is "consistent with expectations of government and laws", and "fulfil its legal obligations" to be a "law-abiding corporate citizen" and supply "goods and services that at least meet [the] minimum legal requirements".⁵⁴³

CSI-part (c):

In complying with local legislation, but also with international norms and guidelines, the company will create long-term future benefits for society at large.⁵⁴⁴ The company is therefore prompted to invest in CSI activities promoted by South Africa's Black economic empowerment policy (with specific reference

⁵³⁹ Masoud 2017 *International Journal of Corporate Social Responsibility* 16.

⁵⁴⁰ UN Global compact date unknown
<https://unglobalcompact.org/sdgs/about#:~:text=All%20Companies%20Can%20Play%20a%20Role&text=The%20UN%20Global%20Compact%20asks,through%20business%20innovation%20and%20collaboration.>

⁵⁴¹ Carroll 1991 *Business Horizons* 40-41; Refer to Table 2-5 above.

⁵⁴² Refer to the definition of CSR in Paragraph 2.3.1.

⁵⁴³ Carroll 1991 *Business Horizons* 40-41; In their last publication Camilleri and Carroll included sustainability and governance considerations. See Camilleri and Carroll "Corporate Social Responsibility" page unknown and Figure 2-18. Refer to Table 2-5 above; also refer to the ISO 26000 standards "seven key underlying principles of social responsibility". ASQ 2023 <https://asq.org/quality-resources/iso-26000>.

⁵⁴⁴ Masoud 2017 *International Journal of Corporate Social Responsibility* 16; "Stakeholder theory posits that the essence of business primarily lies in building relationships and creating value for all its stakeholders." (Freeman and Dmytryiev 2017 *Symphony. Emerging Issues in Management* 10).

to the *B-BBEE*⁵⁴⁵ and related *B-BBEE* Codes). These CSI activities will include but will not be limited to activities such as the education and training of designated groups, and enterprise development (incubator programmes for small businesses).⁵⁴⁶

Although international norms and guidelines are not enforceable, all companies, especially those of member states, are encouraged to promote the UN's 2030 Sustainability goals.⁵⁴⁷

E) Element 4: Environment

This element is fundamentally intertwined with sustainability. The Earth (the natural environment) can be regarded as a specific stakeholder in companies' CSR objectives.⁵⁴⁸ The company should regularly assess its impact on the natural environment/resources and should minimise its impact by adhering to specific rules, regulations and legislation.⁵⁴⁹ The company should strive (always and in all operations) to "protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of the present and future generations".⁵⁵⁰

⁵⁴⁵ 53 of 2003.

⁵⁴⁶ Cheruiyot-Koech and Reddy *Sustainability* 11.

⁵⁴⁷ UN Global Compact date unknown
<https://unglobalcompact.org/sdgs/about#:~:text=All%20Companies%20Can%20Play%20a%20Role&text=The%20UN%20Global%20Compact%20asks,through%20business%20innovation%20and%20collaboration.>

⁵⁴⁸ Lulewicz-Sas and Godlewska 2015 *Procedia - Social and Behavioral Sciences* 533-534.

⁵⁴⁹ One example of such legislation in South Africa is the *National Water Act* 36 of 1998, which "provides for the regulation and management of our scarce water resources". (Salmon date unknown
[https://lawfulliving.co.za/book/text/environment--water.html#:~:text=The%20National%20Water%20Act%201998,Affairs%20and%20its%20Director%2DGeneral\).](https://lawfulliving.co.za/book/text/environment--water.html#:~:text=The%20National%20Water%20Act%201998,Affairs%20and%20its%20Director%2DGeneral).)

⁵⁵⁰ UN environmental programme date unknown

CSI-part (d):

In the broad sense of CSI, the company should address environmental and ecological concerns and issues in the community of which they are part, but also issues of the greater society. It should support the conservation and protection of the natural environment, including flora, fauna and the biosphere in general, for example. Companies are also encouraged to provide training to local communities which will mitigate pollution and training in the conservation and protection of all natural resources. Companies can also provide infrastructure and facilities to store water and provide clean water.

In the narrow sense of CSI, companies can provide funding to registered PBOs (involved with the conservation of natural resources, including land water, sea water and life, flora, fauna, and the biosphere) or higher educational institutions to do research in this regard.

F) Element 5: Society at large

The last element of the Integrated Sustainable CSR Model relates to the company's obligation towards the 'society at large'.

The meaning of 'social', and to some extent, 'society' was considered in Paragraph 2.2.1.3 above.

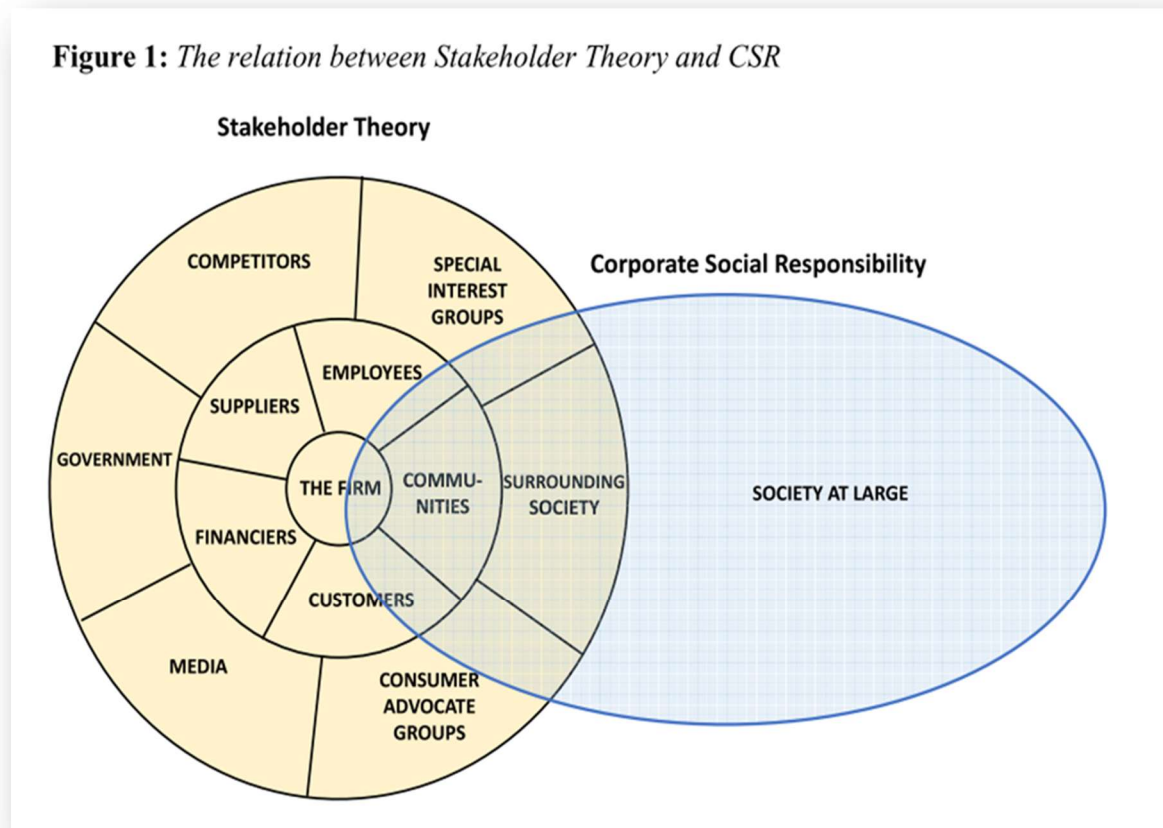
Freeman and Dmytriiev⁵⁵¹ investigated the relation between the Stakeholder Theory and CSR and reasoned that the society (in terms of the theory), which must be considered for the purposes of CSR, will include "mainly communities and partially employees and customers" (as stakeholders).⁵⁵² The society at large is, however, included in the full CSR oval, which is part of their Figure 2-20.⁵⁵³

⁵⁵¹ Freeman and Dmytriiev 2017 *Symphonya. Emerging Issues in Management* 11.

⁵⁵² Refer to Paragraph 2.2.1.3; Mutch's definition of 'community': "populations, organisations, and markets located in a geographic territory and sharing, as a result of their common location, elements of local culture, norms and identity". (Mutch 2021 *Organization Theory* 7).

⁵⁵³ Freeman and Dmytriiev 2017 *Symphonya. Emerging Issues in Management* 11.

Figure 2-20: Freeman and Dmytriiev 's illustration of "the relationship between Stakeholder Theory and CSR"⁵⁵⁴



The Merriam-Webster Dictionary⁵⁵⁵ considers the origin and meaning of the phrase 'at large' and concludes that it can bear the meaning of 'as a whole,' which means "comprehensive or in the broadest sense".

This element considers a company's impact on society and how it can bring about meaningful change. If the data presented in Table 2-4 above are considered, then this element is concerned, amongst other things, with being a good corporate citizen, socio-economic development, improving the quality of the company's employee's lives (including their living conditions etc.), and assisting in the supply

⁵⁵⁴ Freeman and Dmytriiev 2017 *Symphonya. Emerging Issues in Management* 11.

⁵⁵⁵ Merriam-Webster Dictionary date unknown <https://www.merriam-webster.com/word-matters-podcast/episode-81-at-large#:~:text=The%20other%20use%20that%20was,that%20we%20would%20encounter%20today.>

of much-needed resources for the community.⁵⁵⁶ The company is prompted to get involved in community upliftment and its sustainable development needs.

This element has strong links with alleviating the effect of past injustices, through the *B-BBEE* legislation amongst others. There will, therefore, be an overlap between this element and the Legal element.

The bottom part of the triangle is inclusive of philanthropic contributions (CP), whether cash or non-cash contributions. A company might qualify for a deduction against its taxable income for contributions of this type under section 18A of the *ITA(SA)*.⁵⁵⁷ Such contributions will have the goal of improving the quality of life mainly of poor and needy persons. These donations will be received by NGOs and foundations registered as PBOs in terms of section 30 of the *ITA(SA)*, which should provide public benefit activities listed in Part I of the Ninth Schedule of the *ITA(SA)*.⁵⁵⁸

CSI part (e):

This part of the 'society at large' element relates to the broader CSI obligation, which will not be tax deductible.⁵⁵⁹ It is also known as strategic CSI. This obligation has a strong developmental perspective, having to do with promoting sustainable socio-economic development and growth. It will, amongst other things, involve assisting local governments, or even the provincial and central government, to address areas of government inefficiencies (through public-private partnerships, for example).

These CSI programmes will include assistance that may take the form of small business grants, entrepreneurship assistance, skills development and training, small farmer assistance, agricultural development programmes to ensure food security, job creation, infrastructure development and improvement. They might even include programmes/activities like those public benefit activities listed in the Ninth Schedule

⁵⁵⁶ With reference to Figure 2-18 it is clear that included under 'social' in the 'CSR model', the resort consideration for own employees' welfare, customers, local communities, and other people and organisations part of the value chain. Camilleri and Carroll "Corporate Social Responsibility".

⁵⁵⁷ Refer to Paragraph 2.2.2.2 and 2.3.2.

⁵⁵⁸ Also refer to Table 2-4 (Tax deductible CSP within CSI).

⁵⁵⁹ Refer to Paragraphs 2.2.2.2 and Chapter 6 for the discussion on tax deductibility (or not) of donations.

of the *ITA(SA)*, but only if the cash or non-cash contributions are not allotted to registered PBOs/foundations, and the programmes/activities are managed and carried out by the company itself.

2.4.3 Concluding remarks

The objective of Paragraph 2.4 was to propose a new model in the place of Carroll's (1991) Pyramid, due to the limitations identified in it. The data collected, the proposed definitions presented in Paragraph 2.3, together with the positive contributions determined for each of the models discussed in Paragraph 2.4.1 were used to design Preston's Integrated Sustainable CSR Model.

The opinion is held that Preston's Integrated Sustainable CSR Model is a holistic representation of CSR grounded in sustainable practices. The model considers the unique developing path of CSI in South Africa but also takes into consideration the positive contributions of other researchers who have also studied and critiqued Carroll's CSR Pyramid model.

Preston's Integrated Sustainable CSR Model illustrates that CSR should be sustainable. It acknowledges the fact that the South African CSR environment is influenced by global political influences and global standards set for business behaviour, as well as global sustainable goals. The rest of the elements (economic, responsible/ethical, legal, environment, and society at large) are presented as a pentagon within the circle of sustainable CSR.

Although three of the tiers of Carroll's CSR Pyramid are presented in the Integrated Sustainable CSR Model, no hierarchy or weight is assigned to any of the individual elements, with the result that all of the elements should be regarded as equally important and none should be left out when a company is designing its CSR policy.

Preston's Integrated Sustainable CSR Model is dynamic in that it acknowledges the interaction and possible overlapping of responsibilities and activities normally associated with a specific element and allows for the expansion of the pentagon to a hexagon, etc., through the addition of new elements. The possibilities are endless within the circle of sustainable CSR because the current layout and number of elements are not dependent on the specific context or culture of South Africa. Although the model has not been empirically tested for other countries, it is believed

that it could easily be adapted to reflect the unique culture political environment, socio-economic needs, etc. of any specific country or region in which a company operates.

The fact that the greater CSI and CP, as defined, are depicted in the model should not be regarded as a limitation. This statement is based on the fact that many other countries, including all the other BRICS countries, have similar tax legislation, which allows tax deductions (incentives) for donations made for public benefit to some extent.⁵⁶⁰

This model⁵⁶¹ was designed to be a visual representation of the new definitions created for the different concepts of CSR, CP, and CSI.⁵⁶² In the upcoming chapters the researcher will delve into the various elements, particularly focusing on the CSI aspect, alongside the proposed definitions of CSI and CP. These elements will be utilised to analyse and suggest potential legislative reforms aimed at integrating CSIE into the South African taxation system.

2.5 Conclusion

The evolution of CSR, with a specific focus on CSI in South Africa, has been profoundly influenced by the country's history of apartheid and its rich cultural diversity, with the values inherent in *ubuntu* playing a significant role. Ndhlovu notes that CSI has its roots in the adherence of American companies operating within South Africa to the Sullivan Principles. A thorough examination of the historical development of these concepts (conducted in Paragraph 2.1) reveals that they developed over three distinct periods, with the impact of apartheid and its aftermath prominently shaping the discourse.

Government initiatives, such as the implementation of *B-BBEE* legislation and commitment to the Paris Agreement, have exerted considerable influence on the trajectory of CSI. Many companies listed on the JSE, for instance, have been compelled to align with the requirements of *B-BBEE* (in conjunction with the *B-BBEE*

⁵⁶⁰ Charity Aid Foundation *Donation States: An international comparison of the tax treatment of donations* 21.

⁵⁶¹ Preston's Integrated Sustainable CSR Model.

⁵⁶² Refer to Paragraph 2.3.

Code), guiding their CSI practices accordingly. Similarly, the signing of the Paris Agreement underscored the recognition of climate change as a significant threat, prompting the enactment of legislation and regulations such as the *National Greenhouse Gas Emissions Reporting Regulations*,⁵⁶³ the *Carbon Tax Act*⁵⁶⁴ and the *Climate Change Bill*.⁵⁶⁵ These measures emphasise the growing importance of environmental considerations in CSI planning, necessitating adherence to national and international laws, norms and standards.

It is now imperative for South African companies to integrate sustainability into their CSR policies, operations and practices, and to recognise it as an essential component of their functions. The days of operating in isolation are over, as companies must navigate a landscape where societal and environmental responsibilities are integral to business strategies.

One of the secondary objectives of this chapter was to establish clear definitions for CSR, CP, CSI and CSIE within the specific South African context. Achieving this goal involved an examination of the historical evolution of CSR and CSI as concepts, which work was supplemented by empirical research to inform the development of these definitions. That development (presented in Paragraph 2.2) necessitated adopting a comprehensive approach. The methodology employed for the data collection and analysis, as outlined in detail in Paragraph 2.2.2, encompassed two primary methods: a systematic literature review (SLR) and an inductive research process. Through deductive reasoning and analysis of collected data the researcher identified patterns and connections, culminating in drafting precise definitions for each concept.

Of particular significance are the definitions proposed for CP and CSI detailed in Paragraphs 2.3.2 and 2.3.3 respectively. It is important to note that CP is just one facet of CSI. The definition of CSI can be delineated into two categories: a broader interpretation encompassing activities beyond CP, which typically do not qualify for

⁵⁶³ Notice 275 of 2017 in GG 40762 of 3 April 2017; the regulations relate to the *National Environmental Management: Air Quality Act* 39 of 2004.

⁵⁶⁴ 15 of 2019.

⁵⁶⁵ *Climate Change Bill*. For a copy of the Bill refer to https://www.parliament.gov.za/storage/app/media/Bills/2022/B9_2022_Climate_Change_Bill/B9_2022_Climate_Change_Bill.pdf.

tax deductions, and a narrower interpretation focusing on philanthropic donations to PBOs engaged in public benefit activities, potentially eligible for tax deductions⁵⁶⁶ provided certain criteria outlined in the relevant tax legislation are met.

This secondary objective was accomplished through the formulation and presentation of a refined definition of CSR, along with entirely new definitions for CSI and CP, thereby contributing original insights to the academic discourse in the realm of law.

A natural result of this objective was the development of a model that would visually represent these definitions. Paragraph 2.4 aimed to introduce a novel model to replace Carroll's (1991) CSR Pyramid, addressing its identified limitations. The Integrated Sustainable CSR Model was designed by drawing upon the data collected and the definitions proposed in Paragraph 2.3, along with the positive attributes identified for each model discussed in Paragraph 2.4.1.

In this model CSR is portrayed as sustainable, encapsulating economic, ethical, legal, environmental and societal dimensions within a pentagonal framework. Unlike Carroll's hierarchical approach, no element in the Integrated Sustainable CSR Model is prioritised, emphasising the equal importance of each component in CSR policy formulation.

Moreover, this model is dynamic, accommodating interaction and potential overlap among the responsibilities and activities associated with the different elements. It allows for expansion beyond the pentagon, facilitating the inclusion of new elements as needed.

The last objective for this chapter, namely to design and propose a new model representing sustainable CSR in the South African context, was accomplished with the presentation of Preston's Integrated Sustainable CSR Model,⁵⁶⁷ thereby contributing original insights to the academic discourse in the realm of law.

⁵⁶⁶ These tax deductions are deductions allowed against taxable income in terms of sections 18A, 30 and the Ninth Schedule of the *ITA(SA)*. For a more comprehensive discussion, refer to Paragraph 2.2.2 and Chapter 6 of this dissertation.

⁵⁶⁷ Preston's Integrated Sustainable CSR Model is an original contribution by the researcher.

Primarily serving as a visual representation of the newly crafted definitions for CSR, CP, and CSI, the model and the proposed definitions set the stage for subsequent chapters. In these the researcher will explore these elements in depth, with particular emphasis on CSI. These components will inform analyses and recommendations for legislative reforms aimed at integrating CSI into the South African taxation system.

One of the focal points of discussion in Chapter 3 involves delving into the perspectives of South African companies regarding CSI and CP, as delineated in Paragraphs 2.2 and 2.3. The business case will also be evaluated, utilising the model and definitions established for insightful analysis and discussion.

CHAPTER 3 CSI INVOLVEMENT — IN THEORY AND IN SOUTH AFRICA

3.1 Introduction

Mahatma Gandhi inspired many with these words: "Be the change you wish to see in the world".⁵⁶⁸ It is generally accepted that companies have an active role in their community.⁵⁶⁹ The question is to what extent and in which socio-economic sphere? The data summarised in Table 2-4 (discussed in Paragraph 2.3.3) indicates that companies should be involved (amongst others) in socio-economic development and upliftment and strive to improve the quality of life of the communities in which they operate (and, per implication, South Africa). In the broad sense, the definition of CSI outlines companies' investment roles and what stakeholders expect (although the definition does not provide a comprehensive list).

The first sentence of the CSI definition proposed in Paragraph 2.3.3 reads: "Corporate social investment, in the broad sense, is a more focused version of CSR and therefore part of being a good corporate citizen".⁵⁷⁰ Being a good corporate citizen embodies a commitment and responsibility to the well-being of local communities and actively engaging with and supporting the communities in which they operate. The essence of this approach is the hope that businesses will recognise their impact on the environment and society at large⁵⁷¹ and, as responsible members of society, foster acceptance and trust that facilitates ongoing business operations.⁵⁷²

⁵⁶⁸ The Times of India 2019 <https://timesofindia.indiatimes.com/blogs/the-photo-blog/remembering-gandhi-top-10-quotes-by-the-mahatma/>; Waterford.org 2019 <https://www.waterford.org/education/how-to-change-the-world/>.

⁵⁶⁹ Nxumalo *Investigating a South African Listed Company's Corporate Social Responsibility Initiatives in Varying Economic Conditions (SA's Listed Company's CSR Initiatives)* ii.

⁵⁷⁰ According to Paragraph 2.3.3 Table 2-4 (CSI within the greater CSR), the CSI characteristic of being a good 'corporate citizen' had a frequency count of 19 (position 7 out of 11). This is thus an important consideration.

⁵⁷¹ Represented by the outer 'Sustainable CSR' circle in Preston's Integrated Sustainable CSR Model. Refer to the discussion of the element of the model in Paragraph 2.4.2.2.

⁵⁷² It will be illustrated in the following paragraphs that Kloppers' statement is grounded in the stakeholder theory but also links closely with social contract and business case theories. See Kloppers *Improving Land Reform through CSR* 170; King IV Report 2016 25.

While it is understood that companies cannot single-handedly address all the socio-economic challenges South Africans face, stakeholders still expect company involvement and contributions.⁵⁷³

The questions that can be asked are:

- Why should companies get involved in CSI programmes?
- To what extent should companies become involved in their communities?
- What will they gain from this involvement?
- Can companies be expected to step into the shoes of the government?
- To what extent are South African companies involved in CSI?

The objectives of this chapter are to investigate and address these questions through applicable theories, the business case for CSR, and an investigation into the state of CSR amongst South African companies.

3.2 Drivers of CSR: a theoretical perspective

Numerous scholars advocate corporate engagement in CSI initiatives.⁵⁷⁴ Some foundational business theories exist. Several scholars empirically investigated the applicability of these theories in explaining the place of CSR in a business.⁵⁷⁵ These foundational theories include the stakeholder theory, the resource-based theory, the institutional theory, the triple bottom line theory, and the social contract.⁵⁷⁶ From the preliminary literature reviewed for Paragraph 3.2 it became evident that the five (referred to as) foundational theories are the more commonly discussed theories regarding CSR.⁵⁷⁷ Other theories regarding CSR are also addressed to some extent

⁵⁷³ This statement is embodied in the 'society at large elements' (especially the CSI-related discussion) of Preston's Integrated Sustainable CSR Model. Refer to Paragraph 2.4.2.2.

⁵⁷⁴ Nxumalo *SA's Listed Company's CSR Initiatives* ii.

⁵⁷⁵ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration and Management* 2.

⁵⁷⁶ Ashrafi *et al*, for example, reason that the three theories, namely the resource-based theory, institutional theory and the stakeholder theory could be incorporated to explain why corporations should recognise the need for CSR and corporate sustainability (CS), and how the respective CSR and CS strategies could be incorporated in business. See Ashrafi *et al* 2020 *Sustainability* 1.

⁵⁷⁷ The related period is 2015 to 2024. Scholarly works considered included, amongst others, Nxumalo *SA's Listed Company's CSR Initiatives*; Freeman and Dmytriiev 2017 *Symphonya*

in scholarly works but are not referred to often by scholars. These theories are the evolutionary theory, relational theory, managerial theory, legitimacy theory, resource dependence theory, agency theory and utilitarian theory.⁵⁷⁸

The foundational theories trace back to influential figures in business scholarship such as Archie Carroll and notable authors and entrepreneurs like John Elkington, Freeman and Bowen. Elkington introduced the Triple Bottom Line (TBL) theory, a fundamental framework encompassing economic, social, and environmental performance dimensions.⁵⁷⁹ Another significant wave of theoretical development emerged from the work of Edward Freeman, an American philosopher and business administration professor. Freeman's contributions, alongside those of economists like Bowen and scholars like Wood, collectively underpin the concept of corporate social responsibility.⁵⁸⁰

Despite the diversity of these theoretical approaches, stakeholder theory stands out for its descriptive accuracy, instrumental power and normative validity. Although interconnected, the stakeholder theory's economic, social, and environmental dimensions remain distinct.⁵⁸¹

Emerging Issues in Management 7-15; Barney 2018 *Strategic Management Journal* 3305-3325; Ibanga 2018 *International Journal of Development and Sustainability* 355-380; Książak and Szkolmowska 2018 *Journal of Corporate Responsibility and Leadership* 27-46; Ashrafi *et al* 2020 *Sustainability* 1-17; Ndemena and Qutieshat 2022 *Austin Journal of Business Administration and Management* 1-7; Risi *et al* 2023 *International Journal of Management Reviews* 3-23; Prasad and Ansari 2023 *Journal of Cleaner Production* 1-10.

⁵⁷⁸ For further reading which relates to theories less discussed refer to: During *Evolutionary Theory of Social Enterprise: on the Use of Evolutionary Concepts in The Field of Social Entrepreneurship*; Adanlawo, Naidoo and Rugbeer 2018 *African Journal of Gender, Society & Development* 59-79; Czachesz 2018 *Unisinos Journal of Philosophy* 263-271; Cao and Yinping "An Empirical Investigation on Supply Chain Power and Dependence on CSR Performance" 1-6; Sari and Wiwiek 2019 *International Journal of Economics, Business and Accounting Research*; Ashrafi *et al* 2020 *Sustainability*; Cherian *et al* 2020 *Sustainability*; Jain 2020 *Open Journal of Business and Management*; Pintian, Yongqiang and Debi 2020 *Australasian Accounting, Business and Finance Journal*; Olaniyan, Efuntade and Efuntade 2021 *Annals of Spiru Haret University. Economic Series* 37-38.; Olateju *et al* 2021 *International Journal of Managerial Studies and Research*; Wanjari 2021 *International Journal of Home Science* 183; Zhang, Dan and Liang 2021 *Journal of Purchasing and Supply Management*; Jeet 2022 *International Transaction Journal of Engineering, Management & Applied Sciences & Technologies (ITJEMAST)*; Muchiri, Erdei-Gally and Fekete-Farkas 2022 *Economies* 5; Siddika and Sibbir 2022 *International Journal of Supply Chain Management*; Ndemena and Qutieshat 2022 *Austin Journal of Business Administration and Management* 2; Velte 2022 *Management Review Quarterly*; Freeman and Velamuri "A new approach to CSR: Company stakeholder responsibility" 11-13.

⁵⁷⁹ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration and Management* 2.

⁵⁸⁰ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration and Management* 2.

⁵⁸¹ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration and Management* 2.

The following paragraphs will address the stakeholder theory and the more 'commonly discussed or foundational' theories. This discussion aims to provide an overview of the theory and its application to CSR. It should be noted that the objective of this discussion will not be to investigate and report on the rationale and applicability of each theory in detail.

3.2.1 Stakeholder Theory⁵⁸²

The 21st century is one of "Managing for Stakeholders." The task of executives is to create as much value as possible for stakeholders without resorting to trade-offs. Great companies endure because they manage to get stakeholder interests aligned in the same direction.⁵⁸³

These words of Freeman encapsulate the essence of this theory, which he titled the 'stakeholder theory' in 1984.⁵⁸⁴ The essence of this theory resorts in the belief that all stakeholders,⁵⁸⁵ not just shareholders, must be considered in business decision-making, with the primary objective of creating value for society.⁵⁸⁶

⁵⁸² Jones, Harrison, and Felps identified three interconnected sub-theories in stakeholder theory: descriptive, normative ("[M]oral and philosophical principles such as fairness and environmentalism" represent the inherent core of this sub-theory), and instrumental (which represents "connections between stakeholder approaches and corporate desired objectives, for example, profitability"). Ashrafi *et al* 2020 *Sustainability* 11; "The stakeholder theory is descriptive because it describes the interests of an organisation and its stakeholders, providing a framework to better understand the relationship between the organisation and stakeholders." (Keup 2022 <https://www.projectmanager.com/blog/what-is-stakeholder-theory#:~:text=Descriptive%20Approach%3A%20The%20stakeholder%20theory,between%20the%20organization%20and%20stakeholders>). Książak and Szkolmowska discussed other variations of stakeholder theory (which they referred to as 'contemporary mainstream theories' such as the *Shareholder Value Theory or Fiduciary Capitalism*, *Normative Stakeholder Theory*, the 'Corporate Citizenship theory'). See Książak and Szkolmowska 2018 *Journal of Corporate Responsibility and Leadership* 29-46.

⁵⁸³ Freeman 2018 <http://stakeholdertheory.org/about/>. The stakeholders of a company can be described as the shareholders, managers, employees, workers, suppliers, customers, interest groups, unions, competitors, etc. See Argandoña 1998 *Journal for Business Ethics* 1093.

⁵⁸⁴ The essence of Davis' theory appears to have been articulated as early as 1967. See Davis 1967 *Business Horizons* 47. Roberts, however, reported that Ansoff was the first to use the term 'stakeholder theory'. See Roberts 1992 *Accounting, Organisations, and Society* 597; also refer to Kloppers *Improving Land Reform through CSR* 118.

⁵⁸⁵ The stakeholders of a company can be outlined as the shareholders, managers, employees, workers, suppliers, customers, interest groups, unions, competitors, etc. See Argandoña 1998 *Journal for Business Ethics* 1093; also refer to Freeman and Dmytriiev 2017 *Symphonya Emerging Issues in Management* 10.

⁵⁸⁶ Freeman 2018 <http://stakeholdertheory.org/about/>; Barney and Harrison 2020 *Business & Society* 204, 210.

Keup⁵⁸⁷ stresses that stakeholder theory should not be confused with Friedman's shareholder theory, as these theories "propose two very different approaches when it comes to stakeholder management" and, in fact, oppose each other. For Friedman, the only important stakeholder is the shareholder. Kloppers⁵⁸⁸ argues that focusing solely on maximising wealth for shareholders doesn't benefit society as a whole.

There is no single definition of the stakeholder theory, and the diversity of the definitions poses challenges.⁵⁸⁹ Although Keup⁵⁹⁰ did not provide a universal definition, she gave a practical explanation of the theory and described it as follows:

Stakeholder theory addresses business ethics, morals and values when managing stakeholders involved with a project or organisation. It seeks to optimise relations with stakeholders, thereby improving efficiencies throughout the project or organisation. Stakeholder theory is used in many important fields, such as project management, corporate social responsibility, strategic management and business ethics.

While stakeholders and CSR are closely related, they are not the same concept. Freeman and Dmytriye⁵⁹¹ suggest that corporate responsibility instead encapsulates stakeholder theory. There are overlapping considerations, but the company's focus when considering each concept will differ. An example will be the company's obligations to employees and customers regarding CSR, which will primarily emphasise ethical labour practices and environmental initiatives.⁵⁹²

⁵⁸⁷ Keup 2022 <https://www.projectmanager.com/blog/what-is-stakeholder-theory#:~:text=Descriptive%20Approach%3A%20The%20stakeholder%20theory,between%20the%20organization%20and%20stakeholders.>

⁵⁸⁸ Kloppers *Improving Land Reform through CSR* 151.

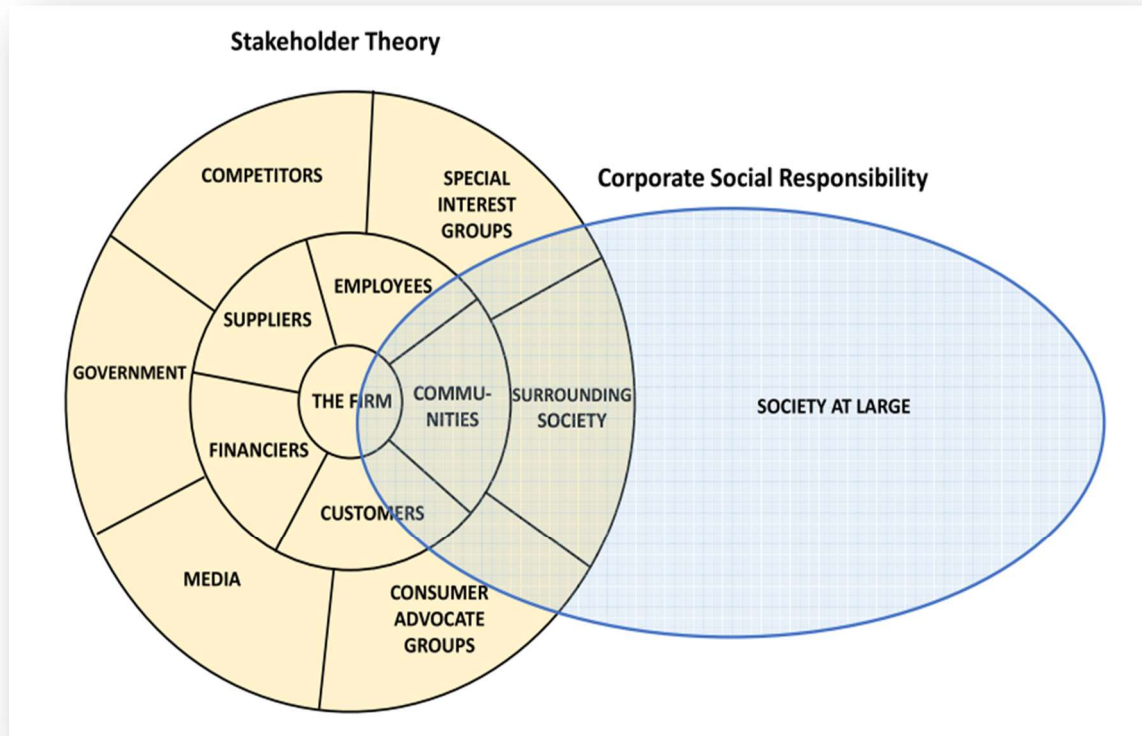
⁵⁸⁹ Barney and Harrison 2020 *Business & Society* 209-210.

⁵⁹⁰ Keup 2022 <https://www.projectmanager.com/blog/what-is-stakeholder-theory#:~:text=Descriptive%20Approach%3A%20The%20stakeholder%20theory,between%20the%20organization%20and%20stakeholders.>

⁵⁹¹ Freeman and Dmytriye 2017 *Symphonya Emerging Issues in Management* 10; also refer to Barney and Harrison 2020 *Business & Society* 209.

⁵⁹² Freeman and Dmytriye 2017 *Symphonya Emerging Issues in Management* 10.

Figure 3-1: Freeman's illustration of the relation between Stakeholder theory and CSR⁵⁹³



Using the above figure (Figure 3-1), Freeman and Dmytriiev⁵⁹⁴ illustrated that the stakeholder theory and CSR highlight the importance of the "company's responsibility towards communities and society" (at large). The stakeholder theory, however, typically directs its focus toward the immediate sphere of a company's operations, primarily encompassing suppliers, financiers, employees, customers and local communities (as represented by the inner circle of the greater yellow circle of Figure 3-1). When considering the relation between stakeholder theory and CSR, the expectations of stakeholders in the form of employees and customers (to some extent) and the communities and surrounding society will be an essential consideration for the company.

Ashrafi *et al*⁵⁹⁵ argue that stakeholder theory has created a "greater foundation for the shaping of CSR- and CD- driven [corporate sustainability] policies and actions",

⁵⁹³ Freeman and Dmytriiev 2017 *Symphonya Emerging Issues in Management* 11.

⁵⁹⁴ Freeman and Dmytriiev 2017 *Symphonya Emerging Issues in Management* 10.

⁵⁹⁵ Ashrafi *et al* 2020 *Sustainability* 11. This study is of particular interest for this research because it can be linked to the discussion of sustainability as per Paragraph 2.2.1.1 above, as well as

improving shared value and helping (in the long run) to create and maintain stakeholder relationships. Although the entities in the general group referred to as 'stakeholders' may vary depending on circumstances, the theory is comprehensive enough to apply across different contexts.⁵⁹⁶ It integrates management and ethics, promoting moral principles in governance.⁵⁹⁷

the discussion of the outer sustainable CSR circle of The Integrated Sustainable CSR Model, as discussed in Paragraph 2.4.2.2 above.

- ⁵⁹⁶ Freeman and Dmytriiev 2017 *Symphony Emerging Issues in Management* 10. Throughout its evolution the stakeholder theory has been subject to debate and application in addressing 'three interconnected problems': elucidating how businesses generate value for both shareholders and stakeholders, reconciling ethics with capitalism, and providing management guidance in resolving these foundational issues. See Parmar *et al* 2010 *Academy of Management Annals* 405. According to Miles the result was that various iterations of the stakeholder theory evolved. She delved into these distinct versions, analysing their respective characteristics and delineating them accordingly. Miles explained that the word 'stake' can be classified as a right, claim, interest, etc. The right or interest will be dependent on the type of relationship which exists between the stakeholder and the company. See Miles 2017 *Journal of Business Ethics* 443-448. The stakeholder theory implies that connected stakeholders have an interest, which can be as simple as the right to be heard. See Kloppers *Improving Land Reform through CSR* 155. The nature of the relationship will have to be determined to determine the type of relationship which applies to a specific situation. The "organisation–stakeholder relationship is based on two distinctions: whether the relationships are compatible in terms of ideas and material interests and whether the relationships are necessary (internal to a social system or logically connected) or contingent (external or not logically connected)." (Miles 2017 *Journal of Business Ethics* 455).
- ⁵⁹⁷ Freeman 2018 <http://stakeholdertheory.org/about/>; Barney and Harrison 2020 *Business & Society* 204; Barney and Harrison 2020 *Business & Society* 210. This statement is supported by the data contained in Table 2-4 (refer to Paragraph 2.3), as well as The Integrated Sustainable CSR Model, which portray responsibility and ethics as elements (Responsible/Ethical) of sustainable CSR.

Collaboration between companies and stakeholders is crucial for creating value,⁵⁹⁸ and every stakeholder can be considered.⁵⁹⁹ Jensen⁶⁰⁰ stresses that a company could not achieve maximum value in the long term if it "ignores or mistreats any important constituency". He limits these stakeholders to include "customers, employees, financial bankers, suppliers, regulators and communities."⁶⁰¹ He proposes that a company may use value creation criteria to choose who to favour of these constituencies because no "constituency can be given satisfaction if the firm is to flourish and survive."⁶⁰²

When considering relationship-building from a practical perspective, many businesses (companies) might shy away due to the perceived high costs and risks of failure.⁶⁰³ Jones, Harrison and Felps⁶⁰⁴ express the opinion that under specific contextual and company-specific circumstances, the added value of fostering a close relationship with all stakeholders can outweigh the expenses associated with its formation and the upkeep of such a relationship. An added benefit of embracing a relational viewpoint is that this endeavour will be transformed into a tool beneficial for all managers across firms, aiding in addressing ethical dilemmas.⁶⁰⁵

⁵⁹⁸ The value for the company would be economic/financial in nature. In the case of an employee, for example, "a company may provide incentives for its employees to acquire specific human capital, which will increase the employees' productivity and create value for the firm as a whole". See Argandoña *Stakeholder Theory and Value Creation* 2,4; Tyagi listed "7 Key Drivers" to motivate companies to engage with stakeholders. Firstly, a company should enhance its positive contributions and through stakeholder engagement reduce and mitigate the negative impact of operations. Secondly, the stakeholders should be consulted to align the company's social responsibilities with stakeholder demands. Thirdly, stakeholder dialogue will also provide feedback regarding the company's strengths, weaknesses and areas needing improvement. Fourthly, dialogue will also enhance understanding of the company's impact and assist in decision-making. Fifthly, engagement fosters transparency and enhances the company's credibility in its communications. The sixth element, which has to do with conflict of interest, will help resolve the conflict between stakeholder(s) and the company. Lastly, stakeholder engagement will provide external knowledge and experience, helping companies to learn and improve beyond internal operations. See Tyagi 2024 <https://askelsustainabilitysolutions.com/7-key-drivers-the-motivation-behind-stakeholder-engagement/#:~:text=Where%20corporate%20social%20responsibility%20is,cost%2C%20much%20like%20quality%20management>.

⁵⁹⁹ Freeman 2013 <https://www.youtube.com/watch?v=7dugfwJthBY&t=983s>.

⁶⁰⁰ Jensen 2010 *Journal of Applied Corporate Finance* 38.

⁶⁰¹ Jensen 2010 *Journal of Applied Corporate Finance* 38, 33.

⁶⁰² Jensen 2010 *Journal of Applied Corporate Finance* 38. It should be noted that the more important stakeholders, which a company may choose first, are discussed later (in Paragraph 3.3.2.2) as key or primary stakeholders.

⁶⁰³ Weitzner and Deutsch 2019 *Academy of Management* 696.

⁶⁰⁴ Jones, Harrison and Felps 2018 *Academy of Management Review* 388.

⁶⁰⁵ Weitzner and Deutsch 2019 *Academy of Management* 696.

Theodoulidis *et al*⁶⁰⁶ stresses that when the outcome of stakeholder management (of CSR-related activities) is considered or predicted, managers should not focus on the immediate impact CSR might have on corporate financial performance (CFP). Managers should also consider the potential indirect effects of CSR because these effects are much more prominent in the long term than in the short term.⁶⁰⁷ Due to its complexity and lack of immediate results, companies might be reluctant to use the stakeholder theory to shape their CSR and CS policies.⁶⁰⁸

To summarise, stakeholder theory concerns the collaborative creation of value for both the company and its stakeholders while "maintaining equilibrium between the expectations of all stakeholders through operating activities."⁶⁰⁹ It advocates that the added value of fostering a close relationship with all stakeholders can outweigh the expenses associated with the formation and upkeep of such a relationship. This theory offers a suitable perspective for analysing the value co-creation process within stakeholder relationships and understanding the distribution of the value created. It is imperative to recognise that moral considerations have been integral to stakeholder theory since its inception.

⁶⁰⁶ Theodoulidis *et al* 2017 *Tourism Management* 173, 186.

⁶⁰⁷ Theodoulidis *et al* 2017 *Tourism Management* 186.

⁶⁰⁸ Ranängen indicated that management tends to favour certain stakeholders above others and that there is poor interaction with these stakeholders. Management should take note of this fact because it might impact on their CSR practices. She advises that the company should evaluate its stakeholder-manager relationship regularly. See Ranängen 2017 *Mineral Economics* 27-28. For more on stakeholder theory and CSR, refer to: Brown and Forster 2013 *Journal of Business Ethics*; Nikolova and Arsić 2017 *Engineering Management*; Theodoulidis *et al* 2017 *Tourism Management*; Ranängen 2017 *Mineral Economics*; Harrison, Freeman and Abreu 2018 *Revista brasileira de gestão de negócios*; Nazama *An exploratory assessment of corporate social responsibility implementation and stakeholder engagement: a case of Hulamin*.

⁶⁰⁹ Jeet 2022 *ITJEMAST* 1.

3.2.2 Social Contract

The social contract is a moral theory firmly grounded in business ethics.⁶¹⁰ Ibanga⁶¹¹ defines the corporate social contract as

an implicit agreement among members of a community to cooperate for social benefits. It is an explicit or implicit pact; an organised society brings into being and invests with [the] right to secure mutual protection and welfare.

This pact regulates the relationship

between the firm and the community, and ... moderates the mutual benefits open to them. Corporate social contract typically posits that the firms have consented, either explicitly or tacitly, to surrender some of their profits to the community in relation to the negative externality their activities have created in the community.⁶¹²

Mutual trust between the company and its stakeholders is essential for establishing and continuing this contract.⁶¹³ The 'social contract' is a tacit agreement between the community and the company.⁶¹⁴ The objective of mutual benefit can be achieved only through a mutual surrender of rights. In this symbiotic relationship the community surrenders portions of its resources (physical and human/goods and services) to the company, while the company gives in return by surrendering a portion of its profits to the community, financially or otherwise.⁶¹⁵ The company is also tasked with providing employment opportunities, fostering conditions for other

⁶¹⁰ Francés-Gómez "Social contract theories" 98. For the history of the development of this theory, also refer to Ritchie 1891 *Political Science Quarterly* 565-676; Höpfl and Thompson 1979 *The American Historical Review* 919-944; Dienstag 1996 *The Journal of Politics* 985-1009; Seabright, Stieglitz and Van der Straeten 2021 *Evolutionary Human Sciences* 6-10, 18-19. Three philosophers made the idea of the existence of social contract part of their philosophy: Thomas Hobbes (1588-1679), John Locke (1632-1704), and Jean-Jacques Rousseau (1712-1778). Rousseau was the first to do so, in a publication titled *Social Contract*, published in 1762. Many of his later publications built on this theme. The social contract (as it was initially argued) is a hypothetical agreement between rulers and their subjects setting out the rights and duties of each. The central idea was that "[p]eople must gather in a community based on consent and form a social contract between themselves, with the ultimate objective of that society being the common good." He further believed that the government should be elected, with the primary role of carrying out administrative tasks. The individual should also sacrifice some rights in the best interest of society. Cartwright 2024 https://www.worldhistory.org/Social_Contract/.

⁶¹¹ Ibanga 2018 *IJDS* 357.

⁶¹² Ibanga 2018 *IJDS* 357. In the case of tacit/implicit consent, this "must be inferred from their conduct: for example, acquiescence to company (or market customary) attitudes and behaviour, willing participation in certain benefits, and so on." (Francés-Gómez "Social contract theories" 96).

⁶¹³ Ibanga 2018 *IJDS* 358; Jeet 2022 *ITJEMAST* 7.

⁶¹⁴ Ibanga 2018 *IJDS* 358; Jeet 2022 *ITJEMAST* 7.

⁶¹⁵ Ibanga 2018 *IJDS* 351.

businesses to thrive, mitigating harm to the community and the environment, compensating for the negative impact caused by its operations, paying community levies, and actively contributing to community development as a responsible corporate entity.⁶¹⁶ The company is the party in the agreement with more power, a power which should be exercised responsibly.⁶¹⁷

CSR can be regarded as the most elementary form of the corporate social contract,⁶¹⁸ and as stated it is rooted in morality and ethical behaviour. Ibanga⁶¹⁹ concludes that the company should accept its responsibility (financially and otherwise) for the negative impact that the company has on the community and the environment, one from which it cannot escape.⁶²⁰ This is a moral obligation dictated by the social contract, and if this obligation is ignored the company will be in breach of the contract. The extreme action taken by the communities of the Niger Delta is an example where the oil companies' actions were socially irresponsible, and they ignored their moral obligation under the social contract. These companies ignored their CSR obligations towards the surrounding communities, which led to violent protests and disruption of the economic operations in the region.⁶²¹

A new social contract came into existence between the communities and the oil companies. This new social contract will allow society to

push for transparent conduct and access to remedies in case of deviations by fossil fuel companies.⁶²²

A new social contract must redefine the current discourse, recognising corporations as principal custodians of responsibility and being "humane and [introducing] eco-friendly" systems.⁶²³

⁶¹⁶ Ibanga 2018 *IJDS* 358.

⁶¹⁷ Jeet 2022 *ITJEMAST* 4. Jeet suggests a narrow boundary between political stakeholder and social contract theories. The political stakeholder theory focuses on companies' influence (*social power*) and their connection with the community.

⁶¹⁸ Ibanga 2018 *IJDS* 357; Jeet 2022 *ITJEMAST* 1,5. Jeet states that indirect commitments will exist on the side of the company.

⁶¹⁹ Ibanga 2018 *IJDS* 367.

⁶²⁰ Ibanga 2018 *IJDS* 365-367.

⁶²¹ Ibanga 2018 *IJDS* 366.

⁶²² Prasad and Ansari 2023 *Journal of Cleaner Production* 6.

⁶²³ Prasad and Ansari 2023 *Journal of Cleaner Production* 6,8. For a full discussion of the "Virtuous cycle of legal responsibility and ethical conduct" (Prasad and Ansari 2023 *Journal of Cleaner*

It can be deduced that the social contract cannot be separated from a company's CSR policy and in terms of CSI specifically regarding environmental affairs and the impact on society at large.⁶²⁴ A company must strive to leave a better community than it found, giving it a better future, because that is the moral and ethical thing to do.⁶²⁵

3.2.3 Resource-based Theory

Various theoretical perspectives can be employed to analyse organisational behaviour. These theories can be categorised on the basis of their views on the similarities or differences between corporations. Some emphasise the benefits of pursuing differentiation strategies,⁶²⁶ while others focus on the advantages of conformity.⁶²⁷ The resource-based theory represents the former approach.⁶²⁸

The concept of resource-based theory, which emphasises achieving a competitive edge by leveraging specific corporate resources, attracted significant attention in the 1980s thanks to influential contributions from scholars such as Penrose,⁶²⁹ and later Barney.⁶³⁰ Penrose characterised a corporation as a 'bundle of resources'.⁶³¹

Production 3-7). For further reading, refer to Ndinga-Kanga, Van der Merwe and Hartford 2020 *Journal of Intervention and Statebuilding* 22-41.

⁶²⁴ Further literature on social contract theory: Conrad *The Social License to Operate and Social Contract Theory; Themes and Relations of Two Concepts – A Literature Analysis*.

⁶²⁵ Ibanga 2018 *IJDS* 375.

⁶²⁶ "A differentiation strategy is an approach business develop by providing customers with something unique, different and distinct from items their competitors may offer in the marketplace. The main objective of implementing a differentiation strategy is to increase competitive advantage." (Indeed *Career Guide 2023* <https://www.indeed.com/career-advice/career-development/differentiation-strategy#:~:text=A%20differentiation%20strategy%20is%20an,is%20to%20increase%20competitive%20advantage>); Also refer to Castelo "Resource-Based Theory and CSR" 2018-2019.

⁶²⁷ "Conformity is typically defined as the expectation of employees to adapt to company policies and standards and use traditional business practices to complete job functions. ... [C]onformity includes setting boundaries for which employees are expected to complete their job functions." (Lumen date unknown <https://courses.lumenlearning.com/wm-organisationalbehavior/chapter/individuality-vs-conformity/#:~:text=Conformity%20is%20typically%20defined%20as,gives%20conformity%20a%20negative%20reputation>); Castelo "Resource-Based Theory and CSR" 2018-2019.

⁶²⁸ Castelo "Resource-Based Theory and CSR" 2018-2019.

⁶²⁹ Penrose *The Theory of the Growth of the Firm*.

⁶³⁰ Barney 1991 *Journal of Management* 99-120.

⁶³¹ Where reference is made to a firm, it can be replaced by 'company' for the purpose of this study. "Firms are bundles of resources, under internal direction, for the production of goods and services, sold in markets for a profit." (Penrose *The Theory of the Growth of the Firm* xix); For a summary of Penrose's contributions, refer to Penrose's *The Theory of the Growth of the Firm* xv-xxiv.

Barney⁶³² defined resource-based theory as a strategic management tool that should explain how access to a specific resource can enable a company to gain a competitive advantage and generate economic profits. Utami and Alamanos⁶³³ concurred with Barney, saying⁶³⁴ that these resources⁶³⁵ should be valuable and rare, such as a patent or formula allowing the company to produce only a particular product. The third requirement is that the specific resource should be 'imperfectly imitable', meaning that other companies/businesses cannot easily obtain the same resource (for example, a company brand). Lastly, the resource should not be capable of being strategically duplicated or substituted, which can be, for example, "the portfolio of popular trademarks that are legally protected, making it a non-sustainable resource".⁶³⁶ If a company does not have such resources, then the company should be 'one of a kind' differentiated from any other competition. Profits will be generated only if the cost of these resources is less than the total income generated.⁶³⁷

In 1991 Barney created the VRIO Framework,⁶³⁸ which can assist in decision-making and give the company a competitive advantage.⁶³⁹

⁶³² Barney 2018 *Strategic Management Journal* 3306, 3308, 3314.

⁶³³ Utami and Alamanos "Resource-Based Theory: A Review" 4; Ashrafi *et al* 2020 *Sustainability* 5. Utami and Alamanos highlight the fact that there are two underlying assumptions on which the resource-based theory was built. The first assumption that one firm possesses unique resources within a given context, which will result in a competitive advantage. Secondly, there is the assumption that the intricacies involved in trading resources between firms can lead to enduring differences in resource allocation, "a concept known as resource immobility". (Utami and Alamanos "Resource-Based Theory: A Review" 2-3).

⁶³⁴ Barney 2018 *Strategic Management Journal* 3306, 3308, 3314.

⁶³⁵ A company's resources can be divided into three broad groups, namely physical capital resources (plant, equipment, raw materials, geographical location, etc.), human capital resources (intelligence, training judgement, relationships, insights from employees), and organisational capital resources (the company's formal and informal structure, comprising of planning, or managing of and coordinating of the systems). It also encompasses the relations between different divisions of the company. See Utami and Alamanos "Resource-Based Theory: A Review" 3. For further information on how the company can utilise these resources to create an advantage, refer to Utami and Alamanos "Resource-Based Theory: A Review" 3-5.

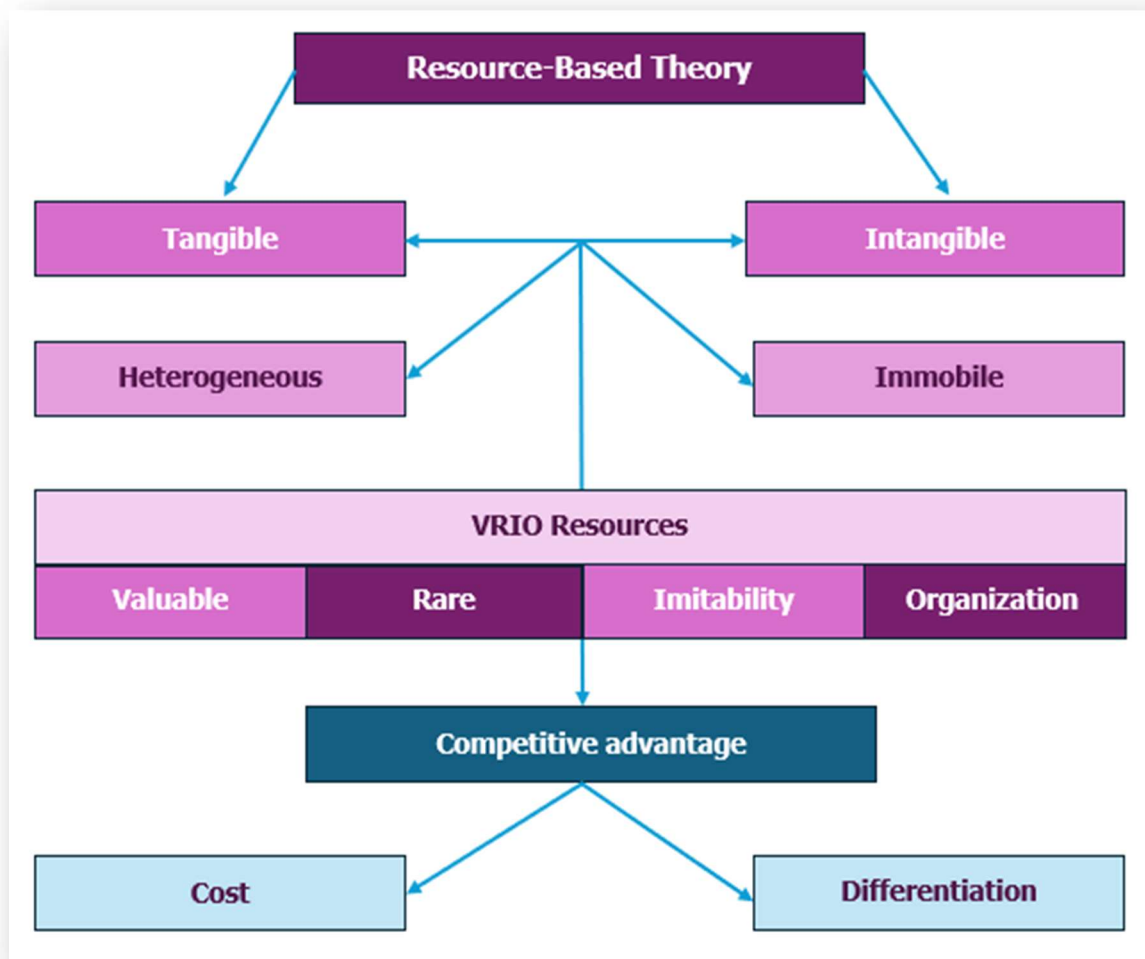
⁶³⁶ Utami and Alamanos "Resource-Based Theory: A Review" 4.

⁶³⁷ Barney 2018 *Strategic Management Journal* 3314.

⁶³⁸ VRIO is the acronym for value, rarity, imitability, and organisation. Cascade Team 2023 <https://www.cascade.app/blog/vrio-framework>; Cascade Team 2023 <https://www.cascade.app/blog/vrio-framework..>

⁶³⁹ LUCIDITY date unknown <https://getlucidity.com/strategy-resources/introduction-to-the-vrio-framework/#:~:text=Jay%20B%20Barney%20invented%20the,a%20similar%20concept%20called%20VRIN>; Cascade Team 2023 <https://www.cascade.app/blog/vrio-framework>; also refer to Geraldine A *Managerial Perspective of how Resource-Based View Theory Leads to Competitive Advantage* 17.

Figure 3-2: VRIO Framework of resource-based theory⁶⁴⁰



Barney⁶⁴¹ linked this theory with the stakeholder theory by suggesting that the capacity to generate economic profits frequently hinges on accessing essential resources sourced from various stakeholders, including a company's internal and external realms. The question can be asked how the stakeholder who provided the resource will benefit from the revenue generated (how these profits will be allocated).

The simplest way to do this would be to allocate profits to stakeholders proportional to their marginal contributions to the economic profits generated by this bundle of resources.⁶⁴²

⁶⁴⁰ Figure 3-2 is an adjusted version of Abrantes 2016 <https://www.linkedin.com/pulse/vrio-framework-analysis-bruno-f-abrantes>; also refer to Utami and Alamanos "Resource-Based Theory: A Review" 4, 6.

⁶⁴¹ Barney 2018 *Strategic Management Journal* 3314-3316.

⁶⁴² Barney 2018 *Strategic Management Journal* 3316.

Castello⁶⁴³ considered the relationship between resource-based theory and CSR. Over and above other positive aspects, he stated that CSR is also an instrument companies can use to show their willingness to adhere to norms and expectations and conform their operations and conduct accordingly.⁶⁴⁴ This consent/willingness to address the norms and expectations of its stakeholders, together with good relations with those stakeholders, will most likely increase the corporation's financial performance and create intangible assets. The value of assets of this type lies in the fact that they differentiate the corporation from its competitors, resulting in a competitive advantage. In this context CSR is not only an end in itself, but also a source creating a competitive advantage.⁶⁴⁵

3.2.4 Institutional Theory

Institutional theory refers to ... the ways in which organisational structures, norms, practices, and patterns of social relationships [which] are connected to the broader social and cultural environment.⁶⁴⁶

Institutional theory directs attention to the social, political and economic functions within which companies operate and establish their legitimacy.⁶⁴⁷ Brammer, Jackson and Matten⁶⁴⁸ found that a company's behaviour and management practices are shaped mainly by the "dominant institutions of the 'business system' or 'organisational field'"⁶⁴⁹ in which the company operates, hence "those wider institutions which govern the broader economic, social and political systems".⁶⁵⁰

⁶⁴³ Castelo "Resource-Based Theory and CSR" 2021.

⁶⁴⁴ Castelo "Resource-Based Theory and CSR" 2021.

⁶⁴⁵ Castelo "Resource-Based Theory and CSR" 2022.

⁶⁴⁶ ScienceDirect 2023 <https://www.sciencedirect.com/topics/social-sciences/institutional-theory>. Defining the concept of 'institution' is necessary to understand this theory and the social relationship between institutions. Brammer, Jackson and Matten divided institutions into two main groups: formal and informal. Formal institutions have some formal structure (for example, specific legislation that is applicable and requires registration). These formal institutions include companies, banks, governments, business associations, governing bodies, civil society groups or trade unions. Informal institutions are those involved in creating and practising religions, traditions, norms, customary practices, tribal traditions, etc. See Brammer, Jackson and Matten 2012 *Socio-Economic Review* 8.

⁶⁴⁷ Brammer, Jackson and Matten 2012 *Socio-Economic Review* 3.

⁶⁴⁸ Brammer, Jackson and Matten 2012 *Socio-Economic Review* 21.

⁶⁴⁹ Brammer, Jackson and Matten 2012 *Socio-Economic Review* 21. This point of view is supported by the data used to draw up the definitions and is clearly reflected in the respective definitions of CSR and CSI, as suggested in Paragraph 2.2); Also refer to Risi *et al* 2023 *International Journal of Management Reviews* 3.

⁶⁵⁰ Brammer, Jackson and Matten 2012 *Socio-Economic Review* 21. The researcher concurs with this view. This point of view is supported by the data used to draw up the definitions and is

Brammer, Jackson and Matten⁶⁵¹ also considered whether companies, in an environment where CSR is still voluntary, implement CSR practices, and if so, what form these social responsibilities take. The researchers found that the dominant institutions and the business systems that directly influence the company will most likely shape its voluntary/social policies and programmes (the 'S' in CSR). However, the programmes' responsibility part (the 'R' in CSR) will probably be shaped by "legal, customary, religious or otherwise defined institutions".⁶⁵²

Risi *et al*⁶⁵³ investigated which factors influence a company's CSR programmes and found that the values⁶⁵⁴ held by various institutions, including the company's own internal values, play a significant role. Drawing on institutional theory, Risi *et al*⁶⁵⁵ further explored why companies engage in CSR, adopt CSR-related values, and how their CSR programs evolve over time. They examined two perspectives: one focused on 'agentic choices' and the other on 'structure-based' explanations. In agency-based CSR, companies undertake initiatives to address gaps created by limited governmental and institutional frameworks promoting ethical business practices. Conversely, structure-based CSR suggests that companies align with existing institutional frameworks, adhering to ethical guidelines set by governments, markets, and civil society.⁶⁵⁶

clearly reflected in the respective definitions of CSR and CSI, as suggested in Paragraph 2.2); Also refer to Risi *et al* 2023 *International Journal of Management Reviews* 3.

⁶⁵¹ Brammer, Jackson and Matten 2012 *Socio-Economic Review* 3.

⁶⁵² Brammer, Jackson and Matten 2012 *Socio-Economic Review* 21.

⁶⁵³ Risi *et al* 2023 *International Journal of Management Reviews* 3.

⁶⁵⁴ The data reflected in Table 2-4 and the CSI definition (Paragraph 2.3.3) indicate that art and culture are important components of CSI. In Paragraphs 2.4.1 and 2.4.2 it was indicated that the complexity theory could explain the relationship between the company and its stakeholders. Mandre *et al* advocate that complexity theory and institutional theory be used together, to better understand the macro and micro dynamics (influences) on a company. See Mandre *et al* 2021 *Accounting and Management Information Systems* 334, 353. A study closely linked to the value factor is that of Peggy *et al*. The data analysis revealed that external institutional factors are more likely to influence a company's CSR practices. They conclude that if a company seriously considers the impact of these institutional factors, incorporates them in CSR practices and, most importantly, enforces these CSR practices, it can improve its financial performance. Peggy *et al* 2022 *Corporate Social Responsibility and Environmental Management* 880.

⁶⁵⁵ Risi *et al* 2023 *International Journal of Management Reviews* 18.

⁶⁵⁶ Risi *et al* 2023 *International Journal of Management Reviews* 18.

Karyawati *et al*⁶⁵⁷ conducted an empirical study using the neo-institutional theory,⁶⁵⁸ researching the complex relationship between CSR and a company's financial performance (CP). They noted that the governance model followed by the company (over and above the institutional factors addressed above), especially those doing business in developing countries, can potentially influence the relationship between CSR and CP and the perceived difference experience between developing and developed countries. They concluded that combining different CSR models (practices) could improve CP.⁶⁵⁹

In conclusion, the theory states that various internal and external institutional factors play a crucial role in shaping a company's behaviour and management practices (as mentioned earlier), directly influencing the decisions and strategies management adopts when developing CSR policies. Additionally, the management's attitude toward institutional theory, whether they consider it significant or not, will directly impact the company's performance (CP).⁶⁶⁰

⁶⁵⁷ Karyawati *et al* 2020 *Journal of Asian Business and Economic Studies* 227-228.

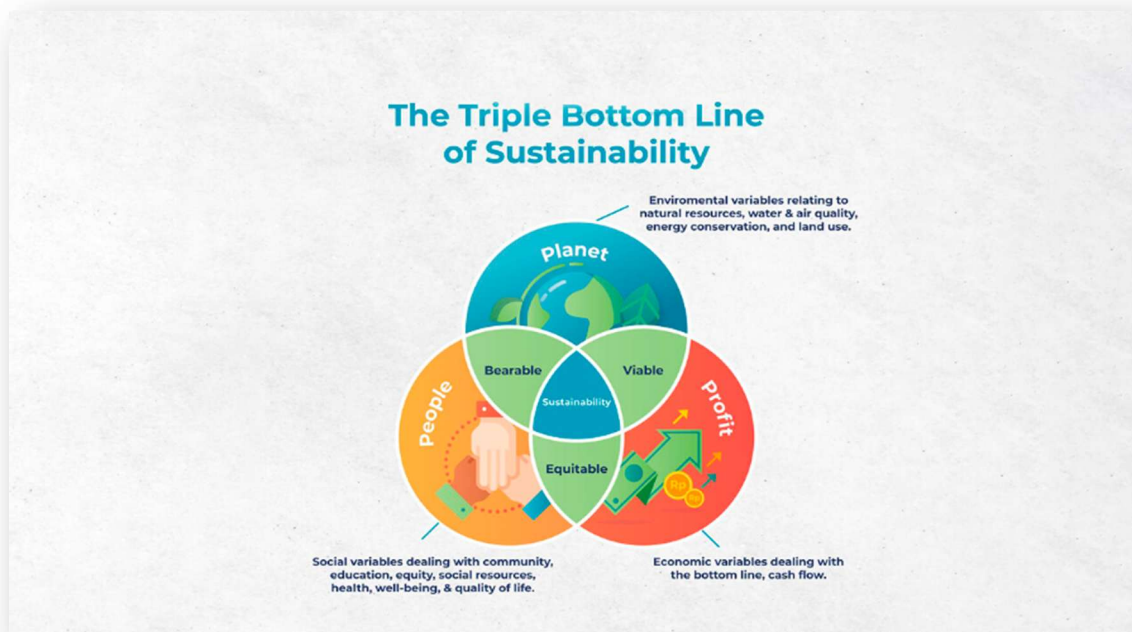
⁶⁵⁸ "The neo [or new] -institutional theory is a later development of the well-known institutional theory, which explores how institutions and rules, as repetitive patterns of actions and practices, affect the behaviours of individuals [companies]." (Springer date unknown https://link.springer.com/content/pdf/10.1007/978-3-319-31816-5_3879-1.pdf). Karyawati *et al* indicate that the neo-institutional theory can explain "institutional changes that occur systematically, uniform, structured or institutionally constructed so that the behaviours or characters in an organisation are homogeneous or resemble one another." (Karyawati *et al* 2020 *Journal of Asian Business and Economic Studies* 228.)

⁶⁵⁹ Karyawati *et al* 2020 *Journal of Asian Business and Economic Studies* 237-238.

⁶⁶⁰ Indian companies must also spend a specific percentage of after-tax profits on CSR. Section 135 of the *Companies Act* 2013 (India). Refer to Oware and Mallikarjunappa 2022 *Meditari Accountancy Research* for further reading regarding the institutional theory. Also refer to Karyawati *et al* 2020 *Journal of Asian Business and Economic Studies* 227-228; and Peggy *et al* 2022 *Corporate Social Responsibility and Environmental Management* 871-886.

3.2.5 Triple Bottom Line Theory

Figure 3-3: Elkington's Triple Bottom Line Theory⁶⁶¹



The Triple Bottom Line theory (TBL) was published by Elkington in 1994.⁶⁶² It proposed that a company's success should not be measured solely by its financial gains/profits but also by its constructive impact on society and the environment.⁶⁶³ The 'PPP's⁶⁶⁴ symbolise the three pillars of sustainability: people (society), the planet (environment), and profit (economy).⁶⁶⁵ The TBL approach to business has gained significant importance and application over the years in the corporate world.⁶⁶⁶

This theory links directly with CSR in that the people/social bottom line directs attention to a company's effect on people/stakeholders, encompassing employees, customers and the wider community. This entails considering equitable labour practices, diversity and inclusivity, and community involvement. Companies prioritising the social bottom line are dedicated to bringing about meaningful

⁶⁶¹ ESG Summit Europe 2023 <https://www.linkedin.com/pulse/beyond-profits-how-triple-bottom-line-theory-transforming/>.

⁶⁶² Elkington "Enter the Triple Bottom Line" 23.

⁶⁶³ Elkington "Enter the Triple Bottom Line" 25.

⁶⁶⁴ Elkington "Enter the Triple Bottom Line" 24. Elkington refers to it as the "3P formulation".

⁶⁶⁵ Elkington "Enter the Triple Bottom Line" 25; refer to Figure 3-3.

⁶⁶⁶ ESG Summit Europe 2023 <https://www.linkedin.com/pulse/beyond-profits-how-triple-bottom-line-theory-transforming/>.

change, including mitigating poverty and inequality, enhancing access to education and healthcare, and bolstering local communities.⁶⁶⁷

The planet/environmental bottom line concentrates on a company's environmental impact. A company should implement measures/plans to limit carbon emissions, preserve natural resources, and minimise waste and pollution. Companies prioritising the environmental bottom line strive to diminish their ecological footprint and foster a more sustainable future.⁶⁶⁸ Pan, Sinha and Chen⁶⁶⁹ caution that organisational policymakers and managers should develop a long-term strategy focusing on pollution control and addressing the impact on the whole ecosystem. "Managers who wish to contribute more to society in the long term should pay attention to their environmental, social and financial CSR."⁶⁷⁰ Lastly, the profit/economic bottom line focuses on a company's financial performance, including revenue, profits, and shareholder returns. However, TBL proponents acknowledge that financial prosperity alone does not define success, recognising

⁶⁶⁷ ESG Summit Europe 2023 <https://www.linkedin.com/pulse/beyond-profits-how-triple-bottom-line-theory-transforming/>. Regarding the definition of CSR proposed in Paragraph 2.3.1, the definition confirms that a company's socio-economic investment and development should have a positive impact on the broader community, which will (amongst other things) protect all of the human rights contained in the *Constitution*, which include striving to be inclusive, to practise equality, to act fairly, to foster diversity, and not to discriminate against any group. "[M]itigating poverty and inequality, enhancing access to education and healthcare" are reflected in the definition of CP (refer to Paragraph 2.3.2) and the CSI in the narrow sense (Refer to Paragraph 2.3.3). Concerning The Integrated Sustainable CSR Model, all the elements represented by the three Ps in the TLB theory are included in the outer Sustainable CSR circle. The 'people element' is thus also present in all three definitions proposed in Paragraph 2.3 and the Model proposed in Paragraph 2.4.2.2.

⁶⁶⁸ ESG Summit Europe 2023 <https://www.linkedin.com/pulse/beyond-profits-how-triple-bottom-line-theory-transforming/>; In the previous footnote it was demonstrated that the element of people is present in all the definitions proposed in Paragraph 2.3 as well as in The Integrated Sustainable CSR Model. The same can be said for the second of the PPP formulation, namely the planet. Sustainability and preserving the earth and all its resources are golden threads in the greater CSR, CSI, and CP. The fourth element of the Model (the environment) encompasses the obligations described above. The idea was to determine how CSR's environmental component interacts and affects the financial and social components. Pan, Sinha and Chen concentrated on two types of eco-innovations, "namely pollution prevention and sustainable environmental innovation". (Pan, Sinha and Chen 2021 *Corporate Social Responsibility and Environmental Management* 222, 225). For further studies on the TBL theory's planet (environmental) element, refer to Pan, Sinha and Chen *Corporate Social Responsibility and Environmental Management*.

⁶⁶⁹ Pan, Sinha and Chen 2021 *Corporate Social Responsibility and Environmental Management* 225.

⁶⁷⁰ Pan, Sinha and Chen 2021 *Corporate Social Responsibility and Environmental Management* 225.

the interconnectedness of long-term economic viability with social and environmental responsibility.⁶⁷¹

Farooq *et al*⁶⁷² explore the role of motivation in encouraging employees. They state that CSR initiatives which improve employees' quality of life act as intrinsic motivators and positively influence employee attitudes.⁶⁷³ The success of the social dimension of TBL in CSR depends significantly on employee involvement in community programmes, which can enhance morale, job motivation and engagement.⁶⁷⁴ Employee volunteering programmes not only boost job satisfaction and health but also foster stronger co-worker relationships. Farooq *et al*⁶⁷⁵ emphasise the critical role of human resource management in leveraging these benefits and argue that engaging employees in volunteering is key to fully realising the TBL framework. Lastly, Farooq *et al*⁶⁷⁶ note that organisations adopting TBL principles are more appealing to the modern workforce.

A primary advantage of the TBL approach lies in encouraging companies to adopt a comprehensive perspective of their impact and consider the enduring repercussions of their actions. By embracing a broader definition of success, companies can develop more resilient business models capable of navigating an ever-evolving landscape.⁶⁷⁷ Nonetheless, implementing the TBL approach poses challenges. Companies must be prepared to invest in systems and processes for monitoring and reporting their social and environmental performance, often facing tough decisions

⁶⁷¹ ESG Summit Europe 2023 <https://www.linkedin.com/pulse/beyond-profits-how-triple-bottom-line-theory-transforming/>. This statement links closely with the stakeholder, institutional, and resource-based theories. These theories also acknowledge that profits should be made for the shareholder and for the company to survive. It is also evident that without collaboration between the company and stakeholders including with regard to resources the goal of being profitable will not be reached. As mentioned in the previous two footnotes, it can again be confirmed that this element of the TLB is also present in both the definitions of CSR and CSI and incorporated into Element 1: Economic of The Integrated Sustainable CSR Model.

⁶⁷² Employee motivation is referred to as the 'internal people line' in the Triple Bottom Line framework and can include employee volunteering programmes. Farooq *et al* 2021 *Corporate Social Responsibility and Environmental Management* 969, 971.

⁶⁷³ Farooq *et al* 2021 *Corporate Social Responsibility and Environmental Management* 971-972.

⁶⁷⁴ Farooq *et al* 2021 *Corporate Social Responsibility and Environmental Management* 973.

⁶⁷⁵ Farooq *et al* 2021 *Corporate Social Responsibility and Environmental Management* 973.

⁶⁷⁶ Farooq *et al* 2021 *Corporate Social Responsibility and Environmental Management* 973.

⁶⁷⁷ ESG Summit Europe 2023 <https://www.linkedin.com/pulse/beyond-profits-how-triple-bottom-line-theory-transforming/>.

regarding resource allocation. The absence of standardised reporting frameworks complicates comparisons across companies.⁶⁷⁸

Despite these obstacles the TBL theory has garnered increasing support from companies and investors worldwide. By embracing a holistic vision of success and committing to fostering positive social and environmental outcomes, companies contribute to a more sustainable future and position themselves for enduring success.⁶⁷⁹

3.2.6 Conclusion for theories for CSR

The previous paragraphs explored the interaction between CSR, business and society through five foundational theories. A central theme across these theories is building strong relationships with the community and broader society. Stakeholder theory, in particular, emphasises creating mutual value for the company and its stakeholders, not just its shareholders, which can be established only if the community trusts the company to act ethically and responsibly. In return the community supplies goods, services and labour, while the company in return gives employment, developing infrastructure, and minimising environmental harm while addressing any negative impacts. Under the social contract theory companies hold great power and are expected to apply this influence responsibly and ethically.

⁶⁷⁸ ESG Summit Europe 2023 <https://www.linkedin.com/pulse/beyond-profits-how-triple-bottom-line-theory-transforming/>; The King II Report urges companies to commit and implement the TBL principles. Shortly thereafter, the JSE amended its listing requirements to incorporate the recommendations of the King II Report (and later also the King III and King IV Reports) and by implication the TBL principles. Later the JSE implemented the Socially Responsible Investment Index (SRI Index), which was replaced (after the publication of the King IV Report) by the FTSE/JSE Responsible Investment Index, which to some extent still measures sustainability practices which include governance, social (people) practices and environmental (planet) practices; JSE 2015 https://sseinitiative.org/wp-content/uploads/2015/04/JoHan_Comm_Stake_Eng.pdf; JSE 2023 <https://www.jse.co.za/sites/default/files/media/documents/FTSE-ESG-scores-overview-2023.pdf>; JSE 2024 <https://www.jse.co.za/services/indices/ftsejse-responsible-investment-index>. Belas and Zvarikova agree that there are no standardised rules (globally) for the reporting of sustainable and CSR practices (economic, environment and social). They consider the guidelines of the *Global Reporting Initiative* and the incorporation of the TBL principles to advise on how companies can report about their CSR activities "in a way which [would] not be looking like greenwashing". (Belas and Zvarikova "Triple Bottom Line of the CSR Concept and its Reporting" 1, 5-7).

⁶⁷⁹ Farooq *et al* 2021 *Corporate Social Responsibility and Environmental Management* 969.

Ibanga suggests that CSR represents the most fundamental form of this corporate social contract.⁶⁸⁰

Companies should develop or acquire resources closely tied to the local context to gain a competitive advantage and in return benefit the community. Strong relationships between the company and the community can facilitate the creation of such benefits through cooperation. Resource-based theory highlights that these resources should be valuable, rare and difficult to replicate, with many of the resources potentially sourced from the community.

The Institutional theory examines how companies should operate and design their CSR policies in three domains: social (community culture and customs), political (government, legislation, and policy objectives) and economic (shareholder expectations and the country's economic conditions). Balancing these dimensions is challenging in South Africa, given the complexities of *B-BBEE*, other CSI-related guidelines, and economic and other daily societal challenges. Paragraph 3.4 delves deeper into the impact of *B-BBEE*.

The TBL theory integrates aspects of the other theories, as it does not prioritise any specific stakeholder group. It had a definite impact on the development of CSI in South Africa,⁶⁸¹ where its principles, the social (people), the environmental (the planet) and the economic (profit)) guide its CSR strategies. Companies prioritising the social dimension aim to bring about meaningful change, such as reducing poverty and inequality, improving access to education and healthcare, and strengthening local communities.

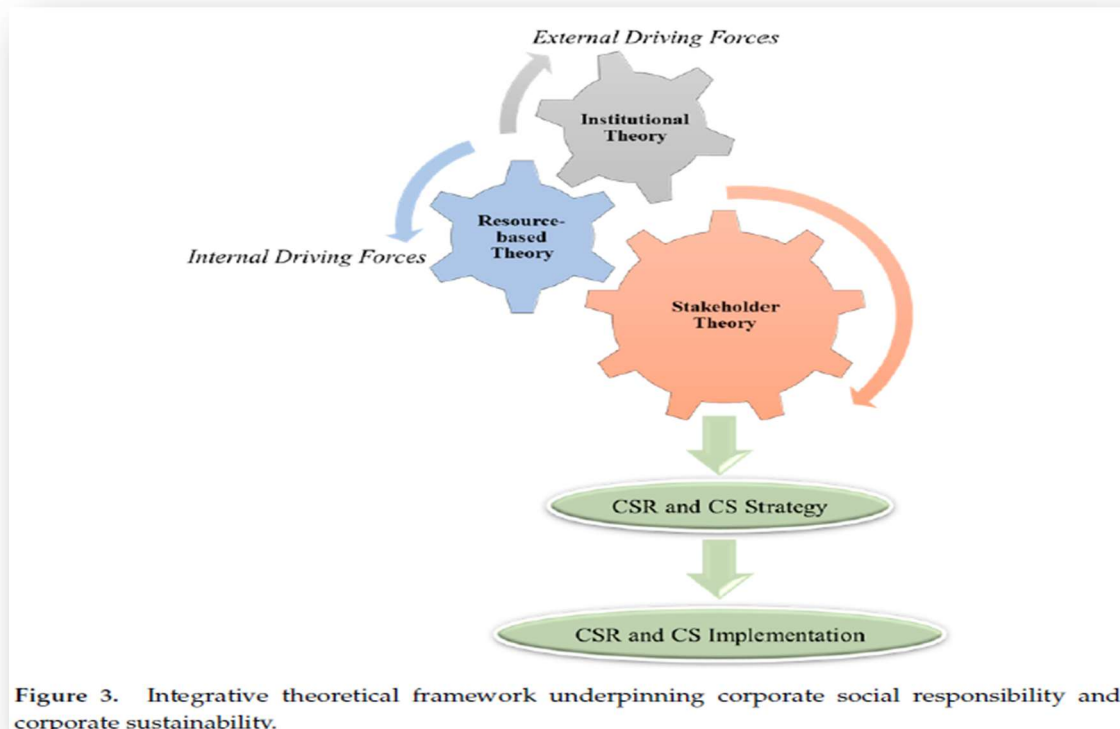
The stakeholder, resource-based and institutional theories are closely interconnected, as shown in Figure 3-4. These theories serve as initial tools for understanding why corporations recognise the importance of CSR and corporate sustainability (CS). The interaction between these theories influences a company's CSR CS approaches. Two main forces influence these strategies: internal drivers

⁶⁸⁰ Ibanga 2018 *IJDS* 357.

⁶⁸¹ Refer to Paragraphs 2.1.2 and 2.3.1.

embedded in resource-based theory and external drivers stemming from institutional theory.⁶⁸²

Figure 3-4: Ashrafi *et al*'s visualisation of the interaction between CSR and the foundational theories⁶⁸³



In this illustration Ashrafi *et al*⁶⁸⁴ attempt to align the interests and expectations of both internal and external stakeholders. Thus alignment forms the foundation of the stakeholder theory. The model suggests that these theories can facilitate recognising, formulating and implementing various CSR and CS initiatives and policies/strategies.

To conclude, Brammer, Jackson, and Matten⁶⁸⁵ emphasise that the dominant institutions and the business system directly influencing the company will most likely shape its CSR policies. This might affect the company's relationship with different stakeholders.

⁶⁸² Ashrafi *et al* 2020 *Sustainability* 10.

⁶⁸³ Ashrafi *et al* 2020 *Sustainability* 11.

⁶⁸⁴ Ashrafi *et al* 2020 *Sustainability* 11.

⁶⁸⁵ Brammer, Jackson and Matten 2012 *Socio-Economic Review* 21.

3.3 Business case: a driver for CSR?

The origins of the modern business case can be traced back to Paris in 1853 when Jules Dupuit defined how to measure the value⁶⁸⁶ of government public works projects using the 'benefit-cost analysis'.⁶⁸⁷ His ground-breaking work focused on determining the optimal toll charge for crossing a bridge.⁶⁸⁸

Defining the business case as a theory or analytical concept is not easy because managers can motivate a business case for each project in need of objective evaluation of the cost and the value of the project, including the value that cannot necessarily be measured in terms of money. The last is, for example, the value a project will have for the general public. This information should allow decision-makers to choose the best business case confidently.⁶⁸⁹

Tembo⁶⁹⁰ stated that under the business case theory, "corporates are expected to be profit-making, but at the same time, they must be responsive to the principles of sustainable development." It can therefore be concluded that a business case is broader than the pure objective of making money.

Solution Matrix Ltd⁶⁹¹ describes the business case in two ways: the information it will provide the decision-makers about the actions/project and the consequences of

⁶⁸⁶ Dupuit emphasises that a project's value is relative. The rationale and methodology remain pivotal in contemporary business case studies worldwide, whether in government, the private industry, or the non-profit organisations; also refer to Solution Matrix Ltd. date unknown <https://www.business-case-analysis.com/business-case.html>.

⁶⁸⁷ "A benefit-cost analysis (BCA) is a systematic process for identifying, quantifying, and comparing expected benefits and costs of an investment, action, or policy." (U.S. Department of Transportation 2024 <https://www.transportation.gov/grants/dot-navigator/what-is-a-benefit-cost-analysis>); Also refer to Beaver's definition: "A cost-benefit analysis involves comparing the explicit and implicit costs of taking an action versus expected benefits. The process of gathering that information may be enlightening because it may require the business to assign monetary value to factors that don't have explicit costs. The resulting analysis allows decision-makers to weigh all information and make rational choices." (Beaver 2023 <https://www.netsuite.com/portal/resource/articles/accounting/cost-benefit-analysis.shtml>).

⁶⁸⁸ Solution Matrix Ltd. date unknown <https://www.business-case-analysis.com/business-case.html>.

⁶⁸⁹ Solution Matrix Ltd. date unknown <https://www.business-case-analysis.com/business-case.html>.

⁶⁹⁰ Tembo *Developing a Corporate Social Responsibility (CSR) Framework for the Diamond Mining Industry in Zimbabwe: The Case of Mbada Diamonds Company (Developing a CSR Framework)* 3.

⁶⁹¹ Solution Matrix Ltd. date unknown <https://www.business-case-analysis.com/business-case.html>.

the decision, arrived at by asking the question, "What happens if we take this or that action?" It will further forecast business costs, benefits (financial and other) and risks. This information (derived from the reasoning and evidence) will "make the case for choosing one action over another. The case proves compellingly why the desired action is the better business decision",⁶⁹² with the best results. Those results relate to a model where the value of the financial and non-financial impact outweighs the plan's (project's) cost.⁶⁹³

If this summary of the meaning of a business case is linked to making a business case for CSR, then one of the many questions that come to mind is which non-financial results will add enough value to outweigh the costs. The business case for CSR will be considered in more detail in the following paragraphs.

3.3.1 The business case for CSR in general

Following initial criticisms of CSR particularly prominent among economists such as Levitt⁶⁹⁴ and Friedman,⁶⁹⁵ the concept of a business case for CSR gained traction, drawing attention from academics and industry professionals alike.⁶⁹⁶ The business case for CSR can be defined as "the relationship between CSR Investment and financial performance".⁶⁹⁷ The underlying aspiration was that demonstrating the potential synergy between corporate social performance (CSP) and profit-maximising objectives could alleviate the longstanding and spirited debate between proponents for and critics of CSR.⁶⁹⁸

The previous paragraph indicated that a business case can be made for any decision that impacts on any part of the business. In recent years it has been noted that the

⁶⁹² Solution Matrix Ltd. date unknown <https://www.business-case-analysis.com/business-case.html>.

⁶⁹³ Schmidt 2023 <https://www.business-case-analysis.com/blog/business-case-business-plan-know-difference/>; Schmidt 2023 <https://www.business-case-analysis.com/blog/soft-benefits-business-case/#:~:text=Outcomes%20such%20as%20higher%20customer,is%20indirect%2C%20but%20tangible%20nevertheless.>

⁶⁹⁴ Levitt 1958 *Harvard Business Review* 41-50.

⁶⁹⁵ Friedman *Capitalism and Freedom*.

⁶⁹⁶ Carroll and Shabana 2010 *International Journal of Management Reviews* 88; Schreck 2011 *Journal of Business Ethics* 183.

⁶⁹⁷ Chiswick "Business case for CSR" 239.

⁶⁹⁸ Carroll and Shabana 2010 *International Journal of Management Reviews* 88; Schreck 2011 *Journal of Business Ethics* 183.

business case for CSR has been applied to make out a business case, for example, for sustainable development and diversity.⁶⁹⁹ It should be acknowledged that it can be challenging to advocate a 'general' business case for CSR because of the unique character associated with a company or the environment, community and circumstances in which it operates.⁷⁰⁰

The business case for CSR is primarily grounded in the expectation that the company will benefit (at least in the long term) from investing in CSR-related activities,⁷⁰¹ to be a good citizen and to get involved in addressing broader societal problems.⁷⁰² The expectation is that acting in a socially responsible manner will have a positive impact on the company's reputation and relationship with stakeholders. This, in turn, might lure new investors and customers, impacting the company's financial bottom line. CSR should therefore be treated as a strategic investment in the company's future and not regarded as a financial burden.⁷⁰³

Company management should be involved in the strategic CSR investment process.⁷⁰⁴ In an ideal world the company would consider interceding variables and situational contingencies to depict the relationship between CSR and firm financial performance accurately.⁷⁰⁵ This encompasses not just business success metrics like capital accessibility, shareholder value and operational efficiency but also delves into the motivating factors behind CSR endeavours. These include maintaining a favourable community reputation, risk management and bolstering brand image.

⁶⁹⁹ Hunt *et al* *Delivering through Diversity* 1-2.

⁷⁰⁰ Kloppers *Improving Land Reform through CSR* 173. Kloppers stresses that the "social welfare orientation, where the focus is on furthering a social cause, is what distinguishes CSR investments from other forms of business investment", normally aiming at benefitting shareholders.

⁷⁰¹ Oikonomou, Pastra and Visvikis "A Financial Business Case for Corporate Social Responsibility" 227.

⁷⁰² Carroll and Shabana 2010 *International Journal of Management Reviews* 91; Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 169, 172, 174.

⁷⁰³ Kloppers *Improving Land Reform through CSR* 173.

⁷⁰⁴ Kloppers *Improving Land Reform through CSR* 173. "Strategic CSR occurs when a business identifies a public good which it would like to serve and then links the public good to the core services rendered by the business. ... The closer the CSR initiatives are to the core business, the more likely it is that the initiatives would receive high-level support from within the business and the greater the opportunity is to use the business' resources and capabilities to the benefit of the business and all its stakeholders." (Kloppers *Improving Land Reform through CSR* 174-175).

⁷⁰⁵ Carroll and Shabana 2010 *International Journal of Management Reviews* 91; Kloppers *Improving Land Reform through CSR* 172.

This comprehensive approach evaluates corporate performance through the lens of value creation, aiming to yield tangible economic advantages. In doing so it provides a measurement system for determining social and environmental impact and anticipates the financial returns the corporation seeks to accrue.⁷⁰⁶ By adopting this view companies can unlock the full potential of CSR initiatives, creating an affirmative agenda that seeks social and economic benefits beyond meeting community expectations.⁷⁰⁷

For the greater society, the benefits will be the

less adverse impacts from ill-thought-through business initiatives; a gearing-up of social partnerships: capacity and innovation brought to bear on problems; and the full contribution of influential citizens to the general well-being.⁷⁰⁸

3.3.2 The business case for CSR and perceived non-financial benefits

Through the business case for CSR the company can motivate (justify) to stakeholders (both internal and external) that the benefits will outweigh the project's cost, including the CSR-related costs incurred,⁷⁰⁹ and describe how its actions will positively contribute to sustainability in future.⁷¹⁰ Porter and Kramer⁷¹¹ stated that the fundamental criterion guiding CSR should not solely be the merit of a cause but rather its potential to generate shared value – a tangible advantage for society and the business.⁷¹² The objective of creating shared values should supersede CSR, "guiding the investments of companies in their communities".⁷¹³ Hence, companies might actively pursue social initiatives, provided they bolster

⁷⁰⁶ Chiswick "Business case for CSR" 239; also refer to Kloppers *Improving Land Reform through CSR: A Legal Framework Analysis* 176.

⁷⁰⁷ Carroll and Shabana 2010 *International Journal of Management Reviews* 91; Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 172.

⁷⁰⁸ King II Report 230.

⁷⁰⁹ Schreck 2011 *Journal of Business Ethics* 167; Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 177.

⁷¹⁰ Chiswick "Business case for CSR" 240.

⁷¹¹ Porter and Kramer 2011 *Harvard Business Review* 2, 16.

⁷¹² Porter and Kramer 2011 *Harvard Business Review* 16.

⁷¹³ Porter and Kramer 2011 *Harvard Business Review* 16.

corporate profits or at least benefit the company in a non-financial manner.⁷¹⁴ Porter and Kramer⁷¹⁵ also stress that

CSR programs focus mostly on reputation and have only a limited connection to the business, making them hard to justify and maintain over the long run.

In discussing the non-financial benefits⁷¹⁶ of what businesses will gain from engaging in CSR initiatives and investment, it can be confirmed that in recent years, scholars have been divided on whether or not there is in fact a benefit. The perceived benefits⁷¹⁷ generally associated with a business case for CSR are (i) image, reputation, and legitimacy,⁷¹⁸ (ii) public trust,⁷¹⁹ (iii) employee relations and retention,⁷²⁰ (iv) providing a competitive advantage,⁷²¹ and (v) financial benefit.⁷²²

Each of these perceived benefits will now be discussed in brief.

⁷¹⁴ Porter and Kramer 2011 *Harvard Business Review* 4; also refer to Schreck 2011 *Journal of Business Ethics* 167.

⁷¹⁵ Porter and Kramer 2011 *Harvard Business Review* 16.

⁷¹⁶ It should be remembered that the business case for CSR requires determining the value of these benefits using benefit-cost analyses.

⁷¹⁷ These benefits are referred to as 'perceived' because there are also claims that such benefits do not exist or that the value for the community does not exceed the costs; Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 178.

⁷¹⁸ Carroll and Shabana 2010 *International Journal of Management Reviews* 92, etc.; Chiswick "Business case for CSR" 241; Kloppers *Improving Land Reform through CSR* 173, etc.; Burke and Clark 2016 *Business Horizons* 275; Barnett 2019 *Business and Society* 177-181; Tembo *Developing a CSR Framework* 36; Kraus *et al* "Challenging the Business Case Logic for Sustainability as an Instrument of CSR: Do Consumer Attitudes in Germany Support a Business Case?" 184; Kramer and Pfitzer 2011 *Harvard Business Review* 2; Allui and Pinto 2022 *Sustainability* 13-14;

⁷¹⁹ Chiswick "Business case for CSR" 241; Kloppers *Improving Land Reform through CSR* 173; Tembo *Developing a CSR Framework* 36; Barnett 2019 *Business and Society* 178; Barnett 2019 *Business in Society* 170-187; Peifer and Newman 2020 *Business and Society Review* 161-181; Allui and Pinto 2022 *Sustainability* 12.

⁷²⁰ Chiswick "Business case for CSR" 241; Kloppers *Improving Land Reform through CSR* 173; Tembo *Developing a CSR Framework* 36; Barnett 2019 *Business and Society* 179, 190; Kaplan 2020 *Academy of Management Discoveries* 2; Allui and Pinto 2022 *Sustainability* 12.

⁷²¹ Chiswick "Business case for CSR" 241; Kloppers *Improving Land Reform through CSR* 179-180; Tembo *Developing a CSR Framework* 36; Allui and Pinto 2022 *Sustainability* 12-14; Ndemena and Qutieshat 2022 *Austin Journal of Business Administration and Management* 2-7.

⁷²² Carroll and Shabana 2010 *International Journal of Management Reviews*; Schreck 2011 *Journal of Business Ethics* 167-188; Chiswick "Business case for CSR" 241; Kloppers *Improving Land Reform through CSR* 177, 180; Maphosa F "Corporate Social Responsibility and Strategic Business Planning in Botswana" 31-75; Tembo *Developing a CSR Framework* 36.

3.3.2.1 Image, reputation and legitimacy

The definition of legitimacy encapsulates the essence of this benefit. Legitimacy is a "generalised perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions."⁷²³

The stakeholders' perceptions of whether a company acts in a socially responsible way, such as the impact the company's operations have on the environment, will either positively or negatively influence the company's image or reputation.⁷²⁴ Kloppers⁷²⁵ reasoned that a company that took deliberate steps to limit its carbon footprint, for example, would not necessarily notice over a short period a considerable improvement in the stakeholders' perception of it. However, when a company acts, according to the stakeholders, in a socially irresponsible way, the impact and the loss of reputation and legitimacy will be experienced very quickly, primarily through consumer boycotts resulting in a drop in sales/the financial bottom line, and for example also through investors selling their shares.⁷²⁶

An excellent example of how public pressure can influence changes in an industry is the 2010 Deepwater Horizon oil platform explosion. This explosion had catastrophic consequences, leading to the platform's sinking and oil spilling into the sea. Unfortunately, before the well was shut off "approximately 4.9 million barrels of oil had already spilt into the ocean, making this the worst accidental oil spill of all time."⁷²⁷ McGuire, Holtmaat and Prakash⁷²⁸ reported reputational damage resulting in a decline of about 50 per cent, which persisted to the end of 2017. BP's share price declined 13.3 per cent over six months but recovered quite quickly (in total a decline of one point three per cent in the first two days after the disaster).⁷²⁹ This is

⁷²³ The original source could not be located. See Carroll and Shabana 2010 *International Journal of Management Review* 99.

⁷²⁴ Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 178.

⁷²⁵ Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 178.

⁷²⁶ Kloppers *Improving Land Reform through CSR* 173-174

⁷²⁷ Hall-Smith IG <https://www.ig.com/za/news-and-trade-ideas/top-10-biggest-corporate-scandals-and-how-they-affected-share-pr-181101>; Also refer to McGuire, Holtmaat and Prakash 2022 *PLoS ONE* 2.

⁷²⁸ McGuire, Holtmaat and Prakash 2022 *PLoS ONE* 1.

⁷²⁹ McGuire, Holtmaat and Prakash used the "synthetic control method" to conduct their empirical study. The study compared BP's reputation before and after the disaster from 2007 to 2017. See McGuire, Holtmaat and Prakash 2022 *PLoS ONE* 1, 3-5, 8-11, 17.

perhaps an indication that shareholders care more about profit (share value) than reputation.⁷³⁰

D'Augusta, Francesco, and Imperatore⁷³¹ found that shareholders, in general, became more aware, after the Deepwater Horizon disaster, of the environmental threats companies' actions may hold. They also found that shareholders channel their disapproval and activism against company attitudes and actions through proposals⁷³² for consideration at Annual General Meetings. These proposals will urge (and can even put pressure on) management to address practices that pose environmental threats that may lead to ecological disasters and can influence the company's operations.⁷³³ Kloppers⁷³⁴ also indicated that a company's negative reputation amongst shareholders or potential shareholders may affect future shareholder investment.⁷³⁵

To conclude, a company's reputation and image are influenced by its attitude and actions related to CSR. Companies can leverage CSR initiatives to effectively convey their credentials, enhancing brand value and bolstering reputation by shaping the company's perception as a responsible citizen. Safeguarding this reputation is crucial, especially as prospective investors increasingly scrutinise organisations based on financial achievements and their commitments to environmental and social causes.⁷³⁶ Tembo⁷³⁷ confirms that CSR aimed at uplifting the local community might improve the reputation of the company, with the added benefits of increased sales, lowered costs and risks, enhanced human resources/a workforce which is more content, and improved access to capital.

The danger lies in the possibility that a company may use CSR only as a marketing tool to improve its corporate image and reputation. If this is the case, the CSR

⁷³⁰ See McGuire, Holtmaat and Prakash 2022 *PLoS ONE* 1, 17-18.

⁷³¹ D'Augusta, Francesco and Imperatore 2024 *Corporate Governance* 1, 12.

⁷³² "Shareholder proposals are the de-facto system to expose critical issues regarding many topics publicly. They cover four broad areas: corporate governance, executive compensation, social policy and voting rules." (D'Augusta, Francesco and Imperatore 2024 *Corporate Governance* 5).

⁷³³ D'Augusta, Francesco and Imperatore 2024 *Corporate Governance* 12.

⁷³⁴ Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 187.

⁷³⁵ For industry reaction to this disaster (or rather the lack thereof), refer to McGuire, Holtmaat, and Prakash, 2022, *PLoS ONE* 1, 17-18.

⁷³⁶ Chiswick "Business case for CSR" 241.

⁷³⁷ Tembo *Developing a CSR Framework* 36.

initiatives "will in all likelihood not contribute to the development of the community."⁷³⁸

3.3.2.2 Public trust

The stakeholder's trust in a company is an added 'benefit' closely linked with the benefits of image, reputation, and legitimacy and employee relation and retention. The stakeholder theory forms a definite cornerstone of the discussion to follow.⁷³⁹

An elementary principle underlying a business case for society posits that stakeholders place greater trust in companies that actively participate in philanthropic endeavours, preferring them as 'exchange partners'. For example, by donating goods and services to local food pantries the company might enhance its relationship with its employees and other related stakeholders, such as the community in which it operates, and local PBOs.⁷⁴⁰ If the company makes such donations, employees may perceive it as more trustworthy and consequently as a more appealing workplace.⁷⁴¹ This increased trust and positive perception often lead to greater employee loyalty, which will be discussed in more detail in the following paragraph. If the benefits of enhanced employee loyalty and stakeholder trust outweigh the costs of the donations, the company stands to gain from its endeavours to support the local community. In essence, a business rationale exists for such initiatives.⁷⁴²

Regarding the business case for CSR, one suggested approach to reducing the costs associated with social and environmental initiatives is to build "trusting relationships

⁷³⁸ Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 178; Peifer and Newman 2020 *Business and Society Review* 176.

⁷³⁹ Oikonomou, Pastra and Visvikis "A Financial Business Case for Corporate Social Responsibility" 223.

⁷⁴⁰ Barnett 2019 *Business in Society* 176.

⁷⁴¹ Barnett 2019 *Business in Society* 176.

⁷⁴² Barnett 2019 *Business in Society* 176.

with key stakeholders",⁷⁴³ thus acting responsibly. Tembo⁷⁴⁴ believes that CSR enables companies to address the needs of their key stakeholders, foster a business environment devoid of conflicts with stakeholders, promote equitable wealth distribution within communities, uphold ethical business practices and enhance competitiveness in the market. Barnett,⁷⁴⁵ on the other hand, believes that the interests of the company and society at large do not always coincide and often may be in conflict. The use of the business case for CSR to address social issues is therefore in question.

As discussed above (regarding the BP Deepwater Horizon disaster), the inverse will also be true. Thus, if the company acts in a socially irresponsible manner, the public is likely to develop distrust in it.⁷⁴⁶

Peifer and Newman⁷⁴⁷ conducted a study that "articulates business case justification" for CSR by determining how stakeholders⁷⁴⁸ evaluate companies. They found that where a company justifies its involvement in CSR activities using the business case for CSR, "employees' perception of benevolence trustworthiness decreased."⁷⁴⁹ The reason for the negative effect on employees relates to their vulnerability, especially considering the "substantial harm" the employing company may cause. Furthermore, the employees are dependent on their monthly income for their livelihood.⁷⁵⁰ For the apparent reason that shareholders want to see the company

⁷⁴³ Peifer and Newman 2020 *Business and Society Review* 163. Also refer to Oikonomou, Pastra and Visvikis "A Financial Business Case for Corporate Social Responsibility" 223. Key or primary stakeholders can be defined as stakeholders who can directly influence the company; "those without whose support the firm would cease to exist". These primary stakeholders include, amongst other employees, customers who actually evaluate whether or not the company is producing "safer and higher quality goods". (Peifer and Newman 2020 *Business and Society Review* 174).

⁷⁴⁴ Tembo *Developing a CSR Framework* 36. Also refer to Oikonomou, Pastra and Visvikis "A Financial Business Case for Corporate Social Responsibility" 223.

⁷⁴⁵ Barnett 2019 *Business and Society* 174.

⁷⁴⁶ Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 178; also refer to Barnett 2019 *Business in Society* 177.

⁷⁴⁷ Peifer and Newman 2020 *Business and Society Review* 161-181.

⁷⁴⁸ Peifer and Newman divided the stakeholders into three groups, namely those who can directly influence the company (the primary stakeholders), those who can only indirectly influence the company (the secondary stakeholders) and then those who lack power and influence in total (the non-stakeholders). See Peifer and Newman 2020 *Business and Society Review* 173-174. It should, however, be noted that the companies included in the sample were all United States of America registered companies.

⁷⁴⁹ Peifer and Newman 2020 *Business and Society Review* 176.

⁷⁵⁰ Peifer and Newman 2020 *Business and Society Review* 173.

make a profit, it was found that investors' trust in the company increased in cases where the engagement in CSR activities was justified using the business case.⁷⁵¹

Barnett⁷⁵² indicates that if the company wants to move beyond a possible situation of distrust, it will have to prove, especially to the primary/key stakeholders, that it not only acts in self-interest but also considers other factors. He suggests that a company can overcome this problem through better communication regarding CSR activities.⁷⁵³

3.3.2.3 Employee relations and retention

Many now acknowledge that a company's capacity to draw, inspire and retain a workforce with the necessary knowledge and skills is crucial for its long-term sustainability. Being socially responsible enhances reputation and positively impacts employee motivation and loyalty, retention and recruitment. This argument is based on the belief that employees are more motivated to work for socially responsible businesses.⁷⁵⁴ Similarly, potential employees are attracted to such businesses, and CSR activities influence their perception of the company.⁷⁵⁵

There is a growing expectation that corporations will offer a high-quality environment reflective of a dynamic workplace, resonating with the aspirations of a new generation of top-tier employees.⁷⁵⁶ Employees can in turn urge their employers (and hold them accountable) to adopt greater social responsibility and refrain from environmental harm. This gives them some leverage against their employers.⁷⁵⁷

3.3.2.4 Competitive advantage

In Paragraph 3.2.3 it was illustrated that the application of the VRIO framework (of the resource-based theory) could result in creating a competitive advantage for the

⁷⁵¹ Peifer and Newman 2020 *Business and Society Review* 176.

⁷⁵² Barnett 2019 *Business in Society* 176; Also refer to Jensen 2010 *Journal of Applied Corporate Finance* 38.

⁷⁵³ Barnett 2019 *Business in Society* 183.

⁷⁵⁴ Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 179.

⁷⁵⁵ Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 179, 190.

⁷⁵⁶ Chiswick "Business case for CSR" 241-242.

⁷⁵⁷ Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 179, 190.

company. The company can create a competitive advantage by using unique resources, intangible assets (not easily accessible or duplicated competitors) or "characteristics, or capabilities that are difficult to duplicate or outperform and provide a better or ideal long-term position over competitors."⁷⁵⁸

The TBL theory was discussed in Paragraph 3.2.5. It was concluded that the TBL promoted a holistic outlook, urging companies to contemplate the lasting consequences of their endeavours. Embracing a more expansive notion of achievement enables firms to forge robust business strategies leading to long-term advantages.

In this paragraph the term 'competitive advantage' will be considered in the "context of a differentiation strategy".⁷⁵⁹ Concerning the business case for CSR, a company will use CSR to distinguish itself from its competitors, improving its competitiveness.⁷⁶⁰

The following is a broad explanation of the competitive advantage concept. Competitive advantage often comes in the form of brand recognition by potential customers, leading to the company's becoming those customers' first choice.⁷⁶¹ As was previously indicated, companies will often concentrate on primary/key stakeholders, treating them with special care, to "maximise the long-term market value"⁷⁶² and create a competitive advantage. Chiswick⁷⁶³ observes that potential investors are increasingly consulting sustainability indexes such as the FTSE4Good index and, in the South African context, the FTSE/JSE Responsible Investment Index.⁷⁶⁴ These indexes offer prospective investors a summary of the company's performance regarding environmental and social standards.

⁷⁵⁸ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration Management* 2-3.

⁷⁵⁹ Carroll and Shabana 2010 *International Journal of Management Review* 97-98.

⁷⁶⁰ Carroll and Shabana 2010 *International Journal of Management Review* 97-98; The conclusion of this paragraph (Paragraph 3.3.2.4) will reflect in brief the data of how companies perceive these advantages stemming from their CSI involvement, as discussed in detail in Paragraph 3.4.3.

⁷⁶¹ Refer to Paragraph 3.3.2.1 above.

⁷⁶² Refer to Paragraph 3.3.2.2 above; Oikonomou, Pastra and Visvikis "A Financial Business Case for Corporate Social Responsibility" 223.

⁷⁶³ Chiswick "Business case for CSR" 241.

⁷⁶⁴ JSE 2015 <https://www.jse.co.za/services/indices/ftsejse-responsible-investment-index>.

Ndemena and Qutieshat⁷⁶⁵ investigated whether or not a company's CSR policies and activities could create any competitive advantage. As the second objective of their study, they determine "measurable variables that link CSR and competitive advantage across all industries."⁷⁶⁶ They find that a company's response to CSR-related regulations is becoming increasingly important in obtaining and maintaining a global competitive advantage⁷⁶⁷ and obviously to avoid paying penalties. CSR programmes relating to "legal, innovation, technology, and branding" provide a new dimension to CSR and will improve a company's position in a competitive market.⁷⁶⁸

It was noted that governments are making previously voluntary CSR activities mandatory through CSR-related legislation.⁷⁶⁹

Ndemena and Qutieshat⁷⁷⁰ indicate that the three most dominant variables connecting CSR with a competitive advantage in the last decade (in descending order of importance) are: (i) the reporting on and disclosure of CSR policies and programmes, (ii) legal compliance, and (iii) minimising environmental impact.

Ndemena and Qutieshat⁷⁷¹ also note the importance of focusing on how people can be essential to the company's success. Firstly, the company should focus on improving its relationship with the community, of whom many members may be customers. This can be done by addressing some of the local community's problems

⁷⁶⁵ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration Management* 1.

⁷⁶⁶ They acknowledged that "each company operates in a specific and unique environment, comparing each industry's competitive landscape with its most pressing social and environmental issues and identifying CSR issues that address these issues while enhancing the sector's ability to compete is of paramount importance". (Ndemena and Qutieshat 2022 *Austin Journal of Business Administration Management* 1, 3).

⁷⁶⁷ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration Management* 1, 3.

⁷⁶⁸ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration Management* 2, 4, 6.

⁷⁶⁹ See Paragraph 2.1.2. Many JSE-listed companies pursue CSI practices prescribed in the *B-BBEE* legislation and the related Code. While drafting the definition of CSI (refer to Paragraph 2.3.3) it was clear that this legislation cannot be ignored with a frequency count of 23. The *B-BBEE* legislation and related Code are included under The Integrated Sustainable CSR Model's broader 'Legal' element. (Refer to Paragraph 2.4.2.2.). Also refer to Kloppers *Improving Land Reform through CSR* 173; Barnett 2019 *Business and Society* 181. Kloppers linked this with an actual 'licence to operate'. "Within the South African context and with specific reference to black economic empowerment, if a business does not sufficiently contribute to transformation and consequently scores low on the BEE scorecard, such a business would be excluded from conducting business with the public sector."

⁷⁷⁰ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration Management* 3, 4.

⁷⁷¹ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration Management* 3. Refer to Chiswick "Business case for CSR" 242-243 for more benefits relating to "innovation". Most of these benefits are discussed in Paragraph 3.3.2.1 to 3.3.2.5.

and engaging in philanthropic donations and activities to benefit the less fortunate. Addressing environmental issues will improve the host community's health and build trust.⁷⁷² Enhancing a company's brand is most effectively achieved through fostering stakeholder relationships, promoting mutual understanding and cooperation between the company and stakeholders, and upholding moral values and accountability while demonstrating loyalty and honesty to investors and customers.⁷⁷³ In addition to the previously mentioned dimensions, it was found that strategically planned CSR programmes,⁷⁷⁴ which involve social and environmental factors, will also play an essential role because of the impact the implementation hereof will have on brand consciousness and the trust of stakeholders.⁷⁷⁵

In conclusion, consumers and shareholders place more value on CSR endeavours amidst heightened competition. Engaging in CSR initiatives can offer a company long-lasting competitive advantages by strengthening its differentiation strategy, building public trust and enhancing its brand and reputation.⁷⁷⁶

3.3.2.5 Financial benefits

In the last decade it has become more important for a company to perform competitively. In this environment it is clear that 'performance' can have different meanings. Firm performance is a comprehensive term, one that is for obvious reasons essential for the company's management teams as well as its stakeholders.⁷⁷⁷ One should first distinguish between the terms when considering the factors influencing a company's financial bottom line. A clear distinction should be established between the 'economic bottom line' (or performance) and the

⁷⁷² Ndemena and Qutieshat 2022 *Austin Journal of Business Administration Management* 3.

⁷⁷³ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration Management* 6. The link between the business case for CSR and the stakeholder theory is encapsulated in this statement.

⁷⁷⁴ Porter and Kramer explained that strategic CSR is a strategy which "goes beyond best practices" and whereby the company choose to take up a unique position. This will entail that the company will do "things differently from competitors" with the result of lowering operational costs and better serving the specific needs of its customers. In cases where the company "build[s] focused, proactive, and integrated social initiatives" and aligns them with the core business, it will increasingly enlarge its competitive advantage. See Porter and Kramer 2006 *Harvard Business Review* 85, 89, 92.

⁷⁷⁵ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration Management* 6.

⁷⁷⁶ Ndemena and Qutieshat 2022 *Austin Journal of Business Administration Management* 6.

⁷⁷⁷ Cultrera and Vermeylen 2017 *Expert Journal of Economics* 53.

'financial bottom line' (or performance), primarily because of the connection with stakeholders through CSR practices.

No single definition exists for the term 'firm performance'. In an economic sense, performance

represents the potential, the capacity of a worker or a firm to achieve a goal, which involves a concept of measurement. Performance is therefore an indicator of success of a firm, a team, a manager, a worker, and may be evaluated in a competitive framework.⁷⁷⁸

None of the researchers referred to in the paragraph define the term economic bottom line/performance. These researchers mainly discuss the financial bottom line as a benefit of the business case for CSR. Ginsberg and Reddy⁷⁷⁹ report that these terms are often regarded as synonyms.

Very little has been written on the economic bottom-line benefit of the business case for CSR.⁷⁸⁰ It can be asserted that economic performance, or the economic bottom line, will relate more to a company's CSR actions regarding the people and planet elements of the TBL theory⁷⁸¹ but should consider economic impact too.⁷⁸² These considerations are regarded as externalities which can be quantified, expressed as a "social cost and are therefore adding or subtracting value from the corporate entity's contribution to the economy."⁷⁸³ This approach acknowledges that profitability is just a part of the economic equation, recognising that economic considerations surpass the boundaries of a single organisation and are closely connected with "environmental and social elements of sustainability".⁷⁸⁴

⁷⁷⁸ Cultrera and Vermeylen 2017 *Expert Journal of Economics* 53. For more information regarding the measurement and the factors influencing performance, the reader is referred to Cultrera and Vermeylen 2017 *Expert Journal of Economics* 53-56.

⁷⁷⁹ Ginsberg and Reddy "Getting to the Bottom of the Economic Bottom Line: Exposing the Quantification Issues, Current Attitude and Potential Gains to Using the Economic Bottom Line" (Abbreviated as "Getting to the Bottom of the Economic Bottom Line") 67.

⁷⁸⁰ Ginsberg and Reddy "Getting to the Bottom of the Economic Bottom Line" 66.

⁷⁸¹ Porter and Kramer *Harvard Business Review* (2006) 81.

⁷⁸² According to Ginsberg and Reddy, economics "relates to how society uses resources to promote human wellbeing". Economics is much more than a company's profit and is linked to "environmental, social and economic sustainability". (Ginsberg and Reddy "Getting to the Bottom of the Economic Bottom Line" 69).

⁷⁸³ Ginsberg and Reddy "Getting to the Bottom of the Economic Bottom Line" 86.

⁷⁸⁴ Ginsberg and Reddy "Getting to the Bottom of the Economic Bottom Line" 66.

It was previously indicated that the financial benefit is intricately tied with 'image and reputation'⁷⁸⁵ and the 'competitive advantage'.⁷⁸⁶ Where management practices include sustainability, an increase in brand reputation and stakeholder satisfaction is seen, and the company can expect a positive impact on its financial bottom line.⁷⁸⁷

Regarding the benefit of employee relations and retention discussed above,⁷⁸⁸ Barnett⁷⁸⁹ establishes

a positive relationship between return on assets and the level of support the firm provides its employees.⁷⁹⁰

Another (financial) benefit closely related to the benefits already discussed is the 'licence to operate' benefit, being the ability of the company to do business, in turn influencing the financial bottom line.⁷⁹¹ For a company to be allowed to do business, it may require explicit permission from local and national governments, amongst other such bodies, in terms of the applicable rules and regulations. A tacit agreement also exists between the company and other stakeholders, including the host community. When society revokes its approval for operation, a business will see its reputation, employee retention and revenues decline accordingly, directly influencing the financial bottom line.⁷⁹²

⁷⁸⁵ Paragraph 3.3.2.1.

⁷⁸⁶ Paragraph 3.3.2.4; Chiswick "Business case for CSR" 241; also refer to Kloppers *Improving Land Reform through CSR* 177, 180.

⁷⁸⁷ Rieschick *Corporate Social Responsibility and Corporate Financial Performance in the Food and Beverage Industry* 62. Kausch stresses that managers should take environmental and social aspects seriously and realise that these aspects can influence the bottom line. Unfortunately, many managers still regard the integration of CSR into the business strategy as an add-on or an annoyance. See Kausch *Attitudes Towards Corporate Sustainability* 15; also refer to Cheruiyot-Koech and Reddy 2022 *Sustainability* 87; Kloppers *Improving Land Reform through CSR* 179-180; Chiswick "Business case for CSR" 241. Societal ideals, legislation and values must evolve and exert influence on economic operation in order to instil a long-term perspective on corporate responsibility and sustainability. Corporate entities are inclined to align with shareholder interests. Thus if shareholders prioritise sustainability, it logically follows that corporations will also prioritise it. Consequently, we anticipate the development of an economic framework where accountability principles extend beyond financial metrics to encompass broader economic impacts. See Ginsberg and Reddy "Getting to the Bottom of the Economic Bottom Line" 87.

⁷⁸⁸ Paragraph 3.3.2.3.

⁷⁸⁹ Barnett 2019 *Business and Society* 174.

⁷⁹⁰ Return on assets "is defined as net income divided by total assets". See Barnett and Salomon 2012 *Strategic Management Journal* 1308.

⁷⁹¹ Kloppers *Improving Land Reform through CSR* 180.

⁷⁹² Kloppers *Improving Land Reform through CSR* 180.

Many empirical studies have been conducted over the last three decades⁷⁹³ to determine the connection between the business case for CSR, corporate social performance (CSP)⁷⁹⁴ and corporate financial performance (CFP).⁷⁹⁵ Unfortunately, if the comments of researchers⁷⁹⁶ and the quantitative results of their studies are considered, it can be deduced that there is no conclusive evidence yet that a company's financial and or economic bottom line will be positively influenced by its CSR initiatives (social and environmental). Some researchers advocate that the business case suggests a positive correlation between social benefits and private profits.⁷⁹⁷ Kloppers⁷⁹⁸ elaborates on this statement and indicates that returns on investment, assets and sales should see positive growth when a company applies the business case for CSR. Researchers such as Carroll and Shabana⁷⁹⁹ believe the market will economically and financially reward companies that engage in CSR. In a more recent study (2015) Ginsberg and Reddy⁸⁰⁰ found (amongst other findings)

⁷⁹³ Schreck 2011 *Journal of Business Ethics* 168; Barnett and Salomon 2012 *Strategic Management Journal* 1304; also refer to Oikonomou, Pastra and Visvikis "A Financial Business Case for Corporate Social Responsibility" 225.

⁷⁹⁴ "There is no universally accepted definition of corporate social performance (CSP). Some scholars believe that CSP is an outcome of activities related to corporate social responsibility (CSR) (Waddock and Graves 1997), while others argue that CSP is a set of structural categories, which include the principles of social responsibility, the processes of social responsiveness, and the outcomes and impacts on performance (Wood 1991)." (Wang and Gao "Corporate Social Performance Management" 577); "CSP is a measure of a corporation's CSR initiatives. No single measure of CSR exists, but initiatives are compared with competitors and measured by indirect means." (See Rieschick *Corporate Social Responsibility and Corporate Financial Performance in the Food and Beverage Industry* 8).

⁷⁹⁵ CFP is, for example, "profits, and return on investment". (Oikonomou, Pastra and Visvikis "A Financial Business Case for Corporate Social Responsibility" 228); "CFP is the measure of a firm's financial performance by accounting-based ratios such as net earnings or stock price." (Rieschick G *Corporate Social Responsibility and Corporate Financial Performance in the Food and Beverage Industry* 8).

⁷⁹⁶ For example: Kausch *Attitudes towards Corporate Sustainability* 12-13; Rieschick *Corporate Social Responsibility and Corporate Financial Performance in the Food and Beverage Industry* 2-3, 62-66; Barnett and Salomon 2012 *Strategic Management Journal* 1304; Kloppers *Improving Land Reform through CSR* 179-180; Ginsberg and Reddy "Getting to the Bottom of the Economic Bottom Line" 87; Reszka *Corporate Sustainability Practices in the Financial Sector: Multiple Case Study* 38, 40, 83.

⁷⁹⁷ Schreck 2011 *Journal of Business Ethics* 168.

⁷⁹⁸ Kloppers *Improving Land Reform through CSR* 179-180; Kloppers referred to "Ford: The high cost of harassment" 1999 (November) *Business Week* 94-96. For a negative view refer to Barnett 2019 *Business and Society* 174 (as discussed above).

⁷⁹⁹ Carroll and Shabana 2010 *International Journal of Management Review* 102; also refer to Kloppers *Improving Land Reform through CSR* 173.

⁸⁰⁰ Ginsberg and Reddy "Getting to the Bottom of the Economic Bottom Line" 87.

that there is a "plausible association between corporate entities that show more awareness of externality incorporation and greater financial returns."⁸⁰¹

Chiswick,⁸⁰² who conducted another study, acknowledges the fact that it is not always obvious what financial benefits could be expected from investing in CSR, but he includes the following, amongst others: (i) a reduction of operational cost,⁸⁰³ and (ii) access to other capital resources.⁸⁰⁴

In a previous study Barnett⁸⁰⁵ hypothesises that as a company engages in socially responsible practices, it will gain the ability to influence stakeholders' perceptions. Then in 2012 Barnett and Salomon⁸⁰⁶ expanded their research to consider "how well firms [that] capitalise [on] their social responsibility efforts" will do financially. They reported that some companies would see a positive association between corporate social performance and CFP and others just the opposite. Barnett and Salomon⁸⁰⁷ believed that over time companies will yield benefits that outweigh the associated cost of social responsibility. For managers, this implies that improving financial performance through social investments requires a sustained commitment to enhancing stakeholder influence capacity over time.⁸⁰⁸

Consequently, relying solely on immediate financial returns to justify social investments will likely lead to disappointment. Instead, firms should recognise that returns may initially be intangible, manifesting as increased levels of SIC, with financial gains following later. Abruptly discontinuing socially responsible practices due to a lack of immediate financial returns risks forfeiting potential SIC growth.

⁸⁰¹ Ginsberg and Reddy "Getting to the Bottom of the Economic Bottom Line" 87.

⁸⁰² Chiswick "Business case for CSR" 241. It should be noted that this study was conducted in 2013.

⁸⁰³ Improving operational efficiency through decreased energy and material consumption can yield tangible financial benefits for businesses. Emphasising eco-efficiency, particularly in practices like recycling waste, fosters environmental sustainability and generates economic value. See Chiswick "Business case for CSR" 241.

⁸⁰⁴ A company that is involved in the communities (in which its operations are done) through CSR activities and has a good record regarding key CSR areas might be able to attract more capital investment. See Chiswick "Business case for CSR" 241.

⁸⁰⁵ Barnett and Salomon 2012 *Strategic Management Journal* 1304; SIC is "the ability of a firm to identify, act on and profit from the opportunity to improve stakeholder relationships through CSR". (Karaye, Ishak and Che-Adam "The Mediating Effect of Stakeholder Influence Capacity on the Relationship Between Corporate Social Responsibility and Corporate Financial Performance." 529).

⁸⁰⁶ Barnett and Salomon 2012 *Strategic Management Journal* 1304.

⁸⁰⁷ Barnett and Salomon 2012 *Strategic Management Journal* 1304.

⁸⁰⁸ Barnett and Salomon 2012 *Strategic Management Journal* 1304-1310.

They should continually seek to enhance their understanding of how a firm's socially responsible (or irresponsible) actions affect its stakeholder relationships. Ultimately, SIC facilitates the conversion of social responsibility into profits, underscoring the importance of nurturing and leveraging these relationships over time.⁸⁰⁹

In a later study Barnett⁸¹⁰ critiqued the general belief that the company would benefit from its selfless acts to society through CSR. He believes that a company will only indirectly benefit financially from its CSR actions to improve society. Conversely, Barnett⁸¹¹ found that the company's CSR efforts aimed at protecting the natural environment and supporting society did not yield equivalent returns in terms of return on assets. The determining factor will be whether or not the relationship with the primary stakeholders was positively influenced.⁸¹²

There are alternatives which can lead to either a reduction in cost or an increase in financial returns. Barnett⁸¹³ gives the following example: A decrease in the waste generated during the manufacturing process may "directly improve its financial returns through savings on material costs and waste disposal."

The following paragraphs will discuss the business case for CSR and the benefits (investigated above) considering the South African context.

3.3.3 Business case for CSR in South Africa

The business case for CSR and the unique South African environment, especially regarding the *B-BBEE* legislation, will be discussed on the basis of the findings of five studies. The findings are discussed in order of publication date and not necessarily in order of importance.

Machine⁸¹⁴ uses the example of Ford Motor Company, which encountered much resistance from shareholders when in 1919 Henry Ford suggested that the profits be re-invested in the business and directly in the community because the idea was

⁸⁰⁹ Barnett and Salomon 2012 *Strategic Management Journal* 1316-1318.

⁸¹⁰ Barnett 2019 *Business and Society* 167.

⁸¹¹ Barnett 2019 *Business and Society* 174.

⁸¹² Barnett 2019 *Business and Society* 181; also refer to Paragraph 3.3.2.2 and the related discussion concerning 'primary stakeholders'.

⁸¹³ Barnett 2019 *Business and Society* 181-182.

⁸¹⁴ Machine *The business case for corporate social responsibility (CSR) is good business: A comparative analysis of CSR practices in the South African and Australian banking sectors.*

that the company should do as much as possible to benefit 'everybody'. Many years later, when his grandson tried to convince stakeholders, including the company's shareholders, of the importance of the company serving society, much more favourable reactions were observed from all stakeholders, including the shareholders. What changed was the shareholders' attitude and perception regarding CSR and the understanding of the relationship between CSR and the financial bottom line.⁸¹⁵ The crux of the matter is that shareholders' buy-in is crucial to the success of the business case for CSR.

Van Heerden and De Beer⁸¹⁶ investigated the potential correlation between consumer perceptions and attitudes towards the CSR initiatives of a corporate sponsor and how it influences the consumer perception of the corporate image and brand.⁸¹⁷ Coca-Cola South Africa is involved in the communities in which it operates through the provision of initiatives which promote an active lifestyle and socio-economic upliftment programmes. They also have a foundation managing the funds to better health care, education, and the environment, as well as programmes encouraging entrepreneurship. Considering the results presented in Table 3-1 below, it is consequently deduced that although a company's CSR involvement in society may positively influence its reputation and consumers' attitude towards the company, it might not significantly impact on consumer purchase behaviour and might not have that big impact on its financial bottom line.

Littlewood and Holt⁸¹⁸ specifically concentrated on the *B-BBEE* benefits directly related to the CSR business case. The benefits of adhering to the *B-BBEE* legislation and related *B-BBEE* Code, and per implication, adhering to the CSI requirements embedded in the *B-BBEE* Code and scorecard.⁸¹⁹ Their findings are presented in Table 3-1 below.

⁸¹⁵ Machine *The Business Case for Corporate Social Responsibility (CSR) is Good Business: A Comparative Analysis of CSR Practices in The South African and Australian Banking Sectors* 4.

⁸¹⁶ The article which will be discussed is a summary of the findings of a Master's degree study conducted by Van Heerden (Van Heerden *Corporate Social Responsibility: A Consumer Survey at the National Zoological Gardens of South Africa*); Van Heerden and De Beer 2016 *Communitas* 145-164.

⁸¹⁷ Van Heerden and De Beer 2016 *Communitas* 145.

⁸¹⁸ Littlewood and Holt 2018 *Business & Society* 542.

⁸¹⁹ Littlewood and Holt 2018 *Business & Society* 542.

Koech and Coldwell's⁸²⁰ research is very similar to that of Van Heerden and De Beer because of the focus of their research. They used a mixed-method methodology to determine "whether the perception of CSR plays a role in the purchasing decisions of South African university students." It should be noted that only students with knowledge and a good understanding of CSR were included in the study, which was conducted by way of a survey as well as interviews.⁸²¹ Their research used Carroll's four CSR elements, economic, legal, ethical, and philanthropic, as dependent variables. Their findings are presented in Table 3-1 below. Consequently, although the company's CSP did not necessarily prompt the students to change their purchasing behaviour, the opposite might be true for the adult consumer with more purchasing power. Big companies cannot disregard the stakeholders' expectations and the importance of their regard for the company's social performance.

In 2019 Ndlovu⁸²² studied companies listed on the FTSE/JSE Responsible Investment Index. The objective was to find conclusive evidence regarding the relationship between and impact of CSR on the CFP of these listed companies. Ndlovu's findings are summarised in Table 3-1 below.

⁸²⁰ Koech and Coldwell 2019 *South African Journal of Business Management* 1.

⁸²¹ Koech and Coldwell 2019 *South African Journal of Business Management* 5. For further information on how the specific population for the study was chosen, please refer to page 5.

⁸²² Ndlovu *The Impact of Corporate Social Responsibility on the Financial Performance of South African Companies* 6-7.

The results are summarised in the following table:

Table 3-1: Summary of research findings — Business case for CSR in South Africa

Author(s)	Focus/Study Area	Key Findings	Implications/Insights
Machine	Shareholder attitudes and CSR in business. ⁸²³	(i) Resistance from Ford shareholders initially; later acceptance. ⁸²⁴ (ii) In South Africa's banking sector - to gain a competitive advantage through, ethical behaviours, compliance with law, and well-motivated CSR practices expected by clients. ⁸²⁵ (iii) Shareholder buy-in is crucial for CSR success.	(i) Ethical conduct and CSR improve financial (CFP) and social gains (CSP). (ii) Shareholder attitudes are pivotal to CSR effectiveness. ⁸²⁶

⁸²³ Machine *The Business Case for Corporate Social Responsibility (CSR) is Good Business: A Comparative Analysis of CSR Practices in The South African and Australian Banking Sectors*.

⁸²⁴ Machine *The Business Case for Corporate Social Responsibility (CSR) is Good Business: A Comparative Analysis of CSR Practices in The South African and Australian Banking Sectors* 4.

⁸²⁵ Machine *The Business Case for Corporate Social Responsibility (CSR) is Good Business: A Comparative Analysis of CSR Practices in The South African and Australian Banking Sectors* 4.

⁸²⁶ Machine *The Business Case for Corporate Social Responsibility (CSR) is Good Business: A Comparative Analysis of CSR Practices in The South African and Australian Banking Sectors* 78-79.

Author(s)	Focus/Study Area	Key Findings	Implications/Insights
Van Heerden and De Beer	Correlation between CSR perceptions and consumer attitudes, using Coca-Cola South Africa as a case study. ⁸²⁷	(i) A positive CSR reputation impacts on supplier relationships, media attention and trust. ⁸²⁸ (ii) CSR awareness improves consumer perception but has limited impact on purchase behaviour. ⁸²⁹ (iii) Business customers' view of CSR activities will have positive effect on the company's marketing efforts. ⁸³⁰	(i) CSR enhances reputation and brand loyalty. ⁸³¹ (ii) CSR significantly impacted the relationship "between the consumer's perception of Coca-Cola's CSR activities and the business use of Coca-Cola's products by the consumers". ⁸³² The good reputation of the company did not necessarily result in more sales.

⁸²⁷ The article which will be discussed is a summary of the findings of a Master's degree study conducted by Van Heerden (Van Heerden *Corporate Social Responsibility: A Consumer Survey at the National Zoological Gardens of South Africa*); Van Heerden and De Beer 2016 *Communitas* 145-164.

⁸²⁸ Van Heerden and De Beer 2016 *Communitas* 150.

⁸²⁹ Van Heerden and De Beer 2016 *Communitas* 156.

⁸³⁰ (Hypothesis 2) Van Heerden and De Beer 2016 *Communitas* 157.

⁸³¹ Van Heerden and De Beer 2016 *Communitas* 156.

⁸³² Van Heerden and De Beer 2016 *Communitas* 158-159.

Author(s)	Focus/Study Area	Key Findings	Implications/Insights
Littlewood and Holt	Benefits of adhering to <i>B-BBEE</i> legislation and CSR in South Africa. ⁸³³	(i) <i>B-BBEE</i> compliance enables government contracts and market opportunities. ⁸³⁴ (ii) Tax benefits for CSR-related expenses. ⁸³⁵ (iii) Banks prefer <i>B-BBEE</i> -compliant companies. ⁸³⁶ (iv) Emerging market opportunities tied to societal transformation. ⁸³⁷	(i) <i>B-BBEE</i> compliance is critical for socio-economic engagement and gaining market opportunities. A strong link exists between legislation and CSR adherence, regarding <i>B-BBEE</i> . ⁸³⁸
Koech and Coldwell	Impact of CSR perception on purchasing decisions of South African university students. ⁸³⁹	(i) Positive CSR perception does not necessarily translate to purchase behaviour. ⁸⁴⁰ (ii) Ethical CSR influences consumer choices, but not more than economic factors. ⁸⁴¹ Price, quality, and convenience overshadow CSR for students. ⁸⁴²	Ethical CSR matters to consumers but doesn't guarantee increased purchases. Companies must balance CSR and core consumer priorities.

⁸³³ Littlewood and Holt 2018 *Business & Society* 542.

⁸³⁴ Littlewood and Holt 2018 *Business & Society* 542.

⁸³⁵ Littlewood and Holt 2018 *Business & Society* 542; It should be noted that there is an ongoing debate of whether a company could benefit from the *B-BBEE* scorecard points and the s 18A *ITA(SA)* benefit. This will be discussed in more detail in the following Chapter 6.

⁸³⁶ Littlewood and Holt 2018 *Business & Society* 542.

⁸³⁷ Littlewood and Holt 2018 *Business & Society* 542.

⁸³⁸ Littlewood and Holt 2018 *Business & Society* 542.

⁸³⁹ Koech and Coldwell 2019 *South African Journal of Business Management* 1.

⁸⁴⁰ Koech and Coldwell 2019 *South African Journal of Business Management* 8-9.

⁸⁴¹ Koech and Coldwell 2019 *South African Journal of Business Management* 8-9.

⁸⁴² Koech and Coldwell 2019 *South African Journal of Business Management* 8-9.

Author(s)	Focus/Study Area	Key Findings	Implications/Insights
Ndlovu	Relationship between CSR (CSI) and financial performance (CFP) in South African listed companies. ⁸⁴³	(i) Investment of more financial resources in CSI, a positive impact in CFP will probably be seen. ⁸⁴⁴ (ii) Negative relationship between CSR investment and 'return on investment and return on equity'. ⁸⁴⁵ (iii) The perceived benefits will likely be more visible in developed countries, than in South Africa CSR practices align better with developed countries than developing economies like South Africa's. Thus CSR in developing economies might harm long-term growth. ⁸⁴⁶	(i) CSR investment may not directly improve financial performance in developing economies. ⁸⁴⁷ Context-specific CSR strategies are essential for effectiveness. ⁸⁴⁸

⁸⁴³ Ndlovu *The Impact of Corporate Social Responsibility on the Financial Performance of South African Companies* 6-7.

⁸⁴⁴ Ndlovu *The Impact of Corporate Social Responsibility on the Financial Performance of South African Companies* 61.

⁸⁴⁵ Some of the studies Ndlovu considered are quite old, and the current situation might be different.

⁸⁴⁶ Ndlovu *The Impact of Corporate Social Responsibility on the Financial Performance of South African Companies* 63-64.

⁸⁴⁷ Ndlovu *The Impact of Corporate Social Responsibility on the Financial Performance of South African Companies* 63-64.

⁸⁴⁸ Ndlovu *The Impact of Corporate Social Responsibility on the Financial Performance of South African Companies* 63-64.

3.3.4 Critique and conclusion

The business case for CSR remains controversial, with some researchers contesting that the perceived benefits do not positively impact on CFP.⁸⁴⁹ Machine⁸⁵⁰ stresses that a company can expect to observe an improvement in its CFP if it is known for its ethical conduct and if its shareholders are on board and support its CSR policies. Littlewood and Holt⁸⁵¹ as well as Ndlovu⁸⁵² emphasise that companies operating in South Africa cannot ignore the benefits the *B-BBEE* legislation and Code may hold financially, especially if the company would like to do business with the Government.

CSR involves the management of company relationships with various stakeholders who hold a real influence on their licence to operate.⁸⁵³ The stakeholder approach is thus the cornerstone of the business case for CSR. Ndlovu⁸⁵⁴ stresses that if a company considers founding its CSR policies on the business case for CSR to maximise stakeholder engagement and CFP, the unique economic and political environment of South Africa as a developing country cannot be ignored. The European Commission⁸⁵⁵ contends that it remains challenging for most SMEs to incorporate CSR into their daily business, arguing in favour of the business case for CSR.

Despite the negative picture drawn above, South African companies (as will be discussed in more detail in Paragraph 3.4.3.2) regard the possible benefits flowing from engaging in a business case for CSR as important enough to persuade them to pursue CSR activities.⁸⁵⁶

The previous paragraphs have concentrated on theoretical motivations for companies to implement CSR programmes and, through CSI, to get involved in their

⁸⁴⁹ Refer to the concluding remarks under Paragraph 3.3.2.

⁸⁵⁰ Refer to Paragraph 3.3.3, Table 3-1.

⁸⁵¹ Refer to Paragraph 3.3.3, Table 3-1

⁸⁵² Refer to Paragraph 3.3.3, Table 3-1.

⁸⁵³ Tyagi 2024 <https://askelsustainabilitysolutions.com/7-key-drivers-the-motivation-behind-stakeholder-engagement/#:~:text=Where%20corporate%20social%20responsibility%20is,cost%2C%20much%20like%20quality%20management.>

⁸⁵⁴ Ndlovu *The Impact of Corporate Social Responsibility on the Financial Performance of South African Companies* 63-64; Refer to Paragraph 3.3.3.

⁸⁵⁵ European Commission *Uptake of Corporate Social Responsibility (CSR) by European SMEs and start-ups* 1, 14.

⁸⁵⁶ Refer to Figure 3-10, Paragraph 3.4.3.2.

host communities and society at large. In the following paragraph the day-to-day grassroots reasons for South African companies to get involved through CSI will be investigated.

3.4 CSI involvement in South Africa: other factors to consider

Paragraphs 3.1, 3.2 and 3.3 discuss researchers' perceptions regarding the theoretical reasons for a company to invest in CSR. It was concluded that there are many contradictory views if only theoretical motivations are considered. It was deduced that the benefits for a company investing in CSR in a developing country such as South Africa will probably not outweigh the cost.

If that is the case, other factors should be considered to motivate South African companies to engage with society at large through CSI. These factors might include ethical considerations as discussed above, socio-economic circumstances, or significant economic challenges related to infrastructure, unemployment, poverty, and so much more.⁸⁵⁷ There are also the claims that the South African government can already be classified as a failed government, unable to provide the necessary services, etc. There is also much talk that our country is in a downward spiral towards becoming a failed state.⁸⁵⁸

These and other factors will be considered in the following sections.

3.4.1 The South African government, is it in trouble?

Mello and Louw⁸⁵⁹ regard the following "as core functions of the state":

- Provision of security: internal (crime) and external threats (invasion).
- Dispute resolution in independent courts and upholding the rule of law.

⁸⁵⁷ The relationship between (economic) growth and infrastructure (which can be divided between the economic and the social) is very important. (For definitions of each of these concepts, refer to Paragraph 2.2.1). Strangely the empirical results confirm the notion that a positive relationship exists between economic growth and economic infrastructure. Unfortunately, the same trend was not confirmed for social infrastructure. In fact Vukeya (page 151-152) finds that "social infrastructure exhibited a significant negative association with economic growth". He also indicates that Government spending (between 2010 and 2015) on 'economic infrastructure' was much higher than 'social infrastructure' spending, although it should be noted that this was always the case. See Figure 1.1 page 2 in Vukeya *The Impact of Infrastructure Investment on Economic Growth in South Africa* 1-3, 151-152; Ndinga-Kanga, Van der Merwe and Hartford 2020 *Journal of Intervention and Statebuilding* 25-26.

⁸⁵⁸ Mello and Louw 2023 *Politeia* 1; Ngcaweni 2023 *Digital Policy Studies* 51.

⁸⁵⁹ Mello and Louw 2023 *Politeia* 3.

- Provision of social services: education and health.
- Economic services: strong banking system and revenue collection.
- Infrastructure development and maintenance.
- Guarantee of universal franchise and human rights.

After 30 years of a new democratic dispensation the public sector is dysfunctional.⁸⁶⁰ In this paragraph, the South African government's performance regarding some of these functions will be discussed.⁸⁶¹ The objective is to determine whether the government is indeed supplying the basic services required of it.

Despite the significant progress made in certain areas since 1994, the citizens of South Africa still need to overcome many challenges.⁸⁶² Unemployment is one of the more critical challenges, impacting the lives of many South Africans daily. The official unemployment rate for the second quarter of 2024 was 33.5 per cent; therefore one out of three citizens in the country is unemployed, thus more or less 20.3 million people.⁸⁶³ This places South Africa in the unfortunate position of having the highest unemployment rate among the G20 countries.⁸⁶⁴ The unemployment rate of South African youth (between the ages of 15 and 34) is a staggering 45.5 per cent.⁸⁶⁵ South Africa favours a social welfare state, although it had "committed itself to [establishing] a 'development state'".⁸⁶⁶ 28.3 million of the 60.6 million people (thus 46.7%, almost half of the population) are dependent on government grants for their daily bread. Although VAT (which also contributes to the fiscus) is the second largest source of revenue for the government, the largest source is personal income tax.⁸⁶⁷ Only seven point one million taxpayers are therefore

⁸⁶⁰ Thusi, Matyana and Juli 2023 *Journal of Studies in Social Sciences and Humanities* 137.

⁸⁶¹ To access the annual reports of government departments performance refer to Parliamentary Monitoring Group <https://pmg.org.za/page/AnnualReports>; The U.S. Department of State *South Africa 2022 Human Rights Report* also provides valuable insight into human rights violations which were reported, apparently committed by the government and various departments.

⁸⁶² Ofusori 2024 <https://ddp.org.za/blog/2024/02/29/30-years-democracy-in-south-africa-lessons-learned-challenges-and-opportunities/>.

⁸⁶³ According to the 2022 Census results, South Africa had an estimated population of 60.6 million at the end of June 2022. See Department: Statistics South Africa 2022 60,6 million people in South Africa | Statistics South Africa (statssa.gov.za); Department: Statistics South Africa 2024 <https://www.statssa.gov.za/publications/P0211/Media%20release%20QLFS%20Q2%202024.pdf>.

⁸⁶⁴ Dyvik 2024 <https://www.statista.com/statistics/722965/g20-unemployment-rates/#:~:text=As%20of%20April%202024%2C%20South,shortage%20and%20high%20unemployment%20levels.>

⁸⁶⁵ Department: Statistics South Africa 2024 <https://www.statssa.gov.za/?p=17266>.

⁸⁶⁶ Mello and Louw 2023 *Politeia* 6.

⁸⁶⁷ SARS *Tax Statistics 2023* 1.

responsible for the largest revenue source and hence support all the other people. Treasury expects the number of dependents to rise to 28.31 million for the 2023/2024 fiscal year.⁸⁶⁸

Amongst other challenges, the following impacts on the daily lives of citizens (whether or not privileged enough to have a stable income, unemployed, dependent on a government grant, etc., including businesses): (i) Corruption, eroding public trust;⁸⁶⁹ (ii) Cost of living;⁸⁷⁰ (iii) Crime and violence;⁸⁷¹ (iv) Deteriorating municipal and provincial services and infrastructure;⁸⁷² (v) Education;⁸⁷³ (vi) Environmental

⁸⁶⁸ Staff Writer *BusinessTech* <https://businesstech.co.za/news/government/754083/28-million-people-on-grants-in-south-africa-but-only-7-million-taxpayers/>.

⁸⁶⁹ Corruption Watch is a non-profit organisation "committed to highlighting and exposing corruption in society ... [aiming to change] the culture of corruption in our country". (Corruption watch date unknown <https://www.corruptionwatch.org.za/>); Ofusori 2024 <https://ddp.org.za/blog/2024/02/29/30-years-democracy-in-south-africa-lessons-learned-challenges-and-opportunities/>; Witten *IOL* <https://www.iol.co.za/news/politics/opinion/the-challenges-facing-south-africa-and-how-we-overcome-them-79c0353e-7ee7-4ea7-bda2-9740822c679f>. One of the many definitions of corruption is: "the abuse of entrusted power or resources, by anyone, for private gain". (Corruption Watch date unknown <https://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/our-definition-of-corruption/>.)

⁸⁷⁰ Cost of living is regarded as the cost of fuel, inflation, lower than inflation-related salary adjustments, war-related price hikes, etc. For further reading refer to: Competition Commission *The Essential Food Pricing Monitoring Report*; Majola *IOL* <https://www.iol.co.za/business-report/companies/food-inflation-at-high-levels-despite-overall-decline-says-essential-food-pricing-monitoring-report-a140bb3b-315d-40d0-a6b2-529d31966c02>; Rondganger *IOL* <https://www.iol.co.za/news/year-in-review-how-the-cost-of-living-crisis-bit-south-africans-in-2023-1ac8cdae-8ff0-4563-a440-9713e0822bea>.

⁸⁷¹ This term is inclusive of the looting of public infrastructure, inadequate law enforcement, etc. Ofusori 2024 <https://ddp.org.za/blog/2024/02/29/30-years-democracy-in-south-africa-lessons-learned-challenges-and-opportunities/>; Witten *IOL* <https://www.iol.co.za/news/politics/opinion/the-challenges-facing-south-africa-and-how-we-overcome-them-79c0353e-7ee7-4ea7-bda2-9740822c679f>.

⁸⁷² Included: Lack of supply of clean water (on a regular basis), sewer works not maintained, lack of maintenance of infrastructure, etc. Mello and Louw 2023 *Politeia* 6; Ofusori 2024 <https://ddp.org.za/blog/2024/02/29/30-years-democracy-in-south-africa-lessons-learned-challenges-and-opportunities/>; Witten *IOL* <https://www.iol.co.za/news/politics/opinion/the-challenges-facing-south-africa-and-how-we-overcome-them-79c0353e-7ee7-4ea7-bda2-9740822c679f>.

⁸⁷³ This includes inequality, lack of schools and other infrastructure, budget cuts, etc.; Ofusori 2024 <https://ddp.org.za/blog/2024/02/29/30-years-democracy-in-south-africa-lessons-learned-challenges-and-opportunities/>; Witten *IOL* <https://www.iol.co.za/news/politics/opinion/the-challenges-facing-south-africa-and-how-we-overcome-them-79c0353e-7ee7-4ea7-bda2-9740822c679f>; also refer to Mello and Louw 2023 *Politeia* 8.

pollution;⁸⁷⁴ (vii) Slow progress in land reform;⁸⁷⁵ and (viii) Public medical facilities,⁸⁷⁶ etc. These challenges affect households and citizens' mental health and lead to increased public concern, cynicism, and criticism of the current Government.⁸⁷⁷

Despite the progress made with the provision of pensions and other social grants,⁸⁷⁸ the government thus far has failed to create a thriving, labour-intensive economy "in which South Africans can develop their economic agency independently from the State".⁸⁷⁹

A significant deterioration in providing quality/basic services has occurred in the past decade.⁸⁸⁰ It is clear that there is an

increasingly urgent need for governance reform able to reinvigorate the country's constitutional checks and balances. Amid multiple challenges to the cohesion of

⁸⁷⁴ Kruger 2019 *Constitutional Court Review* 475.

⁸⁷⁵ Ofusori 2024 <https://ddp.org.za/blog/2024/02/29/30-years-democracy-in-south-africa-lessons-learned-challenges-and-opportunities/>; Witten *IOL* <https://www.iol.co.za/news/politics/opinion/the-challenges-facing-south-africa-and-how-we-overcome-them-79c0353e-7ee7-4ea7-bda2-9740822c679f>.

⁸⁷⁶ This is inclusive of errors and medical negligence, and critical shortages of medical supplies, equipment and infrastructure. In terms of s 27 of the *Constitution* every citizen has the right to access health care, including the right to emergency medical treatment. The *National Health Act* 61 of 2003 is supposed to deliver on this right. "The *Constitution* provides that the State must respect, protect, promote and fulfil the rights enshrined in the *Bill of Rights*, which includes the right to have access to health care services. The *Constitution* further provides that the State must take reasonable measures within its available resources to achieve the progressive realisation of the right to have access to health care services, including reproductive health care." (SAHRC *Investigative Hearing on the State of Oncology in KwaZulu Natal Report* 1, 5); Metelerkamp *Daily Maverick* <https://www.dailymaverick.co.za/article/2024-02-24-tertiary-hospital-professionals-sound-the-public-healthcare-alarm-after-severe-national-budget-cuts/>; Felix *News24* <https://www.news24.com/News24/sa-does-not-have-money-to-keep-state-clinics-open-24-hours-a-day-parliament-hears-20201021>; Staff writer 2021 *Medical Brief* <https://www.medicalbrief.co.za/the-long-slow-collapse-of-south-africas-top-hospitals/>; Staff writer *The Conversation* <https://theconversation.com/legal-claims-for-medical-mistakes-are-on-the-rise-in-south-africa-whats-behind-the-trend-187393>; SAHRC *Investigative Hearing on the State of Oncology in KwaZulu Natal Report* 2; Sukdeo *Daily Maverick* <https://www.dailymaverick.co.za/opinionista/2024-01-21-im-a-medical-doctor-who-graduated-cum-laude-and-i-cant-get-a-government-job/>; Staff writer 2021 *Medical Brief* <https://www.medicalbrief.co.za/the-long-slow-collapse-of-south-africas-top-hospitals/>; South African Government <https://www.gov.za/news/media-statements/health-placement-medical-interns-and-community-service-graduates-05-jan-2024>; Bloomberg *Daily Maverick* <https://www.dailymaverick.co.za/article/2024-01-07-s-african-doctorsshut-out-of-jobs-due-to-budget-constraints-union/>.

⁸⁷⁷ Burger and Pearsons *Mail & Guardian* <https://mg.co.za/thought-leader/opinion/2024-02-20-sa-has-made-progress-towards-social-justice-but-more-needs-to-be-done/>.

⁸⁷⁸ For example Western Cape Government 2024 <https://d7.westerncape.gov.za/general-publication/applying-social-welfare-grant>.

⁸⁷⁹ Bertelsmann Stiftung *BTI 2024 Country Report: South Africa* 5.

⁸⁸⁰ Bertelsman Stiftung *BTI 2024 Country Report: South Africa* 7.

South African society, it has become vital to restore trust in the capacity and independence of the state.⁸⁸¹

With the above in mind, the question can be raised, is South Africa becoming a failed state, or is it a matter of a failed government?

There have been numerous definitions of a failed state since the end of the Cold War. The Oxford Dictionary defines a failed state as "a country in which the government is so weak that it has lost control of the structures of the state."⁸⁸² Stofberg⁸⁸³ explains that a failed state "maintains legal sovereignty but experiences a breakdown in political power, law enforcement, and civil society, leading to a state of anarchy."⁸⁸⁴

Over time, categories were created to understand and describe the "capacity, performance, changes and dynamics of a State" using these definitions.⁸⁸⁵ The following are commonly found:

- 1) "Decreased ability to defend national boundaries".⁸⁸⁶ Tshombe⁸⁸⁷ suggests that a failed state is characterised by a military unable to secure its borders or prevent foreign forces from operating within its territory, while the 2024 World Population Review⁸⁸⁸ added that it may also involve territories being overtaken by criminal gangs or insurgents. Mello and Louw⁸⁸⁹ observe that South Africa struggles with ineffective border management, resulting in uncontrolled immigration and widespread undetected cross-border crimes.

⁸⁸¹ Bertelsman Stiftung *BTI 2024 Country Report: South Africa* 4.

⁸⁸² Oxford Learners' Dictionaries date unknown
<https://www.oxfordlearnersdictionaries.com/definition/english/failed-state?q=failed+state>.

⁸⁸³ Staff writer *BusinessTech* <https://businesstech.co.za/news/business-opinion/696069/the-one-thing-keeping-south-africa-from-becoming-a-failed-state/>.

⁸⁸⁴ Staff writer *BusinessTech* <https://businesstech.co.za/news/business-opinion/696069/the-one-thing-keeping-south-africa-from-becoming-a-failed-state/>.

⁸⁸⁵ Tshombe 2023 *Journal of Nation-Building and Policy Studies* 1; Also refer to Mello and Louw 2023 *Politeia* 8; World Population Review 2024 <https://worldpopulationreview.com/country-rankings/failed-states>.

⁸⁸⁶ Mello and Louw 2023 *Politeia* 9.

⁸⁸⁷ Tshombe 2023 *Journal of Nation-Building and Policy Studies* 33.

⁸⁸⁸ World Population Review 2024 <https://worldpopulationreview.com/country-rankings/failed-states>.

⁸⁸⁹ Mello and Louw 2023 *Politeia* 9.

- 2) "Decreased ability to police its territory".⁸⁹⁰ It will typically be found that corruption,⁸⁹¹ crime and lawlessness are widespread. Typically neither the government nor the police are able to deter the acts of criminality, and they fail to protect the public. The police maintain a low profile and are often absent in troubled areas.⁸⁹² An example of such a situation is the July 2021 unrests.⁸⁹³ The estimated economic cost was more than R50 billion.⁸⁹⁴

In general, African countries struggle with systemic corruption. According to Transparency International's⁸⁹⁵ index, South Africa was ranked 83 out of 180 countries in 2023.

- 3) "Decreased public services".⁸⁹⁶ The South African government's service delivery, whether national, provincial or local, is in a poor and deteriorating state.⁸⁹⁷ The services are, amongst others, "health care, public education, infrastructure such as roads and utilities, and police/fire departments".⁸⁹⁸ Unfortunately, it is the most vulnerable citizens that are the most affected by poor public service delivery.⁸⁹⁹ A strong political will is essential to ensure the supply of public services, but to reach this goal political will should be aligned with ethical leadership standards, which would ensure that the government responded to its citizen's needs, addressed social challenges and fostered development.⁹⁰⁰

⁸⁹⁰ Tshombe 2023 *Journal of Nation-Building and Policy Studies* 33.

⁸⁹¹ Refer to footnote 864 above for a definition of corruption.

⁸⁹² Tshombe 2023 *Journal of Nation-Building and Policy Studies* 33; also refer to World Population Review 2024 <https://worldpopulationreview.com/country-rankings/failed-states>.

⁸⁹³ Moffat and Mbanye 2022 <https://gga.org/the-july-2021-unrest-a-year-later-have-the-lessons-been-learned/>.

⁸⁹⁴ Moffat and Mbanye 2022 <https://gga.org/the-july-2021-unrest-a-year-later-have-the-lessons-been-learned/>.

⁸⁹⁵ Transparency International 2023 <https://www.transparency.org/en/cpi/2023>; Mello and Louw believe (based on the Zondo Commission report) that corruption is endemic in South Africa. See Mello and Louw 2023 *Politeia* 11.

⁸⁹⁶ Tshombe 2023 *Journal of Nation-Building and Policy Studies* 33.

⁸⁹⁷ World Population Review 2024 <https://worldpopulationreview.com/country-rankings/failed-states>.

⁸⁹⁸ World Population Review 2024 <https://worldpopulationreview.com/country-rankings/failed-states>; for further reading refer to: Mello and Louw 2023 *Politeia* 12; Thusi, Mathyana and Jili 2023 *Journal of Studies in Social Sciences and Humanities* 137; Jacobs *Daily Investor* <https://dailyinvestor.com/south-africa/48024/government-losing-control-of-south-africa/>. PWC *South Africa Economic Outlook; Productivity Potential Index (PPI): A new way of measuring countries' productive competitiveness* 2, 5, 8;.

⁸⁹⁹ Thusi, Mathyana and Jili 2023 *Journal of Studies in Social Sciences and Humanities* 137, 144.

⁹⁰⁰ Thusi, Mathyana and Jili 2023 *Journal of Studies in Social Sciences and Humanities* 137, 144.

- 4) "Decreased economic stability".⁹⁰¹ Unemployment is usually a significant issue. The value of the local currency will be in a state of frequent devaluation. The currency will also lose value locally in terms of purchasing power due to extremely high inflation rates, for example. The tax base will also be deteriorating, and it will often be found that economic crimes go unpunished.⁹⁰²

The constant turmoil within South Africa's political realm worsens the economic challenges. Investors avoid regions where the rules of engagement shift with every political shift.⁹⁰³ One of South Africa's crucial trade agreements, generally referred to as the AGOA agreement,⁹⁰⁴ was placed in jeopardy at least two times due to the actions (or lack thereof) of the South African Government.⁹⁰⁵ If South Africa is excluded from the trade agreement, or if the Bill is not renewed in 2025, South Africa could lose an estimated 28 000 jobs directly active in exports to the United States of the estimated total 267 300 jobs supported by exports to the United States.⁹⁰⁶ The potential loss of export income is difficult to predict, but the total value of goods exported under the AGOA and "Generalised System of Preferences"⁹⁰⁷ amounted to US\$14 871 645 million in 2023.⁹⁰⁸ The loss of

⁹⁰¹ Tshombe 2023 *Journal of Nation-Building and Policy Studies* 33.

⁹⁰² World Population Review 2024 <https://worldpopulationreview.com/country-rankings/failed-states>; For further reading regarding these topics in a South African context refer to: AFS Wealth 2023 <https://afswealth.co.za/wp-content/uploads/2023/03/Rand-trends-over-the-long-term.pdf>; Bahlmann *IOL* <https://www.iol.co.za/business-report/economy/a-stark-wake-up-call-for-inward-investment-and-businesses-235a3bef-9745-4006-b70e-8bc850defda3>.

⁹⁰³ Bahlmann *IOL* <https://www.iol.co.za/business-report/economy/a-stark-wake-up-call-for-inward-investment-and-businesses-235a3bef-9745-4006-b70e-8bc850defda3>.

⁹⁰⁴ The *African Growth and Opportunity Act* (AGOA) is a United States Act, and provide preferential access to the United State markets, originally allowing African states to export more than 6 000 different products to the United States, without paying the general import Duties. See AGOA.info date unknown <https://agoa.info/about-agoa/kb/article/16157-what-trade-benefits-does-agoa-provide.html>.

⁹⁰⁵ Vollgraaf 2016 <https://agoa.info/news/article/5965-agoa-trade-stand-off-ties-between-sa-us-in-jeopardy.html>; Fabricius 2024 <https://agoa.info/news/article/16482-new-government-of-national-unity-gives-sa-a-honeymoon-period-for-keeping-its-agoa-status-say-analysts.html>; also refer to AGOA.info 2024 <https://agoa.info/news/article/16455-african-trade-coalition-backs-agoa-16-year-renewal-bill-to-boost-trade-prospects.html>; For further reading refer to Kabendera *African Arguments* <https://africanarguments.org/2024/11/harris-or-trump-south-africas-agoa-fate-hangs-in-the-balance/>.

⁹⁰⁶ COSATU *South Africa in AGOA: Impact, Potential and the Case for Renewal* 21.

⁹⁰⁷ Office of the United State Strade Representative date unknown <https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp>.

⁹⁰⁸ Department: Trade Industry and Competition 2023 <https://www.thedtic.gov.za/wp-content/uploads/AGOA-Presentation-Joint-Committee.pdf> 15. At the exchange rate of R17.67 for one US\$ on 6 November 2024 this equals R26,277,228,868,000.00.

this trade opportunity might have serious implications, and the government cannot deny its role in this regard.

- 5) "Decreased legitimacy".⁹⁰⁹ The state's citizens are losing faith/trust in the government because of poor governance and service delivery. International relationships with other states are deteriorating. In general the citizens are pessimistic regarding their economic prospects, and according to the Afrobarometer 2022 survey the majority of the respondents failed the government on key economic issues.⁹¹⁰

When one compares the above facts with the listed characteristics typical of a failed state and adds what one reads daily in the newspapers,⁹¹¹ it is clear that South Africa might be in trouble.

The "Fragile State Index (FSI)" is a well-known scale used in determining whether a country is a failed or fragile state.⁹¹²

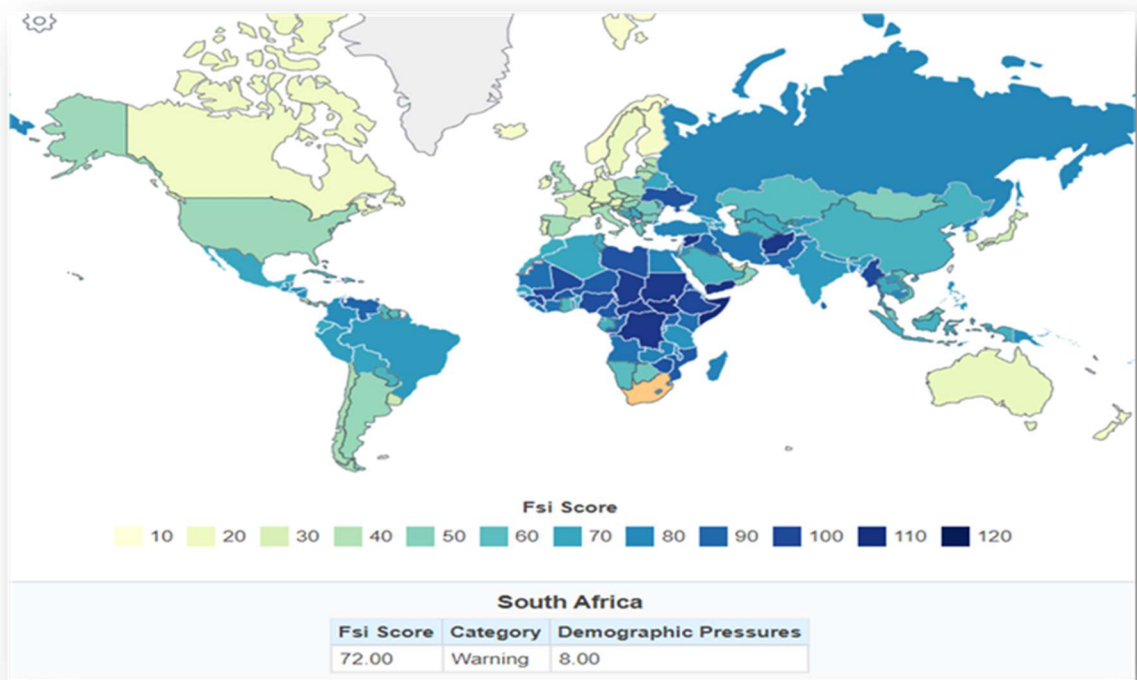
⁹⁰⁹ Tshombe 2023 *Journal of Nation-Building and Policy Studies* 33; Jacobs 2024 *Daily Investor* <https://dailyinvestor.com/south-africa/48024/government-losing-control-of-south-africa/>.

⁹¹⁰ Mpani and Ndoma 2024 <https://www.afrobarometer.org/publication/ad816-south-africans-score-their-government-poorly-on-its-economic-performance/>.

⁹¹¹ For example, the "decreased ability to police its territory." (Pillay 2023 *Daily Maverick* <https://www.dailymaverick.co.za/article/2023-05-01-the-police-are-not-only-failing-to-keep-us-safe-they-are-failing-in-almost-every-aspect-of-their-duty/>); Lamb 2023 *Moneyweb* <https://www.moneyweb.co.za/news/south-africa/south-africas-police-are-losing-the-war-on-crime/>).

⁹¹² The calculation is complex, using both quantitative and qualitative research methods, the "integration and triangulation of data sets", and thereafter determining the review scores. See FSI date unknown <https://fragilestatesindex.org/methodology/>. "They [considered] 12 metrics to determine the fragility of a state, including security apparatus, factionalised elites, group grievances, economic decline and brain drain. Each indicator is scored on a scale of 0 to 10, with 0 being the lowest intensity (most stable) and 10 being the highest intensity (least stable), creating a scale spanning 0 to 120." (Van Den Berg *MyBroadBand* <https://mybroadband.co.za/news/investing/464455-south-africa-showing-signsof-a-failed-state.html>); also refer to World Population Review 2024 <https://worldpopulationreview.com/country-rankings/failed-states>; Van Den Berg *MyBroadBand* <https://mybroadband.co.za/news/investing/464455-south-africa-showing-signsof-a-failed-state.html>).

Figure 3-5: Failed States 2024⁹¹³



With a score of 72 out of 120 (no change from 2022 to 2024, 78th out of 179 countries) there are important factors warning the Government that some of the five characteristics above must be analysed and addressed urgently. Many economists, economic analysts, business leaders and financial reporters have warned that South Africa, which is already regarded as a fragile state, is on a downward spiral and may become a failed state.⁹¹⁴ Stofberg⁹¹⁵ outlines five key pillars,⁹¹⁶ which, according to him, are still preventing South Africa from collapsing

⁹¹³ World Population Review 2024 <https://worldpopulationreview.com/country-rankings/failed-states>.

⁹¹⁴ Derby *Mail&Gaurdian* <https://mg.co.za/editorial/2022-02-06-south-africa-is-not-a-failed-state-but-were-fragile/>. The CEOs of several different industries expressed their concerns strongly. This group included CSOs such as "Neal Froneman of Sibanye-Stillwater, a mining company; Daniel Mminele, the incoming chair of Nedbank; and Ralph Mupita of MTN, a telecoms firm". (Staff writer *The Economist* <https://www.economist.com/middle-east-and-africa/2023/05/22/business-leaders-fear-that-south-africa-risks-becoming-a-failed-state>); Goolam Ballim (Standard Bank chief economist); See Wicks *Eyewitness News* <https://www.ewn.co.za/2024/02/09/sa-not-yet-a-failed-state-but-it-is-a-fragile-one-economist>; Francois Stofberg (Efficient Group economist); Staff writer *BusinessTech* <https://businesstech.co.za/news/business-opinion/696069/the-one-thing-keeping-south-africa-from-becoming-a-failed-state/>.

⁹¹⁵ Staff writer *BusinessTech* <https://businesstech.co.za/news/business-opinion/696069/the-one-thing-keeping-south-africa-from-becoming-a-failed-state/>.

⁹¹⁶ These pillars are the citizens' love for the democratic state, "freedom of speech, an independent central bank, the rule of law and strong financial markets". (Staff writer *BusinessTech*

into a failed state. Most importantly, he stresses that at the foundations of these five pillars one will find "moral individual[s]".⁹¹⁷ The moral individual(s) is essential for this research, as it closely links with CSI and ethical behaviour. He defines this individual as one

who takes responsibility, who takes ownership of their own life, who is accountable and resilient. But also, an individual who understands their responsibility towards the community.⁹¹⁸

It is concluded that if the following characteristics defining a failed or fragile state are considered, then at least we have a failed government that is not able to provide the most basic services, such as: (i) safeguarding its citizens;⁹¹⁹ (ii) supplying clean water and electricity (in the context of the deteriorating municipal, provincial and national infrastructure).⁹²⁰

There are, however, still some who believe and hope that where the South African Government fails, moral individuals (and hopefully companies too) will "once again, step up, as they have done so many times before ... [and] ultimately [will] produce constructive progress."⁹²¹

<https://businesstech.co.za/news/business-opinion/696069/the-one-thing-keeping-south-africa-from-becoming-a-failed>). Goolam Ballim is concerned about the undermining of the 'rule of law'. "Up to 75% of the reasons any economy thrives persistently is because it's founded on the rule of law or more extendedly on a sound bedrock of governance. South Africa's governance structures have been brutally undermined." (Wicks *Eyewitness News* <https://www.ewn.co.za/2024/02/09/sa-not-yet-a-failed-state-but-it-is-a-fragile-one-economist>).

⁹¹⁷ Staff writer *BusinessTech* <https://businesstech.co.za/news/business-opinion/696069/the-one-thing-keeping-south-africa-from-becoming-a-failed-state/>.

⁹¹⁸ Staff writer *BusinessTech* <https://businesstech.co.za/news/business-opinion/696069/the-one-thing-keeping-south-africa-from-becoming-a-failed-state/>.

⁹¹⁹ For statistics refer to: South African Police Service 2024 *Crime Statistics: Integrity* <https://www.saps.gov.za/services/crimestats.php>; Institute For Security Studies date unknown <https://issafrica.org/about-us/press-releases/analysis-of-murder-in-sas-deadliest-provinces-calls-for-policing-rethink>; Staff writer *BusinessTech* <https://businesstech.co.za/news/government/752495/84-people-murdered-every-day-in-south-africa-these-are-the-most-dangerous-areas/>.

⁹²⁰ 94 of 144 municipalities failed to provide clean drinking water to residents during 2022. See Staff writer *BusinessTech* <https://businesstech.co.za/news/government/743773/new-laws-to-force-municipalities-to-clean-up-their-water-supplies/>; SA News.gov.za 2023 <https://www.sanews.gov.za/south-africa/tackling-cholera-challenge>; also refer to the discussion and footnotes on "Decreased public services" above.

⁹²¹ Staff writer *BusinessTech* <https://businesstech.co.za/news/business-opinion/696069/the-one-thing-keeping-south-africa-from-becoming-a-failed>. Also refer to Van Den Berg *MyBroadBand* <https://mybroadband.co.za/news/investing/464455-south-africa-showing-signsof-a-failed-state.html>.

3.4.2 Government and the private sector relationship

In 2022 President Ramaphosa admitted that the country faced immense challenges which, amongst others, required essential reform to revive economic growth, etc. The government recognises its obligation to "create an environment in which the private sector can invest and unleash the dynamism [of the] economy" and encourage equality. The social partners (the government, labour, business and communities) have a "shared responsibility to one another".⁹²² All social partners should acknowledge that "we are all in this together".⁹²³

In all of the 'State of the Nation Address' speeches and 'National Budget' speeches of the last decade⁹²⁴ the South African government has emphasised the need for the private sector to invest in infrastructure and collaborate with it/the Government to address the socio-economic and other challenges faced by our country. These expectations, if compared to the content of Chapter 2, closely relate to CSI-related activities.

The 'State of the Nation Address' and 'National Budget' speeches from 2014 to 2024 have been analysed, and the results are presented in Table A-3, Annexure 3. Certain themes in the form of specific needs and requests by the Government are identified and are presented in Table 3-2.

Table 3-2: A summary of the data of Annexure 3 (Table A3-1)

Combined results extracted from State of the Nation Addresses and National Budget Speeches for the period 2014 to 2024	
Private investment is requested in:	
- CEO Initiative (small business fund)	
- Climate Change Fund	

⁹²² Ramaphosa 2022 <https://www.gov.za/news/speeches/president-cyril-ramaphosa-2022-state-nation-address-10-feb-2022> 3,8,10.

⁹²³ Ramaphosa 2022 <https://www.gov.za/news/speeches/president-cyril-ramaphosa-2022-state-nation-address-10-feb-2022> 3,8,10.

⁹²⁴ For all 'State of the Nation Speeches' refer to: <https://www.thepresidency.gov.za/state-of-the-nation-address>; For all "Budget Speeches" refer to: <https://www.gov.za/national-budget-0>.

Table 3-1: A summary of the data of Annexure 3 (continues) / Private investment is required in:
- Digital Industrial Revolution Commission (to include private sector and civil society)
- Education
- GBVF Response fund (led by the private sector)
- Health (HIV, Cancer, etc.)
- Housing (social housing projects)
- Industrial development (new factories - job creation, exports, etc.)
- Infrastructure (general)
- Infrastructure fund (inclusive of private sector funding)
- Internet access (primarily through fibre installations - rural regions)
- Jobs creation/youth employment
- Local development (District Development model)
- Projects (state planned): private investment involvement
- Prosecuting authority - private sector cooperation
- Regional (community) infrastructure
- Renewable energy
- SA SME Fund - private sector investment
- School infrastructure
- Social support
- Student accommodation (R64 billion private funding)
- Support new business, new entrepreneur support / SME's (mentorship, finance, etc.)
- Support sustainable growth and development
- Urban development

(Table 3-2 continues)	
PPP with State-owned entities:	
- Eskom (power generating, corruption, cable theft)	
- Local law enforcement/police (fight crime, fraud, bribery, etc.)	
- Municipalities (knowledge, infrastructure, development of inner cities, etc.)	
- Telecommunication	
- Transnet (port, railway infrastructure, cable theft, private operating of service)	
Private sector expected to:	
Help with implementation of NDP	
Private sector transformation (<i>B-BBEE</i>)	

It can be deduced from the above, that the government would like the private sector to get involved with and invest in three principal areas. (i) Invest in infrastructure and help to restore state-owned entities such as Transnet, Eskom, and local governments/municipalities, the decay of which currently hampers economic activities/doing business in South Africa. (ii) Closely linked to the first area is the urgent need for inclusive economic growth and the creation of job opportunities, whether through private initiatives or Government-planned initiatives. (iii) Thirdly, the support/investment of the private sector in local communities (clinics/health facilities, crime prevention, education/school infrastructure, housing, etc.) (iv) Lastly, the Government needs/expects the private sector to adhere to the *B-BBEE* legislation and to assist in implementing the NDP. It is acknowledged that this area relates more to socio-economic upliftment/involvement.

Spicer,⁹²⁵ who was, amongst other positions, formerly the CEO of Business Leadership South Africa, researched the relationship between (South African) business and Government stretching over a 30-year period. In the early democratic years President Mandela and the so-called Brenthurst Group (a group of the most senior businesspeople) met regularly.⁹²⁶ This relationship faltered under Deputy

⁹²⁵ Spicer 2016 *The Journal of the Helen Suzman Foundation* 3.

⁹²⁶ Spicer 2016 *The Journal of the Helen Suzman Foundation* 5.

President and later President Mbeki due to mutual distrust.⁹²⁷ Business leaders initiated collaborative efforts to close the widening gap,⁹²⁸ leading to the creation of initiatives like *Business Against Crime* and the *Business Trust*, which aimed to address poverty, job creation and capacity building. Approximately R1.8 billion was contributed to the Trust.⁹²⁹ The original plan was for the Trust to be in operation for five years, but operations were extended for a further five years due to the slow economic growth.⁹³⁰ Under President Zuma dialogue initiatives like Mbeki's Working Groups were abandoned and attempts by business organisations to rebuild trust with the government failed.⁹³¹

Durrant,⁹³² the national director of Habitat for Humanity, indicated that the organisation was and will in future be willing to work with the Government. He believed the government had adopted progressive policies, but actual change would stem from their effective implementation. The organisation's focus (and so it should be for business in general) is on facilitating the delivery of these policies, aiming to identify areas where implementation falls short. He further indicated that the organisation offers extensive field experience and practical solutions for going forward. Rather than assigning blame, they prefer a collaborative approach. They are willing to provide advisory support to the Government in research, processes and policy development.⁹³³

In 2018 the Presidential Economic Advisory Council advised that businesses, civil society, and academia are better equipped to respond to economic fluctuations.⁹³⁴ Five years later (in 2023), some CEOs of South Africa's largest companies reached an agreement with the Government to work together in partnership (hereafter referred to as the SA Business-Government partnership) with the objectives of

⁹²⁷ Spicer 2016 *The Journal of the Helen Suzman Foundation* 5-6.

⁹²⁸ Spicer 2016 *The Journal of the Helen Suzman Foundation* 6.

⁹²⁹ Anon date unknown <https://www.btrust.org.za/>.

⁹³⁰ Spicer 2016 *The Journal of the Helen Suzman Foundation* 11.

⁹³¹ Spicer 2016 *The Journal of the Helen Suzman Foundation* 17-18.

⁹³² Habitat for Humanity is a PBO that builds houses for low-income families. The institution realised that "little is being done to help build sustainable, thriving communities. The intention is there from both the public and private sectors, but this is not carrying through to action." The institution adds a new focus to build capacity and sustainable and cohesive communities. See Trialogue *The 2015 CSI Handbook 18th edition* 94.

⁹³³ Trialogue *The 2015 CSI Handbook 18th edition* 94.

⁹³⁴ Ramaphosa 2018 <https://www.gov.za/news/speeches/president-cyril-ramaphosa-2018-state-nation-address-16-feb-2018>.

removing obstacles to inclusive economic growth and job creation⁹³⁵ and allowing the private sector to contribute "considerable skills and resources and work through relevant partnership structures to address ... the three immediate" critical issues, namely "energy; transport and logistics; and crime and corruption".⁹³⁶

The analysis and conclusions drawn, presented in Annexure 3 and Table 3-2 above, are partially confirmed by this collaboration agreement, which has been concluded.

Silke,⁹³⁷ a political economy analyst, discussed the SA Business-Government partnership in an interview. He pointed out that similar cooperation was seen during the Covid-19 period, where the private sector assisted the Government in establishing the vaccine programme.⁹³⁸ Silke expressed the opinion that this agreement can at least provide a "greater point of understanding and cooperation between these two important parts of society".⁹³⁹

The question comes to mind whether the private sector/business can do things better than the government and government institutions. Preliminary research indicates that a few factors should be considered before addressing this question in the South African context. The country's economic status is relevant (whether the country is classified as a developed or a developing country). The different service sectors may also play a role.⁹⁴⁰ Another factor comes in the form of "red tapes that

⁹³⁵ South African Government 2024 <https://www.gov.za/news/media-statements/joint-statement-south-african-government-and-organised-business-establishing>; SA News.gov.za 2023 <https://www.sanews.gov.za/south-africa/government-and-organised-business-establish-partnership-initiative>.

⁹³⁶ SA News.gov.za 2023 <https://www.sanews.gov.za/south-africa/government-and-organised-business-establish-partnership-initiative>.

⁹³⁷ Maggs *Moneyweb* <https://www.moneyweb.co.za/moneyweb-podcasts/moneyweb-midday/government-and-private-sector-partnership-is-crucial-silke/>.

⁹³⁸ SA News.gov.za 2023 <https://www.sanews.gov.za/south-africa/government-and-organised-business-establish-partnership-initiative>; Maggs *Moneyweb* <https://www.moneyweb.co.za/moneyweb-podcasts/moneyweb-midday/government-and-private-sector-partnership-is-crucial-silke/>.

⁹³⁹ Maggs *Moneyweb* <https://www.moneyweb.co.za/moneyweb-podcasts/moneyweb-midday/government-and-private-sector-partnership-is-crucial-silke/>.

⁹⁴⁰ EPSU *Public and Private Sector Efficiency*. In their study, Chaluvadi, Raut and Gardas compare the efficiency of banks in India, both public and private. They discover that the top performers are predominantly from the private sector. Interestingly, the performance of public sector banks improved when they adopted some private sector management styles and policies. This finding underscores the potential for cross-sector learning and improvement. For more details see Chaluvadi, Raut and Gardas 2017 *Benchmarking: An International Journal* 575, 578, 594.

the public sector procurement is currently experiencing".⁹⁴¹ Addressing this problem might require a comprehensive reform, potentially involving legislative change, aimed at enhancing service delivery. This overhaul should address bureaucratic hurdles/red tape, such as the rigidity of government procurement practices, which inhibit innovation, impede long-term supplier relationships and hinder effective communication regarding future government initiatives.⁹⁴² The Government is aware of this issue, and the 'Red Tape Reduction' interventions implemented by the Western Cape Provincial Government are bearing positive fruit.⁹⁴³

In the context of the CEO-Government partnership agreement⁹⁴⁴ discussed above, the Government and President Ramaphosa in person believe that the private sector could make valuable contributions in addressing specific serious problems regarding public infrastructure.

Regardless of whether or not the private sector could do things better and is more efficient than the public sector, given the severe problems South Africa is currently facing, businesses in general will have to take a leap of faith and provide the public sector with skills, knowledge and resources in the hope that in return we will see "more market-friendly policies, [...] best practice policies, [and] a better security establishment" in which business may flourish and with it, the country.⁹⁴⁵

3.4.3 South African companies' involvement in CSI

This paragraph aims to determine to what extent companies in South Africa support the government and society at large through CSI initiatives. This objective will be pursued through a literature review and reviewing data published by Trialogue over the past decade.

⁹⁴¹ Manyathi, Burger and Mortimer 2021 *Africa's Public Service Delivery and Performance Review* 1.

⁹⁴² Manyathi, Burger and Mortimer 2021 *Africa's Public Service Delivery and Performance Review* 1, 9-10.

⁹⁴³ Between May 2019 and September 2022, the "red tape reduction and ease of doing business interventions, resulted in a saving of R1.85 billion to the Western Cape economy". (Western Cape Government 2024 <https://www.westerncape.gov.za/red-tape-reduction/>).

⁹⁴⁴ South African Government 2024 <https://www.gov.za/news/media-statements/joint-statement-south-african-government-and-organised-business-establishing>.

⁹⁴⁵ Maggs *Moneyweb* <https://www.moneyweb.co.za/moneyweb-podcasts/moneyweb-midday/government-and-private-sector-partnership-is-crucial-silke/>.

3.4.3.1 An overview of the trend of CSI practices in South Africa

Articles researching the motivators of companies to favour specific CSR initiatives over others are minimal. In fact, only two articles could be found that considered this topic specifically for South African companies or companies operating within the borders of South Africa.

African companies and companies doing business in South Africa face unique governmental policies that encourage the redistribution of economic benefits, emphasising empowering mainly black communities.⁹⁴⁶ Over and above the requests by the Government for company involvement in community upliftment,⁹⁴⁷ for example, South African companies are prompted by factors such as the *Companies Act*,⁹⁴⁸ the *B-BBEE Act*,⁹⁴⁹ the listing requirements instituted by the JSE,⁹⁵⁰ and the King IV Report, to allocate resources toward CSI endeavours and disclose the scope of their CSR efforts and initiatives.⁹⁵¹

Mersham and Skinner⁹⁵² remark that South Africa (regarding the legislation mentioned) could be regarded as "an experiment in the role strong government policy can play in creating an enabling environment for CSR". This is a fundamental view, especially in light of the objectives of the following chapters of this thesis.⁹⁵³ They further emphasise that companies want to "see concrete benefits supportive of business as a result of investment."⁹⁵⁴

⁹⁴⁶ Mersham and Skinner 2016 *Society and Business Review* 211.

⁹⁴⁷ Refer to the discussion in Paragraph 3.4.2 above.

⁹⁴⁸ 71 of 2008 (to some extent, regarding the social and ethics committee to be established in terms of s 72 of this act, read with Regulation 43 to the act). For further information on the function etc. of the social and ethics committee, refer to King IV Report 2016 28-30, King IV Practice Note 30/11/2020, and Fluidrock Governance Group date unknown https://www.fluidrock.co.za/wp-content/uploads/2020/06/Social_and_Ethics_Committee.pdf.

⁹⁴⁹ For a more comprehensive discussion, refer to Paragraph 2.1.2. For further reading material see Meuller-Hirth "Corporate Social Responsibility and Development in South Africa: Socio-Economic Context and Contemporary Issues".

⁹⁵⁰ Refer to the related discussion in Paragraph 2.1.2; Greyvenstein *Earnings Management on the JSE before and after King II* 2; King III Report 6-7; Giles 2017 <https://www.michalsons.com/blog/jse-listing-requirements-king-iii-iv/11545>.

⁹⁵¹ Mersham and Skinner 2016 *Society and Business Review* 113; also refer to *Ngorima Drivers of sustainability reporting among JSE listed firms in South Africa: a Stakeholder perspective*. A brief discussion of this work is undertaken in Chapter 2 of this thesis, where it is found that the JSE listed companies mainly invest in those activities promoted by the *B-BBEE* legislation.

⁹⁵² Mersham and Skinner 2016 *Society and Business Review* 111.

⁹⁵³ Refer to Chapter 1, Paragraph 1.4.

⁹⁵⁴ Mersham and Skinner 2016 *Society and Business Review* 111.

Because the *B-BBEE* legislation and the *B-BBEE* scorecard⁹⁵⁵ level obtained by a company plays such a considerable role in the tender process and in securing a contract with the Government, many companies⁹⁵⁶ tend to shape their CSI involvement per the legislation and related Code.⁹⁵⁷ It is noticeable that many smaller companies (from different industry sectors) have adopted more socially responsible CSI practices. It is arguable whether the *B-BBEE* legislation is the motivation behind this trend.⁹⁵⁸

It is clear that including the CSI elements/objectives in the Code has introduced new challenges for companies and financially impacted the companies too. The following is an example of such an impact. To obtain 20 points for the skills development element of the *B-BBEE* scorecard, a company should incur 6 per cent of its payroll expense on programmes specified in the 'Learning Programme Matrix'.⁹⁵⁹ The implication is that the top 100 listed JSE companies, for example, "will need to contribute an estimated R25 billion towards skills development annually."⁹⁶⁰ Mersham and Skinner⁹⁶¹ indicate that although this is significant, South African companies are "increasingly keen to invest in and support effective organisations and projects that will deliver a measurable development return." A

⁹⁵⁵ The "specialised scorecard is a *B-BBEE* scorecard that excludes black ownership from the measurement of determining compliance with the *B-BBEE* Act." (B-BBEE Commission 2021 <https://www.bbbeeecommission.co.za/wp-content/uploads/2021/09/Brochure-on-Specialised-Scorecard-06-September-2021-00000003.pdf>).

⁹⁵⁶ In 2013 44 per cent of the corporate participants in the Trialogue study "cited the imperative of meeting BBBEE codes of good practice as a key driver for CSI involvement." (Mersham and Skinner 2016 *Society and Business Review* 112). The 2023 report published by Trilogue will be discussed in more detail in paragraph 3.4.3.2.

⁹⁵⁷ For a detailed *B-BBEE* scorecard analysis refer to Rossouw and Van Rooyen *Certificate # Moore9543-230720-01 B-BBEE Scorecard – Detailed Analysis*.

⁹⁵⁸ Mersham and Skinner 2016 *Society and Business Review* 113.

⁹⁵⁹ Mersham and Skinner 2016 *Society and Business Review* 112. To obtain a full 20 points a company should incur expenses (a stipulated percentage of the "Leviabale Amount") on any of the "programme[s] specified in the Learning Programme Matrix for black people". There are four categories or skills development element plus one bonus element for which an additional 5 points can be obtained if the company is 100 per cent compliant with the requirements. See Code of Good Practice in GG 36928 of 11 October 2013 50. The matrix referred to above is published as 'Annexe -300A' to the 'Statement 300' (amended in GG 38765 of 6 May 2015). Another scorecard element, which will be discussed in more detail in paragraph 3.4.3.2, is the *socio-economic development* element.

⁹⁶⁰ Mersham and Skinner 2016 *Society and Business Review* 112.

⁹⁶¹ Mersham and Skinner 2016 *Society and Business Review* 112-113.

lack of information on well-managed and successful CSI projects may hamper investment decisions.⁹⁶²

Another factor considered by Mersham and Skinner⁹⁶³ is the role of the FTSE/JSE All Share Index (currently referred to as the FTSE/JSE Responsible Investment Index).⁹⁶⁴ They found that

[t]he Index offers incentives for compliance as it provides an aspirational benchmark for organisations which incorporate triple bottom line best practice into business operations. It further serves as a tool facilitating responsible investment, which calls for investors to be vigilant about investment decisions and closely considering responsible companies.⁹⁶⁵

Some eight years later Cheruiyot-Koech and Reddy⁹⁶⁶ considered which of the 10 CSR activities selected were favoured on the national/institutional level. They further considered whether certain industries favour one CSR activity above others. Their study included 231 firms listed on the JSE. Cheruiyot-Koech and Reddy indicated that the CSR approaches and activities could, amongst other activities, include "philanthropy (donating to charities), volunteering by employees, ethical labour practices, and implementing environmentally friendly operations."⁹⁶⁷ Companies will consider other factors such as stakeholder preferences and requirements. The national or regional context may influence stakeholders to favour certain social initiatives.⁹⁶⁸ One of their objectives was to determine whether the *B-BBEE* legislation, the related Code and the *B-BBEE* scorecards will feature as an institutional driver and will prompt companies to favour the CSI activities, which would result in higher points.⁹⁶⁹

The main elements and the weight assigned to them in the *B-BBEE* Code are the following:

⁹⁶² Mersham and Skinner 2016 *Society and Business Review* 120.

⁹⁶³ Mersham and Skinner 2016 *Society and Business Review* 120.

⁹⁶⁴ JSE 2015 <https://www.jse.co.za/services/indices/ftsejse-responsible-investment-index>.

⁹⁶⁵ Mersham and Skinner 2016 *Society and Business Review* 120.

⁹⁶⁶ Cheruiyot-Koech and Reddy 2022 *Sustainability* 1-16.

⁹⁶⁷ Cheruiyot-Koech and Reddy 2022 *Sustainability* 1. In the following paragraph the data obtained from analysing the *Dialogue Business in Society Handbooks* will consider these activities too.

⁹⁶⁸ Cheruiyot-Koech and Reddy 2022 *Sustainability* 1.

⁹⁶⁹ Cheruiyot-Koech and Reddy 2022 *Sustainability* 2.

Figure 3-6: *B-BBEE* Codes of South Africa⁹⁷⁰

Element	Weighting
Black ownership	25
Management	15
Skills development	20
Enterprise and supplier development	40
Socio economic development	5

Over and above the requirements to do business with the Government, as mentioned above, the Government will also determine whether or not the contracting company procured the goods and services to be supplied to the Government from "suppliers that comply with" the *B-BBEE* legislation. Cheruiyot-Koech and Reddy⁹⁷¹ stressed that in this manner the Government, by enforcing this legislation and the related regulations and code, "affects the entire supply chain of firms that conduct business with the state."

The *B-BBEE* legislation, policies, etc. prompt South African companies to adopt CSR policies and prioritise CSI issues which they might not otherwise have prioritised if they operated in other countries. Worldwide companies prioritise the most pressing social and primarily environmental issues "within their immediate country environment".⁹⁷² At a national level South African companies "respond to the state who exerts pressures ... [and] seek legitimacy at an industry level from stakeholders across the supply chain".⁹⁷³ The mining industry, for example, might experience pressure from the community stakeholders living near the mine.

Cheruiyot-Koech and Reddy⁹⁷⁴ believe the *B-BBEE* legislation exemplifies how regulatory pressure enforces strong-arm isomorphism. The first few companies, generally in the same organisational field, may adhere to the legislation for reasons that might differ. Two of the reasons could be either to survive or to "gain a competitive advantage". Eventually the other companies in that same organisational

⁹⁷⁰ Cheruiyot-Koech and Reddy 2022 *Sustainability* 3.

⁹⁷¹ Cheruiyot-Koech and Reddy 2022 *Sustainability* 3.

⁹⁷² Cheruiyot-Koech and Reddy 2022 *Sustainability* 5.

⁹⁷³ Cheruiyot-Koech and Reddy 2022 *Sustainability* 5. It is believed these reactions by the companies can be explained by the Institutional Theory.

⁹⁷⁴ Cheruiyot-Koech and Reddy 2022 *Sustainability* 5.

group will follow, adhering to the regulations, with the main reason being to remain competitive.

As was also indicated in the study of Mersham and Skinner discussed above, companies which are part of the FTSE/JSE All Share Index are invited to participate and to be benchmarked in terms of the FTSE/JSE Responsible Investment "benchmark for portfolios that have an ESG-based mandate", or ultimately for a place in the Top 30 Index.⁹⁷⁵ This index considers the company's performance regarding the three pillars (the three PPPs) of the triple bottom line theory, namely people (the social), the planet (the environment) and profit (the economy) (or referred to as the ESG rating requirements).⁹⁷⁶ Companies use this index to prioritise the socio-economic objectives of international standards (such as the United Nations' sustainable development goals (SDGs)).⁹⁷⁷

Cheruiyot-Koech and Reddy⁹⁷⁸ lastly presented their findings on which main CSI activities South African companies prefer and whether they differ from industry to industry (therefore industry-driven). Firstly, the main three preferred CSI activities among all industries were "education and training, charitable donations, and enterprise development".⁹⁷⁹ Secondly, if the PBO has a *B-BBEE* status, it might drive a company to make philanthropic donations to this organisation to earn *B-BBEE* scorecard points.⁹⁸⁰ Thirdly, the above preferences were noted across industries.

⁹⁷⁵ The ESG best practices of the different companies are benchmarked against "market-cap weighted index calculated on an end of day basis". The Index "comprises all eligible companies who achieve the required minimum FTSE Russell ESG rating". (JSE 2015 <https://www.jse.co.za/services/indices/ftsejse-responsible-investment-index>); Cheruiyot-Koech and Reddy 2022 *Sustainability* 4.

⁹⁷⁶ Cheruiyot-Koech and Reddy 2022 *Sustainability* 3; "The FTSE/JSE Responsible Investment Top 30 Index is a subset of the RI Benchmark Index and consists of only the top 30 highest ESG-rated companies. It is an equally weighted index allowing the ESG ratings to play a bigger role." (JSE 2015 <https://www.jse.co.za/services/indices/ftsejse-responsible-investment-index>).

⁹⁷⁷ Cheruiyot-Koech and Reddy 2022 *Sustainability* 4; UN 2020 <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>.

⁹⁷⁸ Cheruiyot-Koech and Reddy 2022 *Sustainability* 10.

⁹⁷⁹ Included under education is a range of activities, including "scholarships, bursaries, leadership programs for the unemployed, financial literacy, money management skills, as well as adult literacy and numeracy skills." (Cheruiyot-Koech and Reddy 2022 *Sustainability* 10).

⁹⁸⁰ Enterprise and suppliers' development encompasses various initiatives such as small business incubator programmes. Although donations to registered PBOs might qualify for section 18A of the *ITA(SA)* deductions (as discussed in Chapter 2), it should be noted that Cheruiyot-Koech and Reddy believe that a company can either claim the *B-BBEE* scorecard points or a deduction against taxable income, but not both. See Cheruiyot-Koech and Reddy 2022 *Sustainability* 10-11. This statement will be discussed in more detail in the following chapters.

Cheruiyot-Koech and Reddy⁹⁸¹ further found that within an industry (for example, mining, which might have a negative impact on the hosting community), the CSI activities will relate to the mitigation of negative environmental impact or the supply of food to poor communities by food producing companies, etc. Notably, companies in the mining and construction sectors exhibit a preference for the provision of infrastructure such as roads, water and electricity. This preference may be attributed to the historical relationship between South African firms and specific stakeholders in their operating environment.⁹⁸² However, they also noticed a shift in mining companies' preferences towards favouring B-BBEE-type compliance CSI activities.⁹⁸³ The researchers concluded that the government/institutional *B-BBEE* legislation, related *B-BBEE* Codes and policies are common influences which result in a "regulative posture shifting CSR from a philanthropic voluntary type of activity by firms to a prescriptive one."⁹⁸⁴

Lastly, additional CSR activities beyond the preferred three (arts, culture, and sports activities; infrastructure provision; and employee engagement) are subject to industry-specific dynamics.⁹⁸⁵

The findings of the two studies included in this paragraph correspond with the findings of Trialogue, obtained through mixed method research, which they publish every year in the form of the *Business in Society Handbook*. A comprehensive discussion of their findings is to be found in the next paragraph.

3.4.3.2 South African companies' CSI involvement expressed in numbers

This section aims to determine whether the research discussed in Paragraph 3.4.3.1 is confirmed by or differs from the data published by Trialogue.⁹⁸⁶

⁹⁸¹ Cheruiyot-Koech and Reddy 2022 *Sustainability* 11.

⁹⁸² Cheruiyot-Koech and Reddy 2022 *Sustainability* 11.

⁹⁸³ Cheruiyot-Koech and Reddy 2022 *Sustainability* 12.

⁹⁸⁴ Cheruiyot-Koech and Reddy 2022 *Sustainability* 12.

⁹⁸⁵ Cheruiyot-Koech and Reddy 2022 *Sustainability* 12.

⁹⁸⁶ Trialogue is one of only two institutions/companies publishing regular CSI data. The other is the Actuarial Society of South Africa, whose data and reports are available only to members, unlike Trialogue, whose reports are also available to the public. This is then the reason for using the data and statistics published by Trialogue. This information was analysed for the period 2014 to 2023.

The niche consultancy firm Trialogue⁹⁸⁷ conducts research annually using, amongst other methods, different questionnaires which are completed by participating companies and NGOs. They further analyse the published annual integrated reports of JSE-listed companies, with specific attention to annual CSI budget information related, amongst other matters, to social and environmental affairs. The annual data reported by Trialogue for the period July 2013 to June 2023⁹⁸⁸ were analysed and summarised. The results are presented in full in Table A4-1 of Annexure 4. Hereunder is a shortened version of Table 3-3. Each heading will be briefly discussed.

⁹⁸⁷ "Triologue is a niche consultancy and publisher, providing thought leadership and driving the application of knowledge in the sustainability and corporate social investment (CSI) arenas." Trialogue was founded in 1999 and published its first report on sustainable practices in South Africa in 2004. See Trialogue date unknown <https://trialogue.co.za/about/>.

⁹⁸⁸ Trialogue *The 2015 CSI Handbook 18th edition*; Trialogue *The Trialogue CSI Handbook 19th edition*; Trialogue *The Business in Society Handbook – A Trialogue Publication (2017)*; Trialogue *Business in Society Handbook 2018*; Trialogue *Business in Society Handbook 2019*; Trialogue *Business in Society Handbook 2020*; Trialogue *Business in Society Handbook 2021*; Trialogue *Business in Society Handbook 2022*; Trialogue *Business in Society Handbook 2023*.

Table 3-3: Extract of Table A4-1, Annexure 4

Year	How many participants		Total estimated expenditure				Top 100 listed		Expenditure relating to the Ninth Schedule of the Income Tax Act																			B-BBEE Elements accessed for funding by NPO (% of NPO respondents)			
	Companies	NPOs	Rand value (billion)	% growth/decline	% real growth/ decline (inflation adjusted)	Non-Cash as % total CSI spend	Rand value (billion)	%	Arts and culture	Disaster relief	Education (ED)	Entrepreneur and small business support	Conservation, Environment and Animal Welfare (CEAW)	Food security and agriculture	Health Care (HC)	Land and Housing (LH) & Living conditions	Safety and security	Social and community development	Sport development	Social justice and advocacy	Other	Total %	CSI income to NPOs/PBOs	NPO data - Income received from companies	Socio-economic development	Skills development	Enterprise and supplier development	Unknown			
2014	99	171	8.02			12			2	0	49	5	3	6	12	1	1	16	3		1	99	56	22	81	30	25	12			
2023	68	89	11.8	8	1	?	8.7	74	1	6	48	8	3	9	6	4	1	13	1	0	0	100	63	27	?	?	?	?			
	75.5	146.7	9.7	4.2	-0.9	11.6	7.0	71.3	1.4	3.3	46.7	6.1	3.2	8.1	9.1	1.8	0.6	15.3	2.3	0.0	1.6	99.5	42.0	16.2	74.8	29.3	22.5	14.5			

1) Participants

Every year Trialogue contacts companies and NPOs asking them to complete questionnaires relating to the CSI expenditure incurred by the company, the NPO's sources of income and how the income was used. In cases where the participants preferred not to complete the questionnaire but rather to answer the questions in person in an interview, the participants were accommodated

accordingly. For example, in 2014 99 companies participated in the research and 171 NPOs were involved. In 2023, only 68 companies and 89 NPOs participated in the research.⁹⁸⁹

The rest of the financial information used in the research and reflected in the respective reports was gathered using the annual integrated reports published by the JSE-listed companies. Although all JSE-listed companies' reports were analysed, more detailed data were published on the Top 100 JSE-listed.⁹⁹⁰

On average, 75 companies have been participants in answering the questionnaires over the related period. Some companies participate every year but not all of them do so. Each year Trialogue would indicate the number of participants whose data were reported/used in the previous year. The same applies to the average 147 NPO participants.⁹⁹¹

2) Total estimated expenditure⁹⁹²

Over the period of 10 years, the companies reported an average of R9.7 billion in CSI spending, with the highest amount in 2023 being R11.8 billion.

Table A4-1 (Annexure 4) reflects the bigger economic picture. In 2015 Trialogue reported a decline of one per cent compared to 2014. The same trend was noticed in 2021 when a 4 per cent decline (but in real terms adjusted with inflation, an actual 7 per cent decline) in CSI expenditure was noticed. In the years when the spending on CSI grew, the companies indicated that it was because of better profits. The significant decline in 2021 is related to the economic impact of the Covid-19 pandemic.

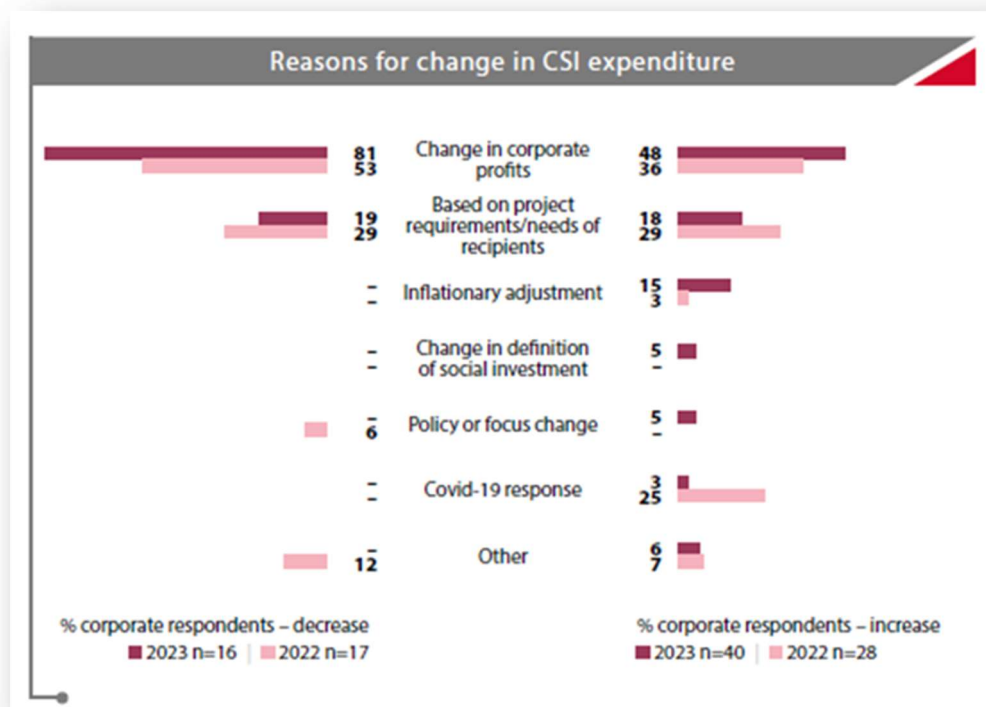
⁹⁸⁹ Trialogue *Business in Society Handbook 2023*.

⁹⁹⁰ Trialogue *Business in Society Handbook 2023*.

⁹⁹¹ Respective Trialogue *Business in Society Handbooks*. Refer to Annexure 4.

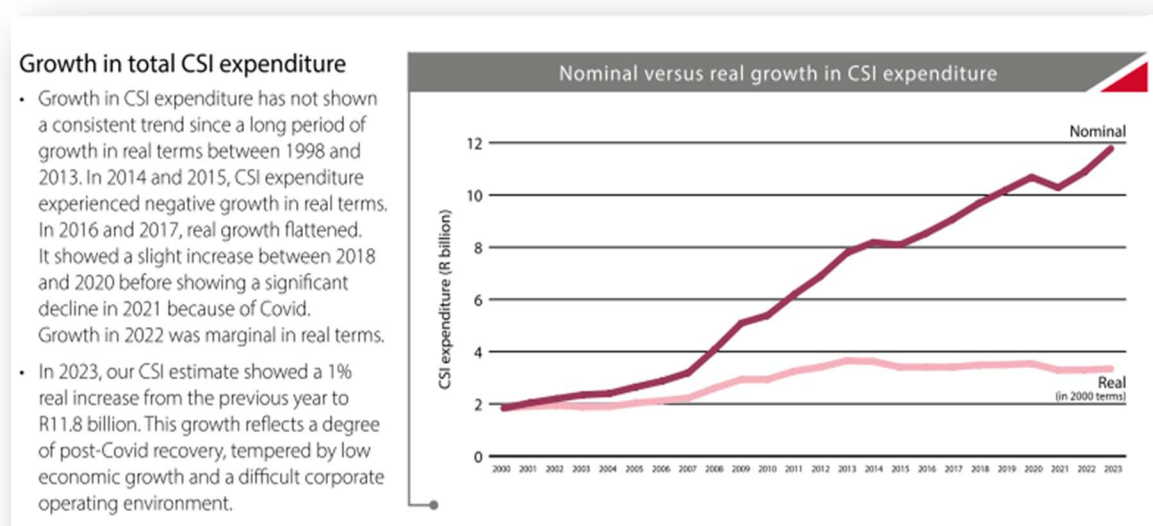
⁹⁹² For 2023, for example, the "CSI expenditure of 135 listed companies and the net profit after tax (NPAT) of 151 companies, using publicly reported data." These data were compared with the data gathered through the questionnaires answered and the NPAT data published by SARS and adjusted. See Trialogue *Business in Society Handbook 2023* 30.

Figure 3-7: Reason for change in CSI expenditure⁹⁹³



The average real (nominal adjusted) estimated total CSI expenditure (calculated over nine years – the 2014 data were not yet available) indicated that the estimated expenditure had indeed declined by almost one per cent.

Figure 3-8: Nominal versus real growth in CSI expenditure⁹⁹⁴



⁹⁹³ Trialogue *Business in Society Handbook 2023* 34.

⁹⁹⁴ Trialogue *Business in Society Handbook 2023* 30.

Non-cash contributions by companies (inclusive of amongst other things goods/products, services, and employee volunteering programmes)⁹⁹⁵ were on average almost 12 per cent. Notably a higher-than-average percentage of the estimated expenditure was in the form of non-cash contributions, especially during the COVID-19 pandemic period (2020-2022, and especially for 2020 – 16 per cent). This corresponds with Silke’s comment in Paragraph 3.4.2, which states that many companies assisted with the rollout of vaccine programmes.⁹⁹⁶

The following note corresponds with the findings reported respectively by Mersham and Skinner, and Cheruiyot-Koech and Reddy, in the previous paragraph. Trialogue⁹⁹⁷ confirmed that the companies strategically plan their CSI programmes in accordance with the *B-BBEE* Code. Most of their non-cash contributions relate to their planned social investment strategies because of the *B-BBEE* Code⁹⁹⁸ (and the related *B-BBEE* scorecard) allows for including socio-economic development expenditure (SED) when calculating the points. It was also reported, however, that not all companies had quantified the value of the SED and other non-cash expenditures.⁹⁹⁹

In the last few years’ publications Trialogue has repeatedly stressed that since the enactment of the *B-BBEE Act* and the related *B-BBEE* Code, the majority¹⁰⁰⁰ of companies determined the CSI budget annually as x per cent of the NPAT. Before the introduction of B-BBEE, the budget was primarily based on a company management’s decision, subject to the board's approval.¹⁰⁰¹

For the 2023 year 95 per cent of the participating companies used the NPAT method to determine the annual CSI budget, assigning between zero point six per cent and two per cent to the CSI budget. Most of these companies kept the CSI budget at one per cent of the net profit after tax, which aligns with the *B-BBEE* scorecard SED

⁹⁹⁵ For an indication of what is included in non-cash contributions and how these contributions should be quantified, refer to Trialogue *Business in Society Handbook 2021* 38-39.

⁹⁹⁶ Refer to footnote 936 page 184.

⁹⁹⁷ Trialogue *Business in Society Handbook 2021* 38.

⁹⁹⁸ *B-BBEE* Code of good practice.

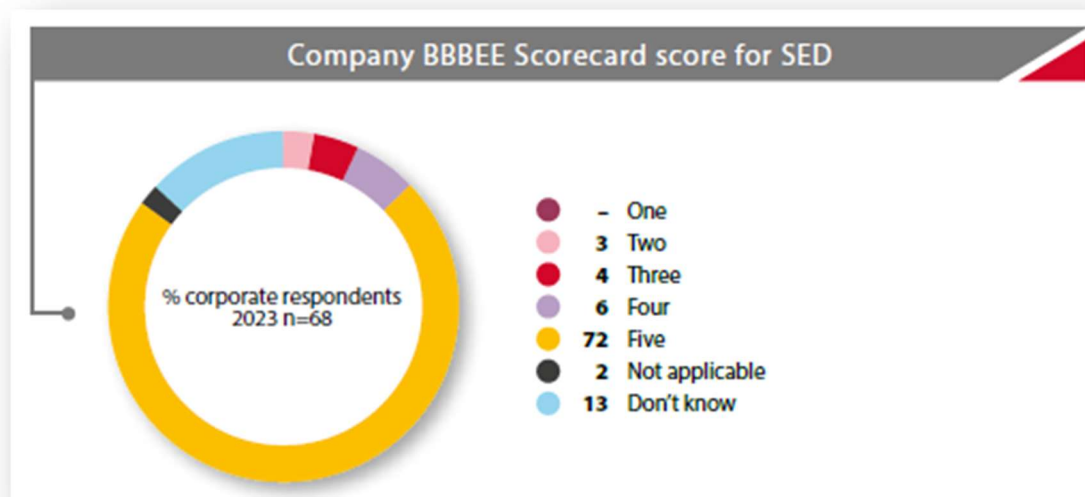
⁹⁹⁹ Trialogue *Business in Society Handbook 2023* 37.

¹⁰⁰⁰ For the 2023 year, 60 per cent of the participating companies. See Trialogue *Business in Society Handbook 2023* 37.

¹⁰⁰¹ Trialogue *Business in Society Handbook 2023* 37.

expenditure target.¹⁰⁰² This is an explicit confirmation of the previously discussed research. Most companies incur CSI expenditure firstly to comply with *B-BBEE* legislation and secondly to get as much benefit from this as possible through contracting with the government, etc.

Figure 3-9: The SED-related *B-BBEE* scorecard 'rating' of the participating companies¹⁰⁰³



Unfortunately, the report does not indicate how many of the 68 participants are from the Top 100 JSE-listed companies. Still, it may be safe to assume that most of the 72 per cent with a SED point of five will be classified as Top 100 companies.

3) Top 100 JSE-listed companies:

The Top 100 companies incurred most (71.3 per cent) of the estimated average CSI expenditure from 2014 to 2023. Of the average R9.7 billion, the Top 100 companies contributed R7 billion. For 2023 the Top 100 companies contributed R8.7 billion rand of the total R11.8 billion estimated CSI expenditure (74 per cent).¹⁰⁰⁴ Trialogue used the published data of 151 listed companies in their research.¹⁰⁰⁵ On 1 May 2024, 277 companies were listed on the JSE.¹⁰⁰⁶ The question can be raised: did the remaining

¹⁰⁰² Trialogue *Business in Society Handbook 2023* 37.

¹⁰⁰³ Trialogue *Business in Society Handbook 2023* 33.

¹⁰⁰⁴ Trialogue *Business in Society Handbook 2023* 31

¹⁰⁰⁵ Trialogue *Business in Society Handbook 2023* 30

¹⁰⁰⁶ Listcorp 2024 <https://www.listcorp.com/jse>.

126 companies not report their CSI contributions, or did they not make any CSI contributions?

In Paragraph 3.4.3.1 above it was reported that South African companies (at least the JSE-listed companies) tend to structure their CSI programmes with the *B-BBEE* legislation and *B-BBEE* scorecard in mind.¹⁰⁰⁷ The Trialogue data were analysed to determine to what extent the CSIE incurred related to the CP as per the Ninth Schedule of the *ITA(SA)* and *B-BBEE* scorecard activities. As for the data reflected in Tables 3-3 and Table A4-1 (Annexure 4), the discussion in part 4 will relate to both the heading 'Expenditure relating to the Ninth Schedule of the Income Tax Act and to B-BBEE Elements accessed for funding by NPO (% of NPO respondents)'.¹⁰⁰⁸

The research of Cheruiyot-Koech and Reddy¹⁰⁰⁸ was discussed in Paragraph 3.4.3.1. They believe that the preferred CSI activities, "education and training, charitable donations, and enterprise development" were encouraged by B-BBEE. If the data in Table 3-3 are considered, this might indeed be the case. However, as discussed in Chapter 2, depending on the specific requirements relating to charitable donations to PBOs,¹⁰⁰⁹ a company may qualify for a deduction against taxable income for public benefit activities.¹⁰¹⁰

The following is noted if one considers the (average) data. Firstly, companies still favour education, with an average of 46.7 per cent of all estimated CSI expenditure allocated to education. The other three main activities are social and community development (15.3 per cent), health care (nine point one per cent), food security and agriculture (eight point one per cent), and entrepreneur and small business support (at six point one per cent on average). Trialogue unfortunately has reported explicitly only on the B-BBEE elements of socio-economic development,¹⁰¹¹ skills

¹⁰⁰⁷ Mersham and Skinner 2016 *Society and Business Review* 112

¹⁰⁰⁸ Cheruiyot-Koech and Reddy 2022 *Sustainability* 10.

¹⁰⁰⁹ This topic will be discussed in detail in Chapter 6, Section 6.1.1.

¹⁰¹⁰ Refer to the Ninth Schedule of the *ITA(SA)*. There is an ongoing debate about whether the company will qualify for an 18A tax deduction and the benefit of a B-BBEE score. See Moore 2024 *BizCommunity* <https://www.bizcommunity.com/PDF/PDF.aspx?l=196&c=512&ct=1&ci=245806>. This topic will be discussed in more detail in the following chapters.

¹⁰¹¹ "Socio-economic development measures the annual extent to which a business contributes in general to skills development, education or other programmes aimed at promoting sustainable access to the economy for groups of beneficiaries of whom at least 75% are black people." (Moore 2024 *BizCommunity*)

development,¹⁰¹² enterprise and supplier development,¹⁰¹³ and unknown/other for the first four years considered. The three *B-BBEE* scorecard elements identified have a potential score value (points) of 65 of the 105 points available. On average 74.8 per cent of the funds received by NPOs are related to socio-economic development. It is therefore deduced that companies might strategically plan CSI spending to get the best tax and/or B-BBEE advantage possible.

Lastly, the statement of Cheruiyot-Koech and Reddy that companies in a specific industry tend to prefer certain charitable causes could not be proven. The information published in Figure A5-1, Annexure 5 does not indicate a specific trend per industry.¹⁰¹⁴

Last comments on why companies incur CSI expenditure as per the Trialogue 2023 report:¹⁰¹⁵ the question with which Paragraph 3.4.4 is concluded is if these soft and hard laws did not pressure South African companies to invest in CSI projects, what would encourage/drive a company to get involved in CSI?

Figure 3-10 below clearly indicates that the first two reasons why a company would incur CSI expenditure are grounded in ethical and moral behaviour, which closely links with Preston's Integrated Sustainable CSR Model's 'Responsible/Ethical' element. Seventy-nine per cent of the participating companies believed it was "the

<https://www.bizcommunity.com/PDF/PDF.aspx?l=196&c=512&ct=1&ci=245806>); Also refer to Rossouw and Van Rooyen *Certificate # Moore9543-230720-01 B-BBEE Scorecard – Detailed Analysis 4*.

¹⁰¹² "The Skills Development section of the scorecard focuses on how much a company invests in the skills training of its employees or other unemployed or disabled individuals in South Africa." (Edge Training date unknown <https://www.edgetraining.co.za/what-is-skills-development-and-its-role-in-bbbee/#:~:text=These%20elements%20work%20together%20as,disabled%20individuals%20in%20South%20Africa.>); For a comprehensive discussion/explanation of how the *socio-economic development* contributions by qualifying small enterprises are categorised refer to Du Plessis 2023 *UMSIZI Sustainable Social Solutions* <https://umsizi.co.za/social-economic-development-and-bee/?cn-reloaded=1#:~:text=SED 3>. Also refer to Rossouw and Van Rooyen *Certificate # Moore9543-230720-01 B-BBEE Scorecard – Detailed Analysis 3*.

¹⁰¹³ "Enterprise Development (ED) and Supplier Development (SD) is one of the three priority elements of the Broad-Based Black Economic Empowerment (B-BBEE) Scorecard. The aim is to strengthen local procurement, enhance local supplier development programmes and increase financial support towards black entities. See B-BBEE Commission date unknown <https://www.bbbee.commission.co.za/wp-content/uploads/2021/02/Enterprise-and-Supplier-Development.-22-02-21.pdf>; also refer to Rossouw and Van Rooyen *Certificate # Moore9543-230720-01 B-BBEE Scorecard – Detailed Analysis 4*.

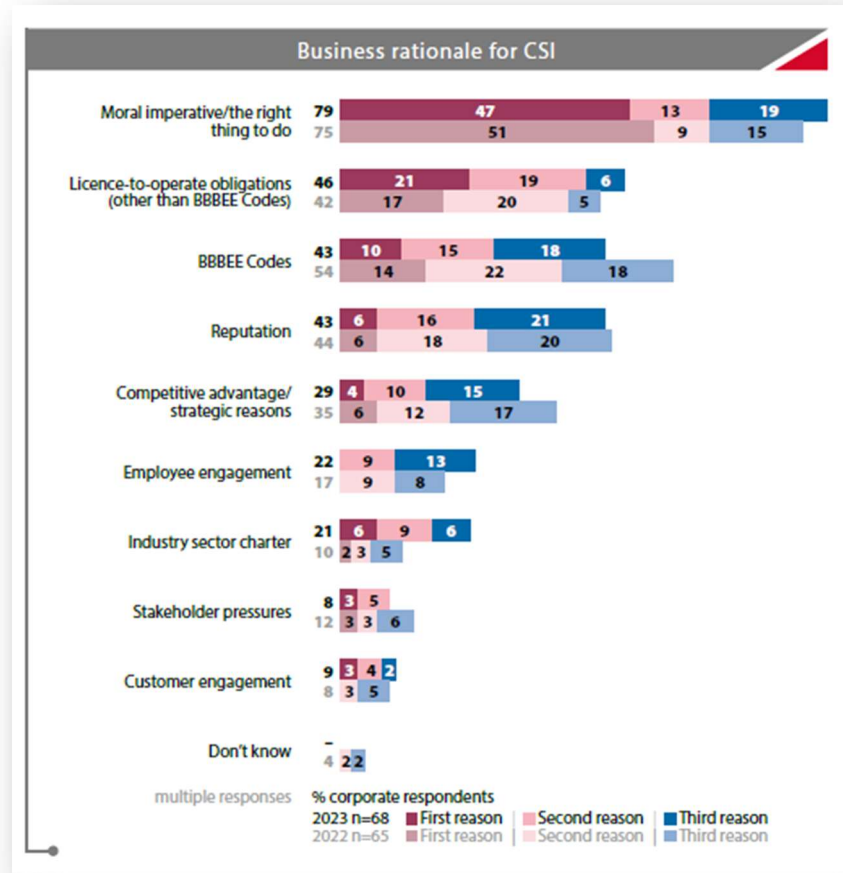
¹⁰¹⁴ Also refer to Trialogue's *Business in Society Handbook 2023* 73-77.

¹⁰¹⁵ Trialogue *Business in Society Handbook 2023*.

right thing to do".¹⁰¹⁶ The second motivation is grounded in the business case for CSR discussed in Paragraphs 3.3.2 and 3.3.3. As long as the company has the 'permission' of the community or "social endorsement to operate"¹⁰¹⁷ it will, in terms of the business case, have a positive financial benefit. In Figure 3-10 below, 21 per cent of the companies listed the 'licence-to-operate obligations' as their primary motivation.

Although the rationale to meet the obligations under the *B-BBEE* Codes (*B-BBEE* scorecard points) is only indicated by 10 per cent of the participating companies as their motivation/reason, the data and related discussion of this topic in this paragraph and in Paragraph 3.4.3 tell another story.¹⁰¹⁸

Figure 3-10: Business rationale for CSI involvement¹⁰¹⁹



¹⁰¹⁶ Trialogue *Business in Society Handbook 2023* 44.

¹⁰¹⁷ Kloppers *Improving Land Reform through CSR* 180.

¹⁰¹⁸ Trialogue *Business in Society Handbook 2023* 44.

¹⁰¹⁹ Trialogue *Business in Society Handbook 2023* 44.

Lastly, Trialogue also noted that companies are more prone to incorporate the UN's sustainable development goals (SDGs) in their CSI strategies/programmes than the goals contained in the NDP. Again the results indicate that education is favoured, and the SDG of 'quality education' is the goal that CSI programmes mostly align with. When considering their CSI programmes, the SDG of 'zero hunger' is increasingly important amongst companies.¹⁰²⁰

3.4.4 CSI in South Africa: concluding remarks

In 2020 Inekwe, Hashim and Yahya¹⁰²¹ confirmed that a positive correlation exists between CSR performance (the extent of CSR activities and CSI) and (both) economic growth and good governance. If the economy grows, this will positively influence the company managers regarding CSI investment. This should indicate to governments and policymakers that these variables cannot be ignored if they want to boost CSI involvement and expenditure. This also confirms to company management the importance of strategically planned CSI programmes.

As indicated in Paragraphs 3.4.1 and 3.4.2, our country desperately needs economic growth, job creation, the upgrading of infrastructure, development, etc. It was further indicated that the government is failing to provide the most basic services as enshrined in the *Constitution*, even though the *Constitution* mandates that the State must uphold, safeguard, advance and fulfil the rights outlined in the *Bill of Rights*.¹⁰²² It is for this reason that it was acknowledged that the Government does not have the capacity to meet its obligations and that businesses in general will have to partner with the Government to change the course/trajectory of our country and prevent it from earning the undesired label of being a failed state.¹⁰²³

It was illustrated through the data presented above that companies mainly determine their CSI budget as a percentage (on average one per cent) of their NPAT income, based on the provisions of the *B-BBEE* Code. Despite the government's plea to assist it in addressing the challenges faced by our country, the current state of

¹⁰²⁰ Trialogue *Business in Society Handbook 2023* 48-49.

¹⁰²¹ Inekwe, Hashim and Yahya 2021 *Social Responsibility Journal* 226-242; 237, 238.

¹⁰²² Chapter 2: *Bill of Rights* of the *Constitution*.

¹⁰²³ Sharma 2018 *Corporate Social Responsibility and Environmental Management* 715; Preston and Peeroo 2023 *De Jure Law Journal* 298.

CSI expenditure mainly incurred by companies reflects the objective of gaining as much benefit as possible from tax legislation and/or *B-BBEE* legislation and the related Codes.

Credit must however be given to the fact that most participating companies indicate that the primary rationale behind their CSI programmes is that they want to do good because it is the right thing to do. This statement is confirmed by the many testimonials in the Trialogue handbooks from 2015 to 2023. One such example is the Sanlam Foundation's new intervention programme, designed in collaboration with the Department of Basic Education, to ensure that children during their early years of education (from grade R onwards) receive "appropriate cognitive stimulation, nutrition, care, and health services"¹⁰²⁴ the objectives being to better the numeracy and literacy skills, "lower repetition and dropout rates, reduce [the] juvenile crime rates, reduce [...] remedial education costs and improve [...] economic and social productivity in adulthood."¹⁰²⁵ This initiative confirms that businesses need to collaborate with the South African government to use (and pool) their strengths, knowledge, and financial and other resources to affect social change and change the country's course.¹⁰²⁶

The current strategic approach will hopefully spill over into a leverage approach where internal and external resources and collaboration between other companies and stakeholders (including the government) are leveraged for a better CSI future to ensure systematic societal change.¹⁰²⁷

The following statement effectively summarises all that has been said above:

Undoubtedly, development in Africa requires the combined efforts of government, business and civil society to implement sustainable initiatives that improve the well-being of all sectors of society. For their part, CSI programmes should, therefore, support national government policies and priorities and align their projects with national goals and structures. They should be prepared to commit to medium- and long-term interventions. They should be strategic and designed, over time, to impact whole nations. And they should strive to build national (and African) pride and identity and, in so doing, demonstrate optimism for the future of the continent.¹⁰²⁸

¹⁰²⁴ Trialogue *Business in Society Handbook 2023* 78-79.

¹⁰²⁵ Trialogue *Business in Society Handbook 2023* 78-79.

¹⁰²⁶ Also refer to Trialogue *Business in Society Handbook 2023* 9.

¹⁰²⁷ Trialogue *Business in Society Handbook 2023* 9.

¹⁰²⁸ Trialogue *CSI in Africa in Handbook of CSI, 2006* 33.

3.5 Conclusion

In this chapter the reasons why companies should get involved in their host communities and incur CSI expenditure were researched extensively in the context of the five foundational theories, the business case for CSR, and the possible positive financial benefits the company might gain.¹⁰²⁹ Barnett¹⁰³⁰ makes the point that if firms expect that addressing social problems comes at a cost, companies rationally are unlikely to do so, especially repeatedly or in significant numbers. So societal issues are unlikely to be resolved through this means. However, if companies expect to profit from alleviating social ills, then knowledge of such win-win scenarios ought to spur widespread and ongoing corporate action to better society.¹⁰³¹

Barnett¹⁰³² also states firmly that we have successfully fooled ourselves into believing that these opposing objectives (serving shareholders and other stakeholders) can be consistently brought into alignment through market mechanisms. Businesses have misled themselves into believing that market mechanisms can consistently reconcile these conflicting states by artificial means, minimising the expectation for companies to serve society and instead determining their success by how well they cater to the demands of their key/primary stakeholders.¹⁰³³ He suggests a solution: by emphasising the potential profitability of managing for society, not just for stakeholders, a company can start evaluating the conditions under which business and society may align through market mechanisms. In cases where alignment proves elusive, crucial discussions should be stimulated about the necessity of formal government intervention to achieve the desired level of harmony.

In moving closer to the actual state of CSI in South Africa, other reasons for South African companies to get involved in CSI initiatives were considered. First, the government's current ability (or actual inability) to provide for its citizens' socio-economic needs and invest in economic and social infrastructure was researched.¹⁰³⁴ It was noted that the big companies have realised that the battle can be won only

¹⁰²⁹ Refer to Paragraphs 3.2 and 3.3.

¹⁰³⁰ Barnett 2019 *Business and Society* 185-186.

¹⁰³¹ Barnett 2019 *Business and Society* 185-186.

¹⁰³² Barnett 2019 *Business and Society* 185-186.

¹⁰³³ Barnett 2019 *Business and Society* 185-186.

¹⁰³⁴ Refer to Paragraphs 3.4.1 and 3.4.2.

if they are willing to cooperate with the government, using their strengths to support it. The CEO Initiative/CEO-government partnership serves as an example here.

After that, the actual involvement of companies in CSR and their CSI initiatives were researched by considering some empirical research as well as the data published by Trialogue. It was found that the majority of companies included in their studies still believe that they can make a difference in their communities and that they are motivated to do so by the belief that it is the right thing to do. However, it was also noted that B-BBEE-related opportunities and possible tax deductions/incentives are significant motivators for incurring CSI expenditures.

Mills¹⁰³⁵ has performed extensive research on the topics of failed or failing states. He believes that a country facing the challenges South Africans face, a country with a failing government, can change for the better. Recovery will, however, largely depend on the citizens as the government cannot bear the sole responsibility of providing for the poor (as one of many examples).¹⁰³⁶ Paragraph 3.4.2 was concluded with the following statement: "[r]egardless of whether or not the private sector can do things better and is more efficient than the public sector, given the serious problems South Africa is currently facing, business in general will have to take a leap of faith, providing the public sector with skills, knowledge and resources in the hope that in return we will see 'more market-friendly policies, ... best practice policies, ... [and a] better security establishment'".¹⁰³⁷

The following chapters will consider the CSI tax-related policies (tax penalties and tax incentives).

¹⁰³⁵ Mills *Why States Recover: Changing Walking Societies into Winning Nations – from Afghanistan to Zimbabwe*.

¹⁰³⁶ Ramaphosa 2022 <https://www.gov.za/news/speeches/president-cyril-ramaphosa-2022-state-nation-address-10-feb-2022>; Sharma 2018 *Corporate Social Responsibility and Environmental Management* 715; Preston and Peeroo 2023 *De Jure Law Journal* 298; Currin 2023 <https://www.gov.za/blog/south-africa-known-be-resilient-nation>.

¹⁰³⁷ Refer to Paragraph 3.4.2; Maggs *Moneyweb* <https://www.moneyweb.co.za/moneyweb-podcasts/moneyweb-midday/government-and-private-sector-partnership-is-crucial-silke/>.

CHAPTER 4 THE RELATIONSHIP BETWEEN CSI AND TAXATION LEGISLATION

Chapter 3 delved into why companies should participate in their communities through CSI. Paragraph 3.4 discussed the 'why' specifically for companies operating in South Africa. In the previous chapter, Paragraph 3.4.4, it was emphasised that the time has come for South African companies to join hands with the government to assist with this task. Taxes can be utilised to steer social behaviour or the economy in a desired direction, representing the regulatory function of taxes.¹⁰³⁸ This can be done, for example, using tax incentives on the positive side and tax penalties on the negative side.¹⁰³⁹ Many countries make use, for example, of a tax incentive to encourage taxpayers to make philanthropic donations to NGOs.¹⁰⁴⁰ Then there is Mauritius, which implemented a tax levy compelling companies to contribute to CSI,¹⁰⁴¹ and South Africa, which enacted the *Carbon Tax Act*¹⁰⁴² to reduce carbon dioxide emissions. These are examples where the government imposed a tax penalty (a levy).

The relationship between a government and its citizens has been described as a social contract or compact.¹⁰⁴³ It involves a mutual responsibility: the citizens are liable to pay taxes, and in turn the government must provide certain public goods and services.¹⁰⁴⁴ The tax collected ensures that the government has a budget to realise its policy objectives.¹⁰⁴⁵ Examples of the goods and services that the government must provide are "defence, health care, public education, housing, infrastructure for transport and communication and social security",¹⁰⁴⁶ and in some countries improved living conditions, which are funded through social grants.¹⁰⁴⁷

¹⁰³⁸ Nerudová *et al* "Tax Policy Areas and Tools for Keeping Sustainable Economy and Society in the EU" 84.

¹⁰³⁹ Preston and Kloppers 2018 *IJSSHS* 153.

¹⁰⁴⁰ OECD *Taxation and Philanthropy* 15.

¹⁰⁴¹ Refer to the discussion of this topic in Paragraph 4.3.3 and Chapter 5.

¹⁰⁴² 15 of 2019.

¹⁰⁴³ Bronkhorst and Stiglingh "General Principles of Taxation" 1.

¹⁰⁴⁴ Bronkhorst and Stiglingh "General Principles of Taxation" 1.

¹⁰⁴⁵ Nerudová *et al* "Tax Policy Areas and Tools for Keeping Sustainable Economy and Society in the EU" 84.

¹⁰⁴⁶ Bronkhorst and Stiglingh "General Principles of Taxation" 1.

¹⁰⁴⁷ Bronkhorst and Stiglingh "General Principles of Taxation" 1; also refer to Gribnau 2015 *Social and Legal Studies* 226; Bronkhorst and Stiglingh "General Principles of Taxation" 1.

The research question posed in Chapter 1 reads: How can the South African taxation framework be reformed to incorporate corporate social investment expenditure? The recommendations depend to a large extent on the answers obtained from researching the objectives of the remaining three chapters.

The primary objective of this chapter is to determine to what extent tax incentives or taxes (either in the form of a tax percentage or a levy) can be employed to encourage CSI. Two secondary objectives will be utilised to meet the primary objective. The first secondary objective is to define the different terms relating to taxation, setting the background for the current chapter and the chapters to follow. The second is to critically evaluate the relationship between CSI and taxation through (i) determining to what extent tax incentives are utilised to encourage CSI, and (ii) determining to what extent a compulsory tax percentage, rate or levy is utilised to prompt CSI involvement. The reason for these last two diverse secondary objectives is that a government, as previously indicated, can apply either an incentive or a penalty (a levy or a higher tax rate, for example) to prompt taxpayers to engage in a specific practice or CSI activity or to change their behaviour.¹⁰⁴⁸

In South Africa the government has not yet imposed a CSI levy requiring companies to contribute in this regard, nor is a specific tax incentive or tax allowance available that relates only to social responsibility investment or contributions. However, three countries (Mauritius, India and Seychelles) have introduced tax levies, although in India it was introduced through its company legislation.¹⁰⁴⁹

While the expectation was expressed that companies should get involved, Chapters 2¹⁰⁵⁰ and 3¹⁰⁵¹ also underscored companies' anticipation of a return on their involvement.¹⁰⁵² An important finding (also for this chapter and the following two chapters) was that the potential B-BBEE benefits and section 18A of the *ITA(SA)* tax deduction plays a significant motivational role for South African resident

¹⁰⁴⁸ Preston and Kloppers 2018 *IJSSHS* 153.

¹⁰⁴⁹ The legislation of these counties is discussed in detail in Chapter 5.

¹⁰⁵⁰ Refer to Paragraphs 2.3.1 (the proposed definition of CSR), 2.3.3 (the proposed definition of CSI), and 2.4.2.2 (the Economic element of Preston's Integrated Sustainable CSR Model).

¹⁰⁵¹ Refer to Paragraphs 3.2, 3.2.1, 3.3, and 3.3.2.

¹⁰⁵² Refer to Paragraph 2.3.3; this return can be in the form of improved profits or it can take other forms, with their value determined by models such as the SROI model (Refer to the discussion under Paragraph 2.2.1.5).

companies¹⁰⁵³ to incur CSIE.¹⁰⁵⁴ Therefore the added benefit for South African companies comes in the form of section 18A of the *ITA(SA)* tax deduction incentives and the *B-BBEE* scorecard-related benefits. It was confirmed that South African companies tend to structure their CSI initiatives and CSIE per applicable legislation to benefit as much as possible from the legally prescribed provisions and/or tax benefits available. Therefore it can already be inferred that tax incentives might influence CSR practices, especially in the South African context.

4.1 Taxation – defining the related terms

To fully understand the context of the later discussion, it is necessary to distinguish between the respective definitions or use of the following terms: taxation framework, tax, tax levy and tax incentive.¹⁰⁵⁵

Taxation is a crucial source of funds enabling the functioning of a government. It also influences the activities and effective functioning of the economy and society in general.¹⁰⁵⁶ Most governments, however, do not define the different taxation-related terms in their legislation.¹⁰⁵⁷

According to Attak¹⁰⁵⁸ the 'taxation framework' is the

¹⁰⁵³ The concept of residency is complex and does not fall within the discussion framework of this study. It is important to emphasise that South Africa has a "resident-based system of taxation." A company will typically be regarded as a resident of RSA if it was "incorporated, established or formed in the Republic" or "has its place of effective management in the Republic." (S 1(1) "resident" of the *ITA(SA)*); Wilcocks "Gross Income" 27, 32.

¹⁰⁵⁴ Refer to Paragraphs 3.4.3 and 3.4.4.

¹⁰⁵⁵ These terms are used either in the title of the research study, the research question, or the different types of legislative documents which will be extensively discussed in Chapters 5 and 6.

¹⁰⁵⁶ Gribnau 2015 *Social and Legal Studies* 226; Guimarães, Duca and Ndlovu *Taxation and State-Society Relations in Sub-Saharan Africa: The Cases of Cameroon, Mozambique and South Africa* 1; Bronkhorst and Stiglingh "General Principles of Taxation" 1.

¹⁰⁵⁷ Sarmento "Taxation Principles and Concepts" 9.

¹⁰⁵⁸ Attak 2023 <https://www.igi-global.com/dictionary/tax-policy-and-entrepreneurship/119943#:~:text=Represents%20the%20underlying%20structure%20and,laws%2C%20procedures%2C%20and%20policies>. The South African taxation framework consists of various pieces of legislation, and the governance and administration processes are carried out by the South African Revenue Service (SARS) (in terms of the *South African Revenue Service Act* 34 of 1997) under the leadership of the current commissioner, Edward Kieswetter. The taxation legislation must adhere to the provisions of the *Constitution*, which is the "supreme law of the Republic." (S 2 of the *Constitution*).

underlying structure and guidelines that govern the imposition and collection of taxes within a particular jurisdiction. It encompasses the legal and regulatory framework that outlines the tax laws, procedures, and policies.

A strong and clearly defined taxation framework ensures "transparency, accountability, and efficient tax administration",¹⁰⁵⁹ which fosters economic stability and growth.

Bronkhorst and Stiglingh¹⁰⁶⁰ define tax as a "compulsory payment that is imposed on citizens to raise revenue in order to fund general expenditure" 'Taxation' is firstly defined as the 'action of taxing'.¹⁰⁶¹ This action of taxing is when the government "levies or imposes a financial obligation on its citizens or residents."¹⁰⁶² In many cases, taxation is regarded as the umbrella term for the different forms of taxes imposed by the government, such as income tax, capital gains tax, company tax, estate duty, stamp duty, value-added tax (or, as some countries refer to it, sales tax), customs and excise duties, and so on.¹⁰⁶³ In particular a distinction must be made between a tax, a levy and a duty, especially in light of the foreign CSR legislation¹⁰⁶⁴ to be discussed in Paragraph 4.3.3 and Chapter 5. A tax is usually levied at a specific tax rate.¹⁰⁶⁵

Section 5 of the *ITA(SA)*¹⁰⁶⁶ stipulates that a taxpayer (a company in the context of this study) will pay an income tax, in respect of income received or accrued for its favour, for the benefit of the National Revenue Fund. This is referred to as a 'normal tax' and is, therefore, a tax in the form of a compulsory payment referred to above.

A tax levy is a mandatory payment to the government, but not on income or the value of a product.¹⁰⁶⁷ It is often linked to units. For example, South Africa has an

¹⁰⁵⁹ Attak 2023 <https://www.igi-global.com/dictionary/tax-policy-and-entrepreneurship/119943#:~:text=Represents%20the%20underlying%20structure%20and,laws%2C%20procedures%2C%20and%20policies.>

¹⁰⁶⁰ Bronkhorst and Stiglingh "General Principles of Taxation" 1.

¹⁰⁶¹ Merriam-Webster dictionary date unknown <https://www.merriam-webster.com/dictionary/taxation#legalDictionary.>

¹⁰⁶² Kagan 2024 <https://www.investopedia.com/terms/t/taxation.asp.>

¹⁰⁶³ LexisNexis 2024 <https://www.lexisnexis.co.uk/legal/glossary/tax-or-taxation;> Koekemoer "Taxation in South Africa" 14.

¹⁰⁶⁴ This will be the legislation of Mauritius, India and Seychelles.

¹⁰⁶⁵ SARS *Guide for Tax Rates/Duties/Levies* of 29 August 2024.

¹⁰⁶⁶ Sections 5(1)(c) and (d) of the *ITA(SA)*.

¹⁰⁶⁷ SARS 2022 [https://www.sars.gov.za/about/how-we-collect-tax/.](https://www.sars.gov.za/about/how-we-collect-tax/)

environmental levy of 3.5 cents per kilowatt hour (kWh).¹⁰⁶⁸ Another example is the carbon tax levy on motor vehicles, which was introduced in the hope that more energy-efficient vehicles will be sold in South Africa.¹⁰⁶⁹ In 2018 (effective 1 April 2018) the South African government introduced the so-called sugar tax by implementing the "Health Promotion Levy (HPL)".¹⁰⁷⁰ Using a tax levy, the government ensured that the prices of these products would increase. The main objective of this tax policy/design was to curb consumers' use (purchase) of sugar and sugar-sweetened beverages to reduce their excessive intake of sugar in an effort to address health issues such as obesity and diabetes. The second objective was to encourage manufacturers of sugar-sweetened beverages to adjust the formulation of these beverages. Another "secondary objective was to raise revenue for the national budget, which could in principle help support a financially strained health care system."¹⁰⁷¹ The results were far better than hoped for, with two studies reporting that the reduction in the purchase of these beverages was considerably larger than anticipated.¹⁰⁷² This is a classic example of the government trying to influence behavioural patterns and encourage behavioural changes using tax levies (as opposed to tax incentives).

An example of a duty levied on the value of the goods imported, called a customs duty, is imposed under the *Customs and Excise Act*.¹⁰⁷³ The legislation to be discussed in the following chapters (based on preliminary investigation) will refer to a tax calculated on taxable income or profit.

Tax policies are part of the government's fiscal policy. The government generally uses fiscal policy and government spending to manipulate the economy.¹⁰⁷⁴ Some possible objectives of tax policy include achieving specific economic goals, such as

¹⁰⁶⁸ *Guide for Tax Rates/Duties/Levies* of 29 August 2024 58.

¹⁰⁶⁹ *Guide for Tax Rates/Duties/Levies* of 29 August 2024 59.

¹⁰⁷⁰ Part 7, Schedule No. 1 of the *Rates and Monetary Amounts and Amendment of Revenue Laws Act* 14 of 2017.

¹⁰⁷¹ SARS 2021 <https://www.sars.gov.za/customs-and-excise/excise/faqs-for-sugary-beverages-levy/>; Essman *et al* 2022 *International Journal of Behavioral Nutrition and Physical Activity* 1.

¹⁰⁷² Stacey *et al* 2021 *Lancet Planet Health* 200; Boachie, Thsehla and Hofman 2022 *SAMJ* 454.

¹⁰⁷³ Part 1 of Schedule 1 of the *Customs and Excise Act* 91 of 1964; also refer to *Guide for Tax Rates/Duties/Levies* of 29 August 2024 49.

¹⁰⁷⁴ Horton and El-Ganainy date unknown <https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/Fiscal-Policy>.

stimulating exports and influencing taxpayer behaviour, such as using less sugar.¹⁰⁷⁵ These behavioural changes can be achieved using tax incentives (on the positive side) or levies and penalties (on the negative side).¹⁰⁷⁶

"Tax incentives have very heterogeneous designs, and their impact often depends on economies' standard tax systems."¹⁰⁷⁷ There are two overarching tax incentives groups: 'general' and 'selective'.¹⁰⁷⁸ Tax incentives are exceptions to the standard tax structure¹⁰⁷⁹ and could be in the form of exemptions (an amount included in income but then exempted again because of its nature; for example, dividend income),¹⁰⁸⁰ tax holidays, tax credits, investment allowances and preferential tax rates.¹⁰⁸¹ Thus, incentive tax policies aim to guide, regulate and promote economic activity and encourage or discourage certain behaviours. These policies are a key component of the state's tax strategy, enabling the government to implement advantageous tax measures to create jobs, support specific sectors or stimulate community actions. Many governments have pursued individual initiatives to promote corporate social practices by gradually imposing additional requirements on businesses and offering various tax incentives. For example, governments may introduce energy consumption and waste management levies to protect the environment. On the social side various financial and fiscal benefits may be provided

¹⁰⁷⁵ Gribnau 2015 *Social and Legal Studies* 225; Preston and Kloppers 2018 *IJSSHS* 153.

¹⁰⁷⁶ Preston and Kloppers 2018 *IJSSHS* 153.

¹⁰⁷⁷ OECD 2022 *OECD Investment Tax Incentive Database 2022 Update: Tax Incentives for Sustainable Development (2022 ITID Report)* 9. Calani, Dressler and Wermelinger conducted the original study on behalf of the OECD and included 36 developing countries. Their object was to compile a database regarding the different investment tax incentives used by the respective countries. The study "describes a classification to structure quantitative and qualitative information on investment tax incentives across three dimensions: design features, eligibility conditions and their legal basis". (Celani, Dressler and Wermelinger *Building an Investment Tax Incentive Database: Methodology and Initial Findings of 36 Developing Countries* 3).

¹⁰⁷⁸ "General tax incentives refer to incentives applying across the board, and with no exception, to all taxpayers, such as a reduction in the corporate tax rate or universal depreciation allowances. Selective investment tax incentives are defined as a selective deviation from the benchmark tax, i.e. the standard tax provision as legislated and which is suspended or changed to benefit a select group of taxpayers." (Calitz, Wallace and Burrows *The Impact of Tax Incentives to Stimulate Investment in South Africa* 5). The different types of incentives finding application in South African tax legislation will be discussed in more detail in Chapter 5.

¹⁰⁷⁹ Lideikyte-Huber 2020 *World Tax Journal* 635.

¹⁰⁸⁰ An example will be s 10(1)(k) of the *ITA(SA)*, which exempts all dividends received from South African companies.

¹⁰⁸¹ A company operating a SEZ will pay CIT at a rate of 15 per cent and not the normal rate of 27 per cent. See *Brochure on the Special Economic Zone Tax Incentives* of July 2018 1; UN *United Nations Design and Assessment of Tax Incentives in Developing Countries: Selected Issues and a Country Experience* iv-v.

to encourage the employment of people with disabilities or of specific cultural groups.¹⁰⁸²

According to the OECD, almost 90 per cent of the 52 emerging and developing countries included in their 2022 study use at least one type of corporate income tax (CIT) incentive (of the 467 different tax incentive regimes considered).¹⁰⁸³ The widespread use of tax incentives by governments worldwide is acceptable for several reasons. The following two are examples applied by the South African government:

- Incentives can be used to encourage companies to establish their operations in special economic development zones (SEZs) and delve into the opportunities arising from clustering different businesses.¹⁰⁸⁴
- Incentives can serve as a powerful tool to foster investment in specific sectors, be it employment or welfare, in both short- and long-term scenarios. This versatility underscores the potential of tax incentives to drive targeted social and economic development.¹⁰⁸⁵

Despite the generous use of tax incentives by developed economies such as Japan, the United Kingdom and the United States of America,¹⁰⁸⁶ and the governments of developing countries, according to the OECD Report,¹⁰⁸⁷ the effectiveness of these tax policies remains a subject of ongoing research, as many questions still need to be answered.¹⁰⁸⁸ Unfortunately, there is also no concurrence amongst scholars on whether the cost for the government (loss in revenue) outweighs the benefits

¹⁰⁸² Kacem and Omri 2022 *Journal of Financial Reporting and Accounting* 642-463.

¹⁰⁸³ OECD 2022 *ITID Report* 2, 4.

¹⁰⁸⁴ Adams *An Analysis of the Efficacy of Uganda's Petroleum Fiscal Regime in Attracting and Retaining Investors in Uganda's Oil and Gas Sector* 10.

¹⁰⁸⁵ Calitz, Wallace and Burrows *The Impact of Tax Incentives to Stimulate Investment in South Africa* 9. The data tabled in Table 2-4 in Paragraph 2.3.3 indicated that employee welfare and working environment/living conditions/quality of life are essential internal CSR factors for a company to consider. The *ETI* was enacted to try to address unemployment among the youth (refer the Preamble of the *ETI*). This is done by giving the employer a reduction in the amount of employees' tax that should be paid for the qualifying employees to SARS. See Bardien 2020 <https://www.thesait.org.za/news/540518/Employment-Tax-Incentive.htm>.

¹⁰⁸⁶ Ekwueme 2024 *American Journal of Law* 12.

¹⁰⁸⁷ OECD *Investment Tax Incentives Database 2022 update: Tax Incentives for Sustainable Development*.

¹⁰⁸⁸ Sebele-Mpofu, Gomera and Sibanda 2022 *Journal of Accounting, Finance and Auditing Studies* 91-92.

because information and data regarding the actual costs and benefits is not readily available.¹⁰⁸⁹

4.2 Can tax incentives be utilised to encourage CSI?

The title of this chapter is the relationship between CSI and taxation legislation. The primary objective is to investigate the relationship between CSI and taxation, with the emphasis in this paragraph on determining to what extent CSI can be encouraged through incentives as part of tax policies (as explained in Paragraph 4.1 above). It is not the objective of this research to conduct an in-depth investigation into how effective tax incentives are in this regard.

The research analysed the keywords and abstracts of 276 academic studies and documents,¹⁰⁹⁰ confirming the conclusion of Kacem and Omri¹⁰⁹¹ that most studies investigated as separate topics either (i) CSR practices or (ii) the use of tax benefits/incentives (employed in different countries) to promote, for example, socially responsible behaviour and discourage environmentally destructive ones. Some scholars concluded that tax incentives can stimulate CSR engagement and presumably CSI, while others concluded that tax policies may have the opposite effect.¹⁰⁹² Only a handful of scholarly works considering whether tax incentives can

¹⁰⁸⁹ Sebele-Mpofu, Gomera and Sibanda 2022 *Journal of Accounting, Finance and Auditing Studies* 92, 93.

¹⁰⁹⁰ Google Scholar and the North-West University Library platform (EBSCOhost) were used as search platforms. Using the search terms: 'tax incentives and CSR', 'tax incentives for CSR', 'tax reduction for CSR', 'tax incentives and corporate social responsibility', 'tax incentives for environment or sustainable development'. These platforms identified 276 documents. The abstracts and keywords of these scholarly works were scrutinised to identify those documents that discussed the relationship between tax incentives and the different elements of CSI, including philanthropy. Most of these documents/articles relate to tax evasion because companies use tax incentives and tax legislation (which foster FDI) to their benefit. The following sources can be consulted for the use of incentives, especially regarding FDI, green energy, tourism and special economic zones (SEZs): Kransdorff 2010 *Consilience: The Journal of Sustainable Development* 68-84; Calitz, Wallace and Burrows *The Impact of Tax Incentives to Stimulate Investment in South Africa*; Munongo *The Effectiveness of Tax Incentives in Attracting Foreign Direct Investment: The Case of the Southern African Development Community*; Li 2016 *Review of International Political Economy* 232-260; Sucheran 2016 *African Journal of Hospitality, Tourism and Leisure* 1-17; Chygryn *et al* 2019 *Journal of Environmental Management and Tourism* 1443-1456; Etim and Daramola 2020 *Journal of Open Innovation: Technology, Market and Complexity* 1-26; GG 41758 and 41759 of 6 July 2018; SARS *Brochure on the Special Economic Zone Tax Incentives* of July 2018.

¹⁰⁹¹ Kacem and Omri 2022 *Journal of Financial Reporting and Accounting* 642.

¹⁰⁹² Ekwueme 2024 *American Journal of Law* 15.

positively encourage CSI and sustainable CSR behaviour were found.¹⁰⁹³ The conclusions drawn from the studies can be divided into five broad groups, namely:

1. General conclusions regarding the effect of tax incentives on CSI
2. Conclusions regarding the effect of tax incentives on philanthropic and humanitarian giving
3. Conclusions regarding the effect of tax incentives on sustainable CSI practices (relating to environmental and sustainable development policies)
4. Conclusions regarding the effect of tax incentives on employment (CSI – social policies)

4.2.1 General findings regarding the effect of tax incentives on CSI

Many definitions of CSR exist, as seen in Chapter 2, and also numerous ideas of what activities should be included in CSI. This was evident in the studies scrutinised. In general the tax incentives provided by governments regarding CSI related to the recruitment and employment of ethnic minority groups or previously disadvantaged groups, addressing unemployment especially amongst the youth, addressing environmental issues such as the reduction of carbon dioxide (CO₂) emissions, and stimulating research and development in the matter of renewable or green energy.¹⁰⁹⁴

The following are general conclusions taken from the respective studies.

¹⁰⁹³ This statement is based on the fact that only 25 academic journal articles relating to CSR and tax incentives (for the search period 2010 to 2024) could be found. Most studies are related to developed countries such as the United States of America, Australia, Canada, France, New Zealand, and Switzerland. Of these articles, only three were related to countries on the African continent. Some other studies conducted by the OECD and other organisations will also be discussed; See, for example, Lideikyte-Huber (a researcher specialising in philanthropy and taxation, especially in Switzerland); also refer to Geneva Centre for Philanthropy 2024: <https://www.unige.ch/philanthropie/en>; Kacem and Omri 2022 *Journal of Financial Reporting and Accounting* 643.

¹⁰⁹⁴ Refer to: Calitz, Wallace and Burrows *The Impact of Tax Incentives to Stimulate Investment in South Africa* 1-22; Ebrahim, Leibbrandt and Ranchhod *The Effects of The Employment Tax Incentive on South African Employment*; Dippenaar 2018 *South African Journal of Economics and Management Sciences* 1-12; Lideikyte-Huber "An Act of Love? Tax Aspects of Corporate Philanthropy"; Dinis, Lemos and Serra "Tax Incentives for SMEs' Digital Transformation" 1-6; Lin and Xu 2023 *Journal of Environmental Management* 1-12; Ekwueme 2024 *American Journal of Law* 11-22.

Unlike individual taxpayers, companies are much more sensitive to changes in tax rates and tax incentives.¹⁰⁹⁵ A direct correlation between the fluctuation of the corporate income tax rate (CIT rate) and CSI spending was reported.¹⁰⁹⁶ It was further confirmed that smaller companies (micro and SMEs) are not always aware of the tax incentives¹⁰⁹⁷ but tend to use them when they are.¹⁰⁹⁸ Apart from the size of a company, the economic sector in which it operates plays a role. It was found that the company's sensitivity to changes in tax incentives might differ depending on the economic sector in which the company operates. Calitz, Wallace and Burrows¹⁰⁹⁹ considered the impact of tax incentives that were available for the nine different economic sectors in South Africa and found that the agricultural, motor vehicle, electricity and transport sectors were the sectors that reacted the most positively to tax incentives and made the most of them. In further considering the impact per sector, it was discovered that benefits received by the various industrial sectors that took advantage of the tax incentives exceeded the loss in revenue (cost) suffered by the government.¹¹⁰⁰ However, there is a very fine balancing act that policymakers should take note of. Without delving too deeply into the issue, incentives stimulating investment for economic growth is for obvious reasons good, but the question is whether it considers sustainable development. Lin and Xu¹¹⁰¹ pointed out that electricity demand increased by about 11 per cent among smaller businesses when the Chinese government implemented one of these tax incentives.

The following was found in considering tax incentives concerning specific CSI areas. A positive correlation exists between tax incentives and CSR initiatives (practices, programmes and commitments) in all CSI areas (economic, social and environmental). This means that an increase in a tax incentive designed to produce

¹⁰⁹⁵ Lideikyte-Huber "An Act of Love? Tax Aspects of Corporate Philanthropy" 537; Ekwueme 2024 *American Journal of Law* 14.

¹⁰⁹⁶ Ekwueme 2024 *American Journal of Law* 14; According to PWC, the CIT rates of trading companies in Ireland are 12.5 per cent and in Singapore 17 per cent. See PWC 2024 <https://taxsummaries.pwc.com/quick-charts/corporate-income-tax-cit-rates>.

¹⁰⁹⁷ Dinis, Lemos and Serra "Tax Incentives for SMEs' Digital Transformation" 4.

¹⁰⁹⁸ Ebrahim, Leibbrandt and Ranchhod *The Effects of The Employment Tax Incentive on South African Employment* 9-10; Dippenaar 2018 *South African Journal of Economics and Management Sciences* 8; Dinis, Lemos and Serra "Tax Incentives for SMEs' Digital Transformation" 1,4.

¹⁰⁹⁹ Calitz, Wallace and Burrows *The Impact of Tax Incentives to Stimulate Investment in South Africa* 1-22.

¹¹⁰⁰ Calitz, Wallace and Burrows *The Impact of Tax Incentives to Stimulate Investment in South Africa* 19.

¹¹⁰¹ Lin and Xu 2023 *Journal of Environmental Management* 1.

an ecological impact will result in a correlative rise in CSI programmes the government intends to promote.¹¹⁰² Tax incentives to target specific CSI areas "can serve as a powerful catalyst for encouraging corporate engagement in socially responsible practices."¹¹⁰³

The following is noteworthy when tax incentives apply to all companies, whether local or multinational (MNEs). In 2021 a global minimum tax (GMT) of 15 per cent was introduced under the Global Anti-Base Erosion (GLoBE) Rules.¹¹⁰⁴ This rate applies to all MNEs wherever they operate. The OECD warned policymakers to be aware that certain tax incentives might need to be re-assessed and re-designed after implementing Pillar Two of the BEPS framework.¹¹⁰⁵ When tax incentives reduce an MNE's effective tax rate in a jurisdiction to below 15 per cent, the MNE may be liable for top-up taxes under the Global Anti-Base Erosion rules, a crucial part of Pillar Two. Consequently, these rules will influence the effectiveness of specific tax incentives.¹¹⁰⁶

The following sections will discuss the impact of tax incentives on more specific areas of CSI.

4.2.2 Findings regarding the effect of tax incentives on philanthropic and humanitarian giving

The United Nation's sustainable development goals number 1 (eradication of poverty), number 2 (zero hunger), number 3 (good health and well-being), number 4 (quality education), and to some extent number 5 (gender equality) closely link

¹¹⁰² Kacem and Omri 2022 *Journal of Financial Reporting and Accounting* 658.

¹¹⁰³ Ekwueme 2024 *American Journal of Law* 14.

¹¹⁰⁴ OECD 2024 <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/cross-border-and-international-tax/summary-economic-impact-assessment-global-minimum-tax-january-2024.pdf>. The two pillar solutions are supposed to address tax issues arising from MNEs doing tax planning and using the tax legislation of different jurisdictions in their favour. For more reading in this regard, refer to KPMG date unknown <https://kpmg.com/xx/en/our-insights/risk-and-regulation/beps-2-0-pillar-one-and-pillar-two.html>.

¹¹⁰⁵ Inclusive Framework on Base Erosion Profit Shifting (BEPS); OECD 2024 <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/cross-border-and-international-tax/summary-economic-impact-assessment-global-minimum-tax-january-2024.pdf>.

¹¹⁰⁶ OECD *Tax Incentives and the Global Minimum Corporate Tax: Reconsidering Tax Incentives After the Globe Rules* 3; OECD 2024 <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/cross-border-and-international-tax/summary-economic-impact-assessment-global-minimum-tax-january-2024.pdf>.

with the activities associated with CSI narrowly defined (also mainly CP in nature).¹¹⁰⁷ Section 18A is one of the very few sections of the *ITA(SA)*, as will be illustrated in Chapter 6, which allows for a deduction of these CSI-related expenses. These expenses relate to *bona fide* donations made to approved PBOs (in terms of section 30 of the *ITA(SA)*) which provide the public benefit activities as recognised under the Ninth Schedule of the *ITA(SA)*.¹¹⁰⁸ South Africa is not unique in providing this type of tax incentive. The OECD performed a comprehensive study of the tax treatment of philanthropic giving under its member-state countries, indicating that countries such as the United States of America and Australia all have a tax incentive to this extent.¹¹⁰⁹

As one of the member states, South Africa was included in the OECD 2022 study,¹¹¹⁰ which aimed to determine "the various arguments for and against the provision of preferential tax treatment for philanthropy."¹¹¹¹ The OECD found that most countries use tax incentives in the form of a deduction against taxable income (similar to the section 18A¹¹¹² deduction). Other less-used tax incentives for philanthropic donations are tax credits and matching. When tax incentives in the form of a deduction are used, it is generally found that the amount is limited to a percentage of taxable income or a specific amount. This is to limit the cost (the loss in revenue) for the government.¹¹¹³

Three countries (Belgium, Canada and New Zealand) did not limit the deduction of philanthropic donations incurred by the company, whether as a percentage of the taxable income or as a fixed amount. These countries seem to view corporate donations as a business expense and "thus simply allow [companies] to deduct the

¹¹⁰⁷ Refer to Chapter 2.

¹¹⁰⁸ For a comprehensive discussion of all the requirements regarding the provisions of ss 18A read with 30 and the Ninth Schedule of the *ITA(SA)*, refer to Paragraph 6.1.1 of Chapter 6.

¹¹⁰⁹ OECD *Taxation and Philanthropy* 15.

¹¹¹⁰ OECD *Taxation and Philanthropy* 18, 44, 45, 47, etc.

¹¹¹¹ OECD *Taxation and Philanthropy* 3

¹¹¹² Section 18A of the *ITA(SA)*.

¹¹¹³ "Countries that provide tax deductions, may cap the share of the donation that is deductible, cap the size of the deduction to a share of taxable or total income, cap the size of the deduction to a fixed value, or use a combination of these ceilings. Countries that provide a tax credit may cap the value of their tax credit to a share of taxable or total income, a share of the income tax liability, a fixed value, a combination of ceilings, or cap the size of the donation that is creditable. To limit the cost of matching schemes, countries set the rate at which the relief may be claimed by the receiving philanthropic entity." (OECD *Taxation and Philanthropy* 130).

gift through the same mechanism that other business expenses are deducted."¹¹¹⁴ It is therefore believed that, in this case, companies might be more willing to incur philanthropic expenditure as their taxable income will be lower. This may be justified because, as the OECD has noted, a tax incentive is the provision of a subsidy for an expense incurred by the donor that would otherwise have been provided for by the government.¹¹¹⁵

It should be noted that most countries will differentiate between donations and sponsorships.¹¹¹⁶ If the donation (in the form of sponsorship) to the PBO was made to receive in return advertising through the PBO's platform, or the PBO promotes the company by including the donor list in their promotional material, for instance, it is regarded as a business expense and the related amount will be deductible as a business expense against taxable income.¹¹¹⁷ The test will determine whether a sufficient nexus/causal link exists between the company operations, the business income produced and the related expenses.¹¹¹⁸

Specific statistics regarding philanthropic giving in South Africa will now be considered.

¹¹¹⁴ OECD *Taxation and Philanthropy* 96, 102-103; the deduction of philanthropic donations by companies of certain foreign countries will be discussed in more detail in Chapter 6.

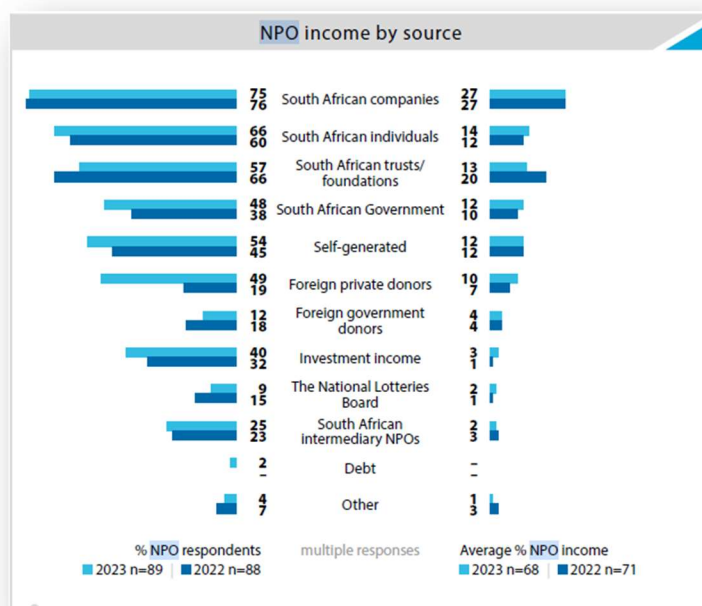
¹¹¹⁵ OECD *Taxation and Philanthropy* 128.

¹¹¹⁶ OECD *Taxation and Philanthropy* 130

¹¹¹⁷ "This report distinguishes between two kinds of sponsorship payments to philanthropic entities: (1) corporations purchase publicity and advertising from philanthropic entities for the fair market value of those services; and (2) corporations donate to philanthropic entities and the fair market value of the publicity and advertisement they receive as a result is below the value of the donation and in line with the country's donor-benefit rules." (OECD *Taxation and Philanthropy* 77, 96, 102-103).

¹¹¹⁸ This is an important finding, especially for Chapters 5 and 6; OECD *Taxation and Philanthropy* 77, 96, 102-103.

Figure 4-1: Not-for-profit revenue sources¹¹¹⁹



According to the statistics gathered from 89 participating NPOs, their primary source of income, 27 per cent, came from South African companies. The government is responsible for only 12 per cent of the funding.¹¹²⁰ Trialogue also reports a (further) decline from 2023 in charitable grant-making support by companies¹¹²¹ and a decline in developmental CSI projects focussing on generating social change. The average spending remained much the same, however.¹¹²² This is an aspect that the government as a stakeholder should take note of.

If this is the case, then the government should note the finding that companies tend to be more tax-sensitive towards health care.¹¹²³ In South Africa, 78 per cent of the 68 corporate participants in the 2023 Trialogue study indicated that 48 per cent of

¹¹¹⁹ Trialogue *Business in Society Handbook 2023* 237.

¹¹²⁰ Trialogue *Business in Society Handbook 2023* 237. The last data published by Statistics South Africa were for the period 2010 to 2014, regarding the non-profit sector. According to this report, government grants were the main source of income for this sector. *National Accounts: Statistics of the Non-profit Sector for South Africa, 201 to 2014 (Discussion document: D0407.2)* of February 2017.

¹¹²¹ Charitable grant-making consists of once-off donations not linked to the business focus that will normally not be followed up to determine what the outcome was. See Trialogue *Business in Society Handbook 2023* 50.

¹¹²² Trialogue *Business in Society Handbook 2023* 46.

¹¹²³ Duquette 2016 *Journal of Public Economics* 51.

the average CSI expenditure goes towards education and only an average of 6 per cent towards health care.¹¹²⁴

In the light of the first note under the general notes above and the Trialogue findings, the government should realise the following. If it would like to ensure that (i) the PBOs continue to be funded by the public and/or (ii) a specific charitable sector or organisation receives more significant benefits through donations, it should reform the value of the deductible contributions (the tax incentives) by increasing the value for the sector where it will have the most significant effect and reduce it where the impact is more negligible.¹¹²⁵ For example, if the government wants to encourage healthcare donations, then a general philanthropic incentive like section 18A will not be sufficient. In this case it is advised that the deduction allowed should not be capped, for example, like all other donations, to a maximum of 10 per cent of taxable income,¹¹²⁶ but the company should be allowed a 100 per cent deduction, even if this would result in the total amount exceeding 10 per cent of taxable income.

Governments in general are also advised to consider the company's size based on turnover or revenue. Many studies have indicated that more wealthy donors, or those making more significant donations, respond robustly to tax incentives.¹¹²⁷ Placing a ceiling on a donation will impact the decision regarding the amount of the donation; The donor company will therefore, strategically plan the total amount of the donations to be equal to or less than the (calculated) ceiling amount. In the South African context, because of the generally applied section 18A ceiling of 10 per cent of taxable income, a company will strategically plan not to exceed that ceiling and will spend less on donations than the 10 per cent of taxable income calculated amount.

It seems that tax incentives for philanthropic giving are well established and applied by most countries. Because there are indications that companies are rethinking their tax strategies and CSI programmes, it might be time for the government to

¹¹²⁴ Trialogue *Business in Society Handbook 2023* 50.

¹¹²⁵ Duquette 2016 *Journal of Public Economics* 68.

¹¹²⁶ Refer to the comprehensive discussion relating to the calculation of the deductible amount under s 18A of the *ITA(SA)* as discussed in Chapter 6, Paragraph 6.1.1.

¹¹²⁷ Lideikyte-Huber 2020 *World Tax Journal* 632.

reconsider the one-size-fits-all approach that is followed in terms of section 18A, for example.¹¹²⁸

The discussion in this paragraph focussed on a narrow definition of CSI as against the discussion below, which will focus on tax incentives relating to the more broad -definition of CSI.¹¹²⁹

4.2.3 Findings regarding the effect of tax incentives on sustainable CSI practices

As seen in Chapter 2, sustainability in the business environment means that business is conducted so that the environment and community (society at large) are not impacted negatively.¹¹³⁰ The United Nations Sustainable Development Goals (SDGs) number 7 ("Ensure access to affordable, reliable, sustainable and modern energy for all"),¹¹³¹ number 9 ("Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation"),¹¹³² number 12 ("Ensure sustainable consumption and production patterns")¹¹³³ and number 13 ("Take urgent action to combat climate change and its impact")¹¹³⁴ are all goals that could be addressed using tax incentives and related tax policies. Therefore environmental resources such as water, air (good quality), and so forth should be protected.

Randahl and Nordblom¹¹³⁵ classified the SDGs as being directly relevant or indirectly relevant to taxation. If they are directly relevant, the authors believe that tax incentives could be utilised to "enable redistribution, or as an instrument for diversifying between different behaviours or products based on their impact on society."¹¹³⁶ When an SDG is indirectly relevant to tax policy, the authors believe these goals will be met only with a tax levied for the government or the regional or local governments. They classify SDGs 12 and 13 as directly relevant, and although

¹¹²⁸ Section 18A of the *ITA(SA)*.

¹¹²⁹ Refer to Paragraph 2.2.3 the definition of CSI.

¹¹³⁰ Refer to Paragraph 2.2.1.1.

¹¹³¹ Randahl and Nordblom *Knowledge Management for Development Journal* 421.

¹¹³² Randahl and Nordblom *Knowledge Management for Development Journal* 421.

¹¹³³ Randahl and Nordblom *Knowledge Management for Development Journal* 421.

¹¹³⁴ Randahl and Nordblom *Knowledge Management for Development Journal* 421.

¹¹³⁵ Randahl and Nordblom *Knowledge Management for Development Journal* 420.

¹¹³⁶ Randahl and Nordblom *Knowledge Management for Development Journal* 420.

there are many examples of tax incentives linked to SDGs 7 and 9, they classify these two as indirectly relevant.¹¹³⁷

The government's objectives with tax incentives in the last few years are more focussed on encouraging "socially responsible activities and discouraging environmentally harmful activities"¹¹³⁸ and attracting investments for sustainable development.¹¹³⁹ The OECD *Investment Tax Incentives Database 2022 update: Tax incentives for sustainable development* (ITID report) reveals that about 34% of all tax incentive schemes target at least one of six sustainable development areas included in their study.¹¹⁴⁰ Although this is positive, it is also a point of concern. Why were not all the SDGs addressed through tax policies, considering that the UN regards climate change as the *crisis of our time* (arguably, this statement was made before the COVID-19 outbreak)?¹¹⁴¹

Unfortunately the ITID report did not provide evidence suggesting that these incentives encouraged companies to invest in these sustainable development areas.¹¹⁴² The study of Daiyabu, Manaf and Hsbollah,¹¹⁴³ however, did investigate this topic for Nigeria using the theory of planned behaviour and found a significant positive correlation, confirming that companies use incentives to invest in sustainable development areas.

South Africa is still heavily dependent on coal to generate electricity.¹¹⁴⁴ If the country wants to meet its commitment to reaching the goals of the Paris Agreement

¹¹³⁷ Randahl and Nordblom *Knowledge Management for Development Journal* 421.

¹¹³⁸ Kacem and Omri 2022 *Journal of Financial Reporting and Accounting* 640.

¹¹³⁹ ITID is the abbreviation for *Investment Tax Incentive Database 2022 Update: Tax Incentives for Sustainable Development*.

¹¹⁴⁰ The six SDG areas tested were employment and job creation, environmental impact, job quality and skills, local linkages, promoting exports, and social inclusion. See OECD *2022 ITID Report* 15.

¹¹⁴¹ UN 2020 <https://www.un.org/en/un75/climate-crisis-race-we-can-win#:~:text=Climate%20change%20is%20a%20major,often%2C%20leading%20to%20mass%20displacement>.

¹¹⁴² The sustainable development areas covered in the ITID report are "employment and job creation, environmental impact, job quality and skills, local linkages [enhancing their potential for Global Value Chain (GVC) upgrading and knowledge spillovers], promoting exports, and social inclusion." (OECD *2022 ITID Report* 15).

¹¹⁴³ Daiyabu, Manaf and Hsbollah 2023 *International Journal of Energy Sector Management* 333-351.

¹¹⁴⁴ Dippenaar 2018 *South African Journal of Economics and Management Sciences* 1; Enerdata 2024 <https://www.enerdata.net/estore/energy-market/south-africa/>.

and reducing greenhouse gas (GHG) emissions to zero by 2050, drastic measures will have to be taken. In November 2022 South Africa partnered with the European Union, France, Germany and the United Kingdom, which states are referred to as the "Just Energy Transition Partnership".¹¹⁴⁵ Together they devised the "Just Energy Transition Investment Plan (JET IP)"¹¹⁴⁶ to achieve the goals set for decarbonisation by 2027. One of the interventions is "a massive rollout of new, sustainable energy sources."¹¹⁴⁷

The European Commission believes that the most efficient, cost-effective way to reduce CO₂ emissions within the shortest time possible is to change human behaviour to increase energy efficiency. While governments use both disincentives (penalties) and tax incentives to address environmental issues, it was found that tax incentives are more widely used, especially in developing countries. South Africa also uses a combination of the tools mentioned. For example, the *Carbon Tax Act*¹¹⁴⁸ provides specific penalties, while tax incentives relating to renewable energy¹¹⁴⁹ are incentivising businesses to transition their operations to greener/renewable energy. These incentives can be divided into two groups, namely those encouraging companies to adjust their business operations to become more energy-efficient (EE)¹¹⁵⁰ and those that encourage using renewable/green energy (RE).¹¹⁵¹

According to a 2011 study concerning the United States, it was found that environmental tax disincentives, such as

a carbon tax would be the most cost-effective tool for lowering CO₂ emissions, and that an energy tax would be the most cost-effective instrument to lower total energy consumption.¹¹⁵²

¹¹⁴⁵ Presidential Climate Commission 2024 <https://www.climatecommission.org.za/south-africas-jet-ip>.

¹¹⁴⁶ Presidential Climate Commission 2024 <https://www.climatecommission.org.za/south-africas-jet-ip>.

¹¹⁴⁷ Presidential Climate Commission 2024 <https://www.climatecommission.org.za/south-africas-jet-ip>.

¹¹⁴⁸ 15 of 2019.

¹¹⁴⁹ Refer to the comprehensive discussion of ss 12B, 12BA, 12L and 12U of the *ITA(SA)* in Chapter 6, Paragraph 6.1.4.

¹¹⁵⁰ Section 12L of the *ITA(SA)* is an example of the EE tax incentive. This incentive will be discussed in more detail in Chapter 6.

¹¹⁵¹ Sections 12B and 12BA of the *ITA(SA)* are examples of RE tax incentives and will be discussed in detail in Chapter 6.

¹¹⁵² Dippenaar 2018 *South African Journal of Economics and Management Sciences* 5.

This view is therefore in line with Randahl and Nordblom's contention.¹¹⁵³ However, other governments, especially in the EU, prefer using EE, often because changing behaviour is more cost-effective in addressing electricity challenges (such as limited supply) and climate change. RE plants can be expensive.¹¹⁵⁴ According to Dippenaar,¹¹⁵⁵ most studies confirm that the best results are obtained through EE and RE tax incentives.

As mentioned above, the South African tax policy provides several environmental tax incentives encouraging the transition to green energy. In a study conducted by Dippenaar¹¹⁵⁶ amongst the JSE Top 40 Index companies, all of these companies indicate that they have already completed EE measures or are nearing the completion of the projects. Most also indicate that they have already transitioned to RE, and many are conducting research and development in EE and RE. Although most of these companies state that they have not used the tax incentives available, they do state that they may do so if they are still available.¹¹⁵⁷ It should be remembered that many of these companies, being regarded as part of the Top 40 Index, would probably aim to be ranked as a FTSE/JSE Responsible Investment Top 30 company, which means that the company takes environmental, social and governance (ESG) considerations very seriously, incorporating them at every level of management and decision-making.¹¹⁵⁸ They would therefore take any measure necessary to meet the ESG requirements, whether a tax incentive is available or not. If the effectiveness of these tax incentives needs to be established, the research ought to be repeated in regard to SMEs

The South African government introduced a once-off tax rebate for natural persons in 2023 as an additional tax incentive to speed up private households' use of

¹¹⁵³ Randahl and Nordblom *Knowledge Management for Development Journal* 420-421.

¹¹⁵⁴ Dippenaar 2018 *South African Journal of Economics and Management Sciences* 5-6.

¹¹⁵⁵ Dippenaar 2018 *South African Journal of Economics and Management Sciences* 6.

¹¹⁵⁶ Dippenaar 2018 *South African Journal of Economics and Management Sciences* 1-12.

¹¹⁵⁷ Dippenaar's study investigated the use of ss 11D, 12B(1)(h), 12C(1)(gA), 12I, 12K, 12L and 13(1)(b) of the *ITA(SA)*. The sections can be linked directly to the broad definition of CSI in Paragraph 2.3.3, which will be discussed in detail in Chapter 6.

¹¹⁵⁸ JSE 2015 <https://www.jse.co.za/services/indices/ftsejse-responsible-investment-index>; FTSE Russell date unknown <https://research.ftserussell.com/products/downloads/ftse-esg-index-series.pdf>.

renewable energy.¹¹⁵⁹ This incentive was available only for the year of assessment, beginning 1 March 2023 and ending 28 February 2024. The incentive was not available for companies. However, in place thereof section 12BA of the *ITA(SA)* was available for companies but only for a limited period of one financial year. In contrast to the incentive for individuals, this tax incentive was very generous, allowing a 125 per cent deduction of the cost of the renewable energy project.¹¹⁶⁰ However, the company had to meet several requirements before qualifying for a full (if any) deduction. These provisions will be discussed in detail in Chapter 6. Unfortunately, because these tax incentives are very new to the South African tax policy framework, it is impossible to determine to what extent they have prompted companies to engage in new renewable energy projects.

A study by Lin and Xu¹¹⁶¹ investigating the effectiveness of this type of accelerated depreciation policy for fixed assets ((ADPFA) incentives provided by sections such as 12B and 12BA) confirmed the following. (i) Over and above the obvious fact that the incentive decreases the capital cost of the new plant/asset for the company, it also decreases the taxable income of the company, and as a further result it frees up capital for further investment in other assets. (ii) An increase in the purchase of other new rather than second-hand equipment/machinery was observed. (iii) The

¹¹⁵⁹ Section 6C of the *ITA(SA)*; SARS 2024 <https://www.sars.gov.za/latest-news/provisional-tax-solar-energy-tax-credit/#:~:text=26%20January%202024%20%E2%80%93%20In%20order,for%20a%20limited%20time%20period.> "Individuals who install rooftop solar panel(s) can claim a rebate of 25% of the cost of the panels, up to a maximum of R15 000 per taxpayer. Taxpayers can use the solar tax rebate to reduce tax liability in the 2023/24 tax year." The rebate could be claimed for newly installed solar panels only, and no other cost relating to a solar power system (battery, inverter, etc.) would be allowed to determine the cost which will qualify for the deduction under s 6C of the *ITA(SA)*. See SARS 2024 <https://www.sars.gov.za/faq/faq-what-is-the-sars-solar-tax-benefit/#:~:text=This%20incentive%20is%20available%20for,the%202023%20F24%20tax%20year.>

¹¹⁶⁰ Without going into too much detail for now, because these sections will be discussed again in Chapter 6, the difference between ss 12B and 12BA of the *ITA(SA)* is in brief the following: s 12B provides for a 100 per cent deduction (over a prescribed period) of the cost of a renewable energy plant used by the business and brought into use for the first time. It does not have to be new and not previously used. It should be noted that the *ITA(SA)* differentiates between wind power, solar power (less or not exceeding one megawatt), hydropower (less than 30 megawatts), and biomass fuel plants. S 12BA allows an accelerated 125 per cent allowance in full in the year the plant is brought into use. There is also no size limit, such as with s 12B, but the plant should be new and have never been used before.

¹¹⁶¹ Lin and Xu 2023 *Journal of Environmental Management* 1-12.

investment patterns of companies changed and their fixed asset investment projects in particular increased.¹¹⁶²

These tax incentives might have had a bigger impact if they had not been available for only one year of assessment and, in the case of individuals, also available against the cost of other equipment generally associated with a Solar Photovoltaic system.¹¹⁶³ Generally, most of the scholarly work performed on this topic scrutinised and researched the relationship between tax incentives, tax policy and environmentally sustainable practices or products. Many scholars concentrated on the influence of tax incentives on research and development (R&D) and foreign direct investment (FDI). The following findings from several studies summarise how tax incentives will impact CSI's sustainable practices.

Yan¹¹⁶⁴ stressed that the electrification of transportation to reduce CO₂ emissions is still very costly, despite the lower cost of batteries and the improvement of green electricity generation. The tax incentives examined in his study were provided for the purchase of electric vehicles. He suggested that the incentives be used for the development of green technology in vehicles.¹¹⁶⁵

If Kacem and Omri's¹¹⁶⁶ classification of tax incentives linked to environmental policies is considered, then these incentives should not be linked only to energy-saving (and like in South Africa to some extent to waste management) but should also extend to "pollution control and environmental protection, purchase of environmentally friendly materials, ... water management."¹¹⁶⁷ In Portugal, for example, the government provided a tax incentive to micro- and SMEs to digitalise their accounting and tax processes. The aim was to cut back on the use of natural resources consumed in the process of making paper. However, this was for only a

¹¹⁶² Lin and Xu 2023 *Journal of Environmental Management* 10.

¹¹⁶³ Engelbrecht and Hassan, who considered the possible impact of s 6C of the *ITA(SA)*, presented their study at a conference in 2023. Because this section impacts on individual taxpayers and not companies, this study does not discuss their findings. There are, however, a few valid statements which researchers should note, such as the fact that tax incentives generally do not reach those who fall under the tax threshold. Here the VAT system would be better able to help the government reach certain goals. See Engelbrecht and Hassan "Solar Photovoltaic Panels Tax Rebate: Is the Tax Rebate the Right Tax Incentive Choice for South Africa?"

¹¹⁶⁴ Yan 2018 *Energy Policy* 1, 61.

¹¹⁶⁵ Yan 2018 *Energy Policy* 61-62.

¹¹⁶⁶ Kacem and Omri 2022 *Journal of Financial Reporting and Accounting* 643.

¹¹⁶⁷ Kacem and Omri 2022 *Journal of Financial Reporting and Accounting* 643.

limited period of time.¹¹⁶⁸ The authors indicated that 373 companies made use of the incentive and that it was regarded as a success.¹¹⁶⁹

Jarvie¹¹⁷⁰ recognises the need for tax policies and tax incentives to protect the environment and to significantly reduce the threat to groundwater systems. She examines the "regulatory structure of command and control directives".¹¹⁷¹ She designed a tax incentive which is part of a bigger framework for groundwater management to address the concerns expressed by the OECD as long back as 2001.¹¹⁷² Her model allows for the flexibility needed to manage a dynamic system comprising "multiple policy instruments with stakeholder engagement."¹¹⁷³ An example of one of the tax incentives proposed is a:

Tax incentive for environmental technological innovation through the Scientific Research and Experimental Development (SR&ED) program for freshwater recovery, reduction of use and recycling of water for energy production.¹¹⁷⁴

Research and development (R&D) is regarded as one of the drivers of economic growth.¹¹⁷⁵ R&D tax incentives¹¹⁷⁶ could be designed to specifically promote or incentivise green innovation, which can be anything from green products and cleaner manufacturing processes to pollution control, for instance.¹¹⁷⁷ Zheng, Li and Duan¹¹⁷⁸ believe that in a tax environment where enforcement is strong, a

¹¹⁶⁸ Dinis, Lemos and Serra "Tax Incentives for SMEs' Digital Transformation" 1,4.

¹¹⁶⁹ Dinis, Lemos and Serra "Tax Incentives for SMEs' Digital Transformation" 5.

¹¹⁷⁰ Jarvie 2016 *Australian Tax Forum* 671-691.

¹¹⁷¹ Jarvie 2016 *Australian Tax Forum* 671.

¹¹⁷² Jarvie 2016 *Australian Tax Forum* 687.

¹¹⁷³ Jarvie 2016 *Australian Tax Forum* 682.

¹¹⁷⁴ Jarvie 2016 *Australian Tax Forum* 683, 689. Also refer to the footnote regarding s 11D below.

¹¹⁷⁵ Bösenberg and Egger 2017 *Economic Policy* 41-42.

¹¹⁷⁶ S 11D of the *ITA(SA)* is an example of a super tax deduction allowing a company (as a general rule) a 150 per cent deduction of expenditure actually incurred on or after 1 January 2014 (but before 31 December 2033) as long as the expenditure is incurred in carrying on of a trade, in the production of income, or in a scientific research and development project approved by the Minister of Higher Education, Science and Innovation. These are the main requirements. For further details the legislation should be consulted, as well as GG 50642 Notice 4793. Because this topic does not link to the definition of CSI, it will not be discussed in detail in Chapter 6. It is assumed, however, that similar research projects proposed by Jarvie could be registered under section 11D with the Minister, without the need to design a specific groundwater tax incentive, but then it will only relate to R&D projects and not to the conservation of groundwater in general.

¹¹⁷⁷ ScienceDirect 2024 <https://www.sciencedirect.com/topics/economics-econometrics-and-finance/green-innovation#:~:text=Eco%2Dinnovation%20is%20a%20broad,waste%20reduction%20and%20handling%20techniques>.

¹¹⁷⁸ Zheng, Li and Duan 2023 *Sustainability* 16.

combination of R&D tax incentives and environmental levies will have the most desirable effect on the green innovation of businesses. Song, Wang and Zhang,¹¹⁷⁹ who also conducted a study in China, believe that the relationship between R&D tax policies and green product innovation is much more complex and that the specific region's economic development level will influence the R&D innovations. For the majority of the provinces included in the study, a positive correlation between the tax regulations and green product innovation is reported. It is also found that R&D incentives and other more generous tax treatments would be available to companies operating in special economic development zones (SEZs).¹¹⁸⁰

Regarding section 11D of the *ITA(SA)* R&D tax incentive, the World Bank Group reports that in general companies reacted very positively to this incentive, aiding companies to incur more than double the R&D cost that they would have been able to incur if the incentive were not available.¹¹⁸¹ The South African government also seems satisfied with the outcome, as the following statement indicates:

Research and technological development is [sic] key to improved productivity, leading to new or improved products, processes or services. This enhanced productivity, in turn, leads to increased economic growth and international competitiveness.¹¹⁸²

Tax incentives are powerful and highly flexible tools for incentivising environmentally sustainable practices.¹¹⁸³ In combination they are effective and can play a significant role in climate change.¹¹⁸⁴ Dippenaar¹¹⁸⁵ believes that tax incentives, together with the *Carbon Tax Act*,¹¹⁸⁶ will have a more significant and faster impact on climate change in the short term. Sustainable development needs to be

¹¹⁷⁹ Song, Wang and Zhang 2020 *Journal of Cleaner Production* 3,8.

¹¹⁸⁰ "Targeting investments in specific locations is also a widely used strategy: almost 70% of *Economies* have a CIT incentive granted to investors that locate in a SEZ, while over half provide one for specific geographic regions in the economy." (OECD 2022 *ITID Report* 11).

¹¹⁸¹ "The R&D survey is produced annually by the Centre for Science, Technology and Innovation Indicators, with support from Statistics South Africa, on behalf of the DSI. It provides an update on SA's R&D statistics, measuring the size, growth and composition of R&D in terms of expenditure, funding and personnel." (Mzekandaba 2024 <https://www.itweb.co.za/article/sas-rd-spend-resurges-after-three-year-slump/JBwErVn3eR276Db2>).

¹¹⁸² National Treasury 2023 *Draft Explanatory Memorandum of the Draft Taxation Laws Amendment Bill*, 2023 of 31 July 2023.

¹¹⁸³ Dippenaar 2018 *South African Journal of Economics and Management Sciences* 6.

¹¹⁸⁴ Dippenaar 2018 *South African Journal of Economics and Management Sciences* 6-7.

¹¹⁸⁵ Dippenaar 2018 *South African Journal of Economics and Management Sciences* 6-7.

¹¹⁸⁶ 15 of 2019.

addressed holistically, as was explained in Chapter 2.¹¹⁸⁷ Governments should consider the impact of tax policy as a whole. Energy problems can therefore not be addressed with only one solution and through one tax incentive only.¹¹⁸⁸

In conclusion, although tax incentives are costly for governments, they are still widely used tax policy instruments. In combination with other tax incentives or with other tax policy instruments, they have proved effective in changing behaviour and influencing sustainable CSI practices. In some cases, such as air quality/CO₂ emissions, a combination of tax levies (penalties) and tax incentives is still recommended.

4.2.4 Findings regarding the effect of tax incentives on employment (Social Policy)

Kacem and Omri¹¹⁸⁹ indicate that the tax incentives included under social policy are usually directed towards employees and their well-being. They can also be devised in such a manner as to incentivise job creation, the employment of unemployed graduates and disabled persons, or to ensure gender equality.

Chapter 3¹¹⁹⁰ noted that unemployment, especially among the youth, is one of South Africa's biggest challenges. The South African government admitted (in the NDP)¹¹⁹¹ that "to address high levels of unemployment, particularly among youth, [will require] extraordinary measures."¹¹⁹² One of the measures the government took was implementing the *ETI Act*.¹¹⁹³

This section will summarise the findings of six studies, the majority of which relate to South Africa and the *ETI Act*.

¹¹⁸⁷ Refer to paragraphs 2.1.3 and 2.4 of Chapter 2.

¹¹⁸⁸ The proposed incentives for producing electrical motor vehicles are one example. For further reading, refer to SARS 2024 <https://www.sars.gov.za/customs-and-excise/registration-licensing-and-accreditation/automotive-production-and-development-programme-apdp/>.

¹¹⁸⁹ Kacem and Omri 2022 *Journal of Financial Reporting and Accounting* 643.

¹¹⁹⁰ Refer to Paragraph 3.4.1.

¹¹⁹¹ *National Development Plan 2030*.

¹¹⁹² *National Development Plan 2030: Our Future — Make it Work of 2017* 58; also refer to pages 26-27.

¹¹⁹³ 26 of 2013. The legislative provisions, terms and conditions will be discussed in more detail in Chapter 6.

South Africa is one of many countries that offers a wage subsidy and/or incentive.¹¹⁹⁴ Wage subsidies would typically be temporary. The Commissioner for Conciliation, Mediation and Arbitration (CCMA) regulates two temporary wage subsidies. The so-called TERS (Temporary Employer/Employee Relief Scheme) is available for only a maximum period of 12 months to assist the employer and employees of a company facing financial distress. During these 12 months an employee will receive 75 per cent of his/her ordinary salary. The TERS subsidy is paid from the Unemployment Insurance Fund (UIF).¹¹⁹⁵ During the COVID-19 pandemic a second subsidy, the COVID-19 TERS, was announced, which paid out a minimum of R3 500 and a maximum of R6 730 to employees who had contributed in the past to the UIF and whose employer had to close operations for three months or less.¹¹⁹⁶ These subsidies were therefore not managed by SARS.

Implementing tax incentives to address the problem of unemployment is a relatively common practice among governments all over the world.¹¹⁹⁷ The incentive is generally not a temporary relief measure because of the aim of encouraging and increasing hiring. The incentive will lower the employer's employment cost.¹¹⁹⁸ An example of such a tax incentive is the *Employment Tax Incentive Act*¹¹⁹⁹ amount paid to the employer for those employees in his/their services who earn less than R6 000 per month.¹²⁰⁰

The *ETI Act* was promulgated in December 2013, effective 1 January 2014.¹²⁰¹ It aimed to reduce hiring costs and encourage employers to hire youth, workers older than 18, and less skilled workers¹²⁰² under 29.¹²⁰³ The qualifying (eligible)

¹¹⁹⁴ Ebrahim *A Policy for The (Jobless) Youth: The Employment Tax Incentive* 15.

¹¹⁹⁵ CCMA 2022 <https://www.ccma.org.za/temporary-employer-employee-relief-scheme/#:~:text=An%20employee%20on%20the%20TERS,is%20paid%20by%20the%20UIF.>

¹¹⁹⁶ Laubscher 2020 <https://bowmanslaw.com/insights/covid-19-south-african-ters-benefit-what-you-need-to-know/>.

¹¹⁹⁷ Odendaal *A Comparative Analysis of the Employment Tax Incentive Act, No.26 of 2013* 14.

¹¹⁹⁸ Bhorat *et al The Employment Tax Incentive Scheme in South Africa: An Impact Assessment* 1.

¹¹⁹⁹ 26 of 2013 (*ETI Act*).

¹²⁰⁰ Bhorat *et al The Employment Tax Incentive Scheme in South Africa: An Impact Assessment* 1. It should be noted that although some authors such as Bhorat *et al* refer to the tax incentive as a subsidy, the *ETI Act* does not refer to the amount the employer is allowed to deduct from the PAYE to be paid to SARS as a subsidy but as an incentive.

¹²⁰¹ GG 37185 of 18 December 2013; s7(1) *ETI Act*.

¹²⁰² Workers who have little or no training or skills.

¹²⁰³ Section 6 of the *ETI Act*; The employee should be in possession of an identity card or an asylum seeker permit (s 6(b)). It should be noted that the employee should not be a connected person,

employer¹²⁰⁴ will do a calculation based on that employee's remuneration each month for each individual qualifying employee.¹²⁰⁵

The calculation takes into account the monthly remuneration paid to the qualifying employee, the period for which the qualifying employee is employed and the amount or percentage that may be claimed.¹²⁰⁶

From the second year, the percentage used will be lower.¹²⁰⁷ The total of the amounts calculated will then be deductible from the employee's tax that should be paid to SARS under the Fourth Schedule of the *ITA(SA)*.¹²⁰⁸ In rand terms, the employer would be allowed a maximum of R1 000 per month per employee in the first year of registration and R500 per employee in the second year of registration.¹²⁰⁹

The original plan was that the scheme would run for only three years until 31 December 2016.¹²¹⁰ Since then the effective period has been extended twice, ending on 28 February 2029.¹²¹¹

A few other countries have implemented legislation similar to the ETI.¹²¹² The general comment was that although some countries' legislative provisions have

nor a domestic worker. The employee should have taken up employment on or after 1 October 2013. The legislation makes provision for the reduction in the employee tax (PAYE) that should be paid to SARS for qualifying employees of an eligible employer. See SARS 2024 <https://www.sars.gov.za/types-of-tax/pay-as-you-earn/employment-tax-incentive-eti/>; Ebrahim, Leibbrandt and Ranchhod *The Effects of The Employment Tax Incentive on South African Employment 1; External Guide: Guide for Employers in Respect of Employment Tax Incentive* of 16 September 2022 4.

¹²⁰⁴ Section 3 of the *ETI Act*; First, employers should be registered as employers with SARS (but not be public entities). The employer will qualify only for 24 months for this benefit, which will be calculated monthly based on the salaries paid to qualifying employees; Also refer to SARS 2024 <https://www.sars.gov.za/types-of-tax/pay-as-you-earn/employment-tax-incentive-eti/>; Ebrahim, Leibbrandt and Ranchhod *The Effects of The Employment Tax Incentive on South African Employment 1; External Guide: Guide for Employers in Respect of Employment Tax Incentive* of 16 September 2022 4.

¹²⁰⁵ SARS *Guide to the Employment Tax Incentive* 26.

¹²⁰⁶ *Guide to the Employment Tax Incentive* 26.

¹²⁰⁷ Borat *et al The Employment Tax Incentive Scheme in South Africa: An Impact Assessment* 2.

¹²⁰⁸ *Guide to the Employment Tax Incentive* 31.

¹²⁰⁹ Borat *et al The Employment Tax Incentive Scheme in South Africa: An Impact Assessment* 2.

¹²¹⁰ Ebrahim, Leibbrandt and Ranchhod *The Effects of The Employment Tax Incentive on South African Employment* 2.

¹²¹¹ *External Guide: Guide for Employers in Respect of Employment Tax Incentive* of 16 September 2022 4.

¹²¹² Odendaal *A Comparative Analysis of the Employment Tax Incentive Act, No.26 of 2013* i; The countries considered, apart from South Africa, were the UK, Poland, Singapore, Chile, Argentina,

positively impacted on youth unemployment, the international experience regarding wage subsidies tends to be more negative than positive.¹²¹³

The latest report published by the National Treasury regarding the ETI is dated 2016.¹²¹⁴ According to this report the ETI seems to have been successful. For young people between 18 and 29 employed for the first tax year of the scheme, the ETI supported about 15 per cent of all jobs in these age groups, and the incentive supported 645 973 individuals. It is also not evident from any data that the ETI has caused job losses for other age groups.¹²¹⁵

Bhorat *et al*/conducted a comparative study between companies that used ETI for the fiscal years 2015 and 2016. They also found a positive correlation between employment and the incentive, meaning that companies that used the incentive had a higher employment rate than others in the study group ¹²¹⁶ Bhorat *et al*/concluded that for the companies that made use of the ETI, the employment rate of eligible youth was about 97 per cent higher than that of companies that did not make use of ETI. However, they warn that the findings should be considered in the context of job numbers. If this is considered, the ETI-claiming companies reflected only a decrease in youth employment with a ratio of 0.34:1. This means that for the 2014/2015 fiscal year 20 278 jobs were saved, and for the 2015/2016 fiscal year more or less 15 055. Therefore, although the effect of the *ETI Act* was positive, it was in fact marginal.¹²¹⁷

Despite the statistics published by the National Treasury in 2016, Ranchhod and Finn¹²¹⁸ found no significant statistical evidence that the legislation had improved the probability of young people finding work. Most studies concur with their findings.

and Colombia. See Odendaal *A Comparative Analysis of the Employment Tax Incentive Act, No.26 of 2013* Chapter 2.3.

¹²¹³ Odendaal *A Comparative Analysis of the Employment Tax Incentive Act, No.26 of 2013* 11-14.

¹²¹⁴ National Treasury *Employment Tax Incentive Descriptive Report* of August 2016.

¹²¹⁵ SARS *External Guide: Guide for Employers in Respect of Employment Tax Incentive* of 16 September 2022 2-3.

¹²¹⁶ Bhorat *et al* *The Employment Tax Incentive Scheme in South Africa: An Impact Assessment* 16.

¹²¹⁷ Bhorat *et al* *The Employment Tax Incentive Scheme in South Africa: An Impact Assessment* 16-18.

¹²¹⁸ For the group 30-34 years of age, which does not qualify in terms of the *ETI Act* for a subsidy, the researchers noticed a slight downward trend during 2014. See Ranchhod and Finn *Estimating the Effects of South Africa's Youth Employment Tax Incentive – An Update* 1, 2, 5.

The following were supplied as reasons. Firstly, Ranchhod and Finn¹²¹⁹ believe that the reason might be that the *ETI Act* excludes smaller businesses. "[T]he ETI thus effectively serves as an incentive that is targeted at medium-sized and larger formal sector firms, which would further limit its potential impact."¹²²⁰ The researchers find that most companies that use the incentive employ 200 employees or more and have an annual turnover of more than R10 million. "The effect of hiring an additional youth employee at a firm [company] with ten employees is very different from that at a firm [company] with 500 employees." The subsidy may have a more significant impact on a smaller company/employer.¹²²¹ Borat *et al*¹²²² indicate that the smaller companies reported a slowdown in growth, whereas the larger companies (in the same period, the 2015 and 2016 fiscal years) reported increased employment/growth. Thirdly, it is believed that strict labour policies also made employers reluctant to employ additional employees, especially unskilled workers.¹²²³

A very valid point for the policymakers to remember is that the decision-makers responsible for hiring may not be directly impacted by the ETI among companies eligible for the ETI benefits. For instance, local branch managers might handle employment decisions in a large, franchised supermarket chain, while the ETI benefits go to a central headquarters. If the incentive is not shared with branch managers, it may not impact employment in the business/company. Likewise, if labour brokers receive the incentive but do not pass it on to the actual employers, the employment-related effects will also be diminished.¹²²⁴

Ranchhod and Finn¹²²⁵ observed a unique employment situation at SMEs. Many of them keep an employee who has reached the retirement age of 65 in employment

¹²¹⁹ Ranchhod and Finn *Estimating the Short-Run Effects of South Africa's Employment Tax Incentives on Youth Employment Probabilities Using a Difference-in-Differences Approach* 35.

¹²²⁰ Ranchhod and Finn *Estimating the Short-Run Effects of South Africa's Employment Tax Incentives on Youth Employment Probabilities Using a Difference-in-Differences Approach* 35.

¹²²¹ Ebrahim, Leibbrandt and Ranchhod *The Effects of The Employment Tax Incentive on South African Employment* 9-10; Van Manen *TaxTalk* 38.

¹²²² Borat *et al* *The Employment Tax Incentive Scheme in South Africa: An Impact Assessment* 16-19.

¹²²³ De Jongh, Meyer and Meyer 2016 *Journal of Contemporary Management* 426-427.

¹²²⁴ Ranchhod and Finn *Estimating the Short Run Effects of South Africa's Employment Tax Incentives on Youth Employment Probabilities Using a Difference-in-Differences Approach* 36.

¹²²⁵ Van Manen *TaxTalk* 38.

beyond that threshold. This results in the SME not having additional capacity for employing young (unskilled) people between the ages of 18 and 29 years. They also believe that SMEs who often have to endure SARS inspections (and are threatened by SARS with understatement penalties even in cases where an honest mistake has been made), do not have the will or capacity to enter into such a scheme.

Ebrahim, Leibbrandt and Ranchhod¹²²⁶ report that the so-called deadweight loss¹²²⁷ is a real problem, making the scheme more expensive than the results warrant. Many companies were already employing young people for whom they were qualified to claim the incentive, and actually did so. "The high percentage of deadweight loss is presumably driven by the larger firms that claim the subsidy but are not creating any new youth jobs."¹²²⁸

The positive findings include the following. Overall, it was found that businesses could employ more employees because the amount not paid to SARS (the total ETI per month) freed up some funds which the company could use to pay other non-eligible employees' salaries or at least part thereof. This is in line with the findings of other international studies.¹²²⁹ It was also reported that the policy led to a "small, but statistically significant increase in the earnings [wages]" of the target group (young people between the ages of 18 and 29).¹²³⁰

The international literature (which considered countries such as New Zealand, Turkey, Germany, Denmark and the United Kingdom) shows that similar wage subsidies had a positive impact, reducing unemployment in the long term. In Germany, for instance, the probability of eligible recipients being employed

¹²²⁶ Ebrahim, Leibbrandt and Ranchhod *The Effects of The Employment Tax Incentive on South African Employment* 18.

¹²²⁷ The deadweight loss means the company had already employed the employee or would have employed the person, whether or not the incentive existed. No new job opportunity is therefore created, but the ETI is still claimed for the employee who meets the qualifying age group and the other qualifying requirements. The fact that no new job opportunity was created results in a deadweight loss.

¹²²⁸ Ebrahim, Leibbrandt and Ranchhod *The Effects of The Employment Tax Incentive on South African Employment* 18.

¹²²⁹ Ebrahim *A Policy for the (Jobless) Youth: The Employment Tax Incentive* 108.

¹²³⁰ Ebrahim *A Policy for the (Jobless) Youth: The Employment Tax Incentive* 142.

increased by 70 per cent.¹²³¹ Morule and Makrellov¹²³² conclude that the following should be done to improve the up-take of the incentive:¹²³³ (i) specific beneficiaries should be selected and assisted through job search assistance programmes to find placement; (ii) specific sectors and companies which have a higher demand for unskilled labourers should be specifically targeted; and (iii) those regions where economic growth is weak and where a wage subsidy can make a significant impact must be identified

In conclusion, it is believed that with a few changes to the legislation, the up-take of the incentive might increase, and the legislation might reach its objective. The suggestions made are the following.

Some believe the legislation should be simplified, especially the formula (supplied in Table 4-1) used,¹²³⁴ which is based on an employee who works 160 hours per month. If the employee, however, works for less than 160 hours, then the amount of the incentive calculated for that employee should be adjusted. This adjustment is not applicable if the employee worked more than 160 hours that month.¹²³⁵

Table 4-1: Calculation of the ETI for remuneration received after 1 March 2019¹²³⁶

Monthly remuneration	ETI per month during the first 12 months ¹⁰⁰ in which the employee qualified	ETI per month during the next 12 months ¹⁰¹ in which the employee qualified
R0 – R1 999	50% of monthly remuneration	25% of monthly remuneration
R2 000 – R4 499	R1 000	R500
R4 500 – R6 499	Formula: $R1\ 000 - [0,5 \times (\text{monthly remuneration} - R4\ 500)]$	Formula: $R500 - [0,25 \times (\text{monthly remuneration} - R4\ 500)]$

¹²³¹ Morule and Makrellov 2019 *South African Reserve Bank Occasional Bulletin of Economic Notes* 5.

¹²³² Morule and Makrellov 2019 *South African Reserve Bank Occasional Bulletin of Economic Notes* 5-6.

¹²³³ Morule and Makrellov 2019 *South African Reserve Bank Occasional Bulletin of Economic Notes* 5-6.

¹²³⁴ Ebrahim *A Policy for the (Jobless) Youth: The Employment Tax Incentive* 149.

¹²³⁵ *Guide to the Employment Tax Incentive* 27.

¹²³⁶ *Guide to the Employment Tax Incentive* 26.

Annexure 6 contains an example to illustrate the difficulty of the process especially if the company has employed many eligible employees for whom the incentive will be claimed, because the calculation must be completed for each employee separately.

The minimum remuneration of certain sectors, such as the manufacturing sector, exceeds the maximum limit set in the legislation, resulting in that sector/company not qualifying for the tax incentive.¹²³⁷ The government should consider some solutions to include this sector (and others) that employ men.

It was suggested that a training component or skills training provided by the related sector SETA should be included to ensure the improved possibility of employment after the 24-month period has expired or to help the employee to start his own business.¹²³⁸

Lastly Morule and Makrelov¹²³⁹ recommended that a combination with other tax policies should be considered. However, the researchers did not suggest any policies.

In South Africa, with its high unemployment rate, especially among the youth, the ETI is an incentive which makes an impact, if not to create many new job opportunities for the youth, then at least to ensure that the employers have the means to keep those in employment and subsidise the remuneration of others. The South African government, however, believes that the ETI is successful and worth the cost.

To ensure that the employee is employable after 24 months and regarded as an eligible employee, it was suggested that the legislation should be amended to ensure that the employee received training and acquires some new skills in this period to improve his/her chances of further employment or starting an own business.

¹²³⁷ De Jongh, Meyer and Meyer 2016 *Journal of Contemporary Management* 426-427.

¹²³⁸ De Jongh, Meyer and Meyer 2016 *Journal of Contemporary Management* 426; Morule and Makrelov 2019 *South African Reserve Bank Occasional Bulletin of Economic Notes* 9.

¹²³⁹ Morule and Makrelov 2019 *South African Reserve Bank Occasional Bulletin of Economic Notes* 9.

It is suggested, however, that the government should consider adjusting the legislation to make the incentive available only if an employee is newly appointed and/or a new job opportunity was created.

4.2.5 Conclusion: the relationship between tax incentives and CSI

The discussion above has confirmed that the tax incentive could be grouped under the broad definition of CSI or the narrow definition (CP).¹²⁴⁰

It is evident that although tax incentives are costly because governments lose out on potential revenue income, they are still widely used tax policy instruments. The use of tax incentives can stem from various aspects of government fiscal policy, broader development initiatives like the National Development Plan, or the United Nations' Sustainable Development Goals (SDGs). Randahl and Nordblom¹²⁴¹ classify the different SDGs as directly or indirectly relevant to taxation. Where the 'direct relevance' link exists, a government would generally make use of tax incentives to encourage a positive change in the behaviour of taxpayers or have a positive influence on electricity use, green innovation development, and other environmental issues, for example. Although Randahl and Nordblom indicate that SDG 9 ("Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation") is mainly linked indirectly with taxation and should therefore be addressed with a tax or levy, Jarvie expresses the belief that tax incentives could also be applied. In South Africa, for example, we see that R&D is incentivised with a section 11D deduction allowed against taxable income. Tax incentives are also available for companies operating within a special economic zone.

Tax incentives could, thus, also help to address issues such as community development or areas where the government believes that short-term intervention is needed. In these situations, the tax incentive will be more like a subsidy. In some cases, as the OECD has noted, a tax incentive is the provision of a subsidy for an expense incurred by the donor or company that would otherwise have been provided for by the government.¹²⁴²

¹²⁴⁰ Refer to Paragraph 2.3.3 the proposed definition of CSI and 2.3.2 the proposed definition of CP.

¹²⁴¹ Randahl and Nordblom *Knowledge Management for Development Journal* 420.

¹²⁴² OECD *Taxation and Philanthropy* 128.

Finally, because it was proven that companies, especially the larger companies with 200 or more employees or belonging to a specific sector, are more sensitive to tax legislative changes, the government can use this to its advantage. Incentives designed to target specific sectors or incentives for a specific SDG/CSI element such as community development and upliftment should be considered. Specific economic sectors also react better to tax incentives than others. The South African government should therefore reconsider the current one-size-fits-all approach and instead develop incentives per sector or region.

4.3 The other side of the coin: mandatory CSI

As previously indicated, the government also has taxes and tax levies at its disposal, which could be utilised to encourage changes in behavioural habits or address SDGs such as climate change. This is the negative side as opposed to the tax incentives, which are the positive side.

The secondary objective set for this paragraph of this research report is to determine to what extent a compulsory tax percentage, rate or levy is utilised to prompt CSI involvement.

In this regard the legislation already imposed in South Africa is the health promotion levy (better known as the sugar tax) and the carbon tax. This legislation will be discussed while keeping the secondary objective in mind.

Previously it was mentioned that Mauritius and India have made CSI (CSR as referred to in their legislation) contributions mandatory. The impact of the respective levies will be investigated.

4.3.1 Health Promotion Levy (sugar tax) — South Africa

In 2018 (effective 1 April 2018) the South African government introduced the so-called sugar tax by implementing the "Health Promotion Levy (HPL)".¹²⁴³ Using a tax levy (a tax on sugar-sweetened beverages (SSB)), the Government ensured that the price of these products would increase. The main objective of this tax

¹²⁴³ Part 7, Schedule No. 1 of the *Rates and Monetary Amounts and Amendment of Revenue Laws Act 14 of 2017*.

policy/design was to curb consumers' use (purchase) of sugar and sugar-sweetened beverages to decrease excessive sugar use and address health issues such as obesity and diabetes. The second objective was to encourage the manufacturers of sugar-sweetened beverages to adjust the formulation of these beverages. Another "secondary objective was to raise revenue for the national budget, which could in principle help support a financially strained health care system."¹²⁴⁴

The results were far better than hoped for, with two studies reporting that the reduction in the purchase of these beverages was significantly more than anticipated.¹²⁴⁵ The results of a study done amongst 617 adolescents of Soweto, who on average consumed 250g of sugar per day before the introduction of the SSB, proved a significant positive reduction in intake after manufacturers reduced the sugar content of their products on average with 21 per cent in the first year alone.¹²⁴⁶

A study conducted in Hungary, where the government introduced a similar levy on the sugar, salt and caffeine content of products, showed a decrease in sales of related products by 27 per cent in the first year (between 25 and 35 per cent in consumption).¹²⁴⁷

This is a classic example where the government attempts to influence behavioural patterns and encourage behavioural changes using tax levies (as opposed to tax incentives).

4.3.2 Carbon Tax — South Africa

The *Carbon Tax Act*¹²⁴⁸ (*CTA*) is another piece of legislation enacted by the South African government aimed at changing behaviour. The preamble of the *CTA* gives seven reasons for implementing the legislation. In summary they are that South

¹²⁴⁴ SARS 2021 <https://www.sars.gov.za/customs-and-excise/excise/faqs-for-sugary-beverages-levy/>; Essman *et al* 2022 *International Journal of Behavioral Nutrition and Physical Activity* 1.

¹²⁴⁵ Stacey *et al* 2021 *Lancet Planet Health* 200; Boachie, Thsehla and Hofman 2022 *SAMJ* 454.

¹²⁴⁶ Wrottesley *et al* 2021 *Public Health Nutrition* 2905.

¹²⁴⁷ Wrottesley *et al* 2021 *Public Health Nutrition* 2905.

¹²⁴⁸ 15 of 2019 (*CTA*).

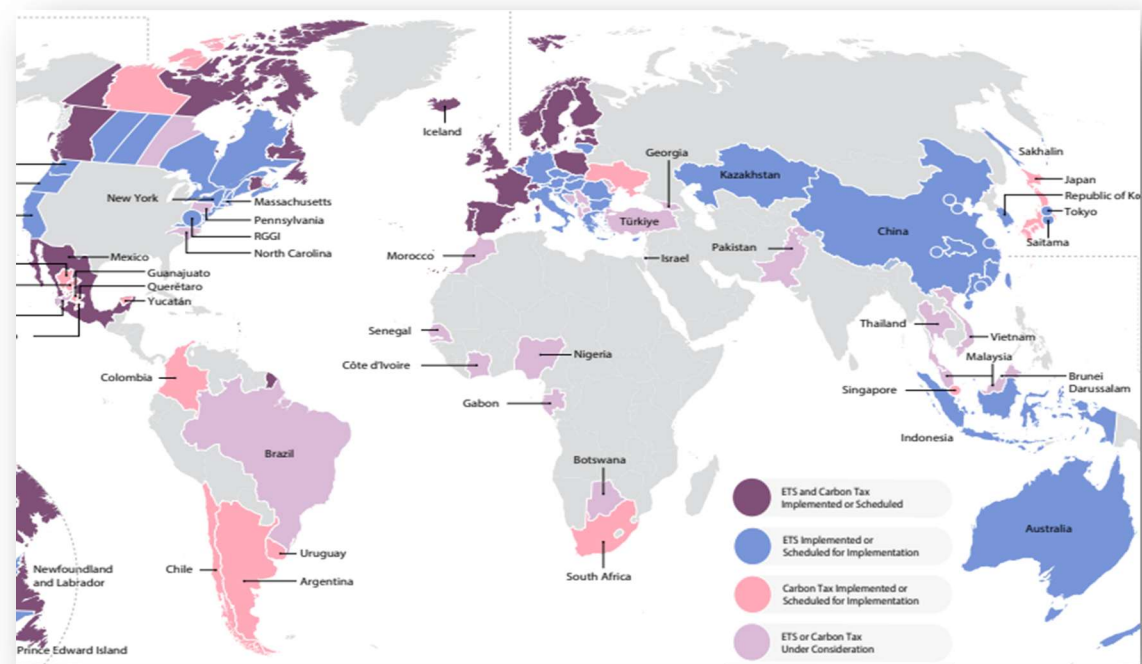
Africa, like the rest of the world, needs to reduce and stabilise greenhouse gas (GHG) emissions in the global fight against climate change.¹²⁴⁹

[T]he costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment (the polluter pays principle).¹²⁵⁰

The *CTA* is one of the measures the government imposed to "address the challenges posed by climate change."¹²⁵¹ Before the implementation of the *CTA*, the government implemented an electricity generation levy as one of the methods employed to assist in reaching long-term climate objectives.¹²⁵²

Greenhouse taxes can come in two forms: the average tax levy is based on the number of CO₂ emissions, and the other is a tax on goods and services sold associated with CO₂ emissions, which are generally known as greenhouse gas-intensive goods or services.¹²⁵³

Figure 4-2: Map of carbon taxes and emission trading systems¹²⁵⁴



¹²⁴⁹ Preamble of the *CTA*.

¹²⁵⁰ Preamble of the *CTA*.

¹²⁵¹ Preamble of the *CTA*.

¹²⁵² IMF *South Africa Carbon Pricing and Climate Mitigation Policy* 33.

¹²⁵³ Centre for Climate and Energy Solutions 2024 <https://www.c2es.org/content/carbon-tax-basics/>.

¹²⁵⁴ ETS = Emission trading systems. World Bank Group *State and Trends of Carbon Pricing 2023* 23.

Where the country taxes greenhouse gas-intensive goods and services, an emission trading system (ETS) is in place. If the map of the countries that implemented both a carbon tax and ETS or either of the two is considered (refer to Figure 4-2), then it is clear that South Africa is one of the few developing countries that has taken remedial steps in this regard. South Africa is the only country in Africa that has implemented any taxation measures to address CO₂e, with a few other African countries considering implementing some form of carbon tax or ETS.¹²⁵⁵

Because the *CTA* has been in place for a relatively short period, only the latest scholarly publications (2023 and 2024) examining the impact of the legislation on air quality, emissions and the economy are considered.¹²⁵⁶

As Africa's largest GHG emitter, South Africa has committed itself to reducing its emissions to 350-420 MtCO₂ by 2030.¹²⁵⁷ The emissions rate had a peak in around the year 2014. Although a sharp decline was noticed shortly after 2014, a steady increase in emissions was reported up to 2018. The tax was implemented in June 2019 and is based on the polluter-pays principle.¹²⁵⁸ The legislation and carbon tax (CO₂T) levy were phased in over time, starting at R120 per ton of CO₂ emission (CO₂e) and set at R190 per tonne of CO₂e for the 2024 calendar year.¹²⁵⁹ The effective rate is still low because the tax was phased in over time, and the tax rate slowly increased. Another reason for the low effective rate is that Eskom, although paying the electricity generation levy for non-renewable sources, is still exempted from paying the CO₂T until 2026. The government further added to the ineffectiveness of the *CTA* and the low effective CO₂T rate by subsidising Eskom.

¹²⁵⁵ World Bank Group *State and Trends of Carbon Pricing* 2023 31,34.

¹²⁵⁶ The following keywords were applied in the search for scholarly publications: carbon tax, effect, impact, South Africa. EBSCO host delivered only one article. With Google Scholar, 2 270 publications were found. Most of the articles considered similar legislation, for example, in Chile. Other articles considered the impact on households and the different options to soften the impact on lower-income households. A higher CO₂T rate is proposed for luxury items and a lower CO₂T rate for basic goods. Some articles concentrated on green inflation. The articles discussed in the text are related to the effectiveness of the *CTA* in general in reducing CO₂e and its impact on companies. For further reading on the topic, refer to Ambareen 2023 *Development Southern Africa* 1038-1052; Yiadom *et al* 2024 *Cogent Economics & Finance* 2312783 (1-19); Iyke-Ofoedu *et al* 2024 *Journal of Cleaner Production* 141210; Anisiuba *et al* 2024 *African Development Review* 173-186.

¹²⁵⁷ IEA 2024 <https://www.iea.org/countries/south-africa/emissions#how-much-co2-does-south-africa-emit>; IMF *South Africa Carbon Pricing and Climate Mitigation Policy* 31

¹²⁵⁸ Refer to Figure 1 (Historical GHG Emissions) IMF *South Africa Carbon Pricing and Climate Mitigation Policy* 31.

¹²⁵⁹ Kotze, Winnan and Wesseloo 2024 *KPMG* 1.

This subsidy is "vastly greater than both the electricity levy on the same basis and the official carbon tax rate."¹²⁶⁰ The result is that there is no incentive for Eskom (which holds the monopoly in the electricity-generating sector) to reduce its emissions levels, even though the electricity-generating industry is the greatest CO₂ polluter in South Africa (54.8 per cent).¹²⁶¹ The government is therefore largely responsible for the limited success of the legislation. Further planned increases in the CO₂T "alone will not be enough for South Africa to meet its emission targets."¹²⁶²

The impact of the CO₂T for the past four/five years will be briefly discussed:

1. Environmental/air quality

In general, CO₂T reduces the CO₂e in the energy-generating industry.¹²⁶³ Overall, in 2023 CO₂e by industries in South Africa was approximately 3 per cent lower than in the previous year. However, South Africa remains amongst the top 15 largest CO₂ emitters in the world.¹²⁶⁴

2. Economic impact

The CO₂T, unfortunately, impacts on the GDP negatively, with the energy sector experiencing the largest output losses.¹²⁶⁵ At least two studies have proved that low-income and poor households are most negatively affected by price increases in goods and services (such as electricity, food, transportation and building materials) resulting from the CO₂T. The IMF suggested that the government use some of the

¹²⁶⁰ IMF *South Africa Carbon Pricing and Climate Mitigation Policy* 33; "The vast majority of CO₂ emissions in the energy sector come from the burning of fossil fuels such as coal [83%], oil and natural gas for power generation or to fuel vehicles and machines." (IEA 2024 <https://www.iea.org/countries/south-africa/emissions#what-are-the-main-sources-of-co2-emissions-in-south-africa>).

¹²⁶¹ IMF *South Africa Carbon Pricing and Climate Mitigation Policy* 33; IEA 2024 <https://www.iea.org/countries/south-africa/emissions#what-are-the-main-sources-of-co2-emissions-in-south-africa>.

¹²⁶² IMF *South Africa Carbon Pricing and Climate Mitigation Policy* 34.

¹²⁶³ Abel *et al* 2023 *International Journal of Energy Economics and Policy* 487.

¹²⁶⁴ Tiseo 2024 <https://www.statista.com/statistics/486073/co2-emissions-south-africa-fossil-fuel-and-industrial-purposes/>.

¹²⁶⁵ Abel *et al* 2023 *International Journal of Energy Economics and Policy* 488.

CO₂T revenue to subsidise these households by installing solar water heater systems, improved public transport services and a basic electricity subsidy.¹²⁶⁶

Because our trading partners in Africa do not employ similar legislation, imports might be affected. The country's exports will be vulnerable to climate-related trade restrictions, such as the EU's "Carbon Border Adjustment Mechanism" (CBAM). Such mechanisms will negatively impact on the cost of exports for South African companies, negatively affecting competitiveness. If other countries in the SADC region also adopt the CBAM, this may negatively impact on electricity exports too. An accumulated (minimum) 350,000 jobs might be lost by 2050.¹²⁶⁷

Trimble,¹²⁶⁸ however, believes that the more the world adopts similar legislation (as indicated in Figure 4-1 above, many countries are considering implementing such legislation) and businesses comply with these requirements, the more the competitive disadvantages linked to carbon legislative measures will become negligible.

Regarding the energy sector's workforce, these workers should be re-skilled to ensure that they can shift to clean energy sectors.¹²⁶⁹

3. Policy measures

It was also noted that the policy lacks environmental effectiveness due to the lenient tax penalties imposed on polluting businesses, delaying the shift to environmentally friendly practices.¹²⁷⁰ The government should limit the discretion in allocating carbon

¹²⁶⁶ IMF *South Africa Carbon Pricing and Climate Mitigation Policy* 40-41; Kabundu, Mbanga and Makasa 2022 *Acta Structilia* 183.

¹²⁶⁷ Gasealahwe, Makrelov and Ragavaloo 2023 *South African Reserve Bank Occasional Bulletin of Economic Notes* 7; The South African Reserve Bank also warned against the current risk. "Other countries transitioning faster in response to the CBAM or having higher carbon prices may also put South Africa at a disadvantage in the medium term as they position themselves as green production destinations. Mitigating against this risk requires a higher and more predictable carbon tax that will also generate significant financial resources to help the economy transition and possibly offset any negative impacts from having a higher carbon price" (Gasealahwe, Makrelov and Ragavaloo 2023 *South African Reserve Bank Occasional Bulletin of Economic Notes* 11).

¹²⁶⁸ Trimble *Are South African Businesses Adapting to the Demands of the Carbon Policy – A Case of Distell* 61.

¹²⁶⁹ Kalaba 2020 *SAIIA* 13.

¹²⁷⁰ Trimble *Are South African Businesses Adapting to the Demands of the Carbon Policy – A Case of Distell* 61.

tax revenues and treat them separately to improve carbon tax effectiveness. Detailed plans for spending these revenues should be established, focussing on financing environmental reforms, mitigating the impacts on low-income individuals, and protecting the competitiveness of trade-exposed sectors.¹²⁷¹

In conclusion, to ensure that the policy has the best effect in the shortest period the government must ensure that Eskom comes on board. This can be done only if Eskom is no longer an exempt organisation under the CO₂T. As explained above, the government should also stop subsidising the company regarding the electricity levy.

Carbon tax revenues collected should be used more transparently.¹²⁷² They should address social welfare for those reliant on carbon-intensive industries and support low-income households.¹²⁷³ They should also be allocated "primarily to finance environmental reform, reduce the adverse impacts on low-income people, and protect trade-exposed sectors' competitiveness."¹²⁷⁴

The discussion of the tax legislation relating to South Africa is now concluded and the legislation compelling CSI contributions will be discussed below.

4.3.3 CSR tax — Mauritius and India

Three developing countries, India, Mauritius and Seychelles, have implemented CSR legislation compelling companies operating in their respective jurisdictions to contribute a specific percentage of either their net profit or, as per the legislation of the Seychelles,¹²⁷⁵ their turnover to CSR.¹²⁷⁶

¹²⁷¹ Trimble *Are South African Businesses Adapting to the Demands of the Carbon Policy – A Case of Distell* 61.

¹²⁷² Trimble *Are South African Businesses Adapting to the Demands of the Carbon Policy – A Case of Distell* 62.

¹²⁷³ Trimble *Are South African Businesses Adapting to the Demands of the Carbon Policy – A Case of Distell* 61.

¹²⁷⁴ Trimble *Are South African Businesses Adapting to the Demands of the Carbon Policy – A Case of Distell* 62.

¹²⁷⁵ Seychelles has since repealed the *CSR Tax Act*. No reports on whether the legislation was effective or not could be located. The legislation will therefore not be discussed in this paragraph, as it will not add any value to the discussion, but it will be discussed in detail in Chapter 5, Paragraph 5.3.

¹²⁷⁶ In 2009 Mauritius amended its *Income Tax Act* 16 of 1995, adding ss 50K and 50L, compelling companies to pay a 'CSR charge' (CSR tax levy), calculated as two per cent of book profits.

Many governments urge companies (private institutions) to assist them in meeting developmental goals and helping address society's ills.¹²⁷⁷ Like so many others, India, Mauritius and South Africa have to face the fact that their governments could not/ cannot meet all of society's needs.¹²⁷⁸

The question is whether mandatory CSI can effectively assist governments in meeting development and other socioeconomic goals. Unfortunately, little has been written on whether a CSR tax/levy is effective. Those studies found during the survey of the relevant literature that did discuss this topic will now be discussed briefly.

4.3.3.1 Mandatory CSR in India

The CSR legislation of India is discussed in detail in Chapter 5.¹²⁷⁹ In brief, section 135 of the Indian *Companies Act*¹²⁸⁰ provides the following.

The company's board of directors should appoint a CSR committee responsible for formulating a CSR policy and activities in line with the government's list of priorities. A budget is then drafted for its CSR programme/activities. The Board of Directors must then ensure that the company annually spends at least two per cent of the company's average profits (calculated on the basis of the two financial years immediately preceding) on these CSR programmes yearly. For almost ten years the legislation was in force without any regulations regarding government oversight and penalties. This changed in late 2022.

(Refer to s 50L(1) of *Income Tax Act* 16 of 1995). In 2013 India implemented similar legislation, incorporating s 135 of its *Companies Act* of 2013. This legislation compels specific companies/boards of directors to ensure that at least two per cent of profits are spent on CSR. (Refer to s 135(5) of *Companies Act* of 2013). The Seychelles enacted the CSR Act 17 of 2013 in the same year. Their tax levy was payable by companies whose turnover exceeded SCR 1 000 000.00. (Refer to the First Schedule of *CSR Act* 17 of 2013). Also refer to Preston and Peeroo 2023 *De Jure Law Journal* 283.

¹²⁷⁷ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 30. This problem was discussed in detail in Chapter 3, Paragraph 3.4.

¹²⁷⁸ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 30; Preston and Peeroo 2023 *De Jure Law Journal* 281, 288 and 290; It should be noted that no literature could be found discussing the reasons for the implementation of the CSR legislation in Seychelles. It can therefore not be assumed that the legislation was enacted as a reaction to the inability of the government to provide in all the needs of the countries' citizens

¹²⁷⁹ Refer to Chapter 5, Paragraph 5.2.1.

¹²⁸⁰ *Companies Act*, 2013.

Sodhi, Kumar and Ganguly¹²⁸¹ attempt to answer the question of what the impact of the CSR legislation was almost ten years after the implementation thereof. They analysed the data of the top 50 listed companies and arrived at the following results. Firstly, 65.5 per cent of the companies included in the study had well-established CSR programmes before the enactment of the CSR legislation. Only one per cent of the participants indicated that the CSR legislation was the primary motivator for them to focus more on their CSR practices.¹²⁸²

As such, compliance with government regulation is not the only reason why companies are doing CSR. There are inward-looking motivations ... [such as] promoter's personal philanthropic motivations.¹²⁸³

Secondly, it was reported that some company managers reported that they had been prompted to give more regard to their CSR programmes, and "had brought focus to the overall CSR work" ¹²⁸⁴ because of the legislation.

An additional result was that large Indian companies started to standardise on CSR reporting.¹²⁸⁵ Before the enactment of the CSR legislation the companies reported only that a donation had been made. After the legislation had been implemented reporting became more specific, suggesting that the sector would also report on topics such as environment and sustainability.¹²⁸⁶ From the reports filed it was also observed that the companies generally had the same spending patterns. For example, most of them contributed most of their CSR spending primarily to education and only thereafter to healthcare.¹²⁸⁷ It should be noted, however, that these are some of the indicated/preferred areas of the government.¹²⁸⁸

One of the objectives of Sodhi, Kumar and Ganguly's¹²⁸⁹ study was to determine whether mandatory CSR would encourage development, because the Government was not meeting the country's social needs. The researchers confirmed the following. The Indian government's budget for healthcare and education is below

¹²⁸¹ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 30.

¹²⁸² Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 48.

¹²⁸³ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 49.

¹²⁸⁴ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 41.

¹²⁸⁵ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 41.

¹²⁸⁶ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 41.

¹²⁸⁷ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 41.

¹²⁸⁸ Refer to Chapter 5, Paragraph 5.2.2.

¹²⁸⁹ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 44.

average (in terms of statistics published by the World Bank regarding other countries) and highly underfunded.¹²⁹⁰ The private sector spends on average three point eight per cent of the country's GDP on healthcare, compared to the average of one point four seven per cent of GDP spent by the government.¹²⁹¹ It can therefore be inferred that the private sector is stepping into the government's shoes and has contributed more than double the government's contribution to this sector.¹²⁹² Not much was spent by the companies on sustainable development. As was previously indicated, the companies spend their CSR budget on the more traditional sectors, mainly because the priority areas listed by the government,¹²⁹³ dictate the main areas to which the budget should be allocated.¹²⁹⁴ It should be noted that the companies try to meet the country's unmet social needs.¹²⁹⁵ By far a minority of the government-listed priority areas are related to sustainable development. If the Indian model of CSR were to be considered for implementation in South Africa and the Indian priority areas are also adopted they would be very limiting, especially regarding the number of areas relating to sustainable development.

Sodhi, Kumar and Ganguly¹²⁹⁶ suggest that the government should change the CSR goals linked to the CSR legislation SDGs, hoping that this might encourage companies to match "their efforts to the outcomes tied to the SDGs." If a government (the South African government) considers implementing a CSI tax levy to compel companies to contribute to CSI, it is essential to note this view. This would ensure that the tax levy is not entirely spent on humanitarian needs, such as poverty, education and health, and that the other needs of society, which are inclusive of (but not necessarily limited to) sustainable socio-economic development

¹²⁹⁰ The financial periods included in this calculation relate from 2010 to 2018, 2019 and 2020. Statistics for the private sector had not yet been published and could therefore not be compared with the government's. See Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 45.

¹²⁹¹ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 45.

¹²⁹² Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 45.

¹²⁹³ For a comprehensive discussion of the priority areas, refer to Paragraph 5.2.2 and 5.4.1.

¹²⁹⁴ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 45-46; although the study included only the top 50 listed companies in India, the statistics reported by the Ministry of Corporate Affairs (2019) indicated similar trends. See Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 46.

¹²⁹⁵ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 51.

¹²⁹⁶ Sodhi, Kumar and Ganguly 2022 *Business Strategy and Development* 51-52.

and growth, improving infrastructure and the upliftment of society at large will also be addressed.

This concludes the discussion of the mandatory CSR legislation of India. A comprehensive discussion of this legislation will be undertaken in Chapter 5, under Paragraph 5.2. In the following paragraph the impact of the mandatory CSR legislation of Mauritius will be investigated.

4.3.3.2 Mandatory CSR in Mauritius

Mauritius was the first country to enact a mandatory CSR contribution with the inclusion of sections 50K and 50L in the *Income Tax Act*¹²⁹⁷ in 2009. The legislation will be discussed in detail in Chapter 5.¹²⁹⁸ However, the following information is provided to supply the necessary background. In terms of these sections of the Act, all Mauritian companies (apart from a few exceptions) should annually set up a CSR fund of two per cent of the chargeable income of the preceding financial year. Most of this fund (depending on when the CSR fund was set up for the first time) will be paid to the Mauritius Revenue Authority, which will pay over most of the funds to the National Social Inclusion Foundation. This Foundation will then ensure that the NPOs who registered projects with them and applied for funds receive the funds, are monitored, and manage the funds for the greater good of the community.¹²⁹⁹

A summarised view of the success or failure of the legislation, according to the researchers whose studies were analysed, will now be presented.

Before section 2 of the *ITA(MAU)*¹³⁰⁰ defined CSR for legislative purposes, "there were many different understandings amongst executives about the nature of CSR; about what it entails."¹³⁰¹ It was evident from the answers received by Pillay from interviews held, that their involvement translated into philanthropic donations, and community development was limited to "staff involvement [in the communities] and

¹²⁹⁷ 16 of 1995 (*ITA(MAU)*).

¹²⁹⁸ Chapter 5, Paragraph 5.1.1.

¹²⁹⁹ Refer to Chapter 5, Paragraph 5.1 for a comprehensive discussion on the related legislation, management of the Foundations etc.

¹³⁰⁰ Section 2 *ITA(MAU)*.

¹³⁰¹ Pillay *CSR – The Case of Mauritius* 325.

the creation of *foundations* and employee welfare."¹³⁰² The foundations were mainly involved in so-called social sponsoring, which is nothing more than funding the "day-to-day expenses of various NGOs."¹³⁰³ The more prominent larger companies were mainly involved in CSR activities to boost and enhance their images, because they were more at the mercy of negative publicity.¹³⁰⁴ CSR was, therefore, before the enactment of the CSR legislation, rather an add-on to the business and not an integral part of the business model.¹³⁰⁵ In 2012/2013 many executives confirmed that CSR was now integral to all business spheres.¹³⁰⁶ Most company executives also indicated that the legislation added formal structure to their CSR programmes, forcing them to budget and set aside funds.¹³⁰⁷ Some companies indicated that even if they did not make a profit they would still contribute the two per cent. In general the participants in Preston and Peeroo's study would spend more than two per cent to benefit society.¹³⁰⁸

The CSR landscape needed to change, and the mandatory regulations did what was necessary to ensure that CSR activities were synchronised and that certain areas were prioritised. In this manner the government aims to protect the environment and raise people's living standards.¹³⁰⁹ Companies, NGOs, the National Social Inclusion Foundation and the government of Mauritius are all part of the big solution to the country's environmental, educational and other social problems, such as unemployment and a lack of development.¹³¹⁰

The Minister of Finance and the National Committee on Corporate Governance, according to Gungadeen, Hossanoo and Gungah,¹³¹¹ constantly monitor and amend

¹³⁰² Pillay *CSR – The Case of Mauritius* 323; also refer to Ramdhony 2018 *Theoretical Economic Letters* 435-436.

¹³⁰³ Pillay *CSR – The Case of Mauritius* 325.

¹³⁰⁴ Pillay *CSR – The Case of Mauritius* 323; Preston and Peeroo reported that the "interviewees [participants in their study] also believe that their CSI involvement has enhanced their corporate reputation and bettered their relationship with the community." (Preston and Peeroo 2023 *De Jure Law Journal* 294).

¹³⁰⁵ Pillay *CSR – The Case of Mauritius* 323.

¹³⁰⁶ Pillay *CSR – The Case of Mauritius* 331.

¹³⁰⁷ Pillay *CSR – The Case of Mauritius* 332; Preston and Peeroo 2023 *De Jure Law Journal* 294.

¹³⁰⁸ Preston and Peeroo 2023 *De Jure Law Journal* 295; Pillay *CSR – The Case of Mauritius* 331-333.

¹³⁰⁹ Ramdhony 2018 *Theoretical Economics Letters* 436.

¹³¹⁰ Gungadeen, Hossanoo and Gungah "Corporate Social Responsibility in Mauritius - An Update of the Current Trends and Practices of Corporate Social Responsibility in the Island Economy of Mauritius" ("Current CSR Trends and Practices of Mauritius") 508-509.

¹³¹¹ Gungadeen, Hossanoo and Gungah "Current CSR Trends and Practices of Mauritius" 493-523.

the priority areas of intervention to ensure that the initiatives align with the government's SDGs.¹³¹² Gungadeen, Hossanoo and Gungah¹³¹³ as well as Preston and Peeroo,¹³¹⁴ however, confirm that the current priority areas of intervention are mainly centred on CP ("alleviating poverty, ... provision of facilities in education, health").¹³¹⁵

Therefore, the general belief is that the government's set priority areas are limiting and insufficient to bring long-term sustainable change.¹³¹⁶ There is little agreement about the efficiency of these policies.¹³¹⁷ One participant in Preston and Peeroo's study made the following comment that summarises the result of the lack of flexibility:

It is because when you take the 2 per cent, and you do the calculations, it's not enough, I would say, to invest in sustainable or in long-term projects. So, if you want just to sponsor a running NGO or an activity or a festival, fair enough. The money available is fine, but if you really want to invest in the community, engage with the community, bring them forward [...] that mindset change. We try to keep on [with] the development, economic, social, economic development ... of the area. [Therefore], that mere 2 per cent is, is just not enough.¹³¹⁸

In conclusion, the legislation was received and applied positively. Many participants commented that seeing the change in their society gave them a sense of pride.¹³¹⁹ The CSR mandatory tax levy generates significant funding that can be applied to CSI initiatives, whether in the form of philanthropy (elevating poverty, enhancing education and healthcare) or socio-economic upliftment. Companies and the general population of Mauritius have become more aware of the real meaning of CSR and the impact of CSR programmes. There are shortcomings, such as the belief that the priority list published by the Government is inadequate and not flexible enough.

¹³¹² With reference to Chapter 5 Paragraph 5.1. The researcher found no evidence that the priority areas of intervention are amended regularly.

¹³¹³ Gungadeen, Hossanoo and Gungah "Current CSR Trends and Practices of Mauritius" 516.

¹³¹⁴ Preston and Peeroo 2023 *De Jure Law Journal* 293.

¹³¹⁵ Gungadeen, Hossanoo and Gungah "Current CSR Trends and Practices of Mauritius" 516.

¹³¹⁶ Preston and Peeroo 2023 *De Jure Law Journal* 295.

¹³¹⁷ Gungadeen, Hossanoo and Gungah "Current CSR Trends and Practices of Mauritius" 517.

¹³¹⁸ Preston and Peeroo 2023 *De Jure Law Journal* 294-295; Pillay also confirmed that some companies spend more than the two per cent. See Pillay *CSR – The Case of Mauritius* 331-333.

¹³¹⁹ One of the participants indicated that 22 families, previously part of a programme supporting the poor, "have bridged the gap of poverty, and now they are empowered. So, they've been removed from the social list of the government" (Preston and Peeroo 2023 *De Jure Law Journal* 294).

Pillay emphasises that the CSR legislation "is so much more than a tax."¹³²⁰ She argues that the legislation and guidelines form the "blueprint of the role that the private sector in Mauritius needs to play in sustainable development."¹³²¹

4.3.4 Conclusion — The impact of mandatory CSR

The objective of this section is to ascertain the extent to which a compulsory CSI tax or levy could be utilised to change behaviour or to prompt companies to engage in sustainable CSR practices and CSI activities. Two pieces of South African legislation designed to change behaviour were investigated, and then the mandatory CSR levies of India and Mauritius.

It can be concluded that the mandatory two per cent contribution imposed by the respective legislations of Mauritius and India generated additional funds that were explicitly utilised for CSI programmes. Companies had to budget in this regard, and in India they also had to plan the related activities. In Mauritius the money not paid to the Mauritius Revenue Authority, which the company could utilise for the benefit of the local community, would also be specifically budgeted and planned for because it would be part of the two per cent prescribed by law. Notably, companies in India and Mauritius reported contributing more than the required two per cent towards CSR spending. Some Mauritian companies indicated they would contribute to CSR, even if no profit was made because it was the right thing to do.

The CSI programmes are not random, *ad hoc* activities anymore, but they relate to a specific government plan and priority areas, although the companies find them very limited. It was further established that the priority areas for both India and Mauritius still relate mainly to CP and exclude many other SDGs. Companies would like to see economic development in their communities and would prefer to be allowed to spend the two per cent contributions, or at least part thereof, on other projects that would meet more SDGs.

¹³²⁰ Preston and Peeroo 2023 *De Jure Law Journal* 296.

¹³²¹ Pillay *CSR – The Case of Mauritius* 329.

4.4 Conclusion

A new definition of CSI was proposed in Chapter 2, Paragraph 2.3.3, an extract from which reads as follows: "The investment projects will have as goals the responsible use of Earth's resources, sustainable socio-economic development and growth, improving infrastructure, the upliftment of society at large and the improvement of the quality of life of the company's employees (with an underlying purpose of addressing past injustices), the promotion of the arts, the preservation of cultural heritage, and contributing towards food security."¹³²² Included in this passage are some of the SDGs discussed previously.

The primary objective of this chapter was to determine to what extent tax incentives or taxes (either in the form of a tax percentage or a levy) can be employed by the government to encourage CSI. This objective links closely with the 'legal', 'environmental' and 'society at large' elements of Preston's Integrated Sustainable CSR Model.

In Paragraphs 4.2 and 4.3 the primary objective was addressed through discussion relating to the general use of tax incentives and tax levies by governments to encourage certain behaviours or investments in specific areas. These areas are mostly linked with sustainable practices such as efficient electricity use, renewable energy, green product innovation and other issues directly related to climate change, groundwater preservation, etc. The use of tax incentives to address socio-economic problems such as unemployment and humanitarian relief (CP) was also investigated. Tax incentives employed in these areas by the South African Government were referred to and discussed to some extent but will be reflected on in detail in Chapter 6.

Unfortunately, not all issues can be addressed using tax incentives. The use of tax incentives is largely voluntary. The company can decide whether to invest in the area linked to the specifically designed incentive. As has been seen, many SMEs are reluctant to make use of the ETI available. If the government wants long-term behavioural change and to achieve visible results in a relatively short period (within one year if the health promotion levy, or so-called sugar tax, in South Africa, can

¹³²² Refer to Paragraph 2.3.3.

be used as an example), then a tax or tax levy will have the desired effect, either as an individual tax policy instrument or in combination with other instruments such as incentives or credits.

It seems as if long-term climate change solutions will be achieved only with a combination of tax incentives and levies, as is already being done in South Africa. The government might see a more positive outcome (in a shorter period of time) if implementing a combination of the tax incentives available to encourage investment in green electricity, for example the incentive available under section 12B (or which was available under section 12BA).¹³²³ Unfortunately, these measures are ineffective, mostly because of the government's policies. Eskom is exempted from paying the CO₂T until 2026. The government further adds to the ineffectiveness of the *CTA* and the low effective CO₂T rate by subsidising Eskom. This situation needs urgent consideration and changes must be made. Unfortunately, a rise in electricity tariffs will follow if Eskom is no longer exempt and/or subsidised, and it will again be the poor that will feel the brunt thereof the most.

Governments do not commonly employ tax levies directly linked to CSI contributions. Mauritius and India are the only countries that mandate CSI (CSR) contributions to specific areas of intervention identified by the governments. The CSR mandatory tax levy generates significant funding for these countries that can be applied for CSI initiatives, whether in the form of philanthropy (combatting poverty, enhancing education and healthcare) or socio-economic upliftment. There are shortcomings, such as the belief that the priority list published by the Government is inadequate and not flexible enough. This is, however, a direct tax policy instrument with an immediate impact on CSI that surely needs further consideration. Care should be taken, however, that it does not become just a conduit for philanthropy. An in-depth study of the CSR legislation of these countries and that of the Seychelles is conducted in Chapter 5.

The South African government's struggles to maintain social infrastructure and stimulate social development, etc., especially at the provincial and municipal level, were highlighted in Chapter 3. The CEOs of major South African companies have

¹³²³ These sections will be discussed in more detail in Chapter 6, Paragraph 6.1.4.1.

indicated that they are willing to join the government in fighting this battle. In light of the fact that tax incentives are versatile and can be adjusted to incentivise any CSI objective (as was proven by Jarvie's study)¹³²⁴ it should be considered too as part of a management framework and might provide more long-term solutions. To enhance companies' willingness to take up such incentives and get involved in the government's CSI vision, it is suggested that the incentive should cover the cost to the company in total (as is the case with section 12B, which will be discussed in detail in Chapter 6), and not only part thereof, like a subsidy, or in the case of the ETI.

The following chapters will investigate some specific legislation linked to tax incentives and mandatory CSI contributions, hence linking closely to the discussion in Chapter 4. In Chapter 5 a detailed investigation into the foreign CSR legislation of Mauritius, India and Seychelles is conducted. Chapter 6 will scrutinise the *ITA(SA)* to determine the deductibility of CSI expenditure. A few specific tax incentives related to this topic will be discussed in detail.

¹³²⁴ Jarvie 2016 *Australian Tax Forum* 671-691. For further information, the reader is referred to the theoretical framework visually presented in Figure 5. See Jarvie 2016 *Australian Tax Forum* 689.

CHAPTER 5 MANDATORY CSR

Countries in general prefer not to regulate CSR directly or by way of hard law.¹³²⁵ Governments play a crucial role in promoting and advancing corporate social responsibility (CSR) in both developed and developing countries. While CSR remains a voluntary initiative, government involvement is essential to foster collaboration and ensure the well-being of all.¹³²⁶ Africa is one continent where CSR is often still regarded as voluntary, while high social expectations exist regarding business social responsibility. In most African countries not much had been done from the governments' side to provide social guidelines or legal frameworks.¹³²⁷

Over the last decades a growing number of countries have adopted CSR-related legislation.¹³²⁸ Most of this regulates the reporting/disclosure of information,¹³²⁹ such as CSR performance, actions and environmental plans. Germany enacted legislation regarding CSR due diligence, and South Africa has brought CSR into

¹³²⁵ Since 2015 many scholars have considered the self-regulatory status of CSR, the different soft law regulations applied, and their effectiveness. A discussion of these topics falls outside the scope of this study. For further reference, refer to: Abah 2016 *University of Baltimore Journal of Media Law & Ethics* 45-55; Alavi, Habek and Cierna 2016 *MM Science Journal* 1121-1126; Halkos and Skouloudis 2016 *Journal of Cleaner Production* 1150-1156; Tamvada 2020 *International Journal of Corporate Social Responsibility* 2-14; Chourou, Himick and Saadi 2023 *Finance Research Letters* 1-10. 'Mandatory CSR' is where a legislative obligation similar to taxation is placed on a company to financially spend or contribute a prescribed percentage on CSR projects or activities. Ramdhony defines mandatory CSR as "a tax imposed by society for using its services" (Ramdhony 2018 *Theoretical Economic Letters* 440).

¹³²⁶ Wirba 2024 *Journal of the Knowledge Economy* 7429.

¹³²⁷ Ntoutoume AGN "Challenges of CSR in Africa: Assessing the Practice Under the Voluntary and Mandatory Provisions" 18. For those African countries that do implement some sort of CSR regulations, refer to pages 19-24 of Ntoutoume's study.

¹³²⁸ Li-Wen 2020 *The American Journal of Comparative Law* 577.

¹³²⁹ For example, France transposed the "Corporate Sustainable Reporting Directive" into national law. The legislation requires, amongst other, that the company report on its impact on the environment or society, on the economy, and on the "material financial impact of sustainability on the company (e.g., the company's development, performance, and position)" (Latham and Watkins 2024 <https://www.lw.com/admin/upload/SiteAttachments/France-Transposes-Corporate-Sustainability-Reporting-Directive-Into-Law.pdf> 1-2). Denmark also included in its *Financial Statement Act* that companies of a specific size must regarding their CSR practices disclose their "CSR policies, including standards, guidelines, and principles; their plan of action to translate CSR policies into results, including all planned procedures and systems; and their evaluation of CSR achievements in the current financial year, as well as expected results of future plans." (Thacker 2019 <https://thecsrjournal.in/csr-policies-around-the-world/>).

governance structures and encouraged CSR practices by including them in corporate law.¹³³⁰

Regarding corporate law,¹³³¹ on 27 October 2005, China introduced a comprehensive revised version of its corporate law by enacting the *Companies Law of the People's Republic of China*.¹³³² Despite an ongoing debate, it appears that CSR is implied through Article 5, which provides that every company shall "observe social morals," act and operate ethically and honestly, and "assume social responsibility."¹³³³ Apart from this phrase there is no other indication of the incorporation or meaning of CSR¹³³⁴ and how far this obligation extends.¹³³⁵

Indonesia, like China, has also adjusted its corporate legislation to incorporate CSR and show its support for implementing CSR programmes.¹³³⁶ CSR is regulated through Article 1(3) of the *Company Law*¹³³⁷ as amended by *Law No. 6* of 2023, which defines CSR as a concept. Furthermore Article 74 stipulates that companies using natural resources are obliged to implement a CSR programme. The legislation is further supplemented by Government Regulation No. 47 of 2012¹³³⁸ on the 'Social

¹³³⁰ Section 72(4) of the *Companies Act* 71 of 2008 (South Africa) prescribes that a social and ethics committee should be appointed by all companies as determined by the Minister. These companies are state-owned enterprises, listed companies, and certain private companies that scored above 500 points in the past two years on their public interest scorecard. The committee must monitor the "company's performance in: Social and economic development (including the United Nations Global Compact Principles, the Organisation for Economic Co-operation and Development recommendations regarding corruption, the Employment Equity Act and the Broad-Based Black Economic Empowerment Act); • Good corporate citizenship; • Environment, health and safety; • Consumer relationships; and • Labour and employment" (Pandor *A Guide to Implementing Social and Ethics Committee Requirements* 3-4). It is interesting that Ntoutoume in his study stated that the *B-BBEE* legislation in South Africa can be regarded as 'mandatory CSR'. See Ntoutoume AGN "Challenges of CSR in Africa: Assessing the Practice Under the Voluntary and Mandatory Provisions" 22-23.

¹³³¹ It is noted that countries such as the United Kingdom expect the directors of companies to consider the impact of the companies' operations on society and the environment and to include the considerations as disclosures in the Business Review. See Thacker 2019 <https://thecsrjournal.in/csr-policies-around-the-world/>.

¹³³² Article 5 of the *Companies Law of the People's Republic of China* 42 of 2005.

¹³³³ Article 5 of the *Companies Law of the People's Republic of China* 42 of 2005.

¹³³⁴ Li-Wen 2020 *The American Journal of Comparative Law* 579.

¹³³⁵ For further reading in this regard, refer Ntoutoume AGN "Challenges of CSR in Africa: Assessing the Practice Under the Voluntary and Mandatory Provisions"

¹³³⁶ Putri and Yusuf 2024 <https://www.mondaq.com/shareholders/1482202/general-overview-of-corporate-social-responsibility-in-indonesia#:~:text=Implementation%20of%20CSR%20in%20Indonesia,under%20the%20company's%20annual%20plan.>

¹³³⁷ *Limited Liability Companies Law* 40 of 2007.

¹³³⁸ GR 47/12.

and Environmental Responsibility of Limited Liability Companies'. This notice stipulates that all Indonesian companies are obliged annually (through their Boards of Directors) to draft CSR plans and approve budgets for these plans. On completion of the CSR programme, a full report should be considered at the annual general meeting for shareholders. The legislation and regulations are silent regarding the amount that should be allocated, what the money should be spent on, etc. Companies can use their discretion regarding social and environmental development programmes.¹³³⁹ Because there are no stipulated compulsory CSR contribution provisions, the Indonesia CSR legislation will not be critically discussed in this chapter.

Germany has also placed an ethical obligation on some of its companies. On 1 January 2023, the *Act on Corporate Due Diligence Obligations in Supply Chains*¹³⁴⁰ became operational. This legislation applies to all enterprises regardless of their business form operating in Germany with at least 1 000 employees.¹³⁴¹ The main obligation placed on companies is to respect human rights, which is defined as their individual due diligence obligations.¹³⁴² The Act requires the company to establish a risk management system aimed at the prevention of or minimising of human rights violations and environmental damage.¹³⁴³ The requirements placed on the company are not limited to its internal affairs. The company must also ensure that contractual partners (direct and indirect suppliers) and their suppliers adhere to the human rights protected under the eleven listed international human rights conventions. The human rights protected include, but are not limited to, (a) the use of child labour, slavery and forced labour; (b) "protection against land grabbing"; (c) the discharge of occupational health and safety obligations; (d) every employee have "the right

¹³³⁹ Putri and Yusuf 2024 <https://www.mondaq.com/shareholders/1482202/general-overview-of-corporate-social-responsibility-in-indonesia#:~:text=Implementation%20of%20CSR%20in%20Indonesia,under%20the%20company's%20annual%20plan>.

¹³⁴⁰ Of July 16, 2021 (*Supply Chain Act*).

¹³⁴¹ Section 1 *Supply Chain Act*. The threshold of 1 000 employees was incorporated from 1 January 2024. Before that, the threshold was 3 000 employees.

¹³⁴² Business and Human Rights 2024 <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/supply-chain-act.html>.

¹³⁴³ Section 3(1) *Supply Chain Act*; Sections 4, 5 6 provide measures regarding 'Risk Management and analysis', and preventative measures, while Section 7 prescribes the 'remedial actions' which should be taken in such case that a violation of human rights was discovered.

to a fair wage"; (e) "the right to form trade unions or employee representation bodies"; (f) the company should not be involved environmental violations.¹³⁴⁴

Significant penalties can be imposed under Section 24 of the act.¹³⁴⁵ A company with an average annual turnover of more than 400 million euros may be fined an administrative fine of up to two per cent of that average turnover.¹³⁴⁶ Companies fined are also excluded from tendering and being awarded any public contracts.¹³⁴⁷ The impact of this legislation is yet to be seen because it has been in operation for less than two years.

Not many countries are willing to impose a specific tax levy to enforce CSI. Nigeria has imposed such a levy to some extent. The *Niger-Delta Development Commission Act*¹³⁴⁸ established the Niger-Delta Development Commission with the specific mission "to offer a lasting solution to the socio-economic difficulties in the Niger Delta region."¹³⁴⁹ Sections 1 to 13 and 15 contain the provisions for the establishment, composition and structure, functions and powers of the Commission.¹³⁵⁰ The financial requirements are included in section 14 of the *NDDC Act*. This section prescribes that the fund established by the Commission¹³⁵¹ will receive monthly contributions from the federal government, "15 per cent of the total monthly statutory allocations due to member States of the Commission from the Federation Account",¹³⁵² "50 per cent of monies due to member States of the Commission from the Ecological Fund"¹³⁵³ and every oil producing and/or gas processing company, operating in the Niger-Delta (regardless of whether on- or offshore), must pay over to the Fund 3 per cent of its total annual budget.¹³⁵⁴ There were some shortcomings, specifically regarding section 14(2)(a) and the fact that

¹³⁴⁴ Federal Ministry of Labour and Social Affairs date unknown <https://www.bmas.de/EN/Europe-and-the-World/International/Supply-Chain-Act/supply-chain-act.html>; also refer to Business and Human Rights 2024 <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/supply-chain-act.html>.

¹³⁴⁵ Section 24 *Supply Chain Act*.

¹³⁴⁶ Section 24(3) *Supply Chain Act*.

¹³⁴⁷ Section 22 *Supply Chain Act*.

¹³⁴⁸ 6 of 2000 (*NDDC Act*).

¹³⁴⁹ Niger-Delta Development Commission (NDDC) 2023 <https://nddc.gov.ng/WhoWeAre/Vision>.

¹³⁵⁰ Sections 1-13 and 15 6 of the *NDDC Act*.

¹³⁵¹ Section 14(1) of the *NDDC Act*.

¹³⁵² Section 14(2)(a) of the *NDDC Act*.

¹³⁵³ Section 14(2)(c) of the *NDDC Act*.

¹³⁵⁴ Section 14(2)(b) of the *NDDC Act*.

the *NDDC Act* does not have any statutory powers to "compel the prompt release of funds accruing to [the Commission] or otherwise impose penalties for non-compliance."¹³⁵⁵ An amendment bill was proposed in 2017, which promised to address these shortcomings. Still, with the publication of the *Niger Delta Development Commission (Establishment, ETC) (Amendment) Act*,¹³⁵⁶ there were no actual changes to the content apart from the format in which section 14(2)(b) was typed. No penalty provision was incorporated.¹³⁵⁷ In light of this study, the shortcomings of the *NDDC Act* lie in the fact that the income and operations are limited to a particular area only and relate only to manufacturing companies involved in oil and gas. Therefore the 3 per cent of the budget that must be paid to the government does not apply to all companies operating in Nigeria. The three per cent is not a specific tax levy imposed under taxation legislation.

Three countries have implemented legislation regulating mandatory CSR contributions. The legislation of the three countries, Mauritius, India and Seychelles, is particularly important for the South African context, as they are developing countries, and Mauritius and Seychelles are considered African countries.¹³⁵⁸ India is one of South Africa's BRICS trading partners.¹³⁵⁹

This study has repeatedly mentioned that alternatives should be investigated to encourage companies to incur CSIE, which is more comprehensive than pure CP. The discussion in this chapter is devoted to scrutinising the CSR legislation of the three countries (including the related regulations) (although Seychelles repealed its legislation on 13 April 2021) aiming at establishing the potential application of such tax legislation in South Africa.

5.1 Mauritius

In 2009 Mauritius became the first country in the world to make CSR contributions mandatory, through the enactment of sections 50K and 50L of the *Income Tax*

¹³⁵⁵ Templars 2018 <https://www.templars-law.com/app/uploads/2018/02/Templars-Newsletter-NDDC-Amendment-Act-.pdf>.

¹³⁵⁶ Of 2017.

¹³⁵⁷ Templars 2018 <https://www.templars-law.com/app/uploads/2018/02/Templars-Newsletter-NDDC-Amendment-Act-.pdf>.

¹³⁵⁸ African Union date unknown https://au.int/en/member_states/countryprofiles2.

¹³⁵⁹ BRICS 2024 <https://infobrics.org/>.

Act.¹³⁶⁰ This legislation was enacted as part of the Mauritian government's fight against poverty and in an effort to promote the overall well-being of its population.¹³⁶¹ In their study Preston and Peeroo¹³⁶² indicated that South Africa had faced socio-economic challenges in the past few years similar to those Mauritius had faced in the years leading up to the enactment of its legislation. These challenges include a lack of government financial resources to provide for all the socio-economic needs of the country's citizens, declining economic activity with little or no economic growth prospects resulting in high unemployment rates, high government debt and regular budget deficits.¹³⁶³

Their study also indicated that it might be time for South Africa to implement similar CSR legislation.¹³⁶⁴

5.1.1 Legislation regulating mandatory CSR contributions in Mauritius

In preparation for introducing the mandatory CSR legislation, the Mauritian government lowered the company tax from an average of 25 per cent in 2006 to an average of 22.5 per cent in 2007.¹³⁶⁵ In the 2007/2008 budget speech the Minister of Finance proclaimed that the government remained committed to moving towards a single low tax regime, but indicated in no uncertain terms that it expected companies in turn to show "solidarity with the weak, the vulnerable and the poor" in a concrete manner through structured CSR programmes.¹³⁶⁶

It seems the government was not satisfied with the reaction to its requests. CSR contributions were officially made mandatory by introducing sections 50K and 50L in the *Income Tax Act*¹³⁶⁷ with the publication of *The Finance (Miscellaneous*

¹³⁶⁰ Preston and Peeroo 2023 *De Jure Law Journal* 303.

¹³⁶¹ Magellan 2023 <https://magellan.mu/en/2023/09/26/corporate-social-responsibility-csr-in-mauritius/>.

¹³⁶² Preston and Peeroo 2023 *De Jure Law Journal* 298-301.

¹³⁶³ Preston and Peeroo 2023 *De Jure Law Journal* 298-301.

¹³⁶⁴ Preston and Peeroo 2023 *De Jure Law Journal* 280, 303; Magellan 2023 <https://magellan.mu/en/2023/09/26/corporate-social-responsibility-csr-in-mauritius/>.

¹³⁶⁵ Trading Economics 2024 <https://tradingeconomics.com/mauritius/corporate-tax-rate>; Some of the participants in the study of Preston and Peeroo confirmed that they paid 17 per cent tax on income before implementing the mandatory CSR tax legislation. In 2022 the fixed rate paid by companies was 15 per cent. Preston and Peeroo 2023 *De Jure Law Journal* 294.

¹³⁶⁶ *Budget Speech 2007/2008: Consolidating the Transition and Securing Full Employment* 32.

¹³⁶⁷ *Income Tax Act* 16 of 1995 (*ITA(MAU)*); s 50L(1).

*Provisions) Act*¹³⁶⁸ on 30 July 2009. These sections provide that every company¹³⁶⁹ must "set up a CSR Fund equivalent to two per cent of its chargeable income of the preceding year ..." annually.¹³⁷⁰ The implication is that the company should operate at a profit to be obliged to pay the tax.¹³⁷¹

Initially a company had the choice to use all the funds for an approved company programme¹³⁷² or to "implement an approved programme under the National Empowerment Foundation; or finance an approved NGO."¹³⁷³ The discretionary¹³⁷⁴ percentage of the two per cent company CSR Fund has changed a few times since the enactment of the legislation, and the freedom of choice has been partially revoked.¹³⁷⁵ Section 50L states that, depending on when the company first created a CSR Fund, it must remit between 50 and 75 per cent of the annual two per cent calculated obligation to the Mauritius Revenue Authority (MRA). Companies that created the fund for the first time on or after 1 January 2019 are those obliged to remit 75 per cent to the MRA.¹³⁷⁶ Discretionary funds not spent by the closing date must be paid to the MRA with the annual tax return submission.¹³⁷⁷

¹³⁶⁸ Sub-Part AD – Corporate Social Responsibility of *The Finance (Miscellaneous Provisions) Act* 14 of 2009.

¹³⁶⁹ The heading of s 50K reads "Interpretation". It provides a list of companies not obliged to adhere to the legislation and defines the meaning of a "société" for the purposes of the legislation. There are a few exclusions, of which the following is most notable: "Global Business Companies; ...Non-resident companies, foundations or trusts; Freeport operators; Freeport private developers with respect to export income; ...". (S 50K of the *ITA(MAU)*); Magellan 2023 <https://magellan.mu/en/2023/09/26/corporate-social-responsibility-csr-in-mauritius/>; also refer to *Corporate Responsibility Guide* of April 2024 2.

¹³⁷⁰ Section 50L(1) of the *ITA(MAU)*; 'Chargeable Income' is calculated similarly to 'taxable income' as per the *ITA(SA)* and equals gross income less allowable deductions. Refer to MRA date unknown <https://www.mra.mu/taxes-duties/corporate-taxation#ChargeableIncome>. Companies that opt to pay a presumptive tax for the preceding income tax year will not be subject to the provisions of s 50L, as per the provisions of s 50L(1A).

¹³⁷¹ Mauritius Revenue Authority *Corporate Responsibility Guide* of April 2024 2 (*Corporate Responsibility Guide* of April 2024).

¹³⁷² Section 50L(1)(a) of the *ITA(MAU)*.

¹³⁷³ Sections 50L(1)(b) and (c) of the *ITA(MAU)*.

¹³⁷⁴ Referring to it as discretionary in this context means that the company is still obliged to incur that portion (for example, 25 per cent) of the two per cent, but is left with the choice to pay it over to an NPO or its own foundation which provides services in one or more of the fixed priority areas of the government. *Corporate Responsibility Guide* of April 2024 4.

¹³⁷⁵ Preston and Peeroo 2023 *De Jure Law Journal* 295.

¹³⁷⁶ Section 50L(2)(a) of the *ITA(MAU)*. Companies that created their CSR trusts between 1 January 2017 and 31 December 2018 must remit a minimum of 50 per cent to the MRA.

¹³⁷⁷ *Corporate Responsibility Guide* of April 2024 3.

The application of the remainder of the funds will again depend on when the company created its fund. If the CSR Fund was created before 1 January 2019, the company could use 50 per cent for its own CSR framework programmes.¹³⁷⁸ Those companies whose CSR Fund was created on or after 1 January 2019 may use the remaining 25 per cent of the CSR Fund to implement their own CSR programmes or fund non-governmental organisations as long as the funded CSR programmes relate to the priority areas of intervention (PAIs) published by the government.¹³⁷⁹ Any remaining funds (50 or 25 per cent) not spent at year-end should be paid to the MRA.¹³⁸⁰

The following example is provided as an illustration for the above discussion: Company C has a financial year ending on 31 December 2019. 75 per cent of its CSR Fund shall be remitted to the Director-General [of the MRA] since it was set up on '01 January 2019'.

The CSR Fund will be computed at 2% of its previous year's chargeable income, which is, the chargeable income reported in the year ended 31 December 2018.

Illustration: Assuming the chargeable income for the year ended 31 December 2018 was Rs. 4m, the CSR Fund on 01 January 2019 will be Rs. 80,000.

[The] remaining percentage of the CSR Fund: The remaining 25% of the CSR Fund shall be used by the company to implement a CSR Programme or finance a non-governmental organisation implementing a CSR Programme in the priority areas of intervention ¹³⁸¹

The CSR contributions collected by the MRA are divided into two parts. Two hundred million Mauritian rupees (Rs)¹³⁸² are annually paid to the National Solidarity Fund (NSF) and the remainder of the CSR contribution income is paid to the National Social Inclusion Foundation (NSIF).¹³⁸³

5.1.2 The use of the CSR Funds collected

As mentioned above, the CSR funds collected by the MRA are paid to the NSF and the NSIF.

¹³⁷⁸ Section 50L(2)(b)(i) of the *ITA(MAU)*.

¹³⁷⁹ Section 50L(1)(b)(ii) of the *ITA(MAU)*; *Corporate Responsibility Guide* of April 2024 4.

¹³⁸⁰ Section 50L(6) of the *ITA(MAU)*.

¹³⁸¹ *Corporate Responsibility Guide* of April 2024 4.

¹³⁸² If the exchange rate of one Rs equals R0.38 on 11 November 2024 is used, then 200 million RS equals R76.03 million.

¹³⁸³ Section 50L(7) of the *ITA(MAU)*. The "National Social Inclusion Foundation" was first called the "National CSR Foundation". National Social Inclusions Foundation (NSIF) 2019 <https://www.nsif.mu/wp-content/uploads/2019/11/Publi-reportage-transformation.pdf>.

According to section 4(a) of the *National Solidarity Fund Act*¹³⁸⁴ the first purpose of the NSF is to provide financial assistance to those Mauritian citizens in need of medical procedures that "can only be performed abroad or in medical institutions in Mauritius approved by the Ministry responsible for the subject of health." Secondly, section 4(b), read with section 4A of the *National Solidarity Fund Act*, provides that funds can be made available to assist redundant workers financially.

In 2016 the Mauritian government developed a comprehensive framework to ensure "no one is left behind".¹³⁸⁵ This framework included, amongst other things, the National Corporate Social Responsibility (CSR) Framework.¹³⁸⁶ The National CSR Foundation was a direct consequence of this vision and framework. The CSR Foundation would be "managed jointly by the public and private sectors."¹³⁸⁷ In 2019 the National CSR Foundation was transformed into the NSIF with a new corporate identity.¹³⁸⁸ The NSIF, which receives most of the CSR funds paid by the companies, describes its role as leveraging "strategic and sustainable partnerships with NGOs, public institutions and the private sector to promote social inclusion, equity and sustainable development."¹³⁸⁹ These funds should be applied for activities relating to the ten PAIs listed in Part A of the Tenth Schedule of the *ITA(MAU)*.¹³⁹⁰ The NSIF further divided the PAIs into four focal areas or action areas, which align with the government's policy objectives and the UN SDGs.¹³⁹¹ Figure 5-1 illustrates the relationship between the different focal areas, the respective PAIs within each focal area, and how each links with the various SDGs.

¹³⁸⁴ *National Solidarity Fund Act* 7 of 1991.

¹³⁸⁵ United Nations Development Programme *Leaving No One Behind: A Social Protection Primer for Practitioners* 28.

¹³⁸⁶ *Budget Speech 2016-2017* of 29 July 2016 45.

¹³⁸⁷ *Budget Speech 2016-2017* of 29 July 2016 45.

¹³⁸⁸ NSIF 2019 <https://www.nsif.mu/wp-content/uploads/2019/11/Publi-reportage-transformation.pdf>.

¹³⁸⁹ NSIF 2019 <https://www.nsif.mu/wp-content/uploads/2019/11/Publi-reportage-transformation.pdf>.

¹³⁹⁰ A list of the PAIs is presented in Figure 5-1 and Paragraph 5.4.1.

¹³⁹¹ NSIF 2019 <https://www.nsif.mu/wp-content/uploads/2019/11/Publi-reportage-transformation.pdf>. For reports on how the *CSR Funds* received were spent and the different approved projects, see NSIF 2023 <https://www.nsif.mu/annual-reports/>; For the NSIF 2023-2024 budget, see NSIF date unknown <https://www.nsif.mu/wp-content/uploads/2023/06/Budget-Brief-2023-20241.pdf>; National Social Inclusions Foundation *Creating Ripples Changing Lives — Impact Report 2022* 12.

Figure 5-1: NSIF different focus and priority areas of intervention¹³⁹²



The NSIF (formerly the National CSR Foundation) allocates funds to NGOs for approved projects linked to the PAIs. The beneficiaries are "individuals and families registered under the SRM [Social Register of Mauritius] and ... vulnerable groups."¹³⁹³ The fight against poverty and the upliftment of citizens and communities are central to the list of PAIs.

The fund management process will be discussed in more detail below.

Part B of the Tenth Schedule of the *ITA(MAU)* lists activities which will not qualify as accepted CSR activities/programmes. The following are regarded as of interest

¹³⁹² *National Social Inclusions Foundation Creating Ripples Changing Lives — Impact Report* 2022 12.

¹³⁹³ Ministry of Foreign Affairs, Regional Integration and International Trade Voluntary *National Review Report of Mauritius* 2019 19.

mainly because of the impact they may have on other stakeholders and society at large.¹³⁹⁴

Activities discriminating on the basis of race, place of origin, political opinion, colour or creed.

Activities targeting shareholders, senior staff or their family members.

Activities which are against public safety and national interest.

Religious, political, trade union, self-financing, staff welfare and marketing activities.

Preston and Peeroo¹³⁹⁵ also indicate that employees expressed unhappiness over the fact that the company may legally contribute to other community CSR projects but not to those that can directly impact their living conditions as employees if the provisions of Part B of the Tenth Schedule, listed above, are considered. Company managers also regard the above fixed PAIs as exceedingly limiting.¹³⁹⁶

5.1.3 The management process of the CSR funds collected

It was mentioned above that the CSR Funds (whether 75 or 50 per cent) which the individual companies annually remit to the MRA are divided into two pools of funds. Two hundred million Rs are paid to the NSF and the remainder to the NSIF. The management structures of the respective funds and how the money available is allocated to different projects or causes will be discussed briefly as they may be of interest in forming and applying a similar public fund in South Africa.

5.1.3.1 National Solidarity Fund of Mauritius

Not much information could be found regarding the day-to-day operation of the NSF. The following three sources provided some insight.

The first is the *National Solidarity Fund Act* itself. Section 5 of the Act provides that a nine-member board will manage and administer the fund. The Ministry of Social Integration, Social Security and National Solidarity will appoint the chairperson.¹³⁹⁷

¹³⁹⁴ "Part B – Activities and Contributions Which Do Not Qualify under CSR" of the Tenth Schedule of the *ITA(MAU)*.

¹³⁹⁵ Preston and Peeroo 2023 *De Jure Law Journal* 295-296.

¹³⁹⁶ Preston and Peeroo 2023 *De Jure Law Journal* 293.

¹³⁹⁷ Section 5(2)(a) of the *National Solidarity Fund Act*.

Four of the other members will directly relate to the Minister's office.¹³⁹⁸ The other members will be representatives of the "Mauritius Tax Payers' Association",¹³⁹⁹ "the Mauritius Employers' Federation",¹⁴⁰⁰ a "representative of employees' trade unions, appointed by the Minister",¹⁴⁰¹ and lastly, a "representative of the Mauritius Council of Social Service."¹⁴⁰² If the structure of the Board is considered, it is noteworthy that business is represented, as well as the general public.

The funds received¹⁴⁰³ by the NSF are received from the MRA and managed by the office of the "Administrative Secretary" of the fund.¹⁴⁰⁴ Different projects, over and above those specifically provided for in the Act, include scholarships and social aid in spectacles, hearing aids, wheelchairs, etc.¹⁴⁰⁵ Qualifying applicants must apply for assistance from the Office of the Administrative Secretary, and it is assumed that this office will ensure the validity of the application.¹⁴⁰⁶ The main activities of the NSF are thus humanitarian in nature and aim to restore human dignity.

It is assumed that the Board reports to the Minister and that the annual reporting on the spending of the budget and so forth will also be done through the office of the Minister. No confirmation could, however, be found for this statement.

¹³⁹⁸ UN Committee on the Rights of the Child 2013 <https://www.refworld.org/reference/statepartiesrep/crc/2013/en/10329641>; S 5(2)(b) to (e) of Act 7 of 1991.

¹³⁹⁹ Section 5(2)(f) of the *National Solidarity Fund Act*.

¹⁴⁰⁰ Section 5(2)(g) of the *National Solidarity Fund Act*.

¹⁴⁰¹ Section 5(2)(h) of the *National Solidarity Fund Act*.

¹⁴⁰² Section 5(2)(i) of the *National Solidarity Fund Act*.

¹⁴⁰³ In Paragraph 5.1.3 it was indicated that Rs two hundred million of the CSR Fund money received by the MRA is paid to the NSF.

¹⁴⁰⁴ *National Solidarity Fund (NSF)* of unknown date; Ministry of Social Integration, Social Security and National Solidarity 2024 https://socialsecurity.govmu.org/socialsecurity/?page_id=1002; Mauritius Institute of Training and Development (MITD) date unknown https://www.mitd.mu/fi_assistance.php.

¹⁴⁰⁵ Ministry of Social Integration, Social Security and National Solidarity 2022 <https://www.facebook.com/watch/?v=498270655743030>; *National Solidarity Fund (NSF)* of unknown date.

¹⁴⁰⁶ *National Solidarity Fund (NSF)* of unknown date 9; MITD date unknown https://www.mitd.mu/fi_assistance.php.

5.1.3.2 National Social Inclusion Foundation (NSIF)

The NSIF is the

Central Body for receiving and allocating public funds to NGOs. The Foundation operates under the guidance of the Minister of Social Security, Social Integration and Economic Empowerment.¹⁴⁰⁷

The NSIF's main income stream is the CSR funds. Section 50L(7) of the *ITA(MAU)* prescribes that the Accountant General should pay over these funds, and any other amounts awarded to them by the government.¹⁴⁰⁸ This income is used to undertake programmes and projects relating to the government's PAIs and for the "benefit of individuals and families registered under the Social Register of Mauritius and of vulnerable groups."¹⁴⁰⁹

The council of the NSIF consists of eleven members. Again, as with the NSF, it is noteworthy that the foundation is governed by a multi-stakeholder Council, including both business (the private sector) and the general public.¹⁴¹⁰ The board is composed of a chairperson, one representative from each of the following ministerial offices (the Prime Minister, Ministry of Finance and Economic Development, Ministry of Social Security, National Solidarity and Reform Institutions, and the Ministry of Social Integration and Economic Empowerment), and two representatives each from the private sector, civil society, and academia.¹⁴¹¹

The Board of Council is supposed to meet at least every month to ensure that the Foundation is functioning properly.¹⁴¹²

Under the management of the Secretary-General (as chief executor officer, and who reports to the Board of Council), the foundation's employees look into identifying projects/programmes, approving and registering proposed NGO programmes,

¹⁴⁰⁷ National Social Inclusions Foundation (NSIF) *Creating Ripples Changing Lives — Impact Report 2022* ii.

¹⁴⁰⁸ Section 50L(7) of the *ITA(MAU)*; *The Republic of Mauritius: Charter of the National Social Inclusion Foundation* 5.

¹⁴⁰⁹ *The Republic of Mauritius: Charter of the National Social Inclusion Foundation* 4.

¹⁴¹⁰ NSIF *Creating Ripples Changing Lives — Impact Report 2022* ii.

¹⁴¹¹ Minister of Social Integration and Economic Development *The Republic of Mauritius: Charter of the National Social Inclusion Foundation* 7.

¹⁴¹² Minister of Social Integration and Economic Development *The Republic of Mauritius: Charter of the National Social Inclusion Foundation* 8.

funding and monitoring those projects and the related NGOs.¹⁴¹³ Funding is provided to projects with the potential to improve social outcomes. "This implies funding for results and outcomes rather than simply paying for inputs and activities."¹⁴¹⁴ NGOs are funded only for a year and should re-apply annually.¹⁴¹⁵

The Results-based Monitoring Toolkit is an essential aspect of the NSIF's governance plan.¹⁴¹⁶ The first four tools of the Results-based Monitoring Toolkit could be used in any public spending monitoring system. An NGO that has received funding during the particular financial year is monitored continuously. Data are collected (both quantitative and qualitative), analysed and reported to track the progress of a programme, ensure the correct use of the funds provided, and comply with the 'Funding Contract Agreement' and relevant regulations. This process, which includes sight visits and progress reports, further ensures that beneficiaries are correctly identified and "risk situations with potential impact on programme/project implementation."¹⁴¹⁷

It is also important to note that the NGO will not receive all of the funding at the beginning of the financial year but rather in instalments upon reaching certain milestones.¹⁴¹⁸

The fact that one foundation is involved in the whole process, from receiving the application to the disbursement and management of the funding, has advantages regarding efficiency and effectiveness. CSR funds received are centralised, ensuring a more effective allocation thereof. It is possible to see and plan for the bigger picture, considering the nature of the NGO, the interventions, the impact and expected outcomes. The funding available can thus be divided between (i) funding the normal, ongoing NGO programmes annually applied for, (ii) new projects/programmes which can be either small (local community-based) or large

¹⁴¹³ NSIF *Creating Ripples Changing Lives — Impact Report 2022* ii, 11.

¹⁴¹⁴ NSIF *Creating Ripples Changing Lives — Impact Report 2022* 21.

¹⁴¹⁵ NSIF *Creating Ripples Changing Lives — Impact Report 2022* 21.

¹⁴¹⁶ NSIF *Creating Ripples Changing Lives — Impact Report 2022* 22.

¹⁴¹⁷ NSIF *Creating Ripples Changing Lives — Impact Report 2022* 22.

¹⁴¹⁸ NSIF *Creating Ripples Changing Lives — Impact Report 2022* 22; Soobaroyen, Sannasse and Pariag 2017 *CIMA Research Executive Summary* 7.

(national) in scale, with a focus of social innovation and/or integrated interventions, (iii) and then, lastly, funds may be allocated to ad-hoc activities.¹⁴¹⁹

Proof of the foundation's success may be found in the numbers published. The 2020/2021 Annual Report¹⁴²⁰ provides the following information:

Table 5-1: CSR Funds income and expenses of the NSIF for the 2021 Financial year¹⁴²¹

For the financial year ending 30 June 2021	Rs	% of Income
CSR funds received from the MRA		
- Received	765 350 603	79.1%
- Receivable	130 963 026	13.5%
Refunds from NGOs	67 181 482	6.9%
Receivable from the Ministry of Fisheries	3 706 405	0.4%
	967 201 516	
Expenses:		
NGO grants	622 103 059	64%
Staff	22 189 467	2%
(For the financial year ending 30 June 2021)	Rs	% of Income
Other	14 780 227	2%
	659 072 753	
Surplus carried forward to the next year	308 128 763	32%

Through the mandatory CSR legislation, an amount of Rs 967 201 516¹⁴²² could be generated and set aside for CSR-specific projects, with indirect input and supervision from the government, the private sector and NGOs through the management of the NSIF. Of this amount a relatively small percentage of two per cent was utilised as staff cost. A question for which no answer could be found is why Rs 308 128 763 was not applied to or assigned to projects and carried forward to the next financial year.

¹⁴¹⁹ NSIF *Creating Ripples Changing Lives — Impact Report 2022 20*.

¹⁴²⁰ NSIF *Annual Report 2020-2021*.

¹⁴²¹ NSIF *Annual Report 2020-2021* 27, 52 and note 16.

¹⁴²² The amount is equal to R195 511 950.00 if an exchange rate of R0.20 for one Rs is applied.

5.1.4 Concluding remarks — mandatory CSR in Mauritius

A comprehensive discussion about the benefits and disadvantages of Mauritius' mandatory CSR contribution falls outside the scope of this study. Chapter 4 did, however, provide some insight in this regard. The benefits and disadvantages have been researched and presented by researchers such as Beebeejuan,¹⁴²³ Bissoon,¹⁴²⁴ Gokulsing,¹⁴²⁵ Gungadeen, Hossanoo and Gungah,¹⁴²⁶ Pillay,¹⁴²⁷ Preston and Peeroo,¹⁴²⁸ Ramdhony,¹⁴²⁹ and Soobaroyen, Sannassee, and Pariag.¹⁴³⁰ The general experience has been positive, especially since the legislation generated tax income specifically earmarked for CSR purposes. Most companies, however, believe that the specific PAIs are very limiting, and so was the one-year period in which an NGO could apply for funding and in which a project should be completed.

Soobaroyen, Sannassee and Pariag¹⁴³¹ suggest that the data gathered by the NSIF, for example, could be used more wisely to re-assess the PAIs (to benefit the general public)¹⁴³² and to ensure the optimal use of CSR funds and the funding of the NSIF.¹⁴³³ To prevent adherence to the CSR legislation from being CP, the government should consider expanding the priority areas to include others relating to sustainable social and environmental development.¹⁴³⁴

In general, a culture of sustainable thinking must be developed in all aspects of business in other African countries.¹⁴³⁵ CSR should become part of a company's core business for mandatory CSR to facilitate social, environmental and economic

¹⁴²³ Beebeejuan 2020 *IJLHSS* 9-19.

¹⁴²⁴ Bissoon 2018 *Asian Journal of Sustainability and Social Responsibility* 1-19.

¹⁴²⁵ Gokulsing 2011 *Social Responsibility Journal* 218-233.

¹⁴²⁶ Gungadeen, Hossanoo and Gungah "Corporate Social Responsibility in Mauritius: An Update of the Current Trends and Practices of Corporate Social Responsibility in the Inland Economy of Mauritius" 493-523.

¹⁴²⁷ Pillay *CSR – The Case of Mauritius*.

¹⁴²⁸ Preston and Peeroo 2023 *De Jure Law Journal* 280-308.

¹⁴²⁹ Ramdhony *The Influence of Corporate Governance Practices on Corporate Social Responsibility (CSR) Reporting — Evidence from Mauritius*.

¹⁴³⁰ Soobaroyen, Sannassee and Pariag 2017 *CIMA Research Executive Summary* 1-10.

¹⁴³¹ Soobaroyen, Sannassee and Pariag 2017 *CIMA Research Executive Summary* 7-8.

¹⁴³² Beebeejuan 2020 *IJLHSS* 17.

¹⁴³³ Soobaroyen, Sannassee and Pariag 2017 *CIMA Research Executive Summary* 7-8.

¹⁴³⁴ Beebeejuan 2020 *IJLHSS* 17.

¹⁴³⁵ Beebeejuan 2020 *IJLHSS* 17.

change. The country's government efficiency and enforcement capabilities will largely determine the successful implementation of mandatory CSR legislation.¹⁴³⁶

5.1.5 Other CSI-related allowable income tax deductions – Mauritius

The *ITA(MAU)* also makes provision for specific deductions that can directly be linked to CSI,¹⁴³⁷ aimed at incentivising taxpayers to incur certain expenses. The following are examples of such provisions.

Although Part B of the Tenth Schedule of the *ITA(MAU)* excludes any activities relating to employees and/or their families as a CSR-acknowledged activity, Section 18(4)(b) provides for a deduction equal to 200 per cent of the wage/salary and training cost of any employee if that employee is employed explicitly at a branch in the small tourist island, Rodrigues.¹⁴³⁸

No deduction for expenditure relating to charitable donations or gifts is allowed against taxable income when calculating chargeable income. Therefore there is no similar deduction to that found in section 18A of the *ITA(SA)*.¹⁴³⁹ However, in the 2023/2024 budget it was announced that

[c]ompanies donating to NGOs involved in supporting persons with health issues and disabilities, protecting street children, and promoting rehabilitation programmes will be allowed a triple deduction on their contribution up to a maximum of Rs 1 million.¹⁴⁴⁰

This provision would extend to donations regarding "animal welfare and protection" too.¹⁴⁴¹ Because the *ITA(MAU)* does not have a specific section allowing for a deduction in the calculation of taxable income, it is assumed that the deduction will be against the two per cent CSR liability. This assumption is further based on the

¹⁴³⁶ Gungadeen, Hossanoo and Gungah "Corporate Social Responsibility in Mauritius - An Update of the Current Trends and Practices of Corporate Social Responsibility in the Island Economy of Mauritius" 518.

¹⁴³⁷ As defined in Chapter 2, Paragraph 2.3.3.

¹⁴³⁸ Section 18(4)(b) of the *ITA(MAU)*. Rodrigues is a small tourist (island) destination, with the majority of the population being women. It is deduced that the aim with this legislation is to better employment opportunities for women. See Mauritius Attractions 2024 <https://mauritiusattractions.com/rodrigues-island-i-37.html>.

¹⁴³⁹ PWC 2024 <https://taxsummaries.pwc.com/mauritius/corporate/deductions>.

¹⁴⁴⁰ *Budget Speech 2023/2024* of 2 June 2023 70.

¹⁴⁴¹ *Budget Speech 2023/2024* of 2 June 2023 71.

words *their contribution*.¹⁴⁴² The implication is that the yearly two per cent contribution calculated by the company will be adjusted downwards with the amount/value donated to these NPOs, and only the remainder of the calculated amount will be payable to the MRA.

5.1.6 Conclusions drawn on mandatory CSR in Mauritius

If the above and the discussion in the previous paragraphs are considered, then it seems as if the main concern of the Mauritian government is to generate funds to provide for humanitarian needs. It also seems as if there are currently specific needs regarding street children, rehabilitation programmes and certain health care issues. The fact that an indirect incentive is provided for donations to these needs in the form of a triple deduction of up to Rs 1 million is a confirmation of the suggestions in Chapter 4, that if the government wants to direct donations or investments in a specific direction, the incentives should be specific and the allowable deduction higher than those allowed under other tax incentives. The reasons for especially allowing a triple deduction as against a double deduction (200 per cent as in the case of the Rodrigues employment incentive) could not be determined.

India has also introduced mandatory CSR legislation compelling contributions by companies. The legislation resembles that of Mauritius', but there are also significant differences, starting with the fact that India does not use tax legislation as a vehicle. An in-depth investigation into India's legislation will be conducted in the following paragraph.

5.2 India

India has one of the largest economies in the world and a long-standing history of CSR.¹⁴⁴³ However, it also has one of the largest populations of people who live in

¹⁴⁴² In their discussion of the 2023/2024 budget speech, Ernst & Young Ltd (Mauritius) confirmed this view by stating: "In certain cases, companies may reduce the amount payable as CSR charge to the MRA where they make certain contributions to qualifying NGOs. In the present case, the interaction between the triple deductions and the CSR contributions should be evaluated." They believed that if the disabled individual was employed by the company, the company could deduct triple the expense (the employee's salary, etc.) for company tax purposes. See EY 2023 <https://www.ey.com/content/dam/ey-unified-site/ey-com/en-mu/documents/ey-budget-2023-24-fiscal-fnalysis.pdf> 11, 12.

¹⁴⁴³ Singh and Verma 2018 *European Journal of Business and Management* 146; Mukherjee, Bird and Duppati 2018 *Journal of Contemporary Accounting Economics* 255; Forbes India 2024

absolute poverty.¹⁴⁴⁴ Evidence shows that the benefits of the thriving economy are not evenly distributed.¹⁴⁴⁵ Company shareholders are the primary beneficiaries of the wealth generated while the government has to "grapple with problems of poverty, unemployment, illiteracy and malnutrition."¹⁴⁴⁶ Some companies have stepped in and tried to adhere to their obligation in this regard through CSR, but others "have done so only when pushed."¹⁴⁴⁷ The slow response of the private sector to the government's requests for help forced the government to make CSR mandatory and move away from its voluntary nature.¹⁴⁴⁸ This situation was thus similar to that of Mauritius.

The Institute of Company Secretaries of India describes introducing the CSR provisions in the *Companies Act, 2013* as a

significant legislative effort undertaken to involve corporates as partners in the social development process of the country and in strengthening the social responsibility of businesses.¹⁴⁴⁹

In the following paragraphs the details and provisions of the CSR legislation will be investigated and discussed in detail.

5.2.1 Legislation regulating mandatory CSR contributions in India

In 2013 India became the second country to make a specific contribution to a CSR Fund mandatory with the enactment of their *Companies Act, 2013*. Section 135 relates to CSR and falls under "CHAPTER IX: ACCOUNTS OF COMPANIES".¹⁴⁵⁰ In

<https://www.forbesindia.com/article/explainers/top-10-largest-economies-in-the-world/86159/1>.

¹⁴⁴⁴ Singh and Verma 2018 *European Journal of Business and Management* 146.

¹⁴⁴⁵ The Gini Index of India stood at 34.7 in 2015 and 2021 at 32.8. Compared to South Africa's Gini Index count of 63 in 2014 (last updated). They are, therefore, doing very well compared to South Africa. See World Bank Group date unknown <https://data.worldbank.org/indicator/SI.POV.GINI?locations=IN>. "The Gini index measures the extent to which the distribution of income or consumption among individuals or households within an economy deviates from a perfectly equal distribution. A Gini index of 0 represents perfect equality, while an index of 100 implies perfect inequality" (World Bank Group date unknown <https://databank.worldbank.org/metadataglossary/world-development-indicators/series/SI.POV.GINI#:~:text=Gini%20index,of%20100%20implies%20perfect%20in%20equality>).

¹⁴⁴⁶ Singh and Verma 2018 *European Journal of Business and Management* 150.

¹⁴⁴⁷ Singh and Verma 2018 *European Journal of Business and Management* 146.

¹⁴⁴⁸ Mukherjee, Bird and Duppati 2018 *Journal of Contemporary Accounting Economics* 254,255.

¹⁴⁴⁹ ICSI *Guidance Note on Corporate Social Responsibility* iii.

¹⁴⁵⁰ Section 135 of Chapter IX of the *Companies Act, 2013* of India.

addition to section 135, the Central Government has provided the *Corporate Social Responsibility Policy Rules*.¹⁴⁵¹ The legislation applies to companies with a net worth of more than 5 billion Indian rupees (INR), a turnover exceeding INR 10 billion, or who reported a net profit of more than INR 50 million (in a financial year).¹⁴⁵²

Except for the percentage indication and the fact that the prescribed amount is calculated on an amount similar to profit after tax, the CSR legislation of India differs significantly from that of Mauritius. Mauritius introduced the CSR legislation as a CSR levy included in its taxation legislation (the *ITA(MAU)*), whereas India has used the *Companies Act* (corporate law) as a legislative vehicle to compel companies to make specific contributions towards CSR. Therefore India's CSR legislation is not a tax levy (because the provisions are not incorporated in taxation legislation) and secondly, to some extent, this is still an optional expense, since if it is not incurred the Act stipulates that the company should report and explain. It should be noted that this changed to some extent with the introduction of penalty provisions, a factor which will be discussed in more detail later in this paragraph.

Section 135 provides that the Board of specific companies¹⁴⁵³ should establish a CSR Committee. Notable is the fact that the CSR Committee should comprise at least three directors, of which one should be an independent director. This Committee is expected to formulate a CSR policy, specifying activities in line with the

¹⁴⁵¹ For easy access to the Rules and to understand the connection between the respective rule and the legislation, refer to Paliwal 2024 https://blog.ipleaders.in/section-135-of-companies-act-2013/#Transfer_of_unspent_amount-_amendment_in_Rule_10.

¹⁴⁵² Cyrill 2024 <https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/>.

¹⁴⁵³ Sections 135(1) and 135(9) should be read in conjunction. S 135(1) of the *Companies Act*, 2013, provides the minimum qualifying thresholds for companies according to which it will be mandatory to establish a CSR committee and set aside a CSR fund. This section reads as follows: "Every company having net worth of rupees five hundred crore or more [$\geq$ R1 040.90 million], or turnover of rupees one thousand crore or more [$\geq$ R2 081.80 million] or a net profit of rupees five crore or more [$\geq$ R10.40 million] during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director." The term 'crore' means ten million. The conversion was done on 23 September 2024 with the exchange rate at 1 INR = R0.21. The changes regarding s 135(9) on 20 September 2022 should be noted. "If the amount to be spent by a company in a financial year towards CSR as per sub-section (5) does not exceed Rs. 50 lakhs, the requirement of constituting CSR Committee shall not apply to such company and the functions of such committee shall be required to be discharged by the Board of Directors of such Company." (MMJC 2022 <https://www.mmjc.in/changes-introduced-by-the-csr-amendment-rules-2022/>).

government's priority areas as per Schedule VII of the *Companies Act, 2013*¹⁴⁵⁴ and to "recommend and advise the board on the financial outlay (expenditure) that will be required to carry out"¹⁴⁵⁵ the CSR policy, divide the budget between the identified activities and undertake a monitoring role.¹⁴⁵⁶

The Board's role is to consider the recommendations made by the CSR Committee, disclose the content of the CSR policy in reports, etc., and ensure that the company undertakes its identified CSR activities.¹⁴⁵⁷ Another essential task of the Board is to

ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility.

Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.¹⁴⁵⁸

The fact that the company might be obliged to create a CSR Fund in (say) year one because one of the section 135(5) and (9) size requirements was met, can change in the following year if the company is no longer meeting the size requirements.¹⁴⁵⁹ This means that the company will no longer be obliged to create such Fund. This may impact the long-term vision of the company regarding planned CSR projects.

It is vital to note that only cash contributions, not contributions in kind, will qualify as CSR, because the legislation specifically refers to an amount spent.¹⁴⁶⁰

¹⁴⁵⁴ Section 135(3)(a) of the *Companies Act, 2013*.

¹⁴⁵⁵ Paliwal 2024 https://blog.ipleaders.in/section-135-of-companies-act-2013/#Functions_of_the_CSR_committee; S 135(3)(b) of the *Companies Act, 2013*.

¹⁴⁵⁶ Section 135(3)(c) of the *Companies Act, 2013*.

¹⁴⁵⁷ Section 135(4) of the *Companies Act, 2013*.

¹⁴⁵⁸ Section 135(5) of the *Companies Act, 2013*; S 198 of the *Companies Act, 2013* provides the formula to calculate profits. The "average net profits" are a calculated average of the past three financial years immediately preceding the current financial year. If the company is still not operating for three consecutive years, then the average of the immediately preceding years will be used.

¹⁴⁵⁹ Refer to footnote 1450 regarding the size requirements.

¹⁴⁶⁰ Anon 2024 <https://thecsrjournal.in/corporate-social-responsibility-csr-news-what-is-not-csr-indian-law-constitution-schedule-seven-companies-act/>.

There were no enforcement measures until mid-2022, including no penalties for non-compliance, in either the *Companies Act*, 2013 or the *Income Tax Act*¹⁴⁶¹ of India.¹⁴⁶²

Section 135 was amended on 20 September 2022 to include penalties and rewards and addressed the following matters. Regarding unspent money, it should be determined whether it relates to an ongoing project. If it relates to an ongoing project (a project therefore not completed in one financial year), the company should transfer the unspent money within thirty days, in terms of section 135(6), from the end of the financial year to a special account, the 'Unspent Corporate Social Responsibility Account'. This amount should be spent to complete the project in three years. If not, the remainder of the money not used for activities, as indicated in the CSR policy, should be transferred within six months of the last day of the three years to a special fund (relating to the project or activity) specified in Schedule VII. These funds include but are not limited to the "Prime Minister's National Relief Fund", the "PM CARES Fund" and a few others established to assist in socio-economic development.¹⁴⁶³

The added section 135(7) provides for the following penalties. Where the company (ultimately the Board as the responsible party) did not spend the required 2 per cent and did not comply with the provision of sections 135(5) and (6), the legislation now imposes two penalties, of which the first is payable by the company and the second is to be paid by each member of the board. The penalties are calculated as follows:

1. The lesser of one crore/10 million Indian rupees¹⁴⁶⁴ (INR) or twice the amount not spent by the company, which it was supposed to transfer either to the Fund

¹⁴⁶¹ *Income-Tax Act, 1961 (ITA(IND))*.

¹⁴⁶² Guha 2020 *Policy Design and Practice* 58.

¹⁴⁶³ Added provisions under s 135(5) second provision read with the newly added s 135(6) of the *Companies Act*, 2013; National Information Centre date unknown https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&sectionId=1326&sectionno=135&orderno=139; Acharya 2024 <https://cleartax.in/s/csr-amendment-rules-2021>; Cyrill 2024 <https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/>.

¹⁴⁶⁴ One crore INR = ten million INR = R2 051 140.26 on 27 September 2024 with the exchange rate of one INR equals to R0.20 South African.

or the special bank account in terms of section 135(6) read with Schedule VII of the *Companies Act*, 2013, will be paid by the company.¹⁴⁶⁵

2. Over and above the amount calculated in note 1, this sub-section also imposes a penalty on every officer (and it is deduced that it is all board members because they were tasked with ensuring that the two per cent was spent), of up to 200 000 INR or one-tenth of the unspent CSR amount (as explained in note 1 above), whichever is less.¹⁴⁶⁶

Regarding the special government directions, the provisions of the newly added subsection 135(8) provide that the government may, when it considers it necessary "to ensure compliance" with the CSR legislation, issue specific instructions "to a company or a class of companies."¹⁴⁶⁷

On the topic of credit, section 135(5) was adjusted to provide 'credit' for subsequent years to a company if the company spent more than the required two per cent of the average net profit in a particular fiscal year, which may carry over the 'excess' amount as a partial discharge of their obligation for the following year or the immediately succeeding three years.¹⁴⁶⁸

As per the amended rules of 2022, the company must also as a supplement to its annual financial reports file the CSR-2 form with the Ministry of Corporate Affairs to declare the company's financial information in order that it may be determined whether it is liable for the mandatory CSR contributions. This is in addition to other

¹⁴⁶⁵ National Information Centre date unknown https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&sectionId=1326&sectionno=135&orderno=139; Acharya 2024 <https://cleartax.in/s/csr-amendment-rules-2021>; Paliwal 2024 https://blog.ipleaders.in/section-135-of-companies-act-2013/#Functions_of_the_CSR_committee.

¹⁴⁶⁶ National Information Centre date unknown https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&sectionId=1326&sectionno=135&orderno=139; Acharya 2024 <https://cleartax.in/s/csr-amendment-rules-2021>; Paliwal 2024 https://blog.ipleaders.in/section-135-of-companies-act-2013/#Functions_of_the_CSR_committee; one lakh INR equals R20 494.75. Therefore two lakh INR equals R 40 989.50 as on 27 September 2024 with one INR equals to R0.20 South African; also refer to Kain 2023 <https://sigmaearth.com/evaluating-the-impact-of-indias-mandatory-csr-spending-law/>.

¹⁴⁶⁷ Section 135(8) of the *Companies Act*, 2013.

¹⁴⁶⁸ National Information Centre date unknown https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&sectionId=1326&sectionno=135&orderno=139; Acharya 2024 <https://cleartax.in/s/csr-amendment-rules-2021>; it should be noted that the official government publication of the amended section 135 could not be located.

financial details, details of the board members, and information regarding sections 135(5) and (6). The other information that should be declared relates to all the CSR programmes that have started, completed and/or are ongoing during the related financial year. The particulars regarding the programme/project required include but are not limited to the budgeted amount, the amount spent during the year, the location of the project, its duration¹⁴⁶⁹ and the mode of implementation.¹⁴⁷⁰

Lastly; Rule 7 of the CSR Rules, as amended in 2022, makes it clear that the total administrative costs in any financial year may not exceed five per cent of the two per cent CSR average budgeted for the particular financial year. This provision presumably limits the possibility of the misappropriation of funds.

It was indicated above that section 135(4) limits the company to implementing projects or contributing to NPOs that comply with the prescribed activities of the government. The implications of these prescribed activities will now be considered.

5.2.2 Legislation — prescribed activities

Unlike the situation in Mauritius, it is left to the Board of the company to pay the company's CSR funds to a preferred recipient(s), and it is not paid to one authority, such as India's Department of Revenue,¹⁴⁷¹ to distribute the funds received to the beneficiaries. Since 2021 the NGO must file a CSR-1 form with the Ministry of Corporate Affairs if it wants to qualify to receive CSR money from a company. This process also aids in monitoring and ensuring compliance regarding CSR spending.¹⁴⁷²

¹⁴⁶⁹ The maximum duration of any CSR project is three years. See Anon 2024 <https://thecsrjournal.in/corporate-social-responsibility-csr-news-what-is-not-csr-indian-law-constitution-schedule-seven-companies-act/>.

¹⁴⁷⁰ The Gazette of India REGD. No. D. L-33004/99; India Filings 2024 [https://www.indiafilings.com/learn/mca-form-csr-2-report-on-the-corporate-social-responsibility/#:~:text=The%20newly%20introduced%20form%20CSR,Corporate%20Social%20Responsibility%20\(CSR\).; Cyrill 2024 https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/](https://www.indiafilings.com/learn/mca-form-csr-2-report-on-the-corporate-social-responsibility/#:~:text=The%20newly%20introduced%20form%20CSR,Corporate%20Social%20Responsibility%20(CSR).; Cyrill 2024 https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/).

¹⁴⁷¹ Department of Revenue 2024.

¹⁴⁷² Cyrill 2024 <https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/>.

Point (a), Paragraph 5.2.1 above indicated that the company's planned activities in terms of the CSR policy should be aligned with those stipulated in Schedule VII of the *Companies Act, 2013*:¹⁴⁷³

Table 5-2: An extract of Schedule VII of the *Companies Act, 2013* activities¹⁴⁷⁴

(i)	1. "eradicating poverty, hunger and malnutrition, (promoting health care including preventive health) and sanitation and ... making available safe drinking water;"
(ii)	2. "promoting education, including special education and employment enhancing vocation [occupational] skills especially among children, women, elderly and the differently abled and livelihood enhancement projects;"
(iii)	3. "promoting gender equality, empowering woman, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;"
(iv)	4. "ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining a quality of soil, air and water ... ;"
(v)	5. "protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;"
(viii)	6. "contribution to the Prime Minister's National Relief Fund or ... any other fund set up by the Central Government for socio-economic development providing relief and welfare of the Scheduled Castes [social class], the Scheduled Tribes, other backward classes, minorities and women."

¹⁴⁷³ Section 135(3)(b).

¹⁴⁷⁴ Schedule VII of the *Companies Act, 2013*; For a more detailed list, refer to the answer sheet of the Minister of Corporate Affairs (India) 2021 <https://sansad.in/getFile/loksabhaquestions/annex/176/AU2080.pdf?source=pqals#:~:text=Schedule%20VII%20of%20the%20Act%20indicates%20the%20activities%20that%20can,rehabilitation%2C%20and%20reconstruction%20activities%2C%20setting;also%20refer%20to%20Cyril%202024> <https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/>; Or refer to Acharya 2024 <https://cleartax.in/s/corporate-social-responsibility>.

(ix)	7. "(a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; ..."
(x)	8. "rural development projects."
(xii)	9. "disaster management, including relief, rehabilitation and reconstruction activities."

It would appear that the CSR activities listed are more comprehensive than philanthropic or humanity-related activities. The Schedule VII of the *Companies Act, 2013* activities will be compared to those of Mauritius and South Africa in Paragraph 5.4.1 below.

In some cases companies set up their own section 8 companies¹⁴⁷⁵ (society, foundation or trust) to ensure that two per cent of their CSR funds are spent on the prescribed activities.¹⁴⁷⁶ It is assumed that the company will have more control regarding the spending of its CSR contributions, in the case of such section 8 company, than it will have if the contributions are paid to a selected NPO.

Like Mauritius, these activities should not be undertaken exclusively for the benefit of the employees and/or their families if the company would like to sufficiently discharge its obligations under the legislation.¹⁴⁷⁷

The impact of the CSR legislation will be discussed briefly in the following section.

¹⁴⁷⁵ A s 8 company is a company established with a *charitable intent*. S 8(1) (a) to (c) provides that the company should "(a) [have] in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object; (b) [intend] to apply its profits, if any, or other income in promoting its objects; and (c) [intend] to prohibit the payment of any dividend to its members". (Refer to s 8 of the *Companies Act, 2013*).

¹⁴⁷⁶ Kumar 2015 <https://www.linkedin.com/pulse/corporate-social-responsibility-tax-benefits-available-kumar/>.

¹⁴⁷⁷ Rule 2(1)(d) of the Companies (CSR Policy) Rules; Kumar 2015 <https://www.linkedin.com/pulse/corporate-social-responsibility-tax-benefits-available-kumar/>; Acharya 2024 <https://cleartax.in/s/corporate-social-responsibility>.

5.2.3 Mandatory CSR in India — the statistics

As is the case in Mauritius, according to Gupta and Chakradhar¹⁴⁷⁸ the mandatory CSR legislation in India increased the amount of CSR expenditure (and therefore will negatively impact the company's profit). It positively affects the amount of money spent on CSR projects and for the benefit of society. In the 2021/2022 financial year 23 142 crore INR was spent by Indian companies in terms of the legislation compared to the amount spent in the 2013/2014 financial year, when they spent an amount of 9 400 crore INR.¹⁴⁷⁹

The legislation also provides additional motivation for those companies which lack the "intrinsic motivation"¹⁴⁸⁰ needed to be involved in CSR practice. Gupta and Chakradhar¹⁴⁸¹ further find that the Schedule VII list notably guided the corporate sector in where to utilise the money and that it impacted "some of the nation's crucial environmental and social issues and boost[ed] development."¹⁴⁸²

Gupta and Chakradhar¹⁴⁸³ state that although it would seem that the elementary 'comply-or-explain' approach prescribed by the *Companies Act*, 2013 in section 135(5) (before the implementation of the penalty clauses) did not provide the government with enough enforcement options, they were indeed enough if the high compliance factor is considered. Guha,¹⁴⁸⁴ however, reports that the smaller companies exhibited a lower compliance factor than the larger firms. Guha¹⁴⁸⁵ reasons that the Indian government created a "powerful new social norm or expectation, which firms were hesitant to violate." The larger firms ran the risk of

¹⁴⁷⁸ Gupta and Chakradhar 2022 *Business and Society Review* 60-62; also refer to Guha 2020 *Policy Design and Practice* 58.

¹⁴⁷⁹ Kain 2023 <https://sigmaearth.com/evaluating-the-impact-of-indias-mandatory-csr-spending-law/>; a crore INR equals 10 million INR. With the exchange rate of one INR equals to R0.21 on 11 November 2024, 23 142 crore INR equals to R49 237 million, and 9 400 Crore INR equals R20 000 million.

¹⁴⁸⁰ Gupta and Chakradhar 2022 *Business and Society Review* 60-62.

¹⁴⁸¹ Gupta and Chakradhar 2022 *Business and Society Review* 60-62.

¹⁴⁸² Gupta and Chakradhar 2022 *Business and Society Review* 60-62; during the height of the COVID-19 pandemic, the "Ministry of Corporate Affairs declared that enterprises' expenditure to combat the COVID-19 (coronavirus) epidemic" will be regarded as CSR activities expenditure and therefore be regarded as part of the two per cent budget. See Kain 2023 <https://sigmaearth.com/evaluating-the-impact-of-indias-mandatory-csr-spending-law/>.

¹⁴⁸³ Gupta and Chakradhar 2022 *Business and Society Review* 60-62; also refer to Guha 2020 *Policy Design and Practice* 58.

¹⁴⁸⁴ Guha 2020 *Policy Design and Practice* 63.

¹⁴⁸⁵ Guha 2020 *Policy Design and Practice* 67.

greater reputational damage than the smaller firms if they did not comply with the legislation.¹⁴⁸⁶

One of the challenges mentioned was that because of the lack of government oversight there is no guarantee that the CSR budget is effectively spent and reaches the intended beneficiaries.¹⁴⁸⁷ It is believed that the relatively new requirements regarding the submission of the CSR-1 and CSR-2 forms and the detailed information that should be declared, especially on the CSR-2 form, will aid in this process and add more oversight.

Another limiting factor also observed in Mauritius is that the two per cent budget may be spent only on the predetermined Schedule VII activities.¹⁴⁸⁸ Although, without any comparison being made, it seems that the list covers a wider range of activities. Definite references to a fund, or funds set up by the government for socio-economic development, are made.¹⁴⁸⁹ There might be other socio-economic development needs in the community or even regarding the employees and their families which would have also been deserving courses that are ignored because they do not meet the legislative requirements.

Cyrill¹⁴⁹⁰ analysed the CSR spending by Indian listed companies (on the Indian National Stock Exchange). Although the net profit on average increased by 13 per cent over the preceding three years, the CSR spending increased by only 5 per cent. INR 155.24 billion¹⁴⁹¹ CSR spending was reported for the 2022/2023 financial year. CSR spending as a percentage of net profit was at a six-year low of one point eight seven (1.87) per cent (thus less than the prescribed two per cent). Despite these statistics, only 25 of the 1 296 companies required by section 135 of the *Companies Act* to create a CSR Fund did not comply. This is an excellent compliance rate of 98%.

¹⁴⁸⁶ Guha 2020 *Policy Design and Practice* 67.

¹⁴⁸⁷ Kain 2023 <https://sigmaearth.com/evaluating-the-impact-of-indias-mandatory-csr-spending-law/>.

¹⁴⁸⁸ Kain 2023 <https://sigmaearth.com/evaluating-the-impact-of-indias-mandatory-csr-spending-law/>.

¹⁴⁸⁹ Refer to Table 5-2 CSR activity (viii).

¹⁴⁹⁰ Cyrill 2024 <https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/>.

¹⁴⁹¹ At an exchange rate of one INR is equal to R0.21, this amount equals to R32.281 billion.

The next paragraph will be devoted as in Paragraph 5.1.5 to determining whether other provisions in the Indian *ITA(IND)* provide for a deduction of CSI/CSR expenses. This will provide insight into possible legislative provisions which could be applied in South Africa to allow CSIE to be deducted.

5.2.4 Other CSI-related allowable income tax deductions – India

Sections 30 to 37 of *ITA(IND)* deal with allowable deductions. From the provisions of these sections it may be assumed that a deduction in the calculation of 'chargeable' income is possible if that expense directly relates to the "main objective of carrying on the business of operation of [as a specified type of operation]" or is "laid out or expended wholly and exclusively for the purposes of the business or profession."¹⁴⁹² This is similar to the provisions of the GDF of the *ITA(SA)* and the 'in the production of the income' requirement.¹⁴⁹³

There are, however, also some exceptions to the rule. A few sections still allow a company to deduct CSI-related expenditures. The first to be considered is section 35CCC. This section allows the company to deduct all eligible expenses¹⁴⁹⁴ relating to expenditure incurred for an approved 'agricultural extension project' in calculating the amount of its taxable income. For the project to qualify it should, amongst other things, undertake 'the training, guidance and education of the farmers'. Furthermore, the Ministry of Agriculture should have approved this project. Notably, the minimum amount of expenditure incurred should exceed 25 lakhs,¹⁴⁹⁵ which should not include land or buildings. The company should not benefit directly or indirectly from the project.¹⁴⁹⁶

¹⁴⁹² As an example: S 33AC (1) of the *ITA(IND)*, s 37 of the *ITA(IND)*.

¹⁴⁹³ Refer to Paragraph 6.1.2.

¹⁴⁹⁴ Eligible expenditure is calculated as:

"Expenses (other than the cost of land/building) incurred exclusively for project	XXX
(-) Amount received from the beneficiary	(XXX)
= Eligible expenditure	XXX".

Kanoi 2021 <https://taxguru.in/income-tax/section-35ccc-deduction-expenditure-incurred-agricultural-extension-project.html>.

¹⁴⁹⁵ One Lakh INR equals one hundred thousand INR. Thus 25 Lakhs equalled R525 000.00 on 28 September 2024 with an exchange rate of one INR being equal to R0.21.

¹⁴⁹⁶ Section 35CCC of the *ITA(IND)*.

Over the years the percentage allowed as a deduction has changed. Table 5-3 summarises these changes.

Table 5-3: Section 35CCC of the ITA(IND) allowable deduction¹⁴⁹⁷

Tax years	Amount of deduction
Till the tax year 2020/2021	150% of the eligible expenditure
From the tax year 2021/2022	100% of the eligible expenditure

Several conditions should be met, and documentary proof should be submitted annually to the Commissioner of Income Tax with the tax return submission. An audit report confirming, amongst other things, that the amount claimed for the project will be part of the documents submitted. The main objective is to prove that an inspection was conducted, that the project exists and that it is ongoing.¹⁴⁹⁸

Section 35CCD allows for a very similar allowance/deduction compared to section 35CCC, especially regarding the percentage of the cost allowed as a deduction. This section relates to a registered skills development project. A specific training institute should undertake the project on behalf of the company, and proof of successful completion, amongst other requirements, should be submitted.¹⁴⁹⁹

Section 80G of the *ITA(IND)* differs from section 18A of the *ITA(SA)*, because it calculates the deduction as a percentage of the value of the donation. The ceiling placed on a donation(s) is therefore not determined as a percentage of the taxable income (or as the *ITA(IND)* refers to it, as the "total income").¹⁵⁰⁰ Donations to specified institutions will be to those that will typically "engage in social, cultural, or

¹⁴⁹⁷ Section 35CCC of the *ITA(IND)*. Rules 6AAE and 6AAD provide the guidelines and requirements regarding the process that should be followed to receive approval for the registration of such a project. Kanoi 2021 <https://taxguru.in/income-tax/section-35ccc-deduction-expenditure-incurred-agricultural-extension-project.html>.

¹⁴⁹⁸ Kanoi 2021 <https://taxguru.in/income-tax/section-35ccc-deduction-expenditure-incurred-agricultural-extension-project.html>.

¹⁴⁹⁹ Section 35CCD of the *ITA(IND)*; Kanoi 2021 <https://taxguru.in/income-tax/section-35ccd-deduction-expenditure-incurred-skill-development-project.html>.

¹⁵⁰⁰ Section 80G(1) of the *ITA(IND)*.

economic development activities."¹⁵⁰¹ The deduction allowed will depend on who the recipient foundation is. If the taxpayer donates to a government relief fund such as the "Prime Minister's National Relief Fund",¹⁵⁰² it will qualify for a 100 per cent deduction.¹⁵⁰³ As per section 80G(1)(ii), donations to all other qualifying entities will qualify for a deduction of 50 per cent of the cost.¹⁵⁰⁴ Notably, the government uses different percentages to incentivise the support of specific government funds.¹⁵⁰⁵

As a last note: In a recent court case¹⁵⁰⁶ the Income Tax Appellate Tribunal (of India) considered whether the eligible company was allowed a deduction under section 80G of the *ITA(IND)* for CSR fund contributions. The NGO partner had the necessary section 80G certificate. It was held that if the expenses were incurred in terms of section 135¹⁵⁰⁷ of the *Companies Act*, 2013 and met the requirements described above, the expenses would be allowed as a deduction in terms of section 80G of the *ITA(IND)* (a donation for charitable purposes). Still, no deduction in terms of section 37(1) of the *ITA(IND)* would be allowed. If these expenses were paid over to a Schedule VII fund in terms of section 135(5) of the *Companies Act*, 2013, it was inferred that the amount paid to this fund would also qualify for such a deduction.¹⁵⁰⁸

The provisions of sections 35CCC and 35CCD are worth noting. These sections incentivise CSI in the form of capacity building (training). They provide for a 100 per cent deduction of the cost. Initially it was 125 per cent, which is believed to be a good way to lure companies into accepting the initiative. These sections are very specific regarding the administration process and documentary proof that should be

¹⁵⁰¹ Section 80G of the *ITA(IND)*; Staff writer 2024 <https://www.bajajfinserv.in/section-80g-deduction>.

¹⁵⁰² Section 80G(2)(a)(iiia) of the *ITA(IND)*.

¹⁵⁰³ Section 80G(1)(i) and 80G(2)(a) of the *ITA(IND)*.

¹⁵⁰⁴ Section 80G(1)(ii) of the *ITA(IND)*; for a comprehensive discussion and list of the different organisations, refer to AVIVA 2022 <https://www.avivaindia.com/insurance-guide/section-80g-income-tax-deductions-donations>.

¹⁵⁰⁵ Another section with similar provisions is, for example, section 80GGA of the *ITA(IND)*.

¹⁵⁰⁶ ITA No.1585/Mum/2023; for a more detailed discussion of the facts of the case, refer to Centre for Advancement of Philanthropy 2024 [https://capindia.in/are-csr-contributions-eligible-for-tax-deduction/#:~:text=Specifically%20only%20CSR%20contributions%20to,2013\)%20deduction%20u%2Fs%2080G](https://capindia.in/are-csr-contributions-eligible-for-tax-deduction/#:~:text=Specifically%20only%20CSR%20contributions%20to,2013)%20deduction%20u%2Fs%2080G).

¹⁵⁰⁷ Refer to Paragraph 5.2.1, the obligations of the Board of the company, above.

¹⁵⁰⁸ Centre for Advancement of Philanthropy 2024 [https://capindia.in/are-csr-contributions-eligible-for-tax-deduction/#:~:text=Specifically%20only%20CSR%20contributions%20to,2013\)%20deduction%20u%2Fs%2080G](https://capindia.in/are-csr-contributions-eligible-for-tax-deduction/#:~:text=Specifically%20only%20CSR%20contributions%20to,2013)%20deduction%20u%2Fs%2080G).

submitted to the Commissioner of Income Tax before the final deduction is approved. The model used in these sections is worth considering for the South African context.

Regarding section 80G, it was noted that the government uses different percentages to incentivise the support of specific government funds.¹⁵⁰⁹

5.2.5 Conclusions drawn on mandatory CSR in India

Before the 2022 amendments to section 135 of the *Companies Act* the legislation was largely unenforceable because no penalty clauses existed and the monitoring of projects was limited. With the amendment of the section the situation changed for the better. With the requirement that the CSR-2 form must be submitted, the company per implication registers its project(s).¹⁵¹⁰

The opinion is held that the legislation is better than that of Mauritius in three respects. Firstly, the Company can to some extent decide for itself within the restrictive guidelines of the CSR activities list what form the project will take, and/or which PBO will be supported. These matters are not determined and controlled by a central foundation. Secondly, the projects can also be planned and executed over more than one year up to a maximum of three years. Finally, the CSR activity list appears to be more extensive than that of Mauritius.

However, it should be noted that the existence of the National Social Inclusion Foundation in Mauritius may mean that there is more oversight to ensure that a wider spread of activity or priority areas are covered.

If the application of sections 35CCC and 35CCD of the *ITA(IND)* is considered, the possibility of registering projects focused on agricultural training and skill development is significant. These sections can potentially be adjusted for implementation in other jurisdictions. The level of oversight, requiring the submission of reports, documentary evidence and other materials to the

¹⁵⁰⁹ Another section with similar provisions is, for example, section 80GGA of the *ITA(IND)*.

¹⁵¹⁰ The CSR-2 form is quite lengthy and the detailed requested regarding the firm, the chargeable income, the CSR fund, and the projects, are very comprehensive. India Filings 2024 [https://www.indiafilings.com/learn/mca-form-csr-2-report-on-the-corporate-social-responsibility/#:~:text=The%20newly%20introduced%20form%20CSR,Corporate%20Social%20Responsibility%20\(CSR\).;](https://www.indiafilings.com/learn/mca-form-csr-2-report-on-the-corporate-social-responsibility/#:~:text=The%20newly%20introduced%20form%20CSR,Corporate%20Social%20Responsibility%20(CSR).;)

Department of Revenue before allowing tax deductions is particularly noteworthy. Equally notable is the Indian government's approach of applying varying percentages to calculate allowable incentive deductions. This strategy encourages taxpayers to prioritise specific areas, ensuring that critical sectors receive increased funding through donations.

The CSR legislation of Mauritius and India was scrutinised in this paragraph and in paragraph 5.1. The last country to implement a CSR tax was Seychelles. The following paragraph is devoted to investigating and discussing the Seychelles CSR tax.

5.3 Seychelles

Information regarding Seychelles' mandatory CSR is minimal. It is also notable that Seychelles recalled its mandatory legislation on the 13th of April 2021. It will still be discussed in detail, however, for the sake of completeness and because the legislation was drafted specifically and only with CSR in mind.

5.3.1 Legislation regulating mandatory CSR contributions in Seychelles

In his 2012-2013 budget speech, Minister Laporte¹⁵¹¹ of the Seychelles stressed that although many businesses regularly and generously contributed to the needs of their communities, many still did not. He regarded CSR as

a concept whereby businesses act to balance their economic growth by contributing to the sustainable, social, and environmental development of the country.¹⁵¹²

Minister Laporte¹⁵¹³ also stated: "[C]orporate social responsibility should be by all and not only by some."

On 27 December 2013 the Seychelles became the first country in the world to promulgate legislation that in totality related only to the regulation of CSR.¹⁵¹⁴ The objective of the legislation was to promote a "sense of social engagement and

¹⁵¹¹ *Budget Speech 2013* of 4 December 2012 36.

¹⁵¹² *Budget Speech 2013* of 4 December 2012 36.

¹⁵¹³ *Budget Speech 2013* of 4 December 2012 36.

¹⁵¹⁴ *Corporate Social Responsibility Tax Act* 17 of 2013 (*CSR Tax Act*).

partnership by national stakeholders in assisting the country's economic goals and supporting national and community-based programmes."¹⁵¹⁵

The *CSR Tax Act* became operational on 1 January 2014. Unlike Mauritius and India, Seychelles expressly referred to its levy as a tax. It was payable by all businesses¹⁵¹⁶ with an annual turnover¹⁵¹⁷ equal to or in excess of 1 million Seychellois rupees (SCR).¹⁵¹⁸ Some businesses were exempt under the legislation, such as those operated under an International Trade Zone licence.¹⁵¹⁹

This legislation was repealed on 29 March 2021.¹⁵²⁰ According to the Minister for Finance, Economic Planning and Trade, Mr Naadir Hassan,¹⁵²¹ the reasons were that this was done firstly as part of a series of government tax reforms, and secondly to provide economic relief for businesses suffering from the COVID-19 pandemic. Although it was repealed the legislation will still be considered and discussed, as the terms and content of the legislation were unique, especially when compared to that of Mauritius and India. The legislation differed mainly in regards to how the amount of the CSR tax due and payable was determined.

The liable person would calculate the CSR tax liability monthly and pay it to the Revenue Commissioner per the prescribed statement.¹⁵²² Therefore, the manner of

¹⁵¹⁵ Revenue Commissioner *Approved Guidelines by Sectors for Projects and Programmes Qualifying Under Corporate Social Responsibility Tax* of 15 February 2017 1.

¹⁵¹⁶ Section 2(d) of the *CSR Tax Act* defines a "person" as any "individual, partnership, entity, trust or government body carrying on a business in Seychelles".

¹⁵¹⁷ Section 2(g) of the *CSR Tax Act* defines "turnover" as the "gross receipts from the carrying on of business including the consideration received from the disposal of trading stock and the gross fees for the provisions of services derived by a person from sources in Seychelles." The turnover threshold is determined for the previous tax year. See s 4(3) of the *CSR Tax Act*; According to Tirant the Revenue Commissioner defined "gross receipts" to include for CSR tax "the total revenue of a business, regardless of the sources or forms such revenue takes, and will include all active income (i.e. operating income, derived from its core business activity), all passive income (i.e. non-operating income, derived from secondary sources), and all amounts derived by a business which is beneficially held". (Tirant *Today in Seychelles* <https://www.facebook.com/todayinsey/posts/taxationbusinesses-get-raw-deal-on-csr-taxthe-ministry-of-finance-has-published-/1264665070237967/>).

¹⁵¹⁸ Section 4(1) read with the First Schedule of the *CSR Tax Act*; the amount equals to R1 318 356.89 at an exchange rate of one SCR equals to R1.32, as on 12 November 2024.

¹⁵¹⁹ For a complete list, refer to the Third Schedule of the *CSR Tax Act*.

¹⁵²⁰ *Corporate Social Responsibility Tax (Repeal) Act* 12 of 2021.

¹⁵²¹ Ministry of Finance, National Planning and Trade 2021 <http://www.finance.gov.sc/news/314/Corporate-Social-Responsibility-Tax-CSR-is-repealed>.

¹⁵²² Sections 5(1) and 5(2) of the *CSR Tax Act*.

the collection was similar to that of Mauritius but different because of the monthly rather than annual obligation.

The CSR tax was unique as the liable person would multiply his/her monthly turnover with the tax percentage, which was zero point five per cent. The tax was therefore calculated each month on the gross sales before any deductions, for example. If the threshold of 1 million SCR is divided by twelve, then the monthly turnover equals 83 333 SCR. The monthly CSR tax for the liable person would then have been 4 166.67 SCR.¹⁵²³ The fact that the tax was imposed on turnover and not on profit after tax (as is the case in Mauritius and India) imposed a heavier burden on businesses and was even described by the Minister as 'punitive'.¹⁵²⁴ It is speculated that this was the main reason why the legislation was repealed.

The act allowed the liable person to offset half of the CSR tax liability against amounts paid to an NGO, "association or entities as approved by the Minister"¹⁵²⁵ as donations, the funding of projects or sponsorships during the same tax year. This provision is similar to that of Mauritius (discussed in Paragraph 5.1.1), allowing a company to donate between 25 and 50 per cent of the two per cent calculated levy to an NPO of its choice, providing that the NPO deliver services which fall within the scope of the prescribed areas of intervention. It leaves the company with some choice of where and how to spend its CSR tax. However, it is still not necessarily enough, as there can be, as indicated above, other worthy causes the company would prefer to support or projects it would rather pursue than those prescribed by the Minister.

¹⁵²³ 83 333 SCR equals R108 332.90 at an exchange rate of 1 SCR equals R1.30. 4 166.67 SCR equals R5 410.35 per month.

¹⁵²⁴ Ministry of Finance, National Planning and Trade 2021 <http://www.finance.gov.sc/news/314/Corporate-Social-Responsibility-Tax-CSR-is-repealed>; According to Tirant (in 2017), the promises made at the time when the idea of a CSR tax was first introduced in the 2013 budget speech on 4 December 2012 and what was actually enacted were worlds apart. "Since the law has become operational the business community has been lobbying for a review of the tax so that it is paid on profits rather than on turnover, since many businesses currently pay the tax on monies they don't have." (Tirant *Today in Seychelles* <https://www.facebook.com/todayinsey/posts/taxationbusinesses-get-raw-deal-on-csr-taxthe-ministry-of-finance-has-published-/1264665070237967/>).

¹⁵²⁵ Section 6(2) read with the Second Schedule of the *CSR Tax Act*; The Ministry of Finance, National Planning and Trade would occasionally publish a list of qualifying sectors and approved programmes. *Approved Guidelines by Sectors for Projects and Programmes Qualifying Under Corporate Social Responsibility Tax* of 15 February 2017.

If the provisions of section 6(4) are considered, it is deduced that the liable person would do a reconciliation at the end of the tax year to determine the final CSR tax liability for the year. In a case where the total amount paid to the Revenue Commissioner and an NGO in a specific financial year exceeded the actual liability for that year, the person had the choice of either rolling over the amount as a tax credit against the CSR tax liability of the next financial year¹⁵²⁶ or requesting a refund if the person's annual turnover had dropped below the threshold.¹⁵²⁷

5.3.2 Management and use of funds collected

Section 7 of the *CSR Tax Act* provided for the establishment by the Minister of a five-man CSR Committee.¹⁵²⁸ The powers and functions of this committee would have been prescribed in published regulations, but no *CSR Tax Act*-related regulations could be found.¹⁵²⁹ However, by working through published government documents and news reports it was possible to make certain inferences regarding the activities of the committees and the procedures that had to be followed by NGOs.

For example, in 2017 the Ministry of Finance, Trade and Economic Planning¹⁵³⁰ published a list of projects and programmes linked to local social needs as they stood at that stage. The government identified five sectors, and listed different pre-approved programmes for each of these sectors, through which the social needs of the country could be addressed. Some additional guidelines were provided for some of these sectors and programmes. National Agencies endorsing new programme applications were also appointed for specific sectors. These agencies would also assist the CSR Committee where applicable.

An NGO or Community Based Organisation (CBO) would then lodge a formal application with the Chairman of the CSR Committee to manage a pre-approved project. If the project was new and, for example, related to a playground, the

¹⁵²⁶ Section 6(4)(a) of the *CSR Tax Act*.

¹⁵²⁷ Section 6(4)(b) of the *CSR Tax Act*.

¹⁵²⁸ Section 7(1) of the *CSR Tax Act*.

¹⁵²⁹ Section 7(2) of the *CSR Tax Act*; also refer to SRC 2024 <https://src.gov.sc/legislation/>.

¹⁵³⁰ *Approved Guidelines by Sectors for Projects and Programmes Qualifying Under Corporate Social Responsibility Tax* of 15 February 2017.

endorsement of the National Sports Council would have been obtained.¹⁵³¹ If the Committee approved the application of the NGO or CBO, the organisation received a CSR certificate and would then receive funding via the Revenue Commissioner's office.¹⁵³²

The following observation is of particular interest because it places business involvement on another level, rendering it potentially more than an act of philanthropy. In the *Approved Guidelines*¹⁵³³ published in 2017 the Minister indicated that a business could discharge part of its CSR tax liability (if approval was obtained) by providing "technical assistance in carrying out projects in line with" the listed qualifying sectors and related approved programmes, for example.¹⁵³⁴

A short extract from the *Approved Guidelines* is reproduced in Figure 5-2 below to explain this statement with an example.

¹⁵³¹ Ministry of Finance, National Planning and Trade 2017 <http://www.finance.gov.sc/press-releases/56/Revised-Corporate-Social-Responsibility-Tax-Guidelines-reflects-current-projects-and-programmes-linked-to-local-social-needs>; Staff writer *Today in Seychelles* <https://www.facebook.com/todayinsey/posts/the-end-of-csr-as-a-tax-today-marks-the-day-that-the-corporate-social-responsibi/3823517581019357/>.

¹⁵³² Ministry of Finance, National Planning and Trade 2017 <http://www.finance.gov.sc/press-releases/56/Revised-Corporate-Social-Responsibility-Tax-Guidelines-reflects-current-projects-and-programmes-linked-to-local-social-needs>; Staff writer *Today in Seychelles* <https://www.facebook.com/todayinsey/posts/the-end-of-csr-as-a-tax-today-marks-the-day-that-the-corporate-social-responsibi/3823517581019357/>.

¹⁵³³ *Approved Guidelines by Sectors for Projects and Programmes Qualifying Under Corporate Social Responsibility Tax* of 15 February 2017 4.

¹⁵³⁴ *Approved Guidelines by Sectors for Projects and Programmes Qualifying Under Corporate Social Responsibility Tax* of 15 February 2017 4.

Figure 5-2: Extract of Seychelles 2017 CSR tax qualifying sectors and approved programmes¹⁵³⁵

Qualifying Sectors	Approved Programmes	Notable particulars
Protection and Preservation of the Environment	• Maintenance of Environment and Natural Conservation Sites • Resource waste management projects • Coastal Management activities • Climate change programs • Cleaning and construction of facilities • Support energy efficient projects/programs	• Restricted to sites classified by the Government • Planting of coastal vegetation, construction of coastal facilities and infrastructures

A liable person (or in the context of this study a company) may identify a need in the society/community, design a project and apply for approval from the CSR Committee.¹⁵³⁶ The proposed project should, however, still align with the approved programmes.¹⁵³⁷ For example, the need for an energy-efficient project for a site classified/stipulated by the government might be identified. The company has the necessary human and/or technical skills to assist with creating or running such a project. If a specific National Agency had been appointed for that sector, the company would have to get the Agency's endorsement of the programme. Once the CSR Committee had approved the project, the company/business could discharge (or reduce) its CSR liability with the cost of the project. The positive aspect of this provision is that the company can assist the government with expertise that government officials do not necessarily own. The negative is that, as in the case of Mauritius and India, these lists could be limiting. There might be other projects that the company would rather propose (and towards which it would rather utilise its 50 per cent allowance) the performance of which might more greatly benefit the community and society at large.

¹⁵³⁵ *Approved Guidelines by Sectors for Projects and Programmes Qualifying Under Corporate Social Responsibility Tax* of 15 February 2017 1.

¹⁵³⁶ *Approved Guidelines by Sectors for Projects and Programmes Qualifying Under Corporate Social Responsibility Tax* of 15 February 2017 4.

¹⁵³⁷ Refer to Annexure 7 and Paragraph 5.4.1 for a comprehensive list.

In conclusion, with the repealing of the legislation a financial burden was lifted from the businesses, but the primary source of income for many NGOs involved in approved projects was removed.

5.3.3 Deductibility of CSR contributions for tax purposes — Seychelles

Sections 23 and the Fifth Schedule of the *Business Tax Act*¹⁵³⁸ should be considered to determine whether a business would be able to get a deduction for CSR-related expenses in calculating tax liability.

Section 23 allows a business 100 per cent of the value of a gift (whether in money or property) during that specific tax year "to a public fund body, or institution listed in the Fifth Schedule"¹⁵³⁹ as a deduction in the calculation of its tax liability.

Because in terms of the *CSR Tax Act* the 0.5 per cent CSR levy was a tax and not a gift, it would not have qualified for the section 23 deduction. However, the half portion the business was allowed to pay to the NGO directly would qualify for the section 23 deduction.¹⁵⁴⁰

Since 2021, when the *CSR Tax Act* was repealed, all CSR donations by companies would again qualify for a full 100 per cent deduction under section 23, as long as the NGO, charity or public fund received the required registration certificate from the Minister of Finance.¹⁵⁴¹

5.3.4 Conclusions drawn on mandatory CSR in Seychelles

The significant difference between the CSR legislation of Seychelles and that of Mauritius and India vests in the method by which the tax levy was calculated. Where India and Mauritius calculated the mandatory CSR contribution as two per cent of *taxable income*, Seychelles determined the CRS tax as a percentage (zero point five per cent) of turnover. India and Mauritius also imposed the obligation to pay the

¹⁵³⁸ *Business Act* 28 of 2009 (of Seychelles).

¹⁵³⁹ Fifth Schedule of 28 of 2009. This schedule provides the definitions of a charity and an NGO. Notably, the NGO should be registered with the Minister of Finance, who will issue the NGO with the certificate of confirmation. If this is not the case, the donor will not be allowed any deduction for the amount donated. The requirements are therefore very similar to that of s 18A read with s 30 of the *ITA(SA)*.

¹⁵⁴⁰ Section 6(2) of the *CSR Tax Act*.

¹⁵⁴¹ SRC 2024 https://src.gov.sc/seychelles-tax-system/#Corporate_Social_Responsibility.

mandatory contribution only annually, whereas the companies in Seychelles had to pay this tax monthly. Over and above the administrative burden placed on the companies operating in the Seychelles, the monthly tax also presumably affected their cash flow.

The companies were, however, provided with some relief in that they were allowed to treat the 50 per cent portion of the CSR tax paid to NGOs as a deduction in the calculation of the taxable income.

Although the government of Seychelles also provided a list of approved programmes or CSR activities, the companies could apply to register a project linked to the approved programmes. In this regard they would be able to provide expertise in planning and executing the project for the benefit of the community or society at large. This aspect will be considered in the proposed model for adjusting the South African taxation framework to incorporate CSIE (corporate social investment expenditure).

5.4 Conclusion

This chapter has discussed CSR levy/tax practices imposed by the Mauritius, India, and Seychelles governments. A comparison will be made below between the respective areas of intervention for each of the three governments, compared to South Africa's own Schedule Nine of the *ITA(SA)*. It has already been indicated in Chapter 2, Paragraph 2.2.2 that the public benefit activities (PBAs) as set out in the Ninth Schedule of the *ITA(SA)* are mainly philanthropic in nature. The comparison aims to establish whether other governments include other areas for intervention/approved activities under their CSR legislation that are wider than the narrow CSI (philanthropic) activities.

Lastly, the legislative provisions that can be applied in South Africa will be reflected on.

5.4.1 Comparison of respective areas of interventions

Table 5-4 lists the PAIs¹⁵⁴² of Mauritius, the Schedule VII of the *Companies Act*, 2013 of India, and the *Approved Guidelines per Sector* of Seychelles, compared with the 'public benefit activities' (PBAs) listed in the Ninth Schedule of the *ITA(SA)*.¹⁵⁴³

¹⁵⁴² Part A to s 50L of the Tenth Schedule of the *ITA(MAU)*.

¹⁵⁴³ The Ninth Schedule of the *ITA(SA)* consists of two parts. Part II lists the PBAs that will qualify for a s 18A of the *ITA(SA)* deduction if provided by a PBO registered in terms of s 30 of the *ITA(SA)*. Part I is a more comprehensive list of PBAs in which an NGO can engage, and if applying for recognition as a PBO in terms of s 30 of the *ITA(SA)*, it will be registered as such, providing all the requirements were met. See *Basic Guide to Section 18A Approval* of 4 October 2023 25-32, 36. If, however, the lists contained in annexures B and C of the *Basic Guide to Section 18A Approval* are considered, then very little difference between the PBAs listed and the wording of the listed activities is detected.

Table 5-4: Comparison between the Ninth Schedule of the *ITA(SA)*, the Tenth Schedule of the *ITA(MAU)*, and Schedule VI of the *Companies Act, 2013*

Ninth Schedule of the <i>ITA(SA)</i> ¹⁵⁴⁴	Tenth Schedule of the <i>ITA(MAU)</i> ¹⁵⁴⁵	Schedule VII of the <i>Companies Act, 2013 - India</i> ¹⁵⁴⁶	Seychelles: <i>Approved Guidelines by Sectors for Projects and Programmes</i> ¹⁵⁴⁷
Part I - <i>Public Benefit Activities</i> (PBAs)	Part A and Part AA – <i>Priority Areas of Intervention</i> (PAIs)	Activities which may be included in the company's CSR policy	Qualifying Sectors
Part II – Approved PBAs for section 18A purposes			
PBAs in both part I and II			
"Welfare and Humanitarian" (including poverty relief, protection of the safety of the general public, community development for the poor and needy, disaster relief ...)	"Poverty alleviation" (through socio-economic development); "Supporting people with disabilities"	"Eradicating extreme hunger and poverty" (Disaster relief)	

¹⁵⁴⁴ Refer to the Ninth Schedule of the *ITA(SA)*. A detailed copy can be obtained at <https://static.pmg.org.za/020604schedule.htm>; the EI1 "Application for Approval of Exemption from Income Tax" form also provides very detailed information. See SARS date unknown <https://www.sars.gov.za/wp-content/uploads/Ops/Forms/EI1-Application-for-Exemption-from-Income-Tax-External-Form.pdf>.

¹⁵⁴⁵ Tenth Schedule of the *ITA(MAU)*.

¹⁵⁴⁶ Schedule VII of the *Companies Act, 2013*; for a more detailed discussion of this schedule, refer to Ministry of Corporate Affairs 2021 <https://sansad.in/getFile/loksabhaquestions/annex/176/AU2080.pdf?source=pqals#:~:text=Schedule%20VII%20of%20the%20Act%20indicates%20the%20activities%20that%20can,rehabilitation%2C%20and%20reconstruction%20activities%2C%20setting.>

¹⁵⁴⁷ *Approved Guidelines by Sectors for Projects and Programmes Qualifying Under Corporate Social Responsibility Tax* of 15 February 2017; For a copy refer to Annexure 7.

Ninth Schedule of the <i>ITA(SA)</i>	Tenth Schedule of the <i>ITA(MAU)</i>	Schedule VII of the <i>Companies Act, 2013 - India</i>	Seychelles: <i>Approved Guidelines by Sectors for Projects and Programmes</i>
"Health Care" (primary for poor and needy persons, prevention of HIV infections...)	"Health problems"	"[P]romotion of health care including preventive health"	"Community development" (health); "Health needs"; "Prevention of Drug Abuse and Rehabilitation"
"Education and Development" also of the unemployed to enable them to obtain employment. Training of government employees for the purposes of capacity building. Bursaries, scholarships, etc. must meet the published provisions.	"Educational support and training"	"Promoting education"; "employment enhancing vocational [occupational] skills"	"Education and Capacity Development"
"Conservation, Environment and Animal Welfare" (including rehabilitation and protection of the natural environment)	"Environment and sustainable development"	"Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, conservation of natural resources ..."	"Protection and Prevention of the Environment"
"Land and Housing" Beneficiaries, those with a monthly income <R15 000; clinics and crèches for the poor and needy; official land reform projects.	"Social housing"	"[S]etting up homes and hostels for women and orphans; setting up old age homes, day care centres ..."	"Social needs" ("Support homes for the elderly, disadvantaged persons like orphans, special needs and people with disabilities")

Ninth Schedule of the <i>ITA(SA)</i>	Tenth Schedule of the <i>ITA(MAU)</i>	Schedule VII of the <i>Companies Act, 2013 - India</i>	Seychelles: Approved Guidelines by Sectors for Projects and Programmes
PBAs listed only in Part I ¹⁵⁴⁸			
"Cultural"	"Restoration of a building designated as national heritage under the National Heritage Fund Act"	"[P]rotection of national heritage, art, culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries ..."	"Community development" (cultural); "Development of Arts and Crafts"
"Religion, Belief or Philosophy"			
"Sport"	"Leisure and sports"	"[T]raining to stimulate rural sports, nationally recognised sports, ..."	"Community development" (recreational, sports, environment, safety, etc.) // "Sport, Leisure and recreational activities."
	"Family protection, including gender-based violence"	"Promoting gender equality and empowering women, ... reducing inequalities faced by socially and economically backward groups"	
	"Peace and nation-building"		
	"Road safety and security"		
	"Such other areas as the Minister may determine"	"Such other matters as may be prescribed."	

¹⁵⁴⁸ The implication of the difference between the two parts will be discussed in more detail in Chapter 6.

Ninth Schedule of the <i>ITA(SA)</i>	Tenth Schedule of the <i>ITA(MAU)</i>	Schedule VII of the <i>Companies Act</i> , 2013 - India	Seychelles: Approved Guidelines by Sectors for Projects and Programmes
		"Social business projects"	
		"Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women"; "rural development projects"; "slum area development"	
-		"[D]isaster management, including relief, rehabilitation and reconstruction activities"	
		"[M]easures for the benefit of armed forces , veterans, war widows and their dependents, ..."	

In Chapter 2¹⁵⁴⁹ it was shown that the activities listed in Part I of the Ninth Schedule of the *ITA(SA)* are philanthropic in nature. Table 5-4 illustrates the similarities between the priority areas of the governments.

It is clear from the comparison above that the eradication of poverty is a significant concern for all countries. However, Seychelles did not include it in its list of approved programmes.¹⁵⁵⁰ All other Part I PBAs listed in the Ninth Schedule of the *ITA(SA)* are also present in the areas of interest considered for financial support by the respective governments.

Some of the priority areas of Mauritius and India do not find application in the Ninth Schedule of the *ITA(SA)*. These CSI areas are noted for the South African context as possible inclusions in section 18A and Part II of the Ninth Schedule:

- Promotion of gender equality and the empowerment of women
- Social business projects
- Socio-economic development

These areas link very closely with areas of concern identified and discussed in Chapter 3 (Paragraph 3.4.1) where it was indicated that the South African government, because of major debt (estimated at 75.3 per cent of GDP) and budget deficit (with gross borrowing requirements estimated at R553.1 billion for the 2023/2024 fiscal year) issues¹⁵⁵¹ finds it financially challenging to provide for the needs of the country and its citizens.

The provision "... and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women" in Schedule VII of the *Companies Act*, 2013 of India is reminiscent of South Africa's *B-BBEE* legislation.

¹⁵⁴⁹ Paragraph 2.2.2.

¹⁵⁵⁰ Seychelles has an unemployment rate of only three point two per cent of the population. There are, however, 25.3 per cent of the population who are still classified as poor, "based on the national poverty line" of US\$ 267 per person per month. (At an exchange rate of R18.07 for one US\$ on 12 November 2024 it equals R4 824.61). See World Bank 2023 <https://thedocs.worldbank.org/en/doc/bae48ff2fefc5a869546775b3f010735-0500062021/related/mpo-syc.pdf>.

¹⁵⁵¹ Department: National Treasury 2024 *Budget Review: Government Debt and Contingent Liabilities* 71, 78, 79.

However, there are no consequences if the company does not contribute towards the related funds because the legislation allows for some freedom regarding which of the approved activities is supported.

5.4.2 Mandatory CSR legislation — lessons for South Africa

Finally, the valuable lessons or guidelines from each of the respective countries' CSR legislation will be summarised, with a view to their possible use in the proposed CSR tax framework for South Africa, which will be discussed in Chapter 7.

The CSR legislation of Mauritius was first discussed. The positives that emerged were the following:

1. The Mauritian government lowered the CIT rate in the years before introducing the CSR compulsory levy by 2 per cent. After the CSR levy was introduced the company still paid the same effective tax as it would have paid before introducing the CSR legislation. As seen in the comments in the literature discussed in Chapter 4 (Paragraph 4.3.3) and in this chapter, this could have positively affected the mind-set regarding this new tax levy. The CIT rate was 17 per cent when the CSR levy was introduced, and the current CIT rate is 15 per cent.¹⁵⁵² This is the ideal. It is believed that, with the strained financial situation of the South African government,¹⁵⁵³ and with CIT being the third largest source of revenue for the government,¹⁵⁵⁴ it is unlikely that the government will further lower the CIT rate to bring in a CSR tax. The government has already reduced the CIT rate for the tax year ending on or after 1 April 2024 from 28 to 27 per cent.¹⁵⁵⁵
2. Although the MRA collects the levies annually, it is divided and managed by two separate institutions, the NSF and the NSIF, which receive the bulk of the funds. A few positive aspects regarding the management of the NSIF were noted. Firstly, a 'Multi-Stakeholder Council' is used as a management structure,

¹⁵⁵² PWC 2024 <https://taxsummaries.pwc.com/mauritius/corporate/taxes-on-corporate-income>.

¹⁵⁵³ Department: National Treasury 2024 *Budget Review: Government Debt and Contingent Liabilities* 71, 78, 79.

¹⁵⁵⁴ Department: National Treasury 2023 *Tax Statistics 2023* vi, 1.

¹⁵⁵⁵ CIT refers to 'company income tax'; SARS 2024 <https://www.sars.gov.za/tax-rates/income-tax/companies-trusts-and-small-business-corporations-sbc/>.

ensuring that the private sector is also represented. Secondly, the NSIF uses both qualitative and quantitative data in the *results-based monitoring* system to track the progress of projects, to ensure that funds are used for what they were intended, to ensure compliance with the relevant legislation and regulations, and lastly to identify potential risk situations which might impact on the implementation of projects.¹⁵⁵⁶

The fact that the NSIF is involved in the whole process from receiving the application to the disbursement and management of funding and projects has the following advantages regarding efficiency and effectiveness. Firstly, with the centralisation of the CSR funds contributed, a more effective allocation is ensured. Secondly, it is possible to see and plan for the bigger picture, taking into account the nature of the NGO, the interventions, the impact and the expected outcomes. Lastly, the funding available can be divided between (i) funding the normal, "ongoing NGO programmes" annually applied for, (ii) new projects/programmes which can be either small (local community-based) or large (national) in scale, with a focus of "social innovation" and/or integrated interventions, (iii) and then lastly, ad-hoc activities.¹⁵⁵⁷

On the negative side, the Mauritian private sector (companies) reported that they found the fixed PAIs very limiting and asked for the consideration of applications to fund other areas as the need arose, as in Seychelles. It was also indicated that a need existed for larger projects which exceeded the time limit of one year, for example, where the project related to infrastructure development. The last matter of concern was that not all the CSR funds received by the NSIF were used in the 2022 financial year. The question could then be asked whether the remainder of the funds could be used for those projects which would better the lives of all and address greater environmental and socio-economic issues.

India's mandatory CSR legislation was considered second. Again, quite a few insightful observations were made. The first was that the Indian government had somehow managed to create a culture of willingly obeying the legislation. It was only recently that penalty provisions had been enacted. What is noteworthy

¹⁵⁵⁶ NSIF *Creating Ripples Changing Lives — Impact Report 2022* 22.

¹⁵⁵⁷ NSIF *Creating Ripples Changing Lives — Impact Report 2022* 20.

regarding these penalties is that the board members would also be penalised for noncompliance, and not just the company.

Unlike Mauritius, India does not have a foundation/institution that monitors the progress of projects. The Ministry of Corporate Affairs is responsible for receiving the CSR forms (to be submitted by NGOs and companies) and for monitoring the spending of the CSR funds.

The most significant information regarding Indian taxation legislation relates to sections 35CCC and 35CCD of the *ITA(IND)*. These sections relate to projects undertaken and/or funded by the company, not associated with the day-to-day operations of the company, and also not associated with the employees of that company. The first section relates to training farmers and farming operations, and professional training institutions conduct the other two skills development training programmes. In the case of section 35CCC, the Ministry of Agriculture must first approve the project. If this requirement is not met, the company will not qualify for the 100 per cent deduction of the cost (provided that all the other requirements are met). On submission of its tax return and audit statements the company must also submit documentary proof to the Commissioner of Income Tax confirming the programme's existence, the expenses, and whether the programme is ongoing or completed.

The situation regarding section 35CCD is very similar. The documentary proof will relate mainly to evidence of the trainees' successful completion of the programme, the audit statement, and the proof of costs. The process followed to register a project and the monitoring and reporting thereof are noteworthy, as the compilation of these sections (sections 35CCC and 35CCD) provides guidelines for other CSI-related incentive legislation. It is therefore essential that some structures and rules are in place to ensure that programmes and their success are monitored.

There are also some positive elements in the CSR tax legislation of Seychelles, especially regarding the published guidelines, which will be highlighted.

Firstly, although there is no specific foundation like the NSIF to manage the funds, the Ministry of Finance, Trade and Economic Planning appointed a CSR Committee to receive and consider the applications for programmes that relate to the pre-

approved programmes. Secondly, certain industry leaders (or the national authority for that specific industry) are appointed to evaluate and endorse a new programme application before it is referred to the CSR Committee. It is also noteworthy that it is not only NGOs (as in the case of Mauritius) that can apply to host these programmes, but also community-based organisations and businesses/companies, thus extending the range of applications.

In considering the applicability of the legislation for South Africa, it is suggested that the pre-approved programmes/activities should be adjusted to allow a company to identify socio-economic or developmental needs in the community (therefore, other CSI-related projects) and to design a project. This proposed project plan should be endorsed by the appointed national industry authority before being submitted for approval to a specific board or committee. This would also allow the company to make its expertise available to the project.

South Africa does not have CSR/CSI legislation similar to that discussed in this chapter. The following chapter will consider CSI in relation to the South African taxation legislation.

CHAPTER 6 THE DEDUCTIBILITY OF CSIE UNDER THE INCOME TAX ACT OF SOUTH AFRICA

It was demonstrated in Chapter 2 that certain key events significantly influenced the development of CSI in South Africa. The same can be said for the trajectory/changes in the South African fiscal system and taxation framework.¹⁵⁵⁸ Guimarães, Duca and Ndlovu¹⁵⁵⁹ divide the historical development of the South African taxation framework into four periods, discussing each in detail.¹⁵⁶⁰ Again, it is evident that our apartheid past has played a significant role in governmental policy changes since 1994. "The tax system was to 'become one of the several institutions targeted for righting the past wrongs'."¹⁵⁶¹

Attak¹⁵⁶² described the taxation framework as an

underlying structure and guidelines that govern the imposition and collection of taxes within a particular jurisdiction. It encompasses the legal and regulatory framework that outlines the tax laws, procedures, and policies.

The institution known as SARS came into existence on 5 September 1997 with the enactment of the *South African Revenue Act* 34 of 1997. Schedule 1 of this act identified the legislation to be administered by the Commissioner of SARS. Since

¹⁵⁵⁸ Guimarães, Duca and Ndlovu *Taxation and State-Society Relations in Sub-Saharan Africa: The Cases of Cameroon, Mozambique and South Africa* 39.

¹⁵⁵⁹ Guimarães, Duca and Ndlovu *Taxation and State-Society Relations in Sub-Saharan Africa: The Cases of Cameroon, Mozambique and South Africa* 39.

¹⁵⁶⁰ The first period was introduced in 1854 with the establishment of the "British colony in the Cape", imposing an income tax levy on the residents of the "Cape Colony". The second period was introduced by the promulgation of the "1909 Constitution, which proposed a general income tax" which was in fact effective from 1914 and was also applicable to Europeans with interests in the Union. After that the tax system changed significantly, being modernised, including more sources of income into the related definitions, and moving from a sourced-based tax system to a residence-based tax system, taxing residents on global income. For a more detailed discussion see Guimarães, Duca and Ndlovu *Taxation and State-Society Relations in Sub-Saharan Africa: The Cases of Cameroon, Mozambique and South Africa* 42-47.

¹⁵⁶¹ Guimarães, Duca and Ndlovu *Taxation and State-Society Relations in Sub-Saharan Africa: The Cases of Cameroon, Mozambique and South Africa* 42.

¹⁵⁶² Attak 2023 [https://www.igi-global.com/dictionary/tax-policy-and-entrepreneurship/119943#:~:text=Represents%20the%20underlying%20structure%20and,laws%2C%20procedures%2C%20and%20policies](https://www.igi-global.com/dictionary/tax-policy-and-entrepreneurship/119943#:~:text=Represents%20the%20underlying%20structure%20and,laws%2C%20procedures%2C%20and%20policies;); The South African taxation framework consists of various pieces of legislation, and the governance and administration processes are carried out by the South African Revenue Service (SARS) (in terms of the *South African Revenue Service Act* 34 of 1997) under the leadership of the current commissioner, Edward Kieswetter. The taxation legislation has to adhere to the provisions of the *Constitution*, which is the "supreme law of the Republic." (S 2 of the *Constitution*).

1997 this list has changed significantly, and currently 26 Acts are administered by the Commissioner.¹⁵⁶³ From a corporate social investment expenditure (CSIE) perspective, the *Income Tax Act* 58 of 1962 (the *ITA(SA)*) is the most significant legislation. Chapter 4 also referred to three other statutes: the *Carbon Tax Act*,¹⁵⁶⁴ Part 7A of Schedule 1 of the *Customs and Excise Act*,¹⁵⁶⁵ and the *Employment Tax Incentive Act* (ETI).¹⁵⁶⁶ The first two were briefly discussed to illustrate that the South African government also uses tax penalties to change behaviour. The government provides six reasons in the preamble of the *Carbon Tax Act*¹⁵⁶⁷ for imposing the carbon tax. The second one discussed (Part 7A of Schedule 1 of the *Customs and Excise Act*)¹⁵⁶⁸ is widely known as the sugar tax and applies to all sugary beverages. This is an excellent example of a tax levy intended to change people's buying habits (their dietary habits), hoping it will significantly decrease the national burden of diseases such as diabetes and obesity. The ETI, as has been discussed, is an example of an incentive used by the government to encourage businesses to employ more of a specific age group or less-skilled workers¹⁵⁶⁹ to address unemployment. A further in-depth discussion of these three pieces of legislation would not add additional value to answering the research question and will, therefore, not be engaged in this chapter.

Chapter 4 had two objectives. The first was to define tax-related terms and the second was to determine the relationship between CSI and taxation. Discussion of the second objective specifically considered the possibility of encouraging CSI using tax incentives.¹⁵⁷⁰

¹⁵⁶³ SARS 2024 <https://sars.mylexisnexis.co.za/#/navigation-view;listCode=LNSA>; On 25 September 2024 SARS published a "high-level guide" about the most significant tax legislation applicable in South Africa. A copy of this document can be obtained at SARS 2024 <https://www.sars.gov.za/wp-content/uploads/Ops/Guides/Legal-Pub-Guide-Gen01-Taxation-in-South-Africa.pdf>.

¹⁵⁶⁴ 15 of 2019; Refer to Paragraph 4.3.2 above.

¹⁵⁶⁵ 91 of 1964; also known as the health promotion levy or the sugar tax; refer to Paragraph 4.3.1 above.

¹⁵⁶⁶ 26 of 2013; refer to Paragraph 4.2.4 above.

¹⁵⁶⁷ 15 of 2019.

¹⁵⁶⁸ 91 of 1964.

¹⁵⁶⁹ Workers who have little or no training or skills.

¹⁵⁷⁰ The different characteristics of CSI are highlighted in the definition proposed in Paragraph 2.3.3 and Paragraph 2.3, where the various elements of Preston's Integrated Sustainable CSR Model that relate to CSI are discussed.

In the light of answering the research question¹⁵⁷¹ Chapter 5 considered foreign CSR legislation, which imposes a specific levy on companies, to identify legislative provisions that might be useful in designing tax legislation incorporating CSIE. However, it is not enough to scrutinise the CSR legislation of foreign countries. Before determining how the South African taxation framework could be reformed to incorporate CSIE it is necessary to determine to what extent CSIE is deductible under the *ITA(SA)* and indirectly to what extent CSI is encouraged by provisions in the *ITA(SA)*.

The narrow definition of CSI is closely linked to a company's philanthropic activities (CP).¹⁵⁷² In this regard it is essential to discuss the extent to which CSIE will be deductible if the definition of CSI (both narrow and broad) is considered. To a certain extent, the *ITA(SA)* allows a deduction of *bona fide* donations made to PBOs. The section 18A of the *ITA(SA)* deduction for philanthropic donations will be the first to be discussed (Paragraph 6.1.1).

The *ITA(SA)* allows specific other amounts to be deducted in the calculation of taxable income. Firstly, an amount will be deductible if it meets the requirements of the so-called 'general deduction formula' (GDF). The deductibility of CSIE in terms of the provisions of the GDF will be critically discussed in Paragraph 6.1.2.

Secondly, an amount will be deductible if the Act makes a specific provision for the deduction. These deductions are referred to in textbooks as specific or special, and are listed and explained in sections 11(c) to 11(x), read with section 23 of the *ITA(SA)*.¹⁵⁷³ The other specific deductions available to legal persons are mainly allowances regarding capital assets, such as sections 12B, 12D, 13, etc. Paragraphs 2.3.1 and 2.3.4 indicate that CSIE¹⁵⁷⁴ generally relates to activities external to the business, and some examples are listed in Table 2-4 above under the heading Broad non-CP activities. Companies will typically not be allowed a deduction against

¹⁵⁷¹ "How can the South African taxation framework be reformed to incorporate corporate social investment expenditure?" (Refer to Chapter 1 Paragraph 1.3).

¹⁵⁷² Refer to the definitions proposed under Paragraphs 2.3.2 and 2.3.3 above.

¹⁵⁷³ The content and provisions of these sections were considered and compared with the definition of CSI, and the expenses referred to in these sections of the *ITA(SA)* relate to business operations and not to CSI or CP. This section will therefore not be discussed. For further reading in this regard refer to Wilcocks "Special Deductions and Assessed Losses" 363-407.

¹⁵⁷⁴ For examples of CSIE refer to Annexure 8.

taxable income in terms of the *ITA(SA)* for these expenses because the expenses do not generally relate to the income-producing activities of the company. The assumption that CSIE expenses apart from CP are not tax deductible has been untested in this study until now. The question is, to what extent is this assumption true?

The first secondary objective of this chapter is to determine to what extent a company¹⁵⁷⁵ may deduct CP expenditure¹⁵⁷⁶ from its taxable income under section 18A of the *ITA(SA)*. The second secondary objective of the chapter is to determine to what extent a company can deduct CSI expenses incurred if the broad definition of CSI is considered.¹⁵⁷⁷ Specific sections (refer to Table 6-1) of the *ITA(SA)* will be scrutinised to meet the second secondary objective.

The sections listed in Table 6-1 were selected through a process of elimination. The short title of each section under the 'arrangement of sections' (index) of the *ITA(SA)* and the information provided in the 'contents' list of two chapters (relating to specific deductions and capital allowances in the SILKE textbook) were scrutinised.¹⁵⁷⁸ These sections will be discussed to determine whether CSIE incurred by a company would be deductible against its taxable income.

¹⁵⁷⁵ The following entities will all be liable for corporate income tax (CIT): "Public companies (Ltd), Private companies (Pty (Ltd)), State owned companies (SOC), Personal Liability Company (Inc), Non profit company, Close Corporations (CC), Co-operatives, Collective Investment Schemes, Small Business Corporation (s12E [of the *ITA(SA)*]), Body Corporates, Share Block Companies, Dormant Companies, Public Benefit Companies." (SARS 2024 <https://www.sars.gov.za/types-of-tax/corporate-income-tax/>); also refer to ss 38, 39, 40A and 40B of the *ITA(SA)*; for the purposes of this study, the collective term 'company' includes public and private companies, personal liability companies, co-operatives, close corporations, small business corporations and business trusts.

¹⁵⁷⁶ The narrow definition of CSI refers to CP, for which the company might qualify for a deduction in terms of s 18A of the *ITA(SA)*, providing that all requirements are met. For the narrow definition of CSI refer to Paragraph 2.3.3.

¹⁵⁷⁷ CSI per the broad definition as proposed in Paragraph 2.3.3.

¹⁵⁷⁸ Wilcocks "Special Deductions and Assessed Losses" 364-407; Wilcocks "Capital Allowances and Recoupments" 409-526.

Table 6-1: Sections of the *ITA(SA)* which will be discussed

Section:	Description:
11(a)	General deductions allowed in determining taxable income. These three sections will be discussed together.
23(g)	
12B	Deduction in respect of certain machinery, plant, implements, utensils and articles used in farming or production of renewable energy
12BA	Deduction in respect of the cost of any new and unused renewable energy-generating assets acquired by a taxpayer for the purpose of his/her trade
12U	Additional deduction in respect of roads and fences in respect of production of renewable energy
12L	Deduction in respect of energy efficiency savings
18A	Deduction of donations to certain organisations
30	Public benefit organisations
37B	Deductions in respect of environmental expenditure
37C	Deductions in respect of environmental conservation and maintenance
37D	Allowance in respect of land conservation in respect of nature reserves or national parks

Lastly, in line with the discussion of the NSI and NSIF of Mauritius, the objective of the South African 'Solidarity Fund' established on 23 March 2020 to obtain and utilise funds to combat the effects of the COVID-19 pandemic will be researched. The goal is to gain insight into this public fund established for the public good: how the funds were obtained, managed and used, as well as the benefits available for contributors. This might be a possible blueprint for taxation legislation that encourages companies to incur CSIE, and it will link to Chapter 7's discussion and proposals.

6.1 Introduction — The deductibility of CSIE for corporate income tax purposes

To calculate a company's taxable income, the profit before tax is adjusted to reflect the "differences between the accounting and tax treatment of all the incomes and expenditures."¹⁵⁷⁹ The main sections dealing with allowable deductions in the

¹⁵⁷⁹ Koekemoer "Taxation in South Africa" 23.

ITA(SA) are sections 11 to 18A and 22 to 24.¹⁵⁸⁰ Table 6-1 indicates which of these sections will be investigated to determine the extent of the deductibility of CSIE for income tax purposes.

It is necessary to revisit the meaning of CSIE as established in Chapter 2 to determine to what extent CSIE is deductible by a company in terms of the *ITA(SA)* provisions. The proposed definition of CSIE¹⁵⁸¹ builds on the two definitions of CSI (which includes CP) proposed in Chapter 2. It was suggested that CSI can be defined broadly and narrowly. The definition of CSI, in a narrow sense,¹⁵⁸² can be supplemented with the definition of CP as it will relate to the provision of humanitarian and welfare-related public benefit activities, as listed in the Ninth Schedule of the *ITA(SA)*. This necessitates a discussion of section 18A read with section 30 and the Ninth Schedule of the *ITA(SA)*. These will be the first sections to be investigated.

6.1.1 The provisions for philanthropic donations to be deductible

Before the provisions of section 18A of the *ITA(SA)* are discussed, the requirements surrounding the beneficiary PBO, which will provide the company with the necessary section 18A(2)(a) receipt, are first considered. If this cornerstone is not in place, the company will not qualify for any deduction under section 18A (as explained later).

Section 30 and the Ninth Schedule of the *ITA(SA)* should be read in conjunction to determine how a PBO differs from an NGO and why public benefit activities (PBAs) are essential in this regard.

Section 30(1) of the *ITA(SA)* firstly indicates that the entity to be registered as a PBO should be a company, a trust or "an association of persons that has been incorporated, formed or established in the Republic". If the company or organisation

¹⁵⁸⁰ The discussion in Paragraph 6.1 will relate to the *ITA(SA)*, and all references to sections of the act will relate to the *ITA(SA)* unless stated otherwise; Claassen and Van Heerden "General Deductions" 128.

¹⁵⁸¹ Refer to Paragraph 2.3.4.

¹⁵⁸² Refer to Paragraph 2.3.3.

is a branch of a foreign entity operating in South Africa, then that entity should be exempt from paying tax on its income in its country of origin.¹⁵⁸³

This entity should provide the services qualified as PBAs.¹⁵⁸⁴ A list of these activities is published in Part I of the Ninth Schedule¹⁵⁸⁵ of the *ITA(SA)* and may be adjusted by the Minister from time to time. Section S 30(1)(b)(i) of the *ITA(SA)* provides that these activities will be "of a benevolent nature, having regard to the needs, interests and well-being of the general public."¹⁵⁸⁶ These activities will be carried on with an altruistic or philanthropic intent. The organisation carrying on these activities will do so without the intent to make a profit.¹⁵⁸⁷

The remainder of section 30 of the *ITA(SA)* prescribes the requirements the PBO needs to comply with to apply for approval from the Commissioner to be registered (and remain registered) as a PBO. It should be noted, however, that being registered as an NPO/NGO is not the same as being approved (registered) as a PBO.¹⁵⁸⁸ The focus of this section is not the PBO but rather the type of PBAs supplied by the PBOs and the requirements the company needs to meet. The remainder of section 30 will, therefore, not be discussed.

Now that the requirements of an approved PBO have been determined the discussion turns to when a company will qualify for a deduction regarding CP expenditure incurred.

Section 18A(1) of the *ITA(SA)* allows a company to deduct from its taxable income an amount of a *bona fide* donation¹⁵⁸⁹ (whether in the form of money or property)

¹⁵⁸³ Section 30(1) "public benefit organisations" of the *ITA(SA)*.

¹⁵⁸⁴ The definition of a "public benefit activity" (PBA) is supplied in s 30(1) of the *ITA(SA)*.

¹⁵⁸⁵ For a detailed copy, refer to: Parliamentary Monitoring Group date unknown <https://static.pmg.org.za/020604schedule.htm>; for a short summary refer to Koekemoer "Exempt Income" 116.

¹⁵⁸⁶ Section 30(1)(b)(i) of the *ITA(SA)*.

¹⁵⁸⁷ Section 30(1)(b)(ii) of the *ITA(SA)*.

¹⁵⁸⁸ The *Basic Guide to Income Tax Exemption for Public Benefit Organisations* of 6 August 2021 is a comprehensive guide on the registration process of a PBO.

¹⁵⁸⁹ A *bona fide* donation had been made "when the legal formalities for a valid donation have been" completed, and not when the cash/money or property was handed over. Van Heerden and Wiesener "Natural Persons" 185.

*actually paid*¹⁵⁹⁰ or transferred to an approved PBO (refer to Table 6-2)¹⁵⁹¹ during the year of assessment. The company should also have a receipt issued by the PBO (or approved institution) which meets the requirements of section 18A(2) of the *ITA(SA)* at the time the return for the current year of assessment is submitted.¹⁵⁹²

To determine whether the company will be able to deduct the value of the donation made, it should be determined which of the four types of PBOs listed hereunder the company donated to, and what kind of PBA was involved.

¹⁵⁹⁰ It was paid or transferred out of the bank account by way of "electronic fund transfer, credit card, postal order or debit card but [this does] not include promissory notes, pledges, payments to be made in future instalments or post-dated cheques" (Van Heerden and Wiesener "Natural Persons" 185).

¹⁵⁹¹ The discussion of the s 10(1)(cA)(i) institutions and the s 18A(1)(c) entities falls outside the scope of this study. The s 10(1)(cA)(i) institutions refer to those companies etc. whose sole business is "(aa) [to conduct] scientific, technical or industrial research; [or] (bb) [to provide] necessary or useful commodities, amenities or services to the State (including any provincial administration) or members of the general public; or (cc) [to carry] on activities (including the rendering of financial assistance by way of loans or otherwise) designed to promote commerce, industry or agriculture or any branch thereof." For a comprehensive list of the UN programmes and funds, refer to s 18A(1)(bA)(ii) to (x) and to others.

¹⁵⁹² The PBO, approved organisation, etc. should also take note of the provisions of ss 18A(2A), 18A(2B), and 18A(2C) regarding receipts issued.

Table 6-2: Which PBOs and for which PBAs, programmes and funds?

Section 18A(1)			
subsection (a)	To a PBO as defined in s 30(1) para (a)(i) def. of PBO, and approved by the Commissioner	or	A s 10(1)(cA)(i) institution.
	who meets all the requirements:		
	provide PBAs listed in Part II of the Ninth Schedule	specifically approved by Commissioner	meet the requirements of S 18A(1C) and 18A(1A)
subsection (b)	To a PBO as defined in s 30(1) para (a)(i) def. of PBO, and		
	which		
	"provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (a) and which has been approved by the Commissioner for the purposes of this section."		
subsection (bA)	"[S]pecialized agencies' in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the <i>Diplomatic Immunities and Privileges Act, 2001</i> ".		
	and/or		
	an number of specific listed UN programmes and funds.		
subsection (c)	Any department of government "as contemplated in section 10(1)(a)		
	provided that:		
	the activities (services) provided by this department has been approved by the Commissioner, and are one/any of those listed PBAs in Part II of the Ninth Schedule.		

With sections 18A(1)(a) and 18A(1)(c) of the *ITA(SA)*, the legislator placed considerable restrictions on the PBAs for which a deduction would be allowed. Although the activities are still regarded as PBAs in Part I of the Ninth Schedule, only those included in Part II will qualify for an allowed deduction in terms of section 18A(1).¹⁵⁹³ The implication is that although the donation was a *bona fide* donation (whether in kind or cash) paid to an approved PBO during the year of assessment,

¹⁵⁹³ The Ninth Schedule and s 18A(1) of the *ITA(SA)*.

the company will not be allowed a deduction against its taxable income for the CP expense incurred.¹⁵⁹⁴ These PBAs are:

1) Religion, Belief or Philosophy¹⁵⁹⁵

This includes the promotion and/or practice and/or engaging in activities regarding acts of religion, "worship, witness and community service based on a belief in a deity", and philosophy.¹⁵⁹⁶

2) Cultural¹⁵⁹⁷

This includes, amongst other things, the "advancement, promotion or preservation of the arts, culture or customs" through youth programmes, for example. An essential aspect under this heading is the protection/preservation or maintenance of "areas, collections or buildings of historical interest, national monuments, national heritage sites, museums, including art galleries, archives and libraries."¹⁵⁹⁸

3) Research and consumer rights¹⁵⁹⁹

The research would relate to the "agricultural, economic, educational, industrial, medical, political, social, scientific" sectors.¹⁶⁰⁰

4) Sport¹⁶⁰¹

Any involvement regarding non-professional sports activities.¹⁶⁰²

The provisions of sections 18(1)(A) and 18A(1)(B) of the *ITA(SA)* should be considered to determine the amount allowed as a deduction in the calculation of taxable income. Section 18A(1)(A) is applicable only to a taxpayer classified as a

¹⁵⁹⁴ For a well explained, detailed list of qualifying Part II PBAs, refer to SAIPA date unknown https://www.saipa.co.za/wp-content/uploads/2019/10/SAIPA_Audit_certificate_Part_2_of_the_Ninth_Schedule_only.pdf.

¹⁵⁹⁵ Par 5 of Part I of the Ninth Schedule.

¹⁵⁹⁶ Par 5 of Part I of the Ninth Schedule.

¹⁵⁹⁷ Par 6 of Part I of the Ninth Schedule.

¹⁵⁹⁸ Par 6 of Part I of the Ninth Schedule.

¹⁵⁹⁹ Par 8 of Part I of the Ninth Schedule.

¹⁶⁰⁰ Par 8 of Part I of the Ninth Schedule.

¹⁶⁰¹ Par 9 of Part I of the Ninth Schedule.

¹⁶⁰² Par 9 of Part I of the Ninth Schedule.

'portfolio of a collective investment scheme'. Section 18A(1)(B) of the *ITA(SA)* provision is available to all other taxpayers, whether natural persons or legal persons. The amount deductible (regarding the value¹⁶⁰³ of all qualifying donations) will be limited to 10 per cent of the company's taxable income before deducting any section 18A or section 6quat(1C)¹⁶⁰⁴ amounts. The value of the donations exceeding the calculated 10 per cent limit will be carried forward to the following year of assessment as if actually paid in the following year.¹⁶⁰⁵

It is necessary to enlighten the above discussion with an example.

ABC (Pty) Ltd is known for its involvement in its community. During the current year of assessment, the company donated R1 500 000 to an approved PBO that takes care of orphaned, abandoned, neglected and/or abused children. In the same year of assessment it donated R650 000 to a well-known Trust that restored and conserved buildings and places of historical interest. The Trust is registered in terms of section 30 as an approved PBO. Before any section 18A or section 6quat of the *ITA(SA)* deduction, ABC (Pty) Ltd had a taxable income of R32 million.

When calculated, the section 18A(1)(B) of the *ITA(SA)* 10 per cent limit amounts to R3 200 000 (R32 million x 10 per cent).

The total value (cash amount) ABC (Pty) Ltd donated was R2 150 000. The amount is thus less than the calculated limit of 10 per cent (R3 200 000). It could be fully deductible (if all the other requirements regarding section 18A receipts etc. were met). However, because the R650 000 is a Part I PBA, which does not qualify for a deduction under section 18A(1), ABC (Pty) Ltd will be able to deduct only the R1 500 000, providing that the other requirements of section 18A(2) were met. The R650 000 is a capital loss; no portion will be rolled over to the following year of assessment.

¹⁶⁰³ The value will be the amount in cash or the money value of the property donated. The method of determining the value of property and which property will be excluded from a donation of property falls outside the discussion of this study. For further information in this regard, refer to Van Heerden and Wiesener "Natural Persons" 185-188.

¹⁶⁰⁴ Section 6quat of the *ITA(SA)* relates to foreign income and tax paid on foreign income. A discussion of this section falls outside the scope of this research study.

¹⁶⁰⁵ Section 18A(1)(B) of the *ITA(SA)*.

The discussion in this paragraph illustrates the fact that CSIE relating to activities included in the broad definition of CSI, which will qualify as a Part I PBA, will not be deductible because of the limitations stipulated in sections 18A(1)(a) and 18A(1)(c). It could be considered that these sections and/or the Ninth Schedule should be amended to accommodate a greater variety of CSIE than those relating to CP alone, including firstly those activities included in Part I but excluded from Part II such as:

The advancement, promotion or prevention of the arts, culture or customs;
The promotion, establishment, protection, preservation or maintenance of areas, collections or buildings of historical or cultural interest, national monuments, national heritage sites, museums, including art galleries, archives and libraries;

As illustrated below in Paragraph 6.1.2.4, community-based organisations have taken over the role of municipalities regarding, community upliftment, among other things. It is suggested that these entities as NGOs register as PBOs and that the Ninth Schedule is expended to incorporate the broadly defined CSI activities in which these forums are involved as PBAs.

The deductibility of CSIE, relating to the broad definition of CSI, will now be considered in relation to the sections listed in Table 6-1.

6.1.2 General deductions and the deductibility of CSIE

A business incurs expenses on a daily basis. Most of these will be deductible because they meet the requirements of section 11(a), read with section 23(g) of the *ITA(SA)*. Together, these two sections are referred to as the 'general deductions formula' (GDF).¹⁶⁰⁶ Although an expense may be deductible because all the requirements of section 11(a)¹⁶⁰⁷ were met, the expenditure must still satisfy the provisions of section

¹⁶⁰⁶ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 71; Claasen and Van Heerden "General Deductions" 131.

¹⁶⁰⁷ S 11A of the *ITA(SA)* relates to "certain pre-trade expenditure". S 11A(1) of the *ITA(SA)* provides that these expenses incurred "prior to commencement of [the] trade" if "[f]or purposes of determining the taxable income derived during any year of assessment by a person from carrying on any trade, there shall be allowed as a deduction from the income so derived, any expenditure and losses — (a) actually incurred by that person prior to the commencement of and in preparation for carrying on that trade; (b) which would have been allowed as a deduction in terms of section 11 (other than section 11(x)), 11B, 11D or 24J, had the expenditure or losses been incurred after that person commenced carrying on that trade; and (c) which were not allowed as a deduction in that year or any previous year of assessment."

23(g).¹⁶⁰⁸ But what if the expenses were incurred for the greater good of society at large?

The provisions of these sections and the extent to which CSIE might be deductible by a company when calculating its taxable income will be discussed now. An example will be used to explain the practical implications of the theory to be discussed. XYZ (Pty) Ltd, a medium-sized company with a financial year ending on the last day of April, will be used as an example.

XYZ (Pty) Ltd believes that a company should be involved in its community and has an obligation not to act in such a manner that it will inflict harm on its employees and the community in which it operates. During the last two years XYZ (Pty) Ltd incurred CSIE to assist a pre-school to fix a roof damaged in a recent storm. The company also erected a board at the school with the company's logo and contact information reflected on the board. The company pays an annual fee of R1 000 for the right to attach the board to the palisade enclosure. As their '67-minute Nelson Mandela Day' project XYZ (Pty) Ltd delivered fruit parcels as gifts to a local old age home. These gifts were not branded. They also fixed the potholes of the 67-meter stretch of road in front of the old age home (after the necessary permission had been obtained from the local municipality). Every sixth pothole was painted with the company's logo. On 'Earth Day' (22 April 2024) XYZ(Pty) Ltd replaced all its buildings' light tubes and fittings with energy-efficient tubes (bulbs) and the necessary fittings. They supplied one set (the LED bulb and the fitting) to each of their employees to replace at least one light bulb with an energy-efficient one in his/her home.

6.1.2.1 The deductibility of CSIE in terms of the provisions of section 11(a) read with section 23(g) of the ITA(SA)

The second secondary objective will now be addressed. It is to determine to what extent CSIE, linked to the broad definition of CSI broadly, will be deductible in calculating the company's taxable income.

¹⁶⁰⁸ Claassen and Van Heerden "General Deductions" 131-132.

Section 11(a) offers the criteria to be met if a company wants to deduct from its income the expenditure incurred in the course of doing business. This section reads as follows:

11. General deductions allowed in determination of taxable income: For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived —

(a) expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature.

Section 11(a) should be read with section 23(g). Section 23(g) states that no deduction would be allowed against taxable income if "any moneys, claimed as a deduction from income derived from trade to the extent to which such moneys were not laid out or expended for the purposes of trade."¹⁶⁰⁹ The implication of this inclusion in the act is that if the expense only partly relates to the trade, only that part that relates to the trade could be considered in the calculation as deductible.¹⁶¹⁰

It should be noted that for the deduction of an amount to be allowed, all the criteria of the GDF should be satisfied.¹⁶¹¹ The meaning of the following requirements, 'trade', 'expense', 'in production of the income', and 'not of a capital nature' will be discussed separately.¹⁶¹²

6.1.2.1.1 Defining the term 'trade'

The first important note is that both sections of the GDF refer to a 'trade'. The term trade is defined in section 1(1) and is inclusive of

¹⁶⁰⁹ Sections 11(a) and 23(g) of the *ITA(SA)*. The provisions of s 23(g) will be discussed in more detail in Paragraph 5.1.2.

¹⁶¹⁰ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 77.

¹⁶¹¹ Claassen and Van Heerden "General Deductions" 132.

¹⁶¹² These expenses should have been incurred during a particular 'year of assessment'. In the case, the *Commissioner for Inland Revenue v Golden Dumps (Pty) Ltd* 1993 2 All SA 496 (A) Corbett CJ relied on the *dictum* in the case of *Sub-Nigel Ltd v Commissioner for Inland Revenue* 1948 4 SA 580 (A) par 589, explaining that the year of assessment is a period of one year. "... the whole scheme of the Act shows that, as the taxpayer is assessed for income tax for a period of one year, no expenditure incurred in a year previous to the particular tax year can be deducted."; a company's year of assessment coincides with its financial year, as indicated in its CIPC registration documents; also refer to Koekemoer "Taxation in South Africa" 23 and CIPC date unknown https://www.cipc.co.za/?page_id=15695.

every profession, trade, business, employment, calling, occupation or venture, including the letting of any property and the use of or the grant of permission to use any patent as defined in the Patents Act or any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act or any copyright as defined in the Copyright Act or any other property which is of a similar nature.¹⁶¹³

It is evident from the above that the term trade has been assigned a very wide meaning.¹⁶¹⁴ There are several cases where South African courts addressed the meaning of carrying on a trade. Some of the most prominent cases, in which the South African courts laid down the tests and principles, will now be discussed.

In *Burgess v Commissioner for Inland Revenue*¹⁶¹⁵ the Court had to determine whether the Special Court was correct in its ruling that the

taxpayer [who engaged in a venture involving loans to buy shares] had not shown that the expenditure had been incurred in the production of income derived by him 'from carrying on any trade' within the meaning of s 11(a).¹⁶¹⁶

The question was, therefore, whether a 'venture' could be regarded as a trade. A venture is usually speculative in nature¹⁶¹⁷ and hence will carry some risk for the taxpayer.¹⁶¹⁸ Grosskopf JA stressed that the intention/motive of the taxpayer (perhaps a profit motive) is irrelevant if that taxpayer is carrying on a trade.¹⁶¹⁹

It is important to note that each case will be decided on merit. It is vital that the taxpayer's actions and activities "should be examined as a whole to establish whether the taxpayer is in fact carrying on a trade."¹⁶²⁰

It is not a prerequisite that the activity be carried out continuously to be regarded as a trade. This was confirmed in the case of *Stephan v Commissioner for Inland*

¹⁶¹³ "trade" as defined in s 1(1) of the *ITA(SA)*.

¹⁶¹⁴ *Burgess v Commissioner for Inland Revenue* 1993 2 All SA 496 (A) (the *Burgess* case) para 24; also refer to Claassen and Van Heerden "General Deductions" 129.

¹⁶¹⁵ *Burgess* case.

¹⁶¹⁶ Together with his partners Mr Burgess entered into a loan agreement with the bank and would use that money to invest indirectly in assets/shares (for a relatively short period of time, i.e. of no more than two years) backed by an endowment policy (a method of limiting losses). "To cover potential loss, the investor paid the bank to issue a bank guarantee. This was the only outlay [of money] by the investor, and represents the maximum amount he could lose." (Williams *Income Tax in South Africa: Cases and Materials* 227); The meaning of 'expenditure' and 'in the production of the income' will be discussed later in this paragraph; Williams *Income Tax in South Africa: Cases and Materials* 228; *Burgess* case para 12.

¹⁶¹⁷ *Burgess* case para 24.

¹⁶¹⁸ *Burgess* case para 25.

¹⁶¹⁹ *Burgess* case para 17.

¹⁶²⁰ Claassen and Van Heerden "General Deductions" 130.

Revenue,¹⁶²¹ and later in the case of *CIR v Leydenburg Platinum Ltd*.¹⁶²² In the case of *CIR v Pick 'n Pay Employee Share Purchase Trust*,¹⁶²³ Schreiner JA referred to the opinion of Stanford JA, confirming that continuity is not a prerequisite for a company to carry on a trade. He iterated that "[t]he test to be applied in the case of an individual is not quite the same as the test in the case of a trading company."¹⁶²⁴

It is also not a prerequisite that a profit should be generated or that a profit motive exists to carry on a trade, but it is an indicator of whether a business is carried on.¹⁶²⁵ Smalberger JA, who delivered the majority ruling in a seminal decision of the *Pick 'n Pay* case, made the following statement: "While a profit motive is not essential for carrying on of a business, its presence or absence is an important factor in determining whether a business is conducted."¹⁶²⁶

To summarise: determining whether a company is carrying on a trade will be a matter of fact, and all the activities of the company will be taken into account. Although a profit motive can indicate that a business is being carried on, this is not a pre-requisite.

¹⁶²¹ *Stephan v Commissioner for Inland Revenue* 1919 32 SATC 54 (WLD) 5. The issue was whether the profits derived from the sale of assets were income generated by operations. The second question considered by Mason J was "whether they are derived from any trade or business, whether continuously carried on or not." It was determined that "In an inquiry as to the existence of a trade, the number of similar transactions by the taxpayer is relevant, as is the scale of his activities." (Williams *Income Tax in South Africa: Cases and Materials* 263-264).

¹⁶²² Stratford JA stated: "So that 'continuity' (as it has been called) is a necessary element in the carrying on of a business in the case of an individual but not of a company ..." (*Commissioner for Inland Revenue v Leydenburg Platinum Ltd* 1929 AD 137 paras 145-146) (the *Leydenburg Platinum* case).

¹⁶²³ *Commissioner of Inland Revenue v Pick 'n Pay Employee Share Purchase Trust* 1992 2 All SA 245 (A) (the *Pick 'n Pay* case).

¹⁶²⁴ Williams *Income Tax in South Africa: Cases and Materials* 279; this opinion was first expressed by Wessels JA in the case of *Commissioner for Inland Revenue v Stott* 1928 AD 251 page 262. It was later confirmed by Centlivres CJ in the case of the *Commissioner for Inland Revenue v Strathmore Explorations Ltd* 1956 1 SA 591 (A) page 14. Centlivres CJ stated, "If you are dealing with a company one of whose objectives is to buy and sell land, then the company might well be considered to be doing the business of selling and buying land even though it carries out only a single transaction."

¹⁶²⁵ Claassen and Van Heerden "General Deductions" 130.

¹⁶²⁶ *Pick 'n Pay* case 7-8; it should be noted that Smalberger JA pointed out that a "[t]ransaction involving shares [does] not differ from a transaction in respect of any other property and the capital or revenue nature of a receipt is determined in the same way..." (*Pick 'n Pay* case 6); a further discussion of the sale of assets and "a scheme of profit-making" falls outside the scope of this research study.

The *Burgess* case and the recent case *Unitrans Holdings Limited v The Commissioner for the South African Revenue Services*¹⁶²⁷ indicate that the main question should rather be "whether the expense was incurred in the production of income derived from carrying on any trade."¹⁶²⁸ The rest of the elements of section 11(a) will be discussed in the following paragraphs.

6.1.2.1.2 Defining 'expenditure'

The *ITA(SA)* distinguishes between two types of 'expenditure' for the GDF. Beadle CJ grouped these types of spending as:

First, money voluntarily and designedly spent by the taxpayer for the purpose of his trade; and second, money which is what I might call involuntarily spent because of some mischance or misfortune which has overtaken the taxpayer. For the sake of convenience, I will refer to the first type of expenditure as 'designed expenditure', and to the second as 'fortuitous expenditure'.¹⁶²⁹

This study will concentrate on the meaning of 'voluntarily incurred' expenditure, as it is unlikely that a company will incur CSIE involuntarily.

The meaning of the term expenditure in the context of the requirements of the GDF was considered by the court in the case *CSARS v Labat*.¹⁶³⁰ Harms AP stated that because the term is not defined in the *ITA(SA)*, the meaning attributed to it in ordinary English should be applied, namely that it is the "action of spending funds".¹⁶³¹ He further clarified that

'expenditure actually incurred' means ... the taxpayer must have incurred an unconditional legal obligation in respect of the amount concerned; it is not required that the obligation be discharged: once the obligation has been incurred, the expenditure becomes deductible.¹⁶³²

¹⁶²⁷ *Unitrans Holdings Limited v The Commissioner for the South African Revenue Services* (A3094/2022) 2024 ZAGPJHC 11 (the Unitrans case).

¹⁶²⁸ *Unitrans* case para 8.

¹⁶²⁹ *Commissioner of Tax v Rendle* 26 SATC 326, 329.

¹⁶³⁰ *Commissioner for the South African Revenue v Labat* 2011 ZASCA 157 (the Labat case).

¹⁶³¹ *Labat* case par 12.

¹⁶³² *Labat* case par 6; In the case of *X Group (Pty) Ltd v The Commissioner for the South African Revenue Service* (unreported) case number 13671 SATC on 20 April 2017; the taxpayer suffered a loss due to a claim relating to a previous contract it entered into while still in the business of selling coal. When the claim was settled, the taxpayer X Group (Pty) Ltd no longer conducted the business of selling coal. The Court referred to the *Caltex Oil (SA) Ltd v Commissioner for Inland Revenue* 1975 (1) SA 665 (A) paras 674D-F stating that actually incurred does not mean actually paid, but rather that "a liability has been incurred during the year". To determine the meaning of a 'contingent liability', the Court considered the ruling of *Commissioner for Inland*

This is an important implication, meaning that if CSIE were *actually incurred* in the course of conducting a trade or doing business, and the last two requirements are satisfied, namely in the *production of income* and *not of a capital nature*, then the CSIE incurred will be deductible by the company in determining its taxable income.

Hoexter AJ too, in the case of *Nasionale Pers Bpk v KBI*,¹⁶³³ considered the meaning of the term actually incurred. He stated that a "company [which] completely subjects itself to a liability, has incurred an absolute and unqualified legal obligation."¹⁶³⁴ Those expenses for which an unconditional legal obligation has been established during the year of assessment will be considered as actually incurred¹⁶³⁵ and deductible from taxable income in the year of assessment in which they were actually incurred, and not in the year of assessment in which they were actually paid.¹⁶³⁶ A further implication of this statement is that if no unconditional legal obligation exists on the last day of the year of assessment regarding an amount provided for as an accounting provision, the amount provided for will be disregarded as a deduction in the calculation of taxable income.¹⁶³⁷ A company will therefore be able to deduct CSIE in the particular year of assessment only if the company "has incurred an absolute and unqualified legal obligation"¹⁶³⁸ regarding this expense and only if the last two criteria of the GDF are met.¹⁶³⁹

With reference to the facts supplied in Paragraph 6.1.2, XYZ (Pty) Ltd's last day of the financial year is 30 April 2023. XYZ (Pty) Ltd has supported a small pre-school facility in a less affluent part of town for the past three years. After a storm hit the area and damaged part of the school's roof, it was decided that the company would assist in repairing the roof. XYZ (Pty) Ltd arranged with a local hardware store to deliver the material needed to repair the roof of the school. XYZ(Pty) Ltd received the tax invoice from the hardware store on the 29th of April 2024, and undertook to

Revue v Golden Dumps (Pty) Ltd 1993 4 SA 110(A) paras 118E-H. The outcome of the dispute should be certain at the end of the financial year for the liability to be actually incurred.

¹⁶³³ *Nasionale Pers Bpk v Kommissaris van Binnelandse Inkomste* 1986 All SA 397 (A) (the *Nasionale Pers* case).

¹⁶³⁴ *Nasionale Pers* case 7.

¹⁶³⁵ *Nasionale Pers* case 9.

¹⁶³⁶ *Nasionale Pers* case 5.

¹⁶³⁷ *Nasionale Pers* case 6.

¹⁶³⁸ *Nasionale Pers* case 7.

¹⁶³⁹ For further reading regarding the meaning of expenditure, refer to Van Zyl 2012 *Obiter* 186-192.

make payment once the materials had been delivered to the school. The delivery took place on the 3rd of May 2024, and XYZ (Pty) Ltd, after confirming that the material was in good order, made the payment. Because there was a condition that the goods should be delivered first, the absolute/unqualified obligation to pay the amount on the invoice arose only once the goods had been delivered. The expense was therefore actually incurred in the new financial year (the 2025 year of assessment).

As indicated, an expense will be actually incurred on the first instance of payment made or when the company, as was demonstrated above, incurred an absolute obligation to pay the expense. If this rule is applied, then all of the other expenses were actually incurred before year-end. These expenses (the cost of the board erected at the school, the R1 000 to secure the right to advertise there, the cost of the gift baskets, the tar to repair the potholes, and the light bulbs and fittings) were paid in full before the 30th of April 2024. If 'actually incurred' was the only requirement, then all of these expenses would be deductible for the 2024 year of assessment.

6.1.2.1.3 Defining 'in the production of the income'

The second last criterion regarding the GDF to consider is 'in the production of income'.¹⁶⁴⁰ It was mentioned above that all the criteria of the GDF should be met to allow a deduction against taxable income. Thus, if an expense incurred was not in the production of income, that amount would not be allowed as a deduction against taxable income.¹⁶⁴¹

¹⁶⁴⁰ To determine "income" for an individual, from the gross income amounts exempt in terms of ss 10, 10A to 10C and specific sub-sections of s 12 of the *ITA(SA)*. See Koekemoer "Taxation in South Africa" 23. A company is not entitled to all the exemptions available to individuals but is entitled to the section 10(1)(k) of the *ITA(SA)* exemptions regarding local dividend income. To calculate a company's taxable income, the accounting profit/loss (before tax) will be adjusted to reflect the correct income and deductions as per the *ITA(SA)*. Therefore the principles for calculating taxable income are the same as for individuals: gross income less exempt income = income less allowable deductions = taxable income. See Van de Zwan "Companies and Dividends Tax" 757-758.

¹⁶⁴¹ Claassen and Van Heerden "General Deductions" 135.

The seminal case that laid down the rules regarding the meaning of these criteria was the case of *Port Elizabeth Electric Tramway Company v CIR*.¹⁶⁴² The issue in this case was whether compensation paid to the family of an employee who had passed away during working hours and who had been busy with his everyday tasks as an employee could be deducted as an allowable expense against the taxable income of the employer company.¹⁶⁴³

To determine whether an expense was incurred in the *production of income*, Watermeyer AJP explained that two questions should be answered: "(a) whether the **act**, to which the expenditure is attached, is performed in the production of income, and (b) whether the expenditure is **linked to it closely enough**."¹⁶⁴⁴

The purpose of the *act* (the action taken) is essential¹⁶⁴⁵ and referred to as the "subjective *purpose test*".¹⁶⁴⁶ If it was a *bona fide* act "done for the purpose of

¹⁶⁴² *Port Elizabeth Electric Tramway Company v Commissioner for Inland Revenue* 8 SATC 13 (the *PE Electric Tramway* case). In much of the case law since the *PE Electric Tramway* case, the deductibility of interest as an expense relating to some loan agreement was considered. For further reading in this regard refer to: *XYZ Holdings (Pty) Ltd v the Commissioner for the South African Revenue Service* (unreported) case number 12 401 SATC of 15 March 2010; *X v The Commissioner for the South African Revenue Service* (unreported) case number 13791 and 13792 TC (CT) on 13 December 2016; Botha 2017 <https://www.thesait.org.za/news/336723/An-interesting-case-Section-11a-of-the-Income-Tax-Act-and-the-deductibility-of-interest-expense.htm>; ENS Africa *TAX | Interest deductibility in South Africa; A Taxpayer v The Commissioner for the South African Revenue Service* (unreported) case number IT45638 TC (CT) on 19 July 2023.

¹⁶⁴³ Williams *Income Tax in South Africa: Cases and Materials* 446; also refer to Madovi *The Deductibility of Damages and Associate Legal Expenses for the Purposes of Determining Taxable Income in South Africa* 14.

¹⁶⁴⁴ Williams *Income Tax in South Africa: Cases and Materials* 446; own emphasis as these words will be considered in the discussion; the court confirmed in the *Unitrans* case that "[i]ncome is produced by a performance of a series of acts attendant upon them as expenses, provided that they are so closely linked to such acts as to be regarded as part of the cost of performing them." (*Unitrans* case para 44).

¹⁶⁴⁵ This is referred to as the 'subjective purpose test'. See Williams *Income Tax in South Africa: Cases and Materials* 448; Claasen and Van Heerden translated the question (a) into "[w]hat action gave rise to the expenditure and what is the purpose of the action?" (Claasen and Van Heerden "General Deductions" 135).

¹⁶⁴⁶ *Unitrans* case para 44; Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 78; in much of the case law since the *PE Electric Tramway* case the deductibility of interest as an expense relating to some loan agreements was considered. All of these cases considered the purpose (intention) for taking up the loan, and the type of trade/business operations the taxpayer was engaged in. In the case of *Ticktin Timbers CC v The Commissioner for Inland Revenue* 1999 4 All SA 192 (A), the loan was incurred to enable the close corporation to pay out a dividend to the member, and it was determined that the interest expense did not relate to the production of income. Refer to paras 7-8, 12; in the case of *X Group (Pty) Ltd v The Commissioner for the South African Revenue Service* (unreported) case number 13671 SATC on 20 April 2017, the taxpayer suffered a loss due to a claim relating to a

carrying on the trade which earns the income, the expenditure attendant on it is deductible."¹⁶⁴⁷ Smalberger JA confirmed this in the *Pick 'n Pay* case.¹⁶⁴⁸ In the judgement in the *Unitrans* case¹⁶⁴⁹ Adams J indicated that the matter of the production of income could not be considered without considering whether a trade was carried on. It is important to determine the specific trade or the nature of the activities conducted by the taxpayer.¹⁶⁵⁰

In answering the question of how closely the expenditure should link to the business operations Watermeyer AJP applied the "objective *nexus* test".¹⁶⁵¹ He concluded that

all expenses attached to the performance of a business operation *bona fide* performed for the purpose of earning income are deductible whether such expenses are necessary for its performance or attached to it by chance or are bona fide incurred for the more efficient performance of such operation provided they are so closely connected with it that they may be regarded as part of the cost of performing it.¹⁶⁵²

previous contract it entered into while still in the business of selling coal. When the claim was settled the taxpayer X Group (Pty) Ltd no longer conducted the business of selling coal. The court also referred to the *PE Electric Tramway* case (refer to paras 65-68) and believed that not all expenses incurred ("however remote [they] may be to the conduct of trade") should be deductible. The purpose of the expenditure could be an overriding factor (refer to para 69). Because the X Group had no obligation regarding any contingent claims under a sale agreement, the Court held that the compensation paid was not 'in the production of income' (refer to paras 78-81).

¹⁶⁴⁷ Williams *Income Tax in South Africa: Cases and Materials* 446; it should be noted that if the act was unlawful or negligent, "and the attendant expense [was] occasioned by the unlawfulness or, possibly, the negligence of the act, then probably it would not be deductible" (Williams *Income Tax in South Africa: Cases and Materials* 447).

¹⁶⁴⁸ *Pick 'n Pay* case 17-18.

¹⁶⁴⁹ *Unitrans* case para 8; in this case the Court had to determine whether the interest incurred on a loan could be deducted as an expense under section 24J of the *ITA(SA)*, which contains the same provision as s 11(a), stating that the expense may be "deducted from the income of that person derived from carrying on any trade, if that amount is incurred in the production of the income." para 10.

¹⁶⁵⁰ *Unitrans* case para 35.

¹⁶⁵¹ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 78.

¹⁶⁵² Williams *Income Tax in South Africa: Cases and Materials* 447; if it was determined that the act was entered into to generate income, that income does not have to have been generated in the same year in which the act was performed. The income may be earned only in future years of assessment, and the expenses will still be deductible as long as the 'purpose and closely connected' tests are satisfied. See Claasen and Van Heerden "General Deductions" 136; Adams and Strydom JJ, in the *Unitrans* case, had to determine whether the interest expense is deductible. They state that it should be determined "whether the interest expense incurred will qualify for a deduction considering: (a) the purpose of the loan and (b) whether the expenditure is linked closely enough to the production of income." (*Unitrans* case para 49); On the matter of expenses incurred due to negligent behaviours or actions, Watermeyer AJP also stated that "the employment of drivers carries with it as a necessary consequence a potential liability to pay compensation [in terms of the *Workmen's Compensation Act*] if such drivers are injured in the course of their employment." The judge established that an 'inherent risk' is linked to the

Expenses, therefore, do not generate income. Instead, they are a series of acts (in a money value) performed as part of the business operations that generate revenue.¹⁶⁵³ Cost is incurred as an essential component ("necessary concomitant") of the income-generating business activities.¹⁶⁵⁴

Goldswain and Swart¹⁶⁵⁵ reflect on Watermeyer AJP's interpretation of the phrase 'in the production of income' in the *PE Electric Tramway* case and whether this interpretation is still valid today. Firstly, they¹⁶⁵⁶ state that the *bona fide* requirement

type of activity, and did not regard it necessary to further consider factors such as negligence. See Williams *Income Tax in South Africa: Cases and Materials* 455; the discussion of inherent risk, or the possibility of a risk associated with the business and actions performed, does not fall within the framework of this research study. For a discussion regarding risk, refer to Lewis AJA in the case of *Commissioner of Tax v Cathcart* 27 SATC 1. Lewis AJA states that compensation in the form of damages would be deductible only if a legal obligation was incurred. "In my view, it must be shown by the taxpayer that he paid the damages in question in pursuance of a liability to pay. If he is not liable to pay but pays purely to avoid the embarrassment or the expense of litigation, or for any other similar reason, then the sum paid cannot be said to be a payment made for the purposes of trade or in the production of income." (Williams *Income Tax in South Africa: Cases and Materials* 458). In his summary of the case *Joffe & Co Ltd v Commissioner for Inland Revenue* 1946 AD 157 Williams says: "The taxpayer's claim failed because he did not or could not adduce evidence to show that accidents of the kind which gave rise to the damages were an inherent risk of the taxpayer's trade. As Watermeyer CJ said, "There is nothing in the stated case to suggest that such negligence, and the consequent liability which negligence entailed, were necessary concomitants of the trading operations of a reinforced concrete engineer'. ... his reasoning is surely unpersuasive. The damages in question were the result of human error or negligence. Does a court require evidence that error and negligence are inevitable in all human activities? Moreover, the issue is surely whether a particular hazard is an inherent risk of the business of a concrete engineer, and not (as Watermeyer suggests) whether the particular taxpayer carried on business in a way which was likely to lead to accidents. The bizarre corollary of this line of reasoning would be that irresponsible and reckless engineers would be entitled to the fiscal benefit of a tax deduction for damages paid by them to injured parties, whereas careful and responsible engineers would be denied the benefit." (Williams *Income Tax in South Africa: Cases and Materials* 455-456). The implication is therefore that if there is an inherent risk that accidents might happen because of the type of business operations, and compensation was paid because the company incurred a legal obligation to pay such an amount, then the amount of the claim will be deductible. The requirements of in the production of income will be met, because there is a close link between the expense and the business operations. However, in cases where the taxpayer's actions were performed negligently, resulting in a damage claim, it will be hard to prove that the expense in the form of compensation was incurred in the production of income. For further reading regarding the 'objective *nexus* test' refer to: Legwaila 2002 *The South African Law Journal* 43-49; Legwaila 2018 *The South African Law Journal* 948-957.

¹⁶⁵³ Madovi *The Deductibility of Damages and Associated Legal Expenses for the Purposes of Determining Taxable Income in South Africa* 16.

¹⁶⁵⁴ Claasen and Van Heerden "General Deductions" 136.

¹⁶⁵⁵ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 71-96.

¹⁶⁵⁶ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 81; a discussion regarding the allowability of expenses resulting from negligent behaviour/acts is beyond the scope of this study. It should only be noted that Goldswain and Swart have shown that these expenses should indeed be allowable as a deduction under the GDF (if the judgments of the *PE Electric Tramway* case and *Joffe and Co (Pty) Ltd v CIR* 1946 AD 157 is compared) as

indicates that Watermeyer AJP attempted to place a narrow and restrictive interpretation of this phrase. Over the past 50 years the judiciary has widened the ambit of the phrase. It has moved away from the narrow interpretation "to take into account the economic, social, statutory and even the requirements of its shareholders and other stakeholders".¹⁶⁵⁷ In the case of *Warner Lambert SA (Pty) Ltd v C: SARS*,¹⁶⁵⁸ which will be discussed in more detail in Paragraph 6.1.2.3, Conradie JA used the 'remoteness test', in the place of the 'closeness test' (the objective *nexus* test). Goldswain and Swart¹⁶⁵⁹ believe that the remoteness test is just another way to analyse the facts, to establish and confirm the "closeness of the connection between the trade being carried on and the expenditure incurred."¹⁶⁶⁰ Goldswain and Swart¹⁶⁶¹ (in considering the judgements of *C: SARS v Mobile Telephone Networks Holdings (Pty) Ltd*)¹⁶⁶² concluded that any statutory imposed expenditure incurred (such as audit fees) should be deductible as "an expense incurred in the ordinary course of carrying on a trade."¹⁶⁶³ Thus if a statute would impose CSI, the related CSIE should be deductible against taxable income, provided that it is 'not of a capital nature'.

In theory (if the viewpoint of Goldswain and Swart is applied),¹⁶⁶⁴ if the stakeholders require a company to be involved in its community, the company should be able to prove, using the remoteness test, a close enough link between the CSIE and the business operations. In such a situation it should be deductible although the act linked to the expense does not generate income. In practice it is unlikely that it will be easy, especially in the light of SARS's narrow application of case law discussed above and the interpretation of the criterion 'in the production of the income' (as was seen in the case of *C: SARS v Mobile Telephone Networks Holdings (Pty) Ltd*). The reason for this statement is that the activity of community involvement (and

long as the taxpayer manages to discharge the 'onus of proof' responsibility placed on him under s 102 of the *Tax Administration Act* 28 of 2011. See Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 81-82.

¹⁶⁵⁷ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 85.

¹⁶⁵⁸ *Warner Lambert SA (Pty) Ltd v Commissioner for the South African Revenue Service* 2003 5 SA 344 (SCA). (The *Warner Lambert* case)

¹⁶⁵⁹ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 88.

¹⁶⁶⁰ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 88.

¹⁶⁶¹ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 89.

¹⁶⁶² *C: SARS v Mobile Telephone Networks Holdings (Pty) Ltd* 2014 ZASCA 4.

¹⁶⁶³ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 89.

¹⁶⁶⁴ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 85.

other CSI activities) links with activities not generally associated with the ordinary day-to-day running of the business and therefore is not closely linked to the income-earning operations of the company. Hopefully if such expenses and the deductibility thereof are tested in court, the court will take into account this viewpoint and the reasoning of the judges in the cases of *Warner Lambert SA (Pty) Ltd v C: SARS* and *C: SARS v Mobile Telephone Networks Holdings (Pty) Ltd*.

In the case of *S G Taxpayer v the Commissioner for the South African Revenue Service*¹⁶⁶⁵ the Court had to determine whether 'S Company' could claim the amount as a deduction on the grounds that there was a close enough link between the taxpayer's income-earning operations and the investment of R48 million in a Trust. The trust had been established as an 'employee management share incentive scheme'.¹⁶⁶⁶ SARS raised additional assessments on the basis that there was no direct causal link between the contribution and the income-earning activities of the company – that the expense had not been incurred in the production of income.¹⁶⁶⁷ SARS did not rely on the provisions of section 23(g) that the expenses should be incurred for trade purposes.¹⁶⁶⁸ The taxpayer (S Company) explained that the purpose of the R48 million was to serve as a funding mechanism.¹⁶⁶⁹ The contribution was never paid back to 'S Company'.¹⁶⁷⁰ Again the Court first looked at the principles laid down in the *PE Electric Tramway* case ruling.¹⁶⁷¹ The court determined the

¹⁶⁶⁵ *S G Taxpayer v Commissioner for the South African Revenue Service* 2018 ZATC 1 (the *S G Taxpayer* case).

¹⁶⁶⁶ *S G Taxpayer* case para 1; in 2004 the group of companies agreed that the 'S Company' would "adopt and implement a share incentive scheme for its key management personnel." The selected personnel were all key managerial staff of the taxpayer, and the objective was to incentivise these employees. The trust acquired a shell company and the employees were offered shares in this company. To enable the trust to fulfil the purpose for which it was created, the S Company contributed the amount R60 million. The Trust acquired the preference shares in the new company for R48 471 714.00. Refer to paras 3-10. For further information on how exactly the scheme worked, refer to paras 11-13, 47.

¹⁶⁶⁷ *S G Taxpayer* case para 14.

¹⁶⁶⁸ *S G Taxpayer* case para 17.

¹⁶⁶⁹ *S G Taxpayer* case para 25.

¹⁶⁷⁰ *S G Taxpayer* case para 30.

¹⁶⁷¹ *S G Taxpayer* case para 35; The Court also referred to *Commissioner for Inland Revenue v Genn and Company (Pty) Ltd* 1955 3 SA 293 AD para 299C; "If I am right in understanding the words 'they must be regarded' as connoting that it would be proper, natural or reasonable to regard the expenses as part of the cost of performing the operation this passage seems to state the approach to such questions correctly."; by referring to *Sub-Nigel Ltd v Commissioner for Inland Revenue* 1948 4 SA 580 (A) 592 the Court concluded that it is not necessary for the taxpayer to prove that the particular expense produced income in that given financial year; the Court also considered the fact that a third party incidentally benefited and that this did not preclude a deduction (*Pick 'n Pay Employees* case). See para 38. An important case which will be

purpose and intention of 'S Company' as being (i) to serve as an incentive for the employees; (ii) to encourage the employees to grow and increase the value of their share investment; (iii) to encourage these valuable employees (regarding skill and knowledge) to remain in the company's employment and therefore to facilitate the retention of staff members; and as a result (iv) "to preserve and enhance the income earning capacity of the taxpayer's business."¹⁶⁷² The Court therefore concluded that a sufficiently close causal link existed between the expenditure (the contributions) and the income-earning operations of the company.¹⁶⁷³

These paragraphs conclude with the example of XYZ (Pty) Ltd (refer to Paragraph 6.1.2) to summarise the findings discussed above. The cost of replacing the old light bulbs and fittings with energy-efficient bulbs directly links with the building from which the company is operating. There is thus a direct link with the income-earning operations, and the cost will be deductible under the GDF.

Suppose the reasoning of the previous paragraph is followed. In that case, XYZ (Pty) Ltd should be able (using the remoteness test) to show that all the CSIE expenses incurred were done so in the production of income, although not a necessary concomitant of its trade. However, as pointed out, the possibility that SARS would agree with this is generally slim. If the individual expenses are therefore considered, then the cost of the board (if for now this is regarded as not an expense of a capital nature) and the R1 000 annual advertisement cost would qualify under the GDF for a deduction. It would be possible to prove a close link to the trade that would relate to future income earned. The potholes which had been fixed and branded - the company might also in this case be able to prove that these repairs were undertaken with the intent of advertising the company and therefore that there exists a close link with its trade and income-earning operation. In this case the cost of fixing the potholes might then also be deductible under the GDF. Because the fruit parcels were not branded (and therefore cannot be regarded as an advertising cost), and the cost of the bulbs given to the employees does not directly link to an

discussed in detail below is the *Warner Lambert* case. The important conclusion regarding the social responsibility expenses incurred in this case was that although the expenses were not directly linked with the income-earning operations of the business, the connection was not too remote. See *S G Taxpayer* case para 44.

¹⁶⁷² *S G Taxpayer* case para 47.

¹⁶⁷³ *S G Taxpayer* case para 51.

employment cost, it might be difficult for XYZ (Pty) Ltd to prove a close link with business operations. SARS would disallow the deduction of any related cost under the provisions of the GDF.

There remains only one criterion to consider under the GDF: the expense should not have been of a capital nature.

6.1.2.1.4 Defining 'not of a capital nature'

The last criterion of the GDF, namely that should be 'not of a capital nature', is also briefly discussed. This is a vast topic and a comprehensive evaluation falls outside the scope of this research.

This criterion implies that if the expense is indeed capital in nature, then the provisions of section 11(a) (the GDF) are explicit in that the amount will not be allowed as a deduction in determining the company's taxable income. The fact that the expenditure or loss incurred meets all the other criteria of the GDF, primarily since the amount was incurred 'in the production of income', does not necessarily give the taxpayer the right to a deduction under the GDF. The last criterion should be met too, meaning that the expense should not have been of a capital nature.¹⁶⁷⁴

Unfortunately, no universal test can be applied to determine whether the expense incurred by the company is of a capital nature.¹⁶⁷⁵ The facts of each case have to be considered on merit. The following statement of Watermeyer CJ might be regarded as a summary of the individual tests.

[T]he true nature of each transaction must be enquired into in order to determine whether expenditure attached to it is capital or revenue expenditure. ... [I]f it is acquired for the purpose of acquiring a capital asset for the business it is capital expenditure even if it is paid in annual instalments; if, on the other hand it is in truth no more than part of the cost incidental to the performance of the income producing operations, as distinguished from the equipment of the income producing machine, then it is a revenue expenditure even if it is paid in a lump sum.¹⁶⁷⁶

¹⁶⁷⁴ Williams *Income Tax in South Africa: Cases and Materials* 560.

¹⁶⁷⁵ Claasen and Van Heerden "General Deductions" 136.

¹⁶⁷⁶ *New State Areas Ltd v CIR* 1946 AD 610 para 627.

The courts have laid down a few tests over the years to determine whether the expense incurred is capital in nature. The tests are detailed in the following table:

Table 6-3: Case law — 'capital in nature'

Case	Ruling
'Fixed - versus floating capital test':	
This test is closely linked to the 'operations v structure' test: floating capital is revenue in nature. This type of capital "frequently changes its form from money to goods and <i>vice versa</i> ", such as trading stock. ¹⁶⁷⁷	
<i>CIR v George Forest Timber Company Ltd</i> ¹⁶⁷⁸	Assets of a capital nature are usually employed to "acquire or improve property, plant, tools, etc., which might qualify for capital allowances." ¹⁶⁷⁹
<i>New State Areas v CIR</i> ¹⁶⁸⁰	Watermeyer CJ made an important comment by saying that capital in nature and revenue in nature will both meet the requirement of in the production of income because both usually will produce income. "[C]apital expenditure establishes, adds to or improves the taxpayer's income earning plant or machinery" (also referred to as the 'income-earning structure'). It is necessary to establish the true (legal) nature of the transaction. ¹⁶⁸¹
<i>Pick 'n Pay</i> case	The difference between fixed and floating capital is that "floating capital is consumed or disappears in the very process of production, while fixed capital does not; though it produces fresh wealth, it remains intact." ¹⁶⁸²
'Income-earning operations v structure':	
The link between the item purchased and the business operations should be considered. If the item purchased is linked to the income-earning operations, it will most likely be of a revenue nature. However, if the item purchased is linked to the income-earning structure (to improve or add to property, plant and equipment), the expense will likely be of a capital nature. ¹⁶⁸³	

¹⁶⁷⁷ Claasen and Van Heerden "General Deductions" 137; *Sub-Nigel Ltd v Commissioner for Inland Revenue* 1948 4 SA 580.

¹⁶⁷⁸ *Commissioner for Inland Revenue v George Forest Timber Company Ltd* 1924 AD 516 (the *George Forest Timber* case)

¹⁶⁷⁹ Williams *Income Tax in South Africa: Cases and Materials* 537; *George Forest Timber* case.

¹⁶⁸⁰ *New State Areas* case.

¹⁶⁸¹ Williams *Income Tax in South Africa: Cases and Materials* 539, 555; *New State Areas* case.

¹⁶⁸² *Pick 'n Pay* case 19-20.

¹⁶⁸³ Claasen and Van Heerden "General Deductions" 137.

Case	Ruling
<i>CIR v George Forest Timber Company Ltd</i> ¹⁶⁸⁴	"Money spent in creating or acquiring an income-producing concern must be capital expenditure. It was invested to yield future profit, and while the outlay did not recur, the income did. There was a great difference between money spent in creating or acquiring a source of profit, and money spent in working it. The one was capital expenditure, the other was not." ¹⁶⁸⁵
<i>CIR v African Oxygen Ltd</i> ¹⁶⁸⁶	"Generally speaking, money spent in creating or acquiring an income-producing concern, a source of profit or a capital asset, is capital expenditure, while the cost incidental to the performance of the income-producing operations is revenue expenditure. There are numerous examples of cases in which the expenditure was allocated to the one or the other of these categories and they are often of assistance, but essentially the enquiry must be into the real nature of the particular transaction ..." ¹⁶⁸⁷
'The true nature of the transaction':	
The true nature of the transaction can be determined only by considering the facts. The intention of the taxpayer at the date the expense was incurred/the item was purchased should also be considered. The test has an objective side (is the taxpayer conducting a business?) and a subjective side (is the taxpayer's intention to use the item purchased in the course of conducting a business?). ¹⁶⁸⁸	
<i>Burman v CIR</i> ¹⁶⁸⁹	The operating capital to buy and sell property is usually speculative in nature. Burman intended to sell the shares and loan accounts in the company as soon as possible for shares in a public company. (In the view of the Court, the taxpayer was "engaged in an operation of business in a scheme of profit-making"). ¹⁶⁹⁰ Burman was not able to sell his shares because the company was liquidated. The Court had to decide whether the loss was of a capital or revenue nature. It was stated that there should be a differentiation between shares and loan accounts. Loan accounts will always have the value of the money lent reflected in the accounting statements. The loss suffered was therefore of a capital nature. Shares might increase or decrease in value. The intention of the owner when the shares are acquired will determine the nature of the expense. ¹⁶⁹¹

¹⁶⁸⁴ *George Forest Timber case.*

¹⁶⁸⁵ *A Taxpayer v Commissioner, South African Revenue Service* 2023 ZATC 11 para 21; *George Forest Timber case* para 26.

¹⁶⁸⁶ *Commissioner for Inland Revenue v African Oxygen Ltd* 1963 1 SA 681 (A).

¹⁶⁸⁷ *Williams Income Tax in South Africa: Cases and Materials* 547.

¹⁶⁸⁸ *Jacobs The Tax Deductibility of Corporate Social Responsibility Expenditure* 42.

¹⁶⁸⁹ *Burman v Commissioner for Inland Revenue* 1990 ZASA 138 (*Burman case*).

¹⁶⁹⁰ *Burman case* 4.

¹⁶⁹¹ *Williams Income Tax in South Africa: Cases and Materials* 554-556; *Burman case* 4, 31.

Case	Ruling
<i>CIR v Hilewitz</i> ¹⁶⁹²	The loss incurred by a taxpayer when suretyship was called upon is capital in nature and therefore not deductible in terms of section 11(a) from the taxpayer's taxable income. ¹⁶⁹³
'Creating a long-enduring benefit':	
To create a long-enduring benefit means that the "expenditure is made with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, which would be indicative of capital expenditure." ¹⁶⁹⁴ Thus, if an asset continuously generates income for the company and is not easily "used up", it will be capital in nature. ¹⁶⁹⁵ The question of how long an asset should be kept to regard as creating a <i>long-enduring benefit</i> will be considered for each case on merit. ¹⁶⁹⁶	
(Also refer to <i>Secretary for Inland Revenue v African Oxygen Ltd</i> 1963 1 SA 681 (A), 25 SATC 67, at 686D-G and 688H-689E (SALR).)	
<i>C: SARS v BP South Africa (Pty) Ltd</i> ¹⁶⁹⁷	A long-enduring benefit ensures that revenue flows into the "company week after week, and month after month ... I have no doubt this advantage is a capital asset, and the payment for it is capital expenditure." ¹⁶⁹⁸ Where no new capital asset was created for "enduring benefit", the expenditure "naturally tends to assume more of a revenue character." ¹⁶⁹⁹
<i>Pick 'n Pay</i> case	Money invested to yield future income (profit) will not recur on a regular basis, but will be of a capital nature. ¹⁷⁰⁰
<i>A Taxpayer v C: SARS</i> ¹⁷⁰¹	"The longterm relationship with XYZ gives [the taxpayer] and the Farmer Trust a sustainable marketing perspective." ¹⁷⁰²

¹⁶⁹² *Commissioner for Inland Revenue v Hilewitz* 60 SATC 86 (T) (*Hilewitz* case).

¹⁶⁹³ Williams *Income Tax in South Africa: Cases and Materials* 558, 560-561; *Hilewitz* case para 99.

¹⁶⁹⁴ *A Taxpayer v Commissioner, South African Revenue Service* 2023 ZATC 11 para 22.

¹⁶⁹⁵ Jacobs *The Tax Deductibility of Corporate Social Responsibility Expenditure* 43.

¹⁶⁹⁶ Claasen and Van Heerden "General Deductions" 137.

¹⁶⁹⁷ *Commissioner of the South African Revenue Service v BP South Africa (Pty) Ltd* 2006 5 SA 559 (SCA) (*BP South Africa* case).

¹⁶⁹⁸ *BP South Africa* case para 25.

¹⁶⁹⁹ Claasen and Van Heerden "General Deductions" 137.

¹⁷⁰⁰ *Pick 'n Pay* case 19.

¹⁷⁰¹ *A Taxpayer v Commissioner of the South African Revenue Service* 2023 ZATC 11.

¹⁷⁰² *A Taxpayer v Commissioner of the South African Revenue Service* para 28.

Case	Ruling
'Once-and-for-all expenditure':	
Capital expenditure will usually occur only once in a while/occasionally (only once in a few years) and not repeatedly. Although it seems as if this test is outdated (the test is, for example, not discussed by Claasen and Van Heerden), ¹⁷⁰³ the Court considered this test in the case of <i>Burman v CIR</i> . ¹⁷⁰⁴	
<i>Burman v CIR</i>	"The expenditure incurred by appellant in effecting the stipulated alterations was made 'once and for all', and there was a complete absence of any element of recurrence in relation to this expenditure ...". ¹⁷⁰⁵

The following statement of Smalberger JA, in the case of *Pick 'n Pay*, summarises the respective tests discussed above:

A similar distinction has been drawn in regard to the deduction of expenditure under s 11(a) of the Act. In *Commissioner for Inland Revenue, v George Forest Timber Co. Ltd.* 1924 AD 516 Innes CJ said at 526: "Now, money spent in creating or acquiring an income-producing concern must be capital expenditure. It is invested to yield future profit; and while the outlay does not recur the income does. There is a great difference between money spent in creating or acquiring a source of profit, and money spent in working it. The one is capital expenditure, the other is not."¹⁷⁰⁶

If the example of XYZ (Pty) Ltd, as supplied in Paragraph 6.1.2 above, is considered, then the cost of the board put up against the palisade enclosure of the pre-school would be regarded as capital in nature because it will create a long enduring benefit. The cost of the board will, therefore, not be deductible under the provisions of the GDF.

In conclusion, suppose the discussion above is applied to the CSI elements and the respective CSIE, as discussed in Paragraph 6.1 above, then the following conclusions may be reached about the deductibility of CSIE in terms of the GDF against taxable income. The company will be able to deduct the CSIE only if it can prove that the expense was actually incurred, during the particular year of

¹⁷⁰³ Claasen and Van Heerden "General Deductions" 136-138.

¹⁷⁰⁴ Williams *Income Tax in South Africa: Cases and Materials* 594.

¹⁷⁰⁵ Williams *Income Tax in South Africa: Cases and Materials* 594; *Burman* case 12.

¹⁷⁰⁶ *Pick 'n Pay* case 19.

assessment, in the ordinary course of doing business (conducting a trade), in the production of income, and it was not of a capital nature.

Although CSIE would probably meet the incurred and during the year of assessment criteria, it is also believed that if the remoteness test is applied the CSIE could be regarded as in the production of the income. It will probably not meet the purpose tests, and SARS will probably disallow the deduction on the grounds of the narrow interpretation of the production of income criterion.

It is believed that a company will be allowed a deduction under the GDF if it can motivate and prove that the CSIE incurred to prevent and mitigate any harm its operations might cause to its workforce, the community, society at large and the environment. (In the example of XYZ (Pty) Ltd, the cost of the energy-efficient bulbs and fittings was incurred to make a small contribution to prevent global warming.) The motivation for this statement is that this type of expense might be regarded as an essential component/necessary concomitant of the income-generating business activities. That said, if the other requirements of the GDF are not met, then the CSIE will still not be deductible as a general trade expense.

6.1.2.2 Section 23(g) specific implication for the deductibility of CSIE

Section 23 lists all expenditures for which a deduction will be prohibited, even though certain items of expenditure might be deductible under section 11(a).¹⁷⁰⁷

Section 23(g) reads as follows:

No deductions shall in any case be made in respect of the following matters, namely ... any moneys, claimed as a deduction from income derived from trade **to the extent** to which such moneys were not laid out or expended for the **purposes of trade**.¹⁷⁰⁸

According to Claasen and Van Heerden,¹⁷⁰⁹ the words 'to the extent' indicate that if the expense was incurred for both trade and non-trade purposes, then the amount of the expense should be apportioned accordingly. Only the portion incurred for trade purposes would be allowed as a deduction against taxable income. They also

¹⁷⁰⁷ A discussion of ss 23(a) to 23(f), except for 23(g), falls outside the scope of this research study.

¹⁷⁰⁸ S 23(g) of the *ITA(SA)*; own emphasis.

¹⁷⁰⁹ Claasen and Van Heerden "General Deductions" 142.

confirm that where reference is made to 'trade purposes', the section must be read together with section 11(a). Therefore, the discussion of the word 'trade' in the previous paragraph will also be applicable when section 23(g) is interpreted or applied.

If part of the CSIE was expended for trade purposes but part thereof was not, then only the part of the CSIE that directly links to the trading operations will be allowed as a deduction against taxable income. If the example of XYZ (Pty) Ltd (refer to Paragraph 6.1.2 for all the facts) is considered, then all the energy-efficient bulbs and fittings were bought together. Some of the costs are related to those bulbs replaced in the business building, but part relates to the cost of the bulbs and fittings given to the employees. In such a case, the total price should be apportioned to determine the cost of the bulbs and fittings used by the company on its premises.

6.1.2.3 CSIE and the deductibility thereof in terms of the GDF — a court ruling

On a few occasions over the past two decades, the court¹⁷¹⁰ had to determine whether the taxpayer was allowed to deduct the CSIE incurred from taxable income if the provisions of the GDF (section 11(a) read with section 23(g)) were considered.

The *Warner Lambert* case was the first (as far as could be established) case where the court had to determine whether the social responsibility expenditure incurred by the taxpayer was incurred for its trade, and if the answer was positive, whether the expense was of a revenue or capital nature.¹⁷¹¹ Conradie JA had to determine whether the taxpayer was correct in deducting these expenses in terms of sections 11(a) read with 23(g).

The taxpayer was obliged to incur social responsibility expenditure under United States legislation (the *Comprehensive Anti-Apartheid Act* and as a subsidiary of an American company signatory of the Sullivan Code).¹⁷¹² An obligation rested on the

¹⁷¹⁰ Supreme Court of Appeal and the Tax Court.

¹⁷¹¹ Warner Lambert case 1.

¹⁷¹² Refer to Chapter 2, Paragraph 2.1.1 regarding the influence the Sullivan Principles/Code had on the development of CSI in South Africa. The expenditure was incurred under the Sullivan Code, related to employees ("non-segregation of races in the workplace, equal and fair employment for all employees, equal pay, development of training programs, increasing the number of disadvantaged persons in management and supervisory positions and improving the quality of employees' lives outside the work environment."), and in the "non-segregation of races in the workplace, equal and fair employment for all employees, equal pay, development of training

American holding company to ensure that the South African subsidiary company adhered to these provisions. If the South African company had not complied, both the South African subsidiary company and the holding company would have been subject to fines in America, and the director might have even faced imprisonment.¹⁷¹³

Conradie JA made the following crucial comments regarding the current discussion of the deductibility of CSIE:

While the connection between the appellant's *trade* and the social responsibility expenditure in the 'second category' (the expenditure which did not directly relate to its employees) is not as direct and evident as in the first (the expenditure which did relate to the employees), it does not imply that the link is too distant. For an expenditure to be considered incurred in the course of trade, it is not necessary for the expenditure incurred itself to generate income.¹⁷¹⁴

The applicant *bona fide* incurred the Sullivan Code expenses. These expenses were incurred as part of the appellant's 'income-earning operations' and were included as a cost of carrying out its responsibilities. Therefore the expenditure on social responsibility was undertaken solely for trade purposes.¹⁷¹⁵

The social expenditure incurred did not relate to the appellant's income earning structure and was therefore 'revenue in nature' and 'not capital in nature'.¹⁷¹⁶

These expenses related to the tax periods of 1990 to 1993 and were therefore incurred before Apartheid officially came to an end.¹⁷¹⁷ The fact that the appellant had no choice but to adhere to the Sullivan Code played a role in the Court's ruling. Conradie JA stated, "[i]t was unthinkable that the appellant should not comply with the Sullivan Code at all."¹⁷¹⁸ Lastly Conradie JA remarked:

programs, increasing the number of disadvantaged persons in management and supervisory positions and improving the quality of employees' lives outside the work environment" (*Warner Lambert* case 3).

¹⁷¹³ *Warner Lambert* case 2.

¹⁷¹⁴ *Warner Lambert* case 9.

¹⁷¹⁵ *Warner Lambert* case 9, 15.

¹⁷¹⁶ *Warner Lambert* case 11.

¹⁷¹⁷ Although a series of events led to the end of the Apartheid regime, the adoption of the *Constitution* in 1993 and the 1994 national elections arguably brought Apartheid to an end. Britannica date unknown <https://www.britannica.com/topic/racial-segregation>.

¹⁷¹⁸ *Warner Lambert* case 9.

It is true that the link between the appellant's trade and the social responsibility expenditure is not as close and obvious in the second category as in the first, but that does not mean that the connection is too remote.¹⁷¹⁹

The *Warner Lambert* case might no longer be of value to prove that CSIE is incurred for trade purposes because the Sullivan Code is no longer enforceable on South African companies 30 years after Apartheid ended.

Three other tax-related cases were influential in the courts' reasoning and ruling in the *Warner Lambert* case.¹⁷²⁰ However, the only case where the court considered "social development expenditure" was the case of *XYZ CC v C: SARS*.¹⁷²¹ Unfortunately the scheme/arrangement through which the money was directed to the beneficiary community trust led to a discussion about whether the amount donated decreased gross income. The Court did not discuss the deductibility of the CSIE in this case.¹⁷²²

To conclude, although South African companies are not currently subject to regulations similar to those of the Sullivan Code, the *B-BBEE* legislation and the soft law in the form of the King Reports oblige companies to act in a certain sustainable

¹⁷¹⁹ *Warner Lambert* case 16; *S G Taxpayer* case para 44.

¹⁷²⁰ The following cases, for example, referred to the *Warner Lambert* case: *BP Southern Africa (Pty) Ltd v The Commissioner for the South African Revenue Services* 2007 ZASCA 7; *Commissioner for the South African Revenue Services v Spur Group (Pty) Ltd* (unreported) case number A285/2019 of 26 November 2019.

¹⁷²¹ *XYZ CC v The Commissioner for the South African Revenues Services* (unreported) case number 14055 of 20 November 2017 (the *XYZ CC* (tax) case).

¹⁷²² The taxpayer (*XYZ CC*) indicated in the tax return submitted for the 2013 year of assessment a reduction of taxable income to the amount of R2 million described as a credit note to a client in favour of "social development expenditure". The Court provided an in-depth discussion regarding the nature of the R2 million account entry in the general ledger of the appellant, *XYZ CC*. The appellant never actually paid an amount to the "community upliftment initiative called the V Trust". The appellant requested banking details and proof that the V Trust complied with the provisions of section 18A of the *ITA(SA)*. These were not received. E Entity, a client of *XYZ CC*, had undertaken to make the necessary payment (donation) on behalf of *XYZ CC*. Instead of transferring (paying) the agreed amount to E Entity, it was agreed that the account of E Entity held at *XYZ* would be credited with the amount of R2 million. The appellant insisted that the R2 million should not be included in gross income, since it was not received nor accrued to the CC. The R2 million was also not deducted in terms of section 11(a) of the *ITA(SA)* from taxable income, because the expense was not incurred, as no money was paid to E Entity. The court decided that the "real substance and purpose" of the transaction was that E Entity was expected to pay an amount of R2 million to the V Trust for the benefit of the local community, replacing their accumulated debt with the appellant. The R2 million was, therefore, in "effect paid off by set-off". The Court thus ruled that the R2 million still accrued to *XYZ CC*, and should hence be included in gross income. Unfortunately the court did not further consider whether the amount would have qualified for a section 11(a) of the *ITA(SA)* deduction. See *XYZ CC* (tax) case paras 8-25.

manner and incur related CSIE. JSE-listed companies, for example, must adhere to the provisions of the King IV Report, leaving especially those companies listed on the JSE with no choice regarding CSI programmes and the incurring of related CSIE.¹⁷²³ It is believed that there is a case to be made based on this statement that at least the JSE-listed companies would qualify for a deduction for CSIE incurred, if the *Warner Lambert* ruling is considered.

6.1.2.4 Conclusion — two other examples concerning the GDF

CSIE which does not closely link with the day-to-day trade and income-earning operation of the company will probably relate to expenses incurred to meet community needs and address environmental and ecological concerns and issues experienced by the community in which the company operates and those of society at large. It might also relate to the conservation and protection of the natural environment. The training provided to members of the local community and society at large regarding conservation etc. will therefore not qualify for a deduction in terms of the GDF. Any training of people not employed by the company will be disregarded for a GDF deduction. The CSIE incurred to provide infrastructure and other facilities necessary to provide clean water to the local community and society at large will also not be deductible under the GDF. These are fictitious examples based on the elements of Preston's Integrated Sustainable CSR Model and the definition of CSI.

The following two real-life examples are used to illustrate the ethical, tax and financial decision-making conflict in which companies (taxpayers) find themselves when they want to do good for the community and to discuss the application of the GDF critically.

¹⁷²³ The King IV Report is not enforceable through legislation, but because it co-exists through a number of laws such as the *Companies Act* 71 of 2008, which applies to companies and is part of the listing requirements of the JSE, those companies listed on the JSE are not left with much of a choice. See Baker McKenzie 2024 <https://resourcehub.bakermckenzie.com/en/resources/cross-border-listings-guide/europe-middle-east--africa/johannesburg-jse-limited/topics/corporate-governance#:~:text=Although%20the%20code%20is%20not,companies%20listed%20on%20the%20JSE.>

6.1.2.4.1 The pointsmen project

A well-known short-term insurance company rolled out its pointsman initiative in 2005.¹⁷²⁴ It started with 21 Alexandra Community Protection Forum youngsters who had demonstrated a devotion to community safety and a company identifying the need for "pointsmen and women directing traffic at high traffic volume intersections throughout Johannesburg."¹⁷²⁵ After negotiations with the Johannesburg Metropolitan Police Department (JMPD), it was agreed that the JMPD would train these unemployed young people of Alexandra as pointsmen and women at no charge. The City of Johannesburg has agreed that these people, after being fully trained, will work in parallel with their employees. The points persons will provide service at certain hotspots during peak traffic. On an emergency basis the company will also deploy a points person with a motorcycle to a hotspot when and where needed. The company purchased several motorcycles to service this part of the agreement.¹⁷²⁶

Some of the young people already had the necessary motorcycle driver's licence. To encourage those who do not have a driver's license yet to obtain one, the company offers a free, internal training programme. The first team member obtaining a driver's licence can apply for the first Mobile Team position becoming available. These young people are usually unemployed and from underprivileged communities. Because they work only during peak hours, they are not employed full-time by the company. The company does, however, pay them a basic wage. The company also sends them, where possible, on short courses and provides them with skill sets, which helped many of the points persons get full-time employment at law enforcement agencies, the JMPD, etc. Scholarships have been provided for a select few.¹⁷²⁷

The motorcycles are branded with the company logo and the points persons receive uniforms branded with the bright neon colours of the company. Daily, more than

¹⁷²⁴ The case study is loosely based but adjusted on the story of Traffic FreeFlow (Pty) Ltd. Traffic Freeflow 2024 <https://www.trafficfreeflow.co.za/about-us/>; Kloppers "Examining Some Options for Deducting CSR Expenses" used a similar case study.

¹⁷²⁵ Traffic Freeflow 2024 <https://www.trafficfreeflow.co.za/about-us/>.

¹⁷²⁶ Traffic Freeflow 2024 <https://www.trafficfreeflow.co.za/about-us/>.

¹⁷²⁷ Traffic Freeflow 2024 <https://www.trafficfreeflow.co.za/about-us/>; Kloppers "Examining Some Options for Deducting CSR Expenses" 123.

300 persons provide service in different regions in Johannesburg, Tshwane, and the greater Winelands district.¹⁷²⁸

Providing this service has corresponding expenses, which positively impact on society at large, as the service improves the daily quality of life of many commuters. It also adds to socio-economic development and community upliftment (especially for those young people who were previously unemployed). These expenses generally relate to CSI and can be classified as CSIE.

Each amount should be considered separately to determine whether it is deductible under the provisions of the GDF.

Firstly, the cost of the motorcycle is capital in nature, and no deduction will be available in terms of the provisions of the GDF.¹⁷²⁹

The second expense to consider is the cost of branding the motorcycles with the company logo and the uniforms the points persons are provided with. These uniforms are in the bright neon colours of the company and are readily identifiable as the company's precisely because the company's brand is so well known. The brand established over the years by the company is capital in nature because it creates a 'long enduring benefit'. The uniforms and logos on the motorcycles do not create a new asset that will ensure that new forms of income will be generated for the company. This cost is, therefore, an advertisement cost and the company could make a case that it is in the production of income closely linked to the core short-term insurance business (trade) and should be deductible in the calculation of taxable income. Both the purpose and the closeness tests are therefore satisfied.

The added benefit of the branded uniform is that the public will recognise the company as a good corporate citizen, also referred to as a socially responsible organisation; one that cares for the community and offers solutions for some of the daily general problems that the public has to deal with because the municipalities and government do not provide for them/do not provide solutions. When

¹⁷²⁸ Traffic Freeflow 2024 <https://www.trafficfreeflow.co.za/about-us/>.

¹⁷²⁹ If the company can prove that it is using the motorcycles for the purpose of its trade, then the cost of the motorcycles could be written off as a depreciation allowance in terms of s 11(e) over their useful life. Also refer to *Interpretation Note 47 (Issue 5)* of 9 February 2021.

considering a short-term insurance company, the public will probably remember the company's logo and consider its services because of the points persons and their daily service to the public.

The definition of 'trade' and the 'purpose' and 'closeness' to the income-earning operations or 'necessary concomitant' requirements of the 'in the production of income' requirement of the GDF make it unlikely that any portion of the expenditure relating to the wages of the points people, the fuel of the motorcycles, the cost of short courses and scholarships, etc. will be deductible for the company against its taxable income.

6.1.2.4.2 Farmers (public) fixing the country’s roads and other infrastructure

The Free State’s roads are disintegrating, becoming death traps rather than important arteries keeping our economy functioning. The situation is so bad that communities are now banding together to try and fix the provincial roads themselves just to avoid further carnage. But it's not just motorists that have been affected: as roads fall apart, farmers increasingly battle to get their grain to silos, hampering a key component of the Free State economy. The roads department has wasted millions on a contractor programme that has delivered little, but the new MEC for Police, Roads and Transport says he has a plan. Carte Blanche investigates.¹⁷³⁰

In April 2024 South African farmers voiced their "frustration over dilapidated roads, railways, and water systems, jeopardising agricultural productivity and livelihoods"¹⁷³¹ even though the South African government had allocated about R2.1 billion for infrastructure projects in the 2024/2025 financial year.¹⁷³²

For many weeks a farmer of the Eastern Cape Province reported that part of the DR1727 road to Gqeberha had been washed away after the area experienced heavy rainfall. The road was used mainly by farmers, and at that stage it was inaccessible even for use by 4x4 vehicles and trucks. For five weeks he had to listen to promises made by the local councillors of the Department of Transport. Mr Du Pisani reported that he could not wait any more and took it upon himself to fix the road at his own

¹⁷³⁰ Carte Balance 2022 <https://www.dstv.com/m-net/en-za/show/carte-blanche/season/37/videos/free-state-death-traps/video>.
¹⁷³¹ Mncwango [foodformzansi.co.za](https://www.foodformzansi.co.za) <https://www.foodformzansi.co.za/fix-failing-infrastructure-demands-farmers/#>.
¹⁷³² Mncwango [foodformzansi.co.za](https://www.foodformzansi.co.za) <https://www.foodformzansi.co.za/fix-failing-infrastructure-demands-farmers/#>.

cost because he had to go to Gqeberha to pick up a tractor.¹⁷³³ He also admitted that it was not the first time this had happened. He could not even say how many hours and how much money he had spent fixing provincial roads over the years.¹⁷³⁴

A well-known chemical and energy company also got involved in fixing and upgrading roads in the surrounding communities and provincial roads. The objective was to make a "meaningful impact on the lives of people living in its fence-line communities."¹⁷³⁵ Over a period of one year the company invested more than R8 million in various road infrastructure projects.¹⁷³⁶ For related road safety projects, the company sub-contracted "black female-owned companies", further contributing to the "economic upliftment of female-run businesses."¹⁷³⁷

A small firm of attorneys (with ten employees) in the same town as the well-known chemical and energy company is located near a busy intersection with an island and a pedestrian crossing. Apart from the potholes, the road signs painted on the road surface had faded and become almost invisible over the years, and the stop sign had been knocked down. The attorneys obtained permission to replace the stop sign and paint the signs on the road surface at their own cost. The employees decided to 'adopt' the island, beautify it with plants, and subsequently maintain it. The cost of fixing the potholes, painting the road signs etc. during the current financial year amounted to R10 000.

In determining whether each of the taxpayers/companies will be able to deduct the expenses incurred relating to the road repairs and other related CSI expenditures in terms of the GDF, the purpose of incurring the expenditure should be considered and the closeness to the income-earning operations of the taxpayer/company.

¹⁷³³ It should be noted that Mr Du Pisani contacted the relevant authorities to obtain the necessary permission, which would allow him to fix the road legally. Even with the help of the local DA branch, obtaining the requested permission was impossible.

¹⁷³⁴ Dorfling *Netwerk24* <https://www.netwerk24.com/netwerk24/nuus/aktueel/raadop-willomere-boer-herstel-self-provinsiale-grondpad-20231130>.

¹⁷³⁵ Staff writer *Vaal Weekblad* <https://www.citizen.co.za/vaalweekblad/news/2022/08/24/sasol-invests-r3-million-to-fix-the-r57/>.

¹⁷³⁶ Staff writer *Vaal Weekblad* <https://www.citizen.co.za/vaalweekblad/news/2022/08/24/sasol-invests-r3-million-to-fix-the-r57/>.

¹⁷³⁷ Staff writer *Vaal Weekblad* <https://www.citizen.co.za/vaalweekblad/news/2022/08/24/sasol-invests-r3-million-to-fix-the-r57/>.

This farmer, Mr Du Pisani, like many other farmers, will probably be able to motivate that there is a close link between the expenses incurred in repairing the roads and his farming operations, because if the roads were not repaired he would not be able to deliver his produce to the market or fetch the tractor he needs for his farming operations. The expense was therefore a necessary concomitant of the income-earning operations and deductible in terms of the GDF from taxable income, meeting the closeness and purpose requirements.

As in the case study of the well-known short-term insurance company, none of the CSIE incurred by the firm of attorneys for being a socially responsible citizen, ensuring that the road safety conditions were improved for the benefit of the community, will be deductible in terms of the GDF in determining the taxable income because these expenses were not incurred 'in the production of income'. There is no close connection with the trade of being a law firm.

The public expects large companies to be socially responsible. The well-known chemical and energy company fulfilled its responsibility regarding CSR and what is expected of it in this case. It could be said that it acted like a good corporate citizen. Unfortunately, regarding the provisions of the GDF this company will be in the same position as the law firm and the short-term insurance company unless it can convince SARS that at least a portion of the expense should be deductible because the conditions of the roads negatively impacted on its business operations. The company should be able to reason that there is a close enough link between the expense and its income-earning operations.

In the next paragraph it will be demonstrated that because this company will probably be a Level 1 *B-BBEE* company, the *B-BBEE* scorecard points might play a conclusive role in this debate.

6.1.3 Binding rulings on CSIE — B-BBEE scorecard

Paragraph 6.1.2 considered the deductibility of CSIE in general in terms of the provisions of the GDF. It was illustrated that CSIE will not be deductible against the company's taxable income because it is difficult to prove that the company incurred CSIE while carrying on a trade and in the production of income.

Since 2003 SARS has issued several 'Binding General Rulings' (BGR),¹⁷³⁸ 'Binding Private Rulings' (BPR)¹⁷³⁹ and 'Binding Class Rulings' (BCR)¹⁷⁴⁰ regarding the deductibility of social responsibility expenditure. Binding rulings (like interpretation notes) are not legislation. The BPRs and BCRs have the sole purpose of clarifying to the requesting taxpayer how SARS interprets specific legislation and how it will apply the legislation to a particular "transaction, person or item of property."¹⁷⁴¹ BGRs generally apply to all taxpayers. BCRs and BPRs will typically relate to a specific set of facts provided to SARS by the taxpayer, requesting a ruling.

SARS has issued three binding rulings which concern CSI activities and related CSIE and its deductibility in terms of the GDF. Two will be discussed.¹⁷⁴² None of these were general rulings (BGRs) and they can therefore not be used as a general interpretation of the applicability of related legislation. Furthermore, the periods in which these rulings were valid have lapsed. Still, a discussion of the rulings is essential as they give insight into the factors SARS will consider for allowing CSIE as a deduction against the company's taxable income. The binding rules issued will be discussed in short.

¹⁷³⁸ "A Binding General Ruling (BGR) is issued on matters of general interest or importance and clarifies the Commissioner's application or interpretation of the tax law relating to these matters." (SARS date unknown [https://www.sars.gov.za/legal-counsel/interpretation-rulings/published-binding-rulings/binding-general-rulings-bgrs/#:~:text=A%20Binding%20General%20Ruling%20\(BGR,through%20the%20navigation%20pane%20above\).](https://www.sars.gov.za/legal-counsel/interpretation-rulings/published-binding-rulings/binding-general-rulings-bgrs/#:~:text=A%20Binding%20General%20Ruling%20(BGR,through%20the%20navigation%20pane%20above).))

¹⁷³⁹ "A Binding Private Ruling (BPR) is issued in response to an application and clarifies how the Commissioner would interpret and apply the provisions of the tax laws relating to a specific proposed transaction." (SARS date unknown [https://www.sars.gov.za/legal-counsel/interpretation-rulings/published-binding-rulings/binding-private-rulings-bprs/#:~:text=A%20Binding%20Private%20Ruling%20\(BPR,to%20a%20specific%20proposed%20transaction\).](https://www.sars.gov.za/legal-counsel/interpretation-rulings/published-binding-rulings/binding-private-rulings-bprs/#:~:text=A%20Binding%20Private%20Ruling%20(BPR,to%20a%20specific%20proposed%20transaction).))

¹⁷⁴⁰ "A Binding Class Ruling (BCR) is issued in response to an application and clarifies how the Commission would interpret and apply the provisions of the tax laws relating to a specific proposed transaction." (SARS date unknown [https://www.sars.gov.za/legal-counsel/interpretation-rulings/published-binding-rulings/binding-class-rulings-bcrs/#:~:text=A%20Binding%20Class%20Ruling%20\(BCR,to%20a%20specific%20proposed%20transaction\).](https://www.sars.gov.za/legal-counsel/interpretation-rulings/published-binding-rulings/binding-class-rulings-bcrs/#:~:text=A%20Binding%20Class%20Ruling%20(BCR,to%20a%20specific%20proposed%20transaction).))

¹⁷⁴¹ Refer to the previous three footnotes.

¹⁷⁴² The third ruling, Binding Class Ruling: BCR 072 of 7 August 2020, relates to the "deductibility of employment related expenditure incurred as part of a *B-BBEE* ownership transaction, and the PAYE treatment of interest-free loans to a share trust." The other two binding rulings also relate to *B-BBEE* legislation, but the expense incurred was for the benefit of the greater society, not only employees. It is easier to motivate those expenses incentivising employees will meet the GDF criteria, especially the closely connected to 'income-earning operations' requirement of 'in the production of the income' criteria. Fifty per cent of the cost of this scheme was not of a capital nature and deductible in terms of the GDF and s 23H(1).

6.1.3.1 BCR 002 — "Expenditure Incurred on Corporate Social Investment Programmes"

The Binding Class Ruling: BCR 002 was published by SARS on 12 May 2009.¹⁷⁴³ The facts in the application were as follows. In line with the *B-BBEE* legislation and the minimum requirements of the socio-economic development category of the *B-BBEE* Codes of Good Practice (the *B-BBEE* Code), the board of the company/taxpayer decided to change its existing CSI programmes to meet the *B-BBEE* scorecard requirements. Bursaries to pay school/tertiary education fees would have been made available to recipients from "underprivileged backgrounds."¹⁷⁴⁴ A minimum of 1 per cent of net profit after tax would be spent on this initiative. The 1 per cent amount would be the CSI programme cost.¹⁷⁴⁵

Two conditions were applicable, namely that the subsidiary company claiming the deduction in terms of section 11(a) should have been carrying on a trade during the respective financial year and should have incurred the expense (CSIE) "for the purposes of its own BEE-rating"¹⁷⁴⁶ and not that of the whole group.¹⁷⁴⁷

SARS ruled that the company may deduct these CSIE expenses (the bursary cost incurred to earn *B-BBEE* scorecard points) under section 11(a) against its taxable income. The ruling was valid only until 27 August 2013.¹⁷⁴⁸

The ruling did not mention how this expense met the production of income requirement. It is deduced that since the applicants obtained the ruling the provisions of the GDF do not have to be tested.

As a matter of speculations: It is assumed that the applicants respectively wanted to pursue the opportunity to obtain government contracts. To do so they would have to meet the *B-BBEE* legislation requirements. If that happened to be the case, it could be reasoned that there was a close enough link between the expense and the opportunity to generate income (in terms of the production of income criterion).

¹⁷⁴³ Binding Class Ruling: BCR 002 of 12 May 2009 (BCR 002).

¹⁷⁴⁴ One per cent is the minimum prescribed by the legislation and the Code. See BCR 002 1-2.

¹⁷⁴⁵ BCR 002 1-2.

¹⁷⁴⁶ BCR 002 2.

¹⁷⁴⁷ BCR 002 2.

¹⁷⁴⁸ BCR 002 2-3.

It is deduced that the purpose of the CSIE will play the determining role in similar scenarios.¹⁷⁴⁹ The opinion is held that because this is a statutorily imposed obligation, the taxpayer is supposed to be able to deduct these expenses, irrespective of whether or not a binding ruling was obtained.¹⁷⁵⁰

6.1.3.2 BPR 113 — "Expenditure Associated with Broad-Based Black Economic Empowerment"

On 15 March 2012 Binding Private Ruling: BPR 113 was published.¹⁷⁵¹ The facts considered in this case are similar to those of BCR 002, thus relating to the *B-BBEE* Code scorecard points. The taxpayer wanted to implement an Equity Equivalent programme¹⁷⁵² to address the black ownership requirement of the *B-BBEE* Code scorecard. The scheme was registered and approved by the DTI, which would ensure the taxpayer obtained the full 25 *B-BBEE* scorecard points and would be able to "conduct business in the South African environment."¹⁷⁵³

The BPR provided that the taxpayer would be able to deduct the investment cost incurred (in the form of reimbursed claims for expenditure incurred by the *B-BBEE*-

¹⁷⁴⁹ A tax specialist of *The Tax Faculty* raised the same argument. The company wanted to grant bursaries to the general public and questioned whether it would be allowed a deduction for the full cost of the bursaries paid. The belief is that it would be deductible, because "all expenses attached to the performance of a business operation *bona fide* performed for the purpose of earning income are deductible whether such expenses are necessary for its performance or attached to it by chance or are *bona fide* incurred for the more efficient performance of such operation provided they are so closely connected with it that they may be regarded as part of the cost of performing it." (Staff writer 2021 <https://taxfaculty.ac.za/news/read/faq-income-tax-deduction-with-regards-to-bursaries>.)

¹⁷⁵⁰ This opinion is supported by the view expressed by Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 89.

¹⁷⁵¹ Binding Private Ruling: BPR 113 of 15 March 2012.

¹⁷⁵² "Equity Equivalent would entail a public programme/scheme and/or private programme/scheme designed to fulfil the requirements of *B-BBEE* ownership. Equity Equivalent may also entail a programme targeting investment or any other programme that promotes Socio-Economic advancement/ development within the South African Economy." These programmes will usually be introduced by "Multinationals that have global practices preventing them from complying with the ownership element of *B-BBEE* through the traditional sale of shares to black South Africans." (Department: Trade, Industry and Competition date unknown <https://www.thedtic.gov.za/financial-and-non-financial-support/B-BBEE/equity-equivalent-programme/#:~:text=The%20economic%20impact%20of%20the,and%20the%20South%20African%20economy>).

¹⁷⁵³ BPR 113 1-2.

approved vendors)¹⁷⁵⁴ in terms of the provisions of the GDF. The expenditure would spread over seven years and be apportioned in section 23H of the *ITA(SA)*.¹⁷⁵⁵

This binding rule would have lapsed at the beginning of August 2018.

Again, SARS did not provide any details on how it had decided that all the criteria of the GDF had been met. This binding ruling and BCR 002 indicate that SARS will probably allow deductions relating to expenses incurred to obtain the necessary *B-BBEE* scorecard points. The opinion is held that, whether the taxpayer obtained a binding ruling or not, these expenses are supposed to be deductible under the provisions of the GDF because the taxpayer is adhering to statutorily imposed obligations.

6.1.3.3 Conclusion – CSIE incurred in adhering to *B-BBEE* legislative requirements

The socio-economic development focal area is one of the B-BBEE focal areas widely promoted by advisors regarding B-BBEE compliance.¹⁷⁵⁶ These CSIEs incurred by a company will not relate to normal day-to-day business operations. These initiatives focus on the upliftment of marginalised communities. The Government Gazette of 11 October 2013¹⁷⁵⁷ defined and explained the meaning of "Socio-Economic Development Contributions" concerning the *B-BBEE* legislation, the *B-BBEE* Code and the related *B-BBEE* scorecards.¹⁷⁵⁸ These contributions can be either in cash or in kind.¹⁷⁵⁹ The target is that at least 75 per cent of the beneficiaries should be black. The list provided is a 'non-exhaustive list' published in the Gazette:

¹⁷⁵⁴ The applicant taxpayer would invest 4 per cent of its annual turnover into a minimum of five black-owned and -managed independent vendors. The taxpayer will reimburse the vendor for expenses incurred relating to "infrastructure, recruitment and employment of black graduates, relevant sales and marketing, software development, training and skills development, travelling and other external services that will include but will not be limited to legal, accounting, tax, advertising, public relations and management consulting expenditure." (BPR 113 2).

¹⁷⁵⁵ Section 23H of the *ITA(SA)* relates to expenditures paid upfront (or the so-called pre-paid expenditure) and how the apportionment should be done for the respective years of assessment. A discussion of this section does not fall within the ambit of this research study.

¹⁷⁵⁶ It should be noted that an in-depth discussion of the meaning of Socio-Economic Development Contributions in relation to the *B-BBEE* legislation (including the *B-BBEE* Code and *B-BBEE* scorecard) falls outside the scope of this study. The information provided serves as background for the case study and the binding rulings discussed above.

¹⁷⁵⁷ GG 36928 of 11 October 2013.

¹⁷⁵⁸ GG 36928 of 11 October 2013 85.

¹⁷⁵⁹ GG 36928 of 11 October 2013 85.

1. grant Contributions to beneficiaries of Socio-Economic Development Contributions;
2. guarantees given or securities provided for beneficiaries;
3. direct cost incurred by a Measured Entity in assisting beneficiaries;
4. overhead costs of a Measured Entity directly attributed to Socio Economic Development Contributions;
5. development capital advanced to beneficiary communities;
6. preferential terms granted by a Measured Entity for its supply of goods or services to beneficiary communities;
7. payments made by the Measured Entity to third parties to perform socio-economic development on the Measured Entity's behalf;
8. ... provision of training or mentoring to beneficiary communities which will assist them to increase their financial capacity; and
9. ... the maintenance by the Measured Entity of a socio-economic development unit which focuses only on support of beneficiaries and beneficiary communities.¹⁷⁶⁰

The activities/contributions listed are broad, and the opinion is held that most projects relating to the upliftment of the beneficiary group, a change in their living conditions and/or an economic/financial situation, for example, would qualify as 'socio-economic development' under the *B-BBEE* legislation.

This section concludes with the following example. Over a period of 18 to 24 months a well-known short-term insurance company committed itself to financial support of R55 million through an Enterprise and Supplier Development Fund.¹⁷⁶¹ The money was used as grants and loans for its suppliers, of which over 90 per cent are black-owned EMEs (exempted micro-enterprises). These suppliers included small businesses such as artisans, builders, electricians, panel beaters and plumbers. The money was utilised in conjunction with specialist interventions, mentorships and skills transfer projects (such as financial management and customer care short courses) to develop and grow the businesses of these suppliers. The added economic growth factor of job creation was observed. Although the company did not expressly market it as a strategic *B-BBEE* programme, it did indicate that the

¹⁷⁶⁰ GG 36928 of 11 October 2013 85-86; Derfoldy summarised this list as "Grant Contributions, Offering Discounts; Covering overheads or direct costs; Providing professional services at no cost; Providing professional services at a discounted rate" (Derfoldy 2019 <https://beeratings.com/socio-economic-development/>).

¹⁷⁶¹ The objective with 'Enterprise and Supplier Development' (ESD) projects is "to promote a conducive environment for creation of sustainable partnerships between Corporate South Africa and black entrepreneurs to enable access and transformation of the value chains." The basis of these programmes is vested in the *B-BBEE* legislation and the *B-BBEE* Code. See SME South Africa 2024 <https://smesouthafrica.co.za/sme-guides/everything-you-need-to-know-about-enterprise-and-supplier-development/>.

"success of the programme was determined by a business's ability to achieve increased turnover, acquire additional clients and improve CSI scores" and therefore also to better its own *B-BBEE* score.¹⁷⁶²

Many reasons may exist why a company would pursue the object of obtaining *B-BBEE* scorecard points, while there is no direct legal obligation for any company in the private sector to comply with the *B-BBEE* legislation.¹⁷⁶³ Firstly, the bigger companies (in size) are incentivised to work with smaller *B-BBEE* compliant companies (organisations), as this will increase the bigger company's *B-BBEE* compliance score/rating.¹⁷⁶⁴ Secondly, if a company would like to tender for government projects, or apply for licences or concessions, or want to become a party to a PPP contract, the *B-BBEE* compliant rating (*B-BBEE* scorecard points) matters. The higher the *B-BBEE* score, the better the possibility of securing a government contract.¹⁷⁶⁵

If the discussion of BCR 002 and BPR 113 is considered, it can be deduced that the CSIE incurred to meet the *B-BBEE* compliance status (*B-BBEE* scorecard points), will be allowed as a deduction against the company's taxable income. That said, the company will need to prove that the cost was incurred to obtain the *B-BBEE* scorecard points. If it succeeds in doing so, the company should be able to prove that the cost incurred directly relates to its income-earning operations since the scorecard status allows the taxpayer some additional privileges regarding doing

¹⁷⁶² Kwande date unknown <https://www.outsurance.co.za/about-outsurance/enterprise-and-supplier-development/>.

¹⁷⁶³ Baker McKenzie *Guide to Broad-Based Black Economic Empowerment* 2; It should be noted that micro enterprises (with an annual turnover of less than R10 million) are exempt from being compliant. These companies will start off with a *B-BBEE* score of 100 per cent. But if the company is fully black owned, the score will go up to 135 per cent. See Edgetraining *BBBEE Explained: A Guideline for Business Owners in South Africa* 4, 5; for further information refer to Department: Trade, Industry and Competition date unknown <https://www.thedtic.gov.za/financial-and-non-financial-support/B-BBEE/B-BBEE-procurement-transformation-verification/>; Bowmans *Guide1 – B-BBEE in South Africa: An Overview*.

¹⁷⁶⁴ Edgetraining *BBBEE Explained: A Guideline for Business Owners in South Africa* 4.

¹⁷⁶⁵ The *Preferential Procurement Policy Framework Act* 5 of 2000 was amended in 2006 to be aligned with the *B-BBEE* Code and in general advance *B-BBEE*. "The current Preferential Procurement Regulations stipulates the 80/20 preference point system for the procurement of goods and services with a rand value of R1 million, and a 90/10 preference point system for the procurement of goods and services with a rand value of above R1 million, to strengthen the contribution of small, medium and micro-sized enterprises (SMMEs)" (Department: Trade, Industry and Competition date unknown <https://www.thedtic.gov.za/financial-and-non-financial-support/B-BBEE/B-BBEE-procurement-transformation-verification/>).

business in South Africa, especially with the government.¹⁷⁶⁶ However, at this stage it seems that it would be better to obtain a BPR to be on the safe side.

The question remains whether the same will apply to CSIE incurred if it is not linked to the *B-BBEE* scorecard points.

6.1.4 Other sections of the ITA(SA) allowing specific deductions which can provide some guidance on the deductibility of specific CSIE

Some scholars divide tax incentives into two broad groups: general and *selective*.¹⁷⁶⁷ The term 'general tax incentives' implies that the incentives are available to all taxpayers or that a reduced tax rate applies, for example, to all companies. According to Calitz, Wallace and Burrows¹⁷⁶⁸ "[s]elective investment tax incentives are defined as a selective deviation from the benchmark tax." In such cases companies operating, for example, in a special economic zone (SEZ) might be assessed at a lower marginal tax rate. In South Africa qualifying companies operating in such SEZ will be paying tax at a rate of 15 per cent compared to the current CIT rate of 27 per cent.¹⁷⁶⁹ Another example will be where the standard provisions available to all companies regarding the depreciation of assets are changed/altered to benefit specific groups of companies or companies operating in an SEZ.¹⁷⁷⁰ Section 12S of the *ITA(SA)* provides a special depreciation dispensation regarding buildings in a SEZ. The qualifying company will, for example, be allowed to deduct 10 per cent of the cost of any new and unused building, compared to section 13 of the *ITA(SA)*, which under general circumstances allows only an annual 2 per cent depreciation.¹⁷⁷¹

¹⁷⁶⁶ Anon 2022 <https://www.labournet.com/does-my-company-really-need-to-be-B-BBEE-compliant/>.

¹⁷⁶⁷ Calitz, Wallace and Burrows *The Impact of Tax Incentives to Stimulate Investment in South Africa* 5.

¹⁷⁶⁸ Calitz, Wallace and Burrows *The Impact of Tax Incentives to Stimulate Investment in South Africa* 5.

¹⁷⁶⁹ SARS date unknown <https://www.sars.gov.za/wp-content/uploads/Ops/Brochure/LAPD-IT-G28a-Brochure-on-the-Special-Economic-Zone-Tax-Incentive.pdf>. For the provisions regarding SEZs in South Africa, and the requirements for a company to qualify for the benefits, refer to s 12R of the *ITA(SA)*.

¹⁷⁷⁰ Calitz, Wallace and Burrows *The Impact of Tax Incentives to Stimulate Investment in South Africa* 5.

¹⁷⁷¹ For further reading refer to ss 12R, 12S and 13 of the *ITA(SA)*.

Sebele-Mpofu, Gomera and Sibanda¹⁷⁷² group tax incentives as either 'cost based' or 'profit based'¹⁷⁷³ incentives. Cost based incentives will reduce the company's taxable income by providing "accelerated depreciation or capital allowances and investment allowances"¹⁷⁷⁴ amongst other things, and typically link to expenditure of a capital nature.

There are no universal definitions of tax incentives.¹⁷⁷⁵ They typically include "investment tax credits and other preferential treatments and advantageous tax computations" and "tax holidays, credits, investment allowances, exemptions, allowable deductions and other special [reduced] tax rates as well as postponement of tax liability."¹⁷⁷⁶ Specific tax incentives are often linked to Special Economic Zones (SEZs). South Africa is one of many countries that provide different tax incentives to resident and (to some extent) non-resident companies.¹⁷⁷⁷

The previous two paragraphs critically discussed the provisions of s 11(a) read with s 23(g), and sections 18A and 30 read with the Ninth Schedule, to determine to what extent CSIE will be deductible by a company in terms of these sections. The same will be done for the remaining sections listed in Table 6-1. All of the remaining sections have to do with specific deductions and mainly resort to the cost-based tax incentive group. These sections will be critically discussed in the context of CSIE, which relates for example to the 'environment' and 'society at large' elements of Preston's Integrated Sustainable CSR Model.¹⁷⁷⁸ Solar energy expenditure and funding can serve as an example. These expenses are typically capital in nature and

¹⁷⁷² Sebele-Mpofu, Gomera and Sibanda 2022 *Journal of Accounting, Finance and Auditing Studies* 95-96.

¹⁷⁷³ "Profit based" incentives usually relate to the tax imposed on the company's profit. These will include, amongst other types, measures "that minimise the tax rate or taxable income or fully or partially waive the tax liability", such as tax credits and tax holidays. Sebele-Mpofu, Gomera and Sibanda 2022 *Journal of Accounting, Finance and Auditing Studies* 95-96.

¹⁷⁷⁴ Sebele-Mpofu, Gomera and Sibanda 2022 *Journal of Accounting, Finance and Auditing Studies* 95-96.

¹⁷⁷⁵ For a summary of the definitions proposed (for tax incentives as a concept) by different scholars refer to Sebele-Mpofu, Gomera and Sibanda 2022 *Journal of Accounting, Finance and Auditing Studies* 96.

¹⁷⁷⁶ Sebele-Mpofu, Gomera and Sibanda 2022 *Journal of Accounting, Finance and Auditing Studies* 95.

¹⁷⁷⁷ Sebele-Mpofu, Gomera and Sibanda 2022 *Journal of Accounting, Finance and Auditing Studies* 95; OECD *Taxation and Philanthropy* 77.

¹⁷⁷⁸ Refer to Paragraph 2.4.2.2.

would therefore not qualify for a deduction under the previous heading of general deductions.

6.1.4.1 Sections 12B(1)(h), 12BA and 12U — renewable energy capital allowance deductions

South Africa is a party to the United Nations Framework Convention on Climate Change.¹⁷⁷⁹ The South African government has introduced tax incentives, amongst other mechanisms, to encourage investment in wind power, solar energy, hydropower and biomass made up of organic waste, landfill gas or plant material.¹⁷⁸⁰

Unfortunately, again, the deductions allowed under these sections, for the capital expenses incurred by the company have to be incurred for trade purposes. For a company to qualify for a section 12U of the *ITA(SA)* deduction, a further qualification requirement was added to the trade requirement, and that is that the company "has to be conducting a trade of generation of electricity"¹⁷⁸¹ which exceeds 5 megawatts from any of the listed renewable energy sources.¹⁷⁸² In the case of hydropower, the outset should not exceed 30 megawatts.¹⁷⁸³

Before the discussion of sections 12B and 12BA of the *ITA(SA)* is undertaken, it should be noted that the company can claim an allowance only under either of the two sections, only with regard to the same asset, and only during the two years that the section 12BA allowance is available.¹⁷⁸⁴

¹⁷⁷⁹ Centre for Environmental Rights 2024 <https://cer.org.za/virtual-library/legislation/international-instruments/united-nations-framework-convention-on-climate-change-1992#:~:text=The%20United%20Nations%20Framework%20Convention,a%20Non%2DAnnex%20I%20country.>

¹⁷⁸⁰ *Draft Explanatory Memorandum of the Draft Taxation Laws Amendment Bill, 2023* of 31 July 2023 1-2; Ss 12B(1)(h)(i) to (iv); Ss 12BA(1)(a) to (e); S 12U(1)(a); all sections relate to the *ITA(SA)*.

¹⁷⁸¹ *Draft Explanatory Memorandum of the Draft Taxation Laws Amendment Bill, 2023* of 31 July 2023 13.

¹⁷⁸² Section 12U(a) of the *ITA(SA)*.

¹⁷⁸³ Section 12U(a)(iii) of the *ITA(SA)*.

¹⁷⁸⁴ *Frequently Asked Questions: Enhanced Renewable Energy Incentive for Businesses* of 25 October 2023 3-4; *Draft Explanatory Memorandum of the Draft Taxation Laws Amendment Bill, 2023* of 31 July 2023 27; for the reason that s 12BA allows for a once-off 125 per cent allowance to be deducted (refer to the discussion of section 12BA), it would be advised that if the asset is new and unused and brought into use for the first time, that the taxpayer makes use of this tax benefit. S 12 allows for a total 100 per cent deduction over a period of three years. Refer to the discussion on s 12B of the *ITA(SA)*; For a comprehensive guide refer to *Draft Guide on the*

Section 12BA only applies to "new and unused machinery, plant, implement, utensil, or article owned by the taxpayer or acquired by the taxpayer"¹⁷⁸⁵ through an instalment credit agreement and used in its trade to generate electricity using one of the listed renewable energy sources.¹⁷⁸⁶ These capital assets should have been brought into use for the first time between 1 March 2023 and 1 March 2025.¹⁷⁸⁷ If the requirements are met, then the qualifying company would be allowed to deduct a once-off 125 per cent of the cost (in the year the asset was brought into use).¹⁷⁸⁸ It is important to note that this section does not limit the power-generating capacity of the plant, compared to section 12U(a)(iii).

The requirements for section 12B differ from those of section 12BA. As with section 12U, the hydropower plant must have a limit of 30 megawatts of generating capacity.¹⁷⁸⁹ These sections (12B and 12BA) also differentiate between photovoltaic solar energy of more or less than 1 megawatt.¹⁷⁹⁰ The last and substantial difference between the provisions of the two sections lies in the fact that section 12B does not require the asset to be new and unused. The only requirement is that it must have been used for the first time by the taxpayer/company.¹⁷⁹¹ The cost will be written off over a period of three years at a rate of 50 per cent in the first year, 30 per cent in the second year and 20 per cent in the last year.¹⁷⁹² If the asset consists of a "photovoltaic solar energy not exceeding 1 megawatt" ("machinery, plant, implement, utensil or article"), the company will be permitted a capital allowance deduction of 100 per cent in the first year that the asset was brought into operation.¹⁷⁹³

Section 12U is closely linked with the activities described in sections 12B and 12BA and was introduced to assist the taxpayer with the additional costs relating to the

Allowances and Deductions Relating to Assets Used in the Generation of Electricity from Specified Sources of Renewable Energy of 30 July 2024.

¹⁷⁸⁵ Section 12BA(1) of the *ITA(SA)*.

¹⁷⁸⁶ Section 12BA(1) of the *ITA(SA)*.

¹⁷⁸⁷ Section 12BA(2) of the *ITA(SA)*; to determine the cost, the provisions of ss 12BA(1)(i), (ii) and (3) should be noted.

¹⁷⁸⁸ Section 12BA(3) of the *ITA(SA)*; also refer to s 12B(3) of the *ITA(SA)*.

¹⁷⁸⁹ Section 12B(h)(iii) of the *ITA(SA)*.

¹⁷⁹⁰ Section 12B(h)(ii)(aa) and (bb) of the *ITA(SA)*.

¹⁷⁹¹ Section 12B(h) of the *ITA(SA)*.

¹⁷⁹² Section 12B(2)(a) of the *ITA(SA)*.

¹⁷⁹³ Section 12B(2)(b) read with s 12B(h)((ii)(bb) of the *ITA(SA)*.

supporting capital infrastructure such as roads, the erecting of fences and related supporting structures, part of large-scale renewable energy plants and projects.¹⁷⁹⁴ A 100 per cent deduction will be allowed for improvements but not repairs in the year the expense was incurred.¹⁷⁹⁵

As mentioned at the beginning of this discussion, the provisions of these sections indicate that the allowances will be available only if the expenses related to the trade of the company and not if the company, for example, supplied the local police station with a photovoltaic solar energy system to ensure that they would be able to function all 24 hours of the day and provide the community with the services it needs. CSIE of this (capital) nature external to the normal trade/business operations will therefore not qualify for the tax incentive intended to incentivise businesses to invest in renewable energy.

6.1.4.2 Section 12L — energy efficiency savings deduction

Like sections 12B and 12BA discussed above, the government introduced the section 12L incentive to address some of the challenges of climate change. The hope was that this would encourage taxpayers to invest in more energy-efficient technology.¹⁷⁹⁶ The benefit became effective from 1 November 2013 and applies to all years of assessments on or after 1 March 2015.¹⁷⁹⁷ At this stage the benefit will lapse on 31 December 2025.¹⁷⁹⁸

The section 12L deduction relates to the energy efficiency savings resulting from changes that affected the income-producing activities of the company. The energy saving will be determined over the whole year of assessment and from "the baseline

¹⁷⁹⁴ *Draft Guide on the Allowances and Deductions Relating to Assets Used in the Generation of Electricity from Specified Sources of Renewable Energy* of 30 July 2024 2, 20; Wilcocks "Capital Allowances and Recoupments" 483.

¹⁷⁹⁵ *Draft Guide on the Allowances and Deductions Relating to Assets Used in the Generation of Electricity from Specified Sources of Renewable Energy* of 30 July 2024 2, 20; Wilcocks "Capital Allowances and Recoupments" 483.

¹⁷⁹⁶ *Draft Guide on the Allowances and Deductions Relating to Assets Used in the Generation of Electricity from Specified Sources of Renewable Energy* of 30 July 2024 24; Wilcocks "Capital Allowances and Recoupments" 482; *Interpretation Note 95* of 4 July 2024 2-3; it should be noted that the provisions of section 12L are available to all "person[s]" as defined in s 1(1) of the ITA(SA).

¹⁷⁹⁷ *Interpretation Note 95* of 4 July 2024 3.

¹⁷⁹⁸ Section 12L(1) of the ITA(SA).

at the beginning of the year of assessment."¹⁷⁹⁹ A qualified person will issue a certificate and the savings will be expressed in kilowatt hours.¹⁸⁰⁰

The allowable deduction will be calculated at a rate of R0.95 multiplied by the number of kilowatt hours of energy savings indicated on the certificate.¹⁸⁰¹

The detail provided in the interpretation note regarding the procedure which should be followed and the requirements the company should comply with yearly is notable. These procedures will not be discussed in detail but it is important to summarise them briefly. Firstly, part 2 of the regulations under section 12L¹⁸⁰² requires a company that wishes to use this benefit to register with the South African National Energy Development Institute (SANEDI). The company will then appoint a verification professional member of an accredited measurement and verification body. At the end of the year this professional will compile a report, which will be submitted to SANEDI. Once SANEDI receives the report, it will be considered by a panel, and once it is approved the Institute will issue the certificate.¹⁸⁰³ It is assumed that the certificate will be submitted with the financial statements when the annual tax return is filed.

The significance of this information is that the details in the regulations are reminiscent of what was observed in the regulations related to sections 35CCC and 35CCD of the *ITA(IND)*.

The application of this *ITA(SA)* section is very limited and currently applicable only to a company making its manufacturing processes more energy efficient, for example. This section could potentially be expanded to incentivise CSIE, allowing, for example, for a project to be registered with SANEDI to replace the old appliances like the fridges, stoves and geysers of a deserving institution not registered as a PBO with new energy-efficient appliances. Once the required audit process is completed and the necessary certificates submitted, the company is allowed the

¹⁷⁹⁹ *Interpretation Note 95* of 4 July 2024 4, 11-12.

¹⁸⁰⁰ Section 12L(3) and (5) of the *ITA(SA)*; the Ministers of Finance, of Energy and of Trade and Industry provided the regulations and guidelines for issuing the certificates. Also refer to *Interpretation Note 95* of 4 July 2024.

¹⁸⁰¹ Section 12L(2) of the *ITA(SA)*; *Interpretation Note 95* of 4 July 2024 13.

¹⁸⁰² Annexure B of *Interpretation Note 95* of 4 July 2024 19.

¹⁸⁰³ *Interpretation Note 95* of 4 July 2024 14.

same amount of cost incurred (or preferably a better) as deduction against its taxable income. This will accelerate the drive to use less energy.

6.1.4.3 Section 37B — deductions relating to environmental waste disposal expenditure

While the previous two sections had a direct link with climate change, section 37B of the *ITA(SA)*, dealing with waste management, is also directly linked with climate change.¹⁸⁰⁴ Wilcocks¹⁸⁰⁵ states that section 37B-type expenses are often incurred because of "legal preconditions for operations".¹⁸⁰⁶

This statement and the wording of section 37B¹⁸⁰⁷ confirm that the cost incurred to acquire an "environmental treatment and recycling asset" or an "environmental waste disposal asset" will be deductible only if the asset is "utilised in the course of a taxpayer's [the company's] trade."¹⁸⁰⁸

The company should own the asset (or it can also be acquired through an instalment credit agreement).¹⁸⁰⁹ The following are two essential requirements that should be met before the company can deduct any allowance for the asset acquired. The asset should be new, unused and brought into use for the first time by the company.¹⁸¹⁰ If the asset is a "new and unused environmental **treatment and recycling asset**"¹⁸¹¹ and the other requirements are met, then the company will be allowed to deduct 40 per cent of the cost in the first year, and in the consecutive years 20 per

¹⁸⁰⁴ Ahead of the COP27 Climate Change Summit in November 2022, it was indicated that "[i]rrresponsible waste management contributes directly to climate change as waste decomposing in landfill sites produces carbon-based particles and methane gases. ... [O]ver 2 billion metric tons of solid waste [is] generated each year". (Don't Waste Group 2022 <https://dontwastegroup.com/waste-management-and-the-fight-against-climate-change/>).

¹⁸⁰⁵ Wilcocks "Capital Allowances and Recoupments" 484.

¹⁸⁰⁶ Wilcocks "Capital Allowances and Recoupments" 484; s 37B par (c) of the definition of "environmental waste disposal asset" specifically refers to other legislation enacted "for purposes of complying with measures that protect the environment."

¹⁸⁰⁷ Sections 37B(1), (4), (6) and (7) of the *ITA(SA)*.

¹⁸⁰⁸ Section 37B(1) of the *ITA(SA)* definitions; the assets will include, according to the definition of "environmental treatment and recycling asset", "any air, water, and solid waste treatment and recycling plant or pollution control and monitoring equipment"; according to the definition of "environmental waste disposal asset" the assets will include "any air, water, and solid waste disposal site, dam, dump, reservoir, or other structure of a similar nature, or any improvement thereto, if the structure is of a permanent nature."

¹⁸⁰⁹ Section 37B(2)(a) of the *ITA(SA)*.

¹⁸¹⁰ Section 37B(2) of the *ITA(SA)*.

¹⁸¹¹ Section 37B(2)(a) of the *ITA(SA)*; own emphasis.

cent each. If the asset is a "new and unused environmental **waste disposal asset**"¹⁸¹² and all the other requirements are met, then the company may deduct five per cent of the asset's cost for 20 successive years.

If it happens that the company is not trading any more or not conducting a business of the exact nature any more but is still compelled by law to incur expenditure "in respect of decommissioning, remediation or restoration arising from any trade previously carried on by that taxpayer" that "would otherwise have been allowed as a deduction in terms of section 11",¹⁸¹³ then the company would be allowed to deduct 100 per cent of that expenditure in calculating its taxable income.¹⁸¹⁴

Unfortunately, this section is not wide enough to make provision for CSI projects undertaken for the greater good and for the benefit of society at large because it specifically indicates that the expense should relate to a current or former trade. As previously suggested, this section should also be amended to make provision for CSI projects not linked to business operations, or new taxation legislation incentivising CSI should be considered.

6.1.4.4 Sections 37C and 37D — conservation of land for public good

The titles of the two sections, 37C and 37D might seem to suggest that they are the only sections thus far that closely link with CSIE as defined in Chapter 2 and discussed in the introduction of this chapter.

In 2022 the Wilderness Foundation published a fact sheet indicating that because of the 37D tax deduction, companies/entities could engage in national biodiversity stewardship efforts.¹⁸¹⁵ The result was that South Africa's protected areas have since

¹⁸¹² Section 37B(2)(b) of the *ITA(SA)*; own emphasis; on 16 October 2009 SARS released BPR 051 (which had lapsed on 3 March 2014). The document provided insight into the following: 1) in this case, "environmental expenditure" incurred by the taxpayer meant "decommissioning, restoration and remediation expenditure" to restore the environment because of harm done by his manufacturing operations. BPR 051 1-2.

¹⁸¹³ Section 37B(6)(b) of the *ITA(SA)*.

¹⁸¹⁴ Section 37B(6) of the *ITA(SA)*.

¹⁸¹⁵ Wilderness Foundation Africa 2022 <https://wildernessfoundation.co.za/wp-content/uploads/2022/07/37D-Fact-Sheet-FINAL.pdf>.

2015 grown by approximately 500,000 hectares of communal and private land through the declaration of additional nature reserves.¹⁸¹⁶

A taxpayer may in terms of the *National Environmental Management: Protected Areas Act (NEMPA)*¹⁸¹⁷ and the *National Environmental Management: Biodiversity Act (NEMBA)*¹⁸¹⁸ enter into an agreement with the government to conserve and maintain particular land owned by it for the public good and, in some cases, might forfeit the right to use the land for its own benefit.¹⁸¹⁹ These agreements are usually in terms of section 44 of *NEMBA* and for a minimum of five years.¹⁸²⁰ The taxpayer would generally utilise this land, or land in the immediate proximity of the land affected per the agreement, for the production of income.¹⁸²¹ All the expenses that the company incurred to conserve and maintain such land will be deductible, but only to the extent that it equals (and therefore does not exceed) the income derived from the trade carried out on such land or the land in the immediate proximity of the land affected by the agreement.¹⁸²² If the expenses exceed the income, the excess amount will be carried forward to the following year of assessment and will be deemed to have been incurred as expenses in the following year of assessment.¹⁸²³

In such cases where the company entered into the agreement in terms of either section 20, 23 or 28 of *NEMPA* for a minimum of 30 years to conserve and maintain a particular piece of land for the public good, section 37C(3) should be read with section 18A.¹⁸²⁴ On 15 February 2016 SARS released an updated version of BGR 24,¹⁸²⁵ explaining the link between these two sections and how the amount allowed as a deduction for the company would be calculated.

¹⁸¹⁶ Wilderness Foundation Africa 2022 <https://wildernessfoundation.co.za/wp-content/uploads/2022/07/37D-Fact-Sheet-FINAL.pdf>.

¹⁸¹⁷ 57 of 2003 (*NEMPA*); s 37C(1)(a) of the *ITA(SA)*.

¹⁸¹⁸ 10 of 2004 (*NEMBA*).

¹⁸¹⁹ Wilcocks "Capital Allowances and Recoupments" 485.

¹⁸²⁰ Section 44 of the *NEMBA* (biodiversity agreement); s 37C(1)(a) of the *ITA(SA)*.

¹⁸²¹ Section 37C(1)(b) of the *ITA(SA)*.

¹⁸²² Section 37C(1)(b) of the *ITA(SA)*.

¹⁸²³ Sections 37C(1), 2(a) and 2(b) of the *ITA(SA)*.

¹⁸²⁴ Sections 37C(3) of the *ITA(SA)*; ss 20, 23 and 28 of the *NEMPA*.

¹⁸²⁵ Binding General Ruling: BGR 024 (Issue 2) of 15 February 2016 (BGR024). No expiry date is set for this binding rule.

The deductible amount is "deemed to be a donation paid or transferred to the government for which a receipt has been issued under section 18A(2)."¹⁸²⁶ Considering the discussion of the provisions of section 18A above, it was indicated that section 18A(1) stipulates that the amount donated should have been actually paid. In contrast, section 37C(3) requires only that the expense should have been actually incurred (as in the provision of section 11(a)).¹⁸²⁷ Binding ruling BGR024 was issued because of uncertainty about whether a section 18A(2) receipt is indeed required for a section 37C(3) deduction. The ruling provides:

[F]or purposes of section 37C(3) deemed to be a donation, it will qualify for deduction notwithstanding the fact that a receipt as prescribed in section 18A(2) has not been issued.¹⁸²⁸

Unfortunately, these conservation and maintenance costs will be added to all other CP contributions made during the assessment year. The total will be limited to 10 per cent of taxable income because this expense will be deemed a section 18A donation. But at least this is one positive expansion of section 18A.

Section 37D, like section 37C(3), relates to an agreement entered into between the government and a taxpayer, where the land of the taxpayer is 'reserved' as "declared land" in terms of section 20 or 23 of *NEMPA*.¹⁸²⁹ The land affected by this agreement is usually declared a nature reserve or national park, and the agreement is endorsed against the title deed for a minimum of 99 years.¹⁸³⁰

The taxpayer will receive an allowance over 25 years to compensate for the cost of acquiring the land and the cost incurred on improvements (but exclusive of borrowing and finance costs). The cost reimbursement in this manner will not be lower than the market value or the municipal value of the 'declared land' at the date of the agreement.¹⁸³¹ The cost will be the actual expenditure. If the actual expenditure is less than the market or municipal value, then a special formula

¹⁸²⁶ Section 37C(3) of the *ITA(SA)*; BGR024 1.

¹⁸²⁷ BGR024 1-2.

¹⁸²⁸ BGR024 2.

¹⁸²⁹ Section 37D(1)(a) of the *ITA(SA)*.

¹⁸³⁰ Section 37D(1) of the *ITA(SA)*.

¹⁸³¹ Section 37D(2)(a) of the *ITA(SA)*.

prescribed in section 2(b) will be applied to adjust the cost upwards.¹⁸³² The cost or the amount calculated with the prescribed special formula will be multiplied annually by four per cent to determine the amount deductible from taxable income.

It can be argued that the provision of this legislation allows a taxpayer to do environmental harm and then get rewarded for trying to mitigate the harm done.

BPR 404¹⁸³³ (concerning sections 37C and 37D) is a private ruling and therefore not generally applicable, but it still serves as a good example of the application of these sections. The ruling was published on 15 July 2024. The particular taxpayer wanted to expand its operation and would in the process destroy existing wetlands. To mitigate the environmental impact the taxpayer purchased a property on which a wetland would be created. The property would further be apportioned for a nature reserve to be established and urban development to be undertaken. An agreement in terms of section 20 or 23 of *NEMPA* was entered into, and an endorsement of 99 years was affected against the title deed specifying the nature reserve portion. There is also a biodiversity management agreement between the taxpayer and the municipality regarding section 44 of *NEMBA*, whereby the municipality will manage the declared land for a minimum of five years. The taxpayer will pay all maintenance costs. The taxpayer qualified for the deductions provided for under sections 37C and 37D.

The following example explains the implications of the legislation discussed.¹⁸³⁴

XYZ Forestry (Pty) Ltd, with its head office in Tzaneen, signed three different agreements with the government during the past year of assessment (2024).

1. The first was a biodiversity agreement in terms of section 44 of *NEMBA* for land near Modjadjiskloof. They are the owners of the land, which will be conserved

¹⁸³² Section 37D(2)(b) of the *ITA(SA)*: "A = B + (C × D) in which formula — (i) 'A' represents the amount to be determined; (ii) 'B' represents the cost of acquisition of the declared land and of any improvements to that land; (iii) 'C' represents the amount of a capital gain (if any), that would have been determined in terms of the Eighth Schedule had the declared land been disposed of for an amount equal to the lower of the market value or municipal value of that land on the date of the agreement; and (iv) 'D' represents 60 per cent in the case of a natural person or special trust or 20 per cent in any other case".

¹⁸³³ Binding Private Ruling: BPR 404 of 15 July 2024.

¹⁸³⁴ Example 13.29 Wilcocks "Capital allowances and Recoupments" 488 was adjusted from applicable to an individual to address the case study as applied for a company.

and maintained for the public good. Their mill, which specialises in the manufacturing and supplying of creosote and copper chrome arsenate-treated poles, is situated adjacent to the land identified in the agreement. The year's cost to conserve and maintain the land was R5 million. The taxable income of the mill is more than R5 million.

2. XYZ Forestry (Pty) Ltd owns land that borders the Wolkberg Wilderness Area and which belongs to the government. XYZ Forestry (Pty) Ltd agreed to enter into a protected area agreement with the government under *NEMPA* for 40 years. The environmental maintenance and rehabilitation expenses relating to footpaths etc. for the current year of assessment amounted to R500 000.
3. XYZ Forestry (Pty) Ltd owns land adjacent to Agatha Forest Reserve. In terms of an agreement between them and the government this land was declared a national nature reserve (declared land) under *NEMPA* for 99 years. The cost of the land when originally acquired was R10 million rand. The current market value is R105 million. No municipal value is available.

XYZ Forestry (Pty) Ltd made other section 18A qualifying donations of R150 000 during the year of assessment, and its taxable income before any section 18A or sections 37C or 37D deductions is R333 million.

The deductions XYZ Forestry (Pty) Ltd will qualify for will affect the calculation of taxable income as follows:

Table 6-4: Solution to example - section 37C and 37D deductions

	R million
<i>Taxable income before section 37 deduction:</i>	333 000
- Less:	
100% s 37C(1) / 37C(2)(a)	-5
s 37D(2) (biodiversity agreement)	
[A = B + (C x D)]	
C = R105 million less R10 million (cost)	
= R95 million (capital gain)	
D = 20% for other persons other than a natural person	
A = R10 million + (R95 million x 20%)	
= R10 million + R19 million	
= R29 million	

4% allowance = R29 million x 4%=	-1.16
Taxable income before s 18A deduction	332 994
Actual = R150 000	
Deduction (protected area agreement - s 37C(3)) cost R500 000	
Total = R650 000 thus R0.650 million	
Thus less than 10% of R332 994 million = R33 299.98 million	-0.65
Taxable income	332 993

It should be noted that the company may retain the right to use the land but that the market value used in the formula above will then be adjusted with the value of the right of use and that the deduction allowed will be limited too, using the adjusted market value.¹⁸³⁵

In conclusion, section 37C and 37D incentive deductions are very specific, as demonstrated through the facts of BPR 404 and the example above. What is encouraging is that the land cost is also deductible over time, and not only conservation and maintenance costs. The section 37D(2) calculation is deemed complex and might even be regarded as confusing because the formula (discussed above for section 37C) brings into account 'capital gains'. However, the calculation does not relate to the provisions of the Eighth Schedule of the *ITA(SA)*. A question to which no definite answer could be found is why individuals are duly favoured by the benefit of 60 per cent inclusion of the section 37D 'capital gains' calculated, as against the 20 per cent benefit in the formula for any other entity.¹⁸³⁶ It should be considered to provide the same benefit for companies as for individuals in order to encourage more companies to get involved in conservation and biodiversity projects, therefore adjusting the 20 per cent upwards to 60 per cent.

¹⁸³⁵ Section 37D(3) of the *ITA(SA)*; the formula to calculate the deductible amount will be = the amount determined under S 37D(2) x market value of the declared land divided by (market value of the declared land + market value of land with the rights retained); refer to Wilcocks "Capital Allowances and Recoupments" 487.

¹⁸³⁶ Paragraph 10 of the Eighth Schedule of the *ITA(SA)* stipulates that the inclusion rate for an individual is 40 per cent and for legal persons 80 per cent. Therefore, it is assumed that the benefit percentage had been determined as follows for individuals 100 – 40 = 60 per cent, and legal persons 100 – 80 = 20 per cent.

6.1.4.5 Other types of incentives

Chapter 4 discussed the use of tax incentives to incentivise certain behaviours.¹⁸³⁷ For example, it indicated that governments provide specific incentives to companies willing to conduct business in special economic zones (SEZs).¹⁸³⁸ Consequently sections 12R and 12S (concerning SEZs) will be discussed. Similar legislation might be considered to encourage CSIE regarding socio-economic development impacting on society at large.

Section 12R is one of the sections referring specifically to a "qualifying company" and defines it in section 12R(1)(a) as being incorporated under any law in South Africa or as having its "place of effective management in the Republic."¹⁸³⁹ As already said, the company should conduct business in this specially declared industrial zone.¹⁸⁴⁰

A qualifying company will be entitled to the following preferential benefits:

1. Tax relief will be granted in terms of the *ITA(SA)* in that the Company income tax (CIT) rate will be 15 per cent and not the normal 27 per cent.¹⁸⁴¹

¹⁸³⁷ Chapter 4, introduction.

¹⁸³⁸ Chapter 4, Paragraph 4.1.

¹⁸³⁹ Section 12R(1)(a) of the *ITA(SA)*. It should be noted that there are a few other qualifications; for example, that not less than 90 per cent of the income should be generated from the fixed property (building(s)) situated within the special economic zone, what type of business is conducted and when it commenced (on or after 1 January 2013). There are quite a number of industries and businesses excluded as not qualifying to be regarded as qualifying companies, such as those engaged in "wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods; hotels and restaurants." The researcher does not deem these details as necessary for the current discussion but refers the reader to s 12R(1)(c), (d), (e) and the detailed discussion by Bardien 2020 <https://www.thesait.org.za/news/540513/Special-Economic-Zones---Sections-12R-and-12S.htm>.; *Brochure on the Special Economic Zone Tax Incentive* of July 2018 1.

¹⁸⁴⁰ The area will be declared a special economic zone by the Minister of Finance by notice in the Gazette. This will follow a consultation process between the Ministers of Finance and Trade and Industry in terms of the *Special Economic Zones Act*. See s 12R(1)(b).

¹⁸⁴¹ PWC 2024 <https://taxsummaries.pwc.com/south-africa/corporate/tax-credits-and-incentives#:~:text=An%20SEZ%20incentive%20was%20introduced,any%20building%20owned%20by%20a>; *Brochure on the Special Economic Zone Tax Incentive* of July 2018 1.

2. In terms of section 12S the qualifying company will also be able to deduct an accelerated allowance of 10 per cent of the "cost of any new and unused buildings or improvement owned by the qualifying company."¹⁸⁴²
3. In terms of the *Employment Tax Incentive Act*,¹⁸⁴³ the *Value-Added Tax Act*¹⁸⁴⁴ and the *Customs and Excise Act*,¹⁸⁴⁵ the company may qualify for further relief if it employs employees who qualify in terms of the legislation and the business is "located within a Customs Controlled Area."¹⁸⁴⁶

It should be noted that a company will be disqualified if more than 20 per cent of its transactions (whether income or expenses) were done with a connected person.¹⁸⁴⁷

The relevance of these sections lies in the possibility of adjusting them for CSI projects. Similar legislation might encourage companies to invest in rural communities, for example, or to promote new industries and economic development in towns experiencing economic decline, etc., addressing socio-economic ills in the long run.

6.1.5 Conclusion

The *ITA(SA)* was scrutinised in Paragraph 6.1 to determine the deductibility of CSIE incurred by a company in calculating its taxable income. The provisions of section 18A, the GDF (the meaning and tests applied for the different criteria), case law, the binding rulings and a few specific sections allowing specific deductions and allowances were discussed in detail. The objective was to determine to what extent CSIE incurred will be allowed as a deduction when calculating a company's taxable income. Unfortunately all of the sections discussed (except for section 18A) provide

¹⁸⁴² Section 12S(2) of the *ITA(SA)*; also refer to *Brochure on the Special Economic Zone Tax Incentive* of July 2018 1.

¹⁸⁴³ 26 of 2013.

¹⁸⁴⁴ 5 of 1991.

¹⁸⁴⁵ 91 of 1964.

¹⁸⁴⁶ PWC 2024 <https://taxsummaries.pwc.com/south-africa/corporate/tax-credits-and-incentives#:~:text=An%20SEZ%20incentive%20was%20introduced,any%20building%20owned%20by%20a.>

¹⁸⁴⁷ Section 12R(4)(c) of the *ITA(SA)*; for a definition of a connected person in relation to a company, refer to s 1 the definition of "connected person" para (d). Typically it will be another group company or a shareholder.

that the expenses should have been incurred in carrying on a trade. Summaries and suggestions to incorporate CSIE were supplied under the individual sub-paragraphs. The suggestions will again be addressed in Paragraph 6.3.

In the last section of this chapter, the South African Solidarity Fund, which was founded in 2020 as a direct result of the COVID-19 pandemic, will be investigated. The only relevance to the *ITA(SA)* is that the donations to this fund were allowed under section 18A as a deduction for a donor/taxpayer.

6.2 The Solidarity Fund as a vehicle to encourage CSI

In the introduction to this chapter and in Chapter 5 it was indicated that the government of Mauritius has a public fund with a similar name. The purpose of the Mauritian Solidarity Fund is to make funds available for medical procedures only performed abroad, as well as to provide financial assistance to redundant workers.¹⁸⁴⁸

It is important for this research to examine the form and management of the South African Solidarity Fund (the Fund) and its link with section 18A of the *ITA(SA)* as a possible model to accommodate CSI.

The Fund was established on 23 March 2020 as an independently managed fund (independent of government and business) to mobilise and coordinate financial and in-kind contributions from all South Africans and members of the international community.¹⁸⁴⁹ The main objective was to support the government in the national health response to the COVID-19 pandemic and other organisations in providing humanitarian aid.¹⁸⁵⁰ Although the Fund was independent in its management and structure, it would collaborate closely with the government.¹⁸⁵¹

¹⁸⁴⁸ Refer to the discussion under Paragraph 5.1.2; S 4(a) of the *National Solidarity Fund Act 7 of 1991*.

¹⁸⁴⁹ Solidarity Fund 2020 https://harambee.co.za/wp-content/uploads/2020/04/Solidarity-Fund-Overview_200407.pdf 1; SARS *S18A Fact Sheet for Filing Season 20/21* 3.

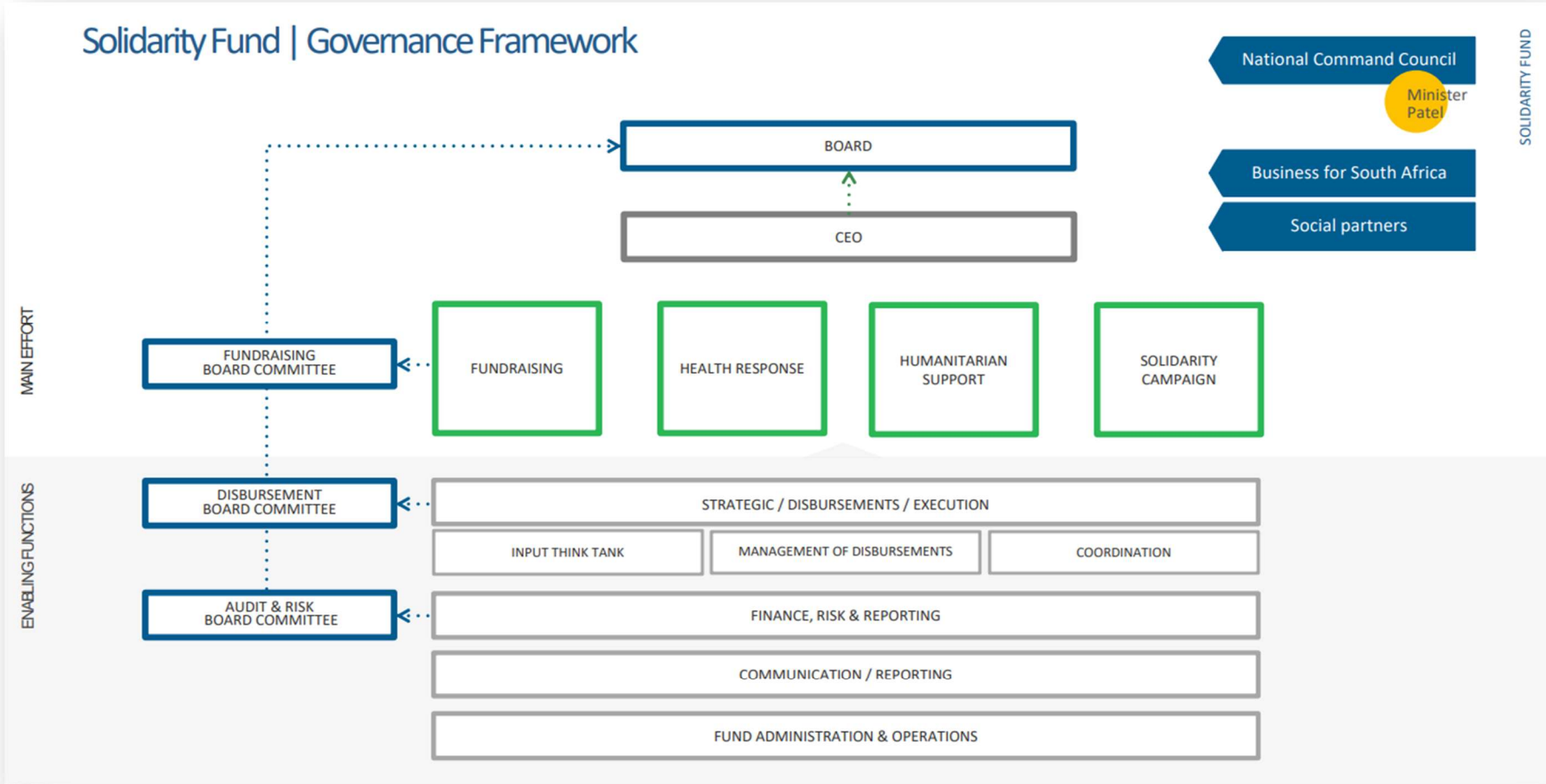
¹⁸⁵⁰ Solidarity Fund 2020 https://harambee.co.za/wp-content/uploads/2020/04/Solidarity-Fund-Overview_200407.pdf 1; SARS *S18A Fact Sheet for Filing Season 20/21* 3.

¹⁸⁵¹ Solidarity Fund 2020 <https://solidarityfund.co.za/knowledge-hub/how-the-fund-was-established/>.

From the outset there was a clear governance plan. It was vowed that strong and transparent principles of governance would be upheld.¹⁸⁵²

¹⁸⁵² Solidarity Fund 2020 https://solidarityfund.co.za/media/2020/12/Solidarity-Fund-%E2%80%93-Interim-Impact-Report_Final.pdf 6.

Figure 6-1: Solidarity Fund — Governance Framework¹⁸⁵³



¹⁸⁵³ Solidarity Fund 2020 https://solidarityfund.co.za/media/2022/11/SF-Institutional-Knowledge_Governance-Overview.pdf 6.

The idea was to establish a "rapid response [financial] vehicle" able to fund "high-impact initiatives in three key focus areas"¹⁸⁵⁴ immediately. Initially the Fund's objective in this regard was only to provide for the needs resulting from the COVID-19 pandemic but in the end its mandate was adjusted to respond to the humanitarian crises that followed the July 2021 nationwide riots and the April 2022 floods in KwaZulu-Natal.¹⁸⁵⁵ The first focal area was 'Health Services'. Over and above the objective of making available additional equipment and emergency supplies, it was stated that:

Our resources will be carefully targeted at high-impact procurement where Government is not able to act with the speed required, or on critical products and services that fall outside the capacity of the state.¹⁸⁵⁶

The second focal area was the 'Solidarity Campaign' area, which focussed, amongst other campaigns, on replacing fear with hope through knowledge, getting people to adhere to the rules and implementing initiatives to encourage change in human behaviour.¹⁸⁵⁷

The third and last focal area was the 'Humanitarian' area, which aimed at coordinating the efforts of businesses, civil society and communities and mobilising resources to ensure that the most vulnerable communities received food and humanitarian aid.¹⁸⁵⁸

The funds received from the public, businesses and even international donors were governed by a diverse board of eleven directors. Prof Michael Katz (chairman of ENS Africa, a well-known law firm specialising in tax and commercial law), Ms Tryphosa Ramano (a qualified Chartered Accountant who served as Chair of the Audit and

¹⁸⁵⁴ Solidarity Fund 2020 https://harambee.co.za/wp-content/uploads/2020/04/Solidarity-Fund-Overview_200407.pdf 1.

¹⁸⁵⁵ Solidarity 2020 <https://solidarityfund.co.za/knowledge-hub/strategy-and-mandate/>. The KwaZulu-Natal floods affected more than 40 000 people, leaving a trail of destroyed infrastructure. "More than 440 people are known to have died" with some 62 people still reported as missing. See JBA Risk Management Limited 2024 <https://www.jbarisk.com/products-services/event-response/south-africa-kwazulu-natal-floods/>.

¹⁸⁵⁶ Solidarity Fund 2020 https://harambee.co.za/wp-content/uploads/2020/04/Solidarity-Fund-Overview_200407.pdf 2.

¹⁸⁵⁷ Solidarity Fund 2020 https://harambee.co.za/wp-content/uploads/2020/04/Solidarity-Fund-Overview_200407.pdf 2-3.

¹⁸⁵⁸ Solidarity Fund 2020 https://harambee.co.za/wp-content/uploads/2020/04/Solidarity-Fund-Overview_200407.pdf 3.

Risk Committee), and Minister Tito Mboweni (then the Minister of Finance), were three of the board members. It was important for the Board to appoint people with holistic business expertise and experience in various fields of the value chain.¹⁸⁵⁹ To ensure solid governance and oversight the board was assisted by sub-committees which held regular meetings and reported back.¹⁸⁶⁰

The administration of the funds/money was done by an independent bank (Old Mutual), but Tshikululu Social Investments administered all disbursements.¹⁸⁶¹ The length and scope of this study do not allow for an in-depth discussion of the full management, the administrative structure and the processes followed, but clear guidelines were provided on:¹⁸⁶²

- Governance
- The resources model (human capital and strategic partners)
- The financial design, structure and processes
- The fund administration and donor management
- The fund monitoring and reporting (including but not limited to interim impact reports, annual and integrated reports)
- Internal control, especially regarding risk¹⁸⁶³

¹⁸⁵⁹ Solidarity Fund 2022 <https://solidarityfund.co.za/knowledge-hub/operating-model/>. As the Deputy Chair of the Fund, Adrian Enthoven, explained: "The effort began with building exemplary governance and management frameworks and systems, assembling a board of highly respected and experienced individuals, and marshalling the strongest possible executive team to formulate and execute the projects. The Fund crowded in the best and most experienced organisations and individuals. These individuals were required not only to be outstanding at ideation and execution of multifaceted interventions, but also at managing the complexity of close coordination and partnerships with government, business and civil society." (Solidarity Fund 2020 https://solidarityfund.co.za/media/2020/12/Solidarity-Fund-%E2%80%93-Interim-Impact-Report_Final.pdf 79).

¹⁸⁶⁰ See Solidarity Fund 2020 https://solidarityfund.co.za/media/2020/12/Solidarity-Fund-%E2%80%93-Interim-Impact-Report_Final.pdf 79.

¹⁸⁶¹ Solidarity Fund 2020 https://harambee.co.za/wp-content/uploads/2020/04/Solidarity-Fund-Overview_200407.pdf 4.

¹⁸⁶² Solidarity Fund 2020 <https://solidarityfund.co.za/knowledge-hub/overview-of-the-solidarity-fund/>.

¹⁸⁶³ A specific Audit and Risk Committee was established to oversee "financial and other reporting, risk management, the control environment and other areas of compliance." PWC had been appointed as independent auditors of the Fund. See Solidarity Fund 2020

- Project identification (determining where the most significant possible impact could be made with the available funds)

The projects launched or coordinated by the Fund were, amongst others, food relief projects (the distribution of food parcels and the provision of support to female subsistence farmers), 1.2 million COVID-19 test kits were purchased to support the government's testing process, seven universities and three virology labs were funded to increase the testing capacity, funds were provided for additional healthcare workers in the Western Cape, and the 'Citizens in Solidarity Campaign' (which had as aim to change behaviours regarding the wearing of masks and hygiene).¹⁸⁶⁴

The Fund was registered as an NPO and a PBO¹⁸⁶⁵ from the beginning to make the fund more attractive, allowing donors to qualify for a section 18A deduction.

Under the *Disaster Management Tax Relief Administration Act*¹⁸⁶⁶ and the *Disaster Management Tax Relief Act*,¹⁸⁶⁷ special taxation dispensations were created regarding donations made from 1 April 2020 to 30 September 2020 to the Fund. Section 8(2) of the *Disaster Management Tax Relief Act* provided that where a taxpayer (a company in the context of this study) made a *bona fide* donation to the Fund, the total value of the contribution whether in cash or kind actually paid or transferred during the specified period to a maximum of 10 per cent of the taxpayer's taxable income would be allowed as a deduction in the calculation of its taxable income.¹⁸⁶⁸ This 10 per cent is an additional 10 per cent allowable deduction over and above the normal maximum 10 per cent (ceiling) allowable deduction for

https://solidarityfund.co.za/media/2022/11/SF-Institutional-Knowledge_Governance-Overview.pdf 14.

¹⁸⁶⁴ Solidarity Fund 2020 https://solidarityfund.co.za/media/2020/12/Solidarity-Fund-%E2%80%93-Interim-Impact-Report_Final.pdf 6, 40, 74,

¹⁸⁶⁵ The Fund did qualify in terms of the Ninth Schedule of the *ITA(SA)*, providing "Welfare and Humanitarian, Health Care, Disaster Relief" as PBAs. See Solidarity Fund 2020 <https://solidarityfund.co.za/knowledge-hub/overview-of-the-solidarity-fund/>.

¹⁸⁶⁶ 14 of 2020; this Act allowed employers to deduct an amount from the remuneration of employees and pay it over on the employee's behalf to the Fund. S 5(a)(i) of the Act limited the maximum deduction to 33.3 per cent of the monthly remuneration. Also refer to SARS *S18A Fact Sheet for Filing Season 20/21* 4.

¹⁸⁶⁷ 13 of 2020.

¹⁸⁶⁸ Refer to the discussion of Paragraph 6.1.1 above regarding the amounts which will not be included in taxable income before the s 18A deduction is calculated; for example, lump sums and s 6quat amounts. Also refer to S 8(2) of the *Disaster Management Tax Relief Act*.

donations made to PBOs under section 18A.¹⁸⁶⁹ The special Solidarity Fund section 18A donation deduction had therefore increased the section 18A donation contribution deduction for the 2020/2021 year of assessment to an effective 20 per cent.¹⁸⁷⁰ Any donation to the Fund which exceeded the additional 10 per cent allowable deduction specifically for the Fund and the 2020/2021 year of assessment could be carried forward to the succeeding years of assessment but would then be added to the new year's actual *bona fide* donation amounts paid in calculating the 2021/2022 year of assessment 10 per cent limit.¹⁸⁷¹

It should be noted that all other requirements as per section 18A(2), such as the fact that the donor must have a section 18A receipt/certificate as proof of donation, were also applicable in the case of a donation to this Fund.¹⁸⁷²

What were the positives?

A year and a half after its creation, the CEO of the Solidarity Fund, Tandi Nzimande, made the following statement that in essence encapsulates the positive results that can be taken from the whole organisational and governance experience. She said:

One reality that the progress of the Solidarity Fund has brought to the fore, is the power of collaboration. My hope is that we as South Africans will see this as an important lesson and realise that we can apply the same model and mindset to issues such as hunger, poverty, unemployment, and the water crisis. In this way, the Solidarity Fund can be used as a template for future impactful initiatives.¹⁸⁷³

The Fund was a vehicle to raise R3.47 billion and distribute R3.24 billion.¹⁸⁷⁴ Under the three main focal areas, 54 projects (with 37 additional sub-projects) were

¹⁸⁶⁹ SARS *S18A Fact Sheet for Filing Season 20/21* 3.

¹⁸⁷⁰ Also refer to SARS *S18A Fact Sheet for Filing Season 20/21* 3.

¹⁸⁷¹ SARS *S18A Fact Sheet for Filing Season 20/21* 5.

¹⁸⁷² In the March 2022 newsletter the Fund urged donors to register online to claim their s 18A certificates. It is assumed that the number of donors made it very difficult to issue certificates by hand. See Solidarity Fund 2022 <https://solidarityfund.co.za/media/2022/06/Solidarity-Fund-Bulletin-March-202254.pdf>.

¹⁸⁷³ Anon 2022 <https://www.ebnet.co.za/an-effective-model-to-emulate-in-service-of-the-south-african-public/>.

¹⁸⁷⁴ Solidarity Fund 2022 <https://solidarityfund.co.za/media/2022/06/Solidarity-Fund-Bulletin-March-202254.pdf> 2; R62 millions of this amount were used for humanitarian relief following the July 2021 civil unrest. See Solidarity Fund 2022 <https://solidarityfund.co.za/media/2022/06/Solidarity-Fund-Bulletin-March-202254.pdf> 8.

implemented.¹⁸⁷⁵ The funds were distributed as follows to each of the three main focal areas:

Figure 6-2: Solidarity Fund — money distributed¹⁸⁷⁶

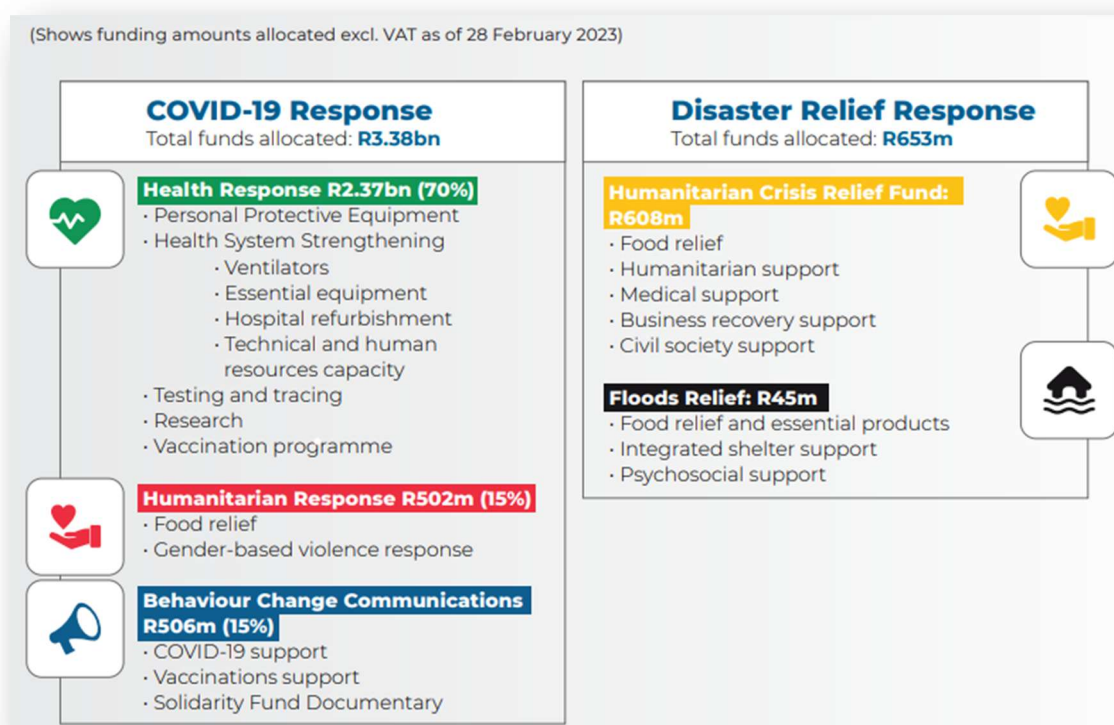
Pillars	Disbursed
Health	R2,3bn
Humanitarian	R429m
Behaviour Change	R508m
Total	R3,24bn

* Accurate as at 29 March 2022

Projects and sub-projects were launched under each of the main focal areas. Figure 6-2 summarises the different projects and sub-projects under each area. The Health focal area (pillar) concentrated its efforts on supporting and strengthening the health system. Areas where the greatest impact could be made were targeted. Working with the government, academia, private sector, civil society etc. ensured that much-needed personal protection equipment and medical equipment such as ventilators and testing kits were sourced and distributed. The Fund also ensured wide access to vaccines, provided additional nursing capacity, and supported research at different universities and other research facilities.¹⁸⁷⁷

¹⁸⁷⁵ Solidarity Fund 2022 <https://solidarityfund.co.za/media/2022/06/Solidarity-Fund-Bulletin-March-202254.pdf>.
¹⁸⁷⁶ Solidarity Fund 2022 <https://solidarityfund.co.za/media/2022/06/Solidarity-Fund-Bulletin-March-202254.pdf>.
¹⁸⁷⁷ Solidarity Fund 2023 https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 23; For a detailed outline of the various projects, refer to pages 24-30.

Figure 6-3: Funded projects¹⁸⁷⁸



The Humanitarian focal area projects aimed to rapidly respond to the "needs of vulnerable communities in a dignified manner to help alleviate the negative social impact of the pandemic."¹⁸⁷⁹ The food relief projects aimed to provide immediate relief to those unable to access food and facing the threat of starvation/hunger. Complimenting other projects, the Fund initially distributed food parcels, but because of logistical constraints thereafter distributed a digital food voucher. The urban areas were the first to be targeted.¹⁸⁸⁰ The second phase implemented a 'farming input voucher' programme to support "subsistence farmers who had either suffered increased hunger or lost income because of COVID-19 restrictions, with preference given to rural and women farmers."¹⁸⁸¹ The gender-based violence (GBV)

¹⁸⁷⁸ Solidarity Fund 2023
https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 19.

¹⁸⁷⁹ Solidarity Fund 2023
https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 33.

¹⁸⁸⁰ Solidarity Fund 2023
https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 33.

¹⁸⁸¹ Solidarity Fund 2023
https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 33.

response programme aimed at keeping children and women safe during COVID-19 primarily by providing financial assistance to existing GBV organisations nationwide.¹⁸⁸² The second phase of the programme aimed at reducing GBV in general. R35 million was donated to a newly created national response unit, the GBVF Response Fund.¹⁸⁸³

The 'Behaviour change' focal area aimed to assist the government in slowing the infection rate. Projects focussing on education regarding non-pharmaceutical behaviour, vaccination programmes, and specific targeted messages were implemented, using different media (radio, billboards, social media) and influential politicians and celebrities to spread the message.¹⁸⁸⁴

Then in 2021 a focal area which was not originally anticipated was added. After the July 2021 civil unrest President Ramaphosa asked the Fund to assist in humanitarian relief. The reason for contacting the Fund was because of its "ability to mobilise rapidly in support of the COVID-19 pandemic while maintaining due diligence and cost-effectiveness."¹⁸⁸⁵ The Disaster Relief Response project was launched. R100 million was transferred from the original COVID-19 funds to this project, and the fundraising team raised additional resources.¹⁸⁸⁶ The focus was on those areas where the food supply chains had been most severely impacted. Those who lost their livelihoods received R1 000 funding through vouchers over three months. Business recovery support was also provided to

small, micro, and medium enterprises (SMMEs), cooperatives, and pharmacies and other medical entities damaged or looted in the unrest, who were not covered by insurance, and were struggling to survive; and supporting civil society

-
1882	Solidarity Fund	2023
	https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 33.	
1883	Solidarity Fund	2023
	https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 34. For more detailed project information, refer to pages 35-39.	
1884	Solidarity Fund	2023
	https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 42. For more detailed project information, refer to pages 43-45.	
1885	Solidarity Fund	2023
	https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 48.	
1886	Solidarity Fund	2023
	https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 48.	

organisations working in Food Security, Health Care, Peace Building, Economic Recovery, and NPO Support in communities that were severely affected by the unrest enabling them to continue to be there for their beneficiaries.¹⁸⁸⁷

The last project, again under the 'Disaster Relief Response' focus area, was also taken up at the request of the government.¹⁸⁸⁸ In April 2022 floods hit KwaZulu-Natal and the Eastern Cape, resulting in more than 400 deaths, 40 000 people being displaced, and 13 790 totally or partially destroyed homes in KwaZulu-Natal only. Once again the focus was on those areas in KwaZulu-Natal and the Eastern Cape hit the worst.

Across both provinces, access to health, education, food, transportation, and water and sanitation services were interrupted due to the extensive damage to infrastructure and supply chains.¹⁸⁸⁹

R20 million was directed to this project, and food and essential products were supplied to the displaced people, as well as shelter and psychosocial support.¹⁸⁹⁰

Over and above the fact that it was possible to raise R3.47 billion and distribute R3.24 billion it proved possible for South Africans to work together in a model such as this, in which a broader range of socio-economic issues could be challenged to find solutions or bring about change.

-
1887	Solidarity	Fund	2023
	https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 48. For further reading and details regarding this project, refer to pages 49-52.		
1888	Solidarity	Fund	2023
	https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 55.		
1889	Solidarity	Fund	2023
	https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 55.		
1890	Solidarity	Fund	2023
	https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 55. For more detailed information regarding these projects, refer to pages 57-58.		

The lessons learned were:

Figure 6-4: Lessons learned¹⁸⁹¹



¹⁸⁹¹ Solidarity Fund 2020 https://static.pmg.org.za/201201SOLIDARITY_FUND.pdf 22.

A detailed blueprint has been compiled for future use, as and when it is necessary to reactivate the Fund. A cash reserve of R15 million was also set aside for such an event.¹⁸⁹²

Some notes of reflection:

The Solidarity Fund is an example of a project (or projects) that was devised and managed for national impact. Because the Fund was registered as a PBO, the income was exempt from income tax.¹⁸⁹³ It was also able to register as a PBO, because the Fund supplied Part I of the Ninth Schedule of the *ITA(SA)* public benefit activities. This option is not available for a company which would like to implement a CSI project (on a smaller scale) that does not necessarily meet Part I of the Ninth Schedule of the *ITA(SA)* public benefit activities requirements.

Such an independent fund does not allow the company limited insight into the type of projects on which the money will be spent.

For obvious reasons the Solidarity Fund also functions under legislation separate from the *ITA(SA)* in terms of fund management and has a specific mandate (to assist the government in procuring COVID-19 aid, etc.)¹⁸⁹⁴ If other larger CSI projects were to be managed by this Fund, then it is assumed that the founding documents would have to be amended to make provisions for projects of this type.

Some of South Africa's best and most knowledgeable academics, lawyers, accountants, businessmen, humanitarian relief workers etc. were involved. And although this contributed to the Fund's perceived success, it impacted on these people's normal day-to-day work-life. As indicated in Figure 6-4 above, it is preferable to shift to a "Technical Operating Model that allows for a steady staff/capacity component to maximise spend to impact."¹⁸⁹⁵ This would be like the

¹⁸⁹² Solidarity Fund 2023
https://solidarityfund.co.za/media/2023/08/Consolidated_Report_vFinal_27.6.23-compressed.pdf 66.

¹⁸⁹³ Refer to the discussion in Paragraph 6.1.1.

¹⁸⁹⁴ A PBO can be a company, trust or any other incorporated organisation. *Basic Guide to Income Tax Exemption for Public Benefit organisations* of 6 August 2021 21.

¹⁸⁹⁵ Solidarity Fund 2020 https://static.pmg.org.za/201201SOLIDARITY_FUND.pdf 22.

structure employed by Mauritius for its National Solidarity Fund and the National Social Inclusions Foundation.

South Africa is unfortunately well-known for its systemic corruption. The Solidarity Fund vowed that they would exercise the most rigorous control over every rand received and spent, and at all times they were transparent about this and the processes followed.¹⁸⁹⁶ However, the same cannot be said of the South African government, as it failed to exercise the necessary strict control over its finances. Money that was supposed to go to the poor (an R500 billion stimulus/temporary relief package) was looted by corrupt officials who used the relaxed procurement policies "because the government was under pressure to ensure PPE [personal protection equipment] for frontline workers."¹⁸⁹⁷ The lesson to be learned is that the ethical morality of the leadership of South Africa is under suspicion. Given the history of alleged corruption in the government structure, allowing such funds to be controlled by any public government structure is not ideal.¹⁸⁹⁸ The model followed by the Solidarity Fund could still be considered as being appropriate to managing CSI for the greater good, but it would then be advised that it should also mainly work independently of the government regarding identifying and managing projects. The projects could also not be limited to procurement, as the needs addressed by the CSI project might differ significantly from the needs addressed by the Solidarity Fund.

6.3 Conclusion

This chapter has investigated the *ITA(SA)* as the main component of South Africa's taxation framework allowing companies to deduct expenses incurred against income in the calculation of their taxable income. The examination of the legislation focussed on the deductibility of CSIE linked to CSI, broadly and narrowly defined

¹⁸⁹⁶ Solidarity Fund 2020 https://solidarityfund.co.za/media/2020/07/SF_Impact_Framework_2020-1.pdf; Solidarity Fund 2020 https://solidarityfund.co.za/media/2020/09/1-Solidarity_Response_Fund_NPC_anti-bribery_policy_V2_final_-_signed.pdf 33.

¹⁸⁹⁷ Mlambo and Masuku 2020 *Journal of Public Administration* 549, 557-560; Transparency International 2020 <https://www.transparency.org/en/blog/in-south-africa-covid-19-has-exposed-greed-and-spurred-long-needed-action-against-corruption#:~:text=Back%20in%20March%2C%20Corruption%20Watch,Sadly%2C%20we%20were%20right>; Maseko *BBC News* <https://www.bbc.com/news/world-africa-54000930>.

¹⁸⁹⁸ SONA 2024 <https://www.stateofthenation.gov.za/priorities/fighting-corruption/corruption-in-public-procurement>.

(as per Chapter 2, Paragraph 2.3.3). A conclusion that relates explicitly to that section was drawn for each section, with suggestions on how adjustments might be made or what the negative implications were as the legislation currently stands. The following are therefore only the most general and important conclusions for this chapter.

Section 18A is the only section directly linked to the narrow definition of CSI. It was again confirmed that philanthropic donations (CSIE, which relates to the narrow definition of CSI) would be deductible under section 18A if the requirements were met. The amount deductible depends on whether the total value of donations (actually paid) during the year of assessment exceeds or is less than the ceiling of 10 per cent of the taxable income in place. The 10 per cent limit may therefore deter rather than encourage, and should be reconsidered. This section might be the only one that could be adjusted to encourage companies to contribute (indirectly through other organisations) to CSI, expanding the application of the section beyond CP. It was suggested that this section be amended to include the PBAs excluded from Part II of the Ninth Schedule of the *ITA(SA)*. It is further suggested that community forums (as NPOs) should be allowed to register as PBOs and that their activities should also be included as PBAs since these activities benefit the general public/community in which they operate.¹⁸⁹⁹

When considering CSIE in relation to the GDF, it was concluded that SARS would not regard the activities resulting in CSIE as close enough to the income-earning operations of the company and that the activities would not meet the requirements of the in the production of income criterion. This said, there is a case to make that social responsibility expenditure should be deductible. As Conradie JA stated, although a direct causal link does not exist with the income-earning operations, the link is also not too distant.¹⁹⁰⁰ This argument is based on the case law discussed,¹⁹⁰¹ the binding rulings that were discussed,¹⁹⁰² and the opinion of Goldswain and Swart that the case law over the years has expanded the narrow interpretation of the in

¹⁸⁹⁹ Refer to Paragraph 6.1.1.

¹⁹⁰⁰ Refer to Paragraphs 6.1.2.1.3 and 6.1.2.3. Also refer to the case law listed in the footnote below.

¹⁹⁰¹ The *Warner Lambert* case (refer to Paragraph 6.1.2.3); The *S G Taxpayer* case (refer to Paragraph 6.1.2.1.3).

¹⁹⁰² Refer to Paragraph 6.1.3.

the production of income criterion to include expenses relating to the company's obligation to society, and other stakeholders too. Unfortunately, the last case in which the court addressed the deductibility of social responsibility cost, the *Warner Lambert* case, related to the financial period ending in 1993, and until such time that the court again considers explicitly the deductibility of social responsibility cost (CSIE), then the uncertainty will prevail.

Most of the specific deductions/allowances (sections 12B, 12BA, 12U, 12L 37B)¹⁹⁰³ discussed can be linked to the objective of addressing climate change. Unfortunately, the provisions of these sections are not wide enough to allow CSIE related to the broadly defined CSI as a deduction. All these sections state that the expense should relate to the company's business operations and to the infrastructure of which the company is the owner.

The two sections that came closest to CSIE being allowed as a deduction are sections 37C and 37D of the *ITA(SA)*, which allow the company a deduction for expenses incurred relating to the conservation of land for the public good and an allowance for the fixed property in calculating taxable income. Although these sections are limiting because the cause they link to is specific, they provide a guideline for legislation to incorporate CSIE projects and provide for the deduction of related CSIE under the provisions *ITA(SA)*.

To conclude, South Africa was one of the 192 signatories of the 2030 Agenda for Sustainable Development in 2015, over and above the fact that the NDP was adopted in 2012.¹⁹⁰⁴ Unfortunately, the *ITA(SA)* did not adapt to these commitments to change, with the minimum taxation incentives available for companies (or taxpayers in general) incentivising sustainable development investment and investment for the greater good. As seen in the discussion above, only seven (standalone) sections which provide companies with a deduction were added, indirectly rewarding them for steps taken to save energy etc.

¹⁹⁰³ Refer to Paragraph 6.1.4.

¹⁹⁰⁴ SDSN South Africa 2015
<https://southafrica.unsdsn.org/sdgs/#:~:text=In%202015%2C%20the%202030%20Agenda,at%20the%20Sustainable%20Development%20Summit.>

Chapter 7 will conclude with the possible solution(s) to the research question: How can the South African taxation framework be reformed to incorporate corporate social investment expenditure, taking into account the findings thus far.

CHAPTER 7 CONCLUSION AND RECOMMENDATIONS

7.1 Reconsidering the research question and objectives

The motivation for asking the research question and the main aim of this study is vested in a deep-seated belief that the government alone cannot address the socio-economic, environmental and sustainability challenges being experienced by the country.¹⁹⁰⁵ It has been demonstrated that the South African government has in the past urged the private sector/companies to assist in addressing and finding solutions for these problems. It is believed that CSI legislative measures will encourage companies (those that "remain outside the net of commitment") to contribute to "better social and environmental practice"¹⁹⁰⁶ either by way of an incentive or mandatory contributions/tax.

The research question posed in this thesis is: "How can the South African taxation framework be reformed to incorporate corporate social investment expenditure?"¹⁹⁰⁷ This study's main focus and objective is therefore to

propose legislative changes to the South African taxation framework, which will incorporate corporate investment expenditure (CSIE), either by introducing tax incentives and/or by introducing a compulsory tax.¹⁹⁰⁸

The research question and main objective encompass several issues explored through specific secondary objectives which were designed to support the research question. The broader investigation was broken down into different topics and focused on the key aspects of these topics, which formed the basis of the discussion in Chapters 2 to 6. The specific secondary objectives are:

1. To investigate the historical development of CSI in South Africa.
2. To propose universal definitions for the concepts CSR, CSI, CP and CSIE for the South African context.

¹⁹⁰⁵ Refer to Paragraphs 1.2 and 1.1.

¹⁹⁰⁶ Fig 2005 *International Affairs* 599.

¹⁹⁰⁷ Refer to Paragraph 1.3.

¹⁹⁰⁸ Paragraph 1.4.

3. A natural consequence of formulating new definitions is to re-evaluate Carroll's Pyramid model and if possible adopt it.
4. To determine theoretical and South African-driven reasons for companies to get involved in their host communities through CSI.
5. To determine to what extent tax incentives or taxes can encourage CSI.
6. To scrutinise international mandatory CSR legislation to find possible solutions for incorporating CSIE into the South African taxation framework.
7. To determine to what extent and how CSIE is incorporated in the current South African taxation framework.

The chapter layout linked to the above secondary objectives was as follows:

Chapter 2 addressed the first two secondary objectives. Describing the historical development of CSI in South Africa set the scene for proposing distinguishable definitions of CSR, CSI, CP and CSIE, specifically for the South African context, including our Apartheid past. The second part of this chapter was devoted to defining terms. This was done by using a systematic literature review and inductive reasoning as research methods. The last part of the chapter critically evaluated the CSR models of different researchers. These findings and the proposed definitions led to the development of the proposed integrated sustainable CSR model.

Chapter 3 considered the reasons why companies should be involved in CSI and have CSR programmes, hence addressing secondary objective three. This chapter was again divided into two main themes. The first explored the theoretical motivations behind CSR, including the 'business case for CSR'. The second part of this chapter was devoted to South African-specific socio-economic development and other national problems, motivating the need for companies to get involved and strengthen the government's efforts to address these and other sustainability issues, like environmental concerns.

In Chapter 4 the fifth secondary objective was addressed. The main purpose of this chapter was to determine to what extent tax incentives and tax levies could be employed to legalise CSI.

In Chapter 5 the mandatory CSR legislation of Mauritius, India, and Seychelles was scrutinised, essentially addressing the sixth secondary objective, to establish tax legislative possibilities for incorporating CSI.

The last secondary objective, namely, to determine to what extent CSI is contained in the *ITA(SA)* and, more specifically, to examine to what extent CSIE will be deductible from taxable income, was addressed in Chapter 6.

The main objective was formulated to answer the research question. Based on the findings reached for each secondary objective, the main research question will be answered and legislative reform for the incorporation of CSIE will be proposed in Paragraph 7.7. The following paragraphs will reflect on how each secondary objective was addressed and the respective findings. Paragraph 7.2 will address the secondary objectives of Chapter 2. Paragraph 7.3 will address those secondary objectives set for Chapter 3. Paragraph 7.4 will reflect on how the secondary objectives set for Chapter 4 were met, and Paragraph 7.5 will reflect on those set for Chapter 5. Lastly, Paragraph 7.6 will be reflect on Chapter 6.

7.2 Historical background and defining CSR, CSI, CSP and CSIE

In this paragraph the secondary objectives one to three (set for Chapter 2) will be reflected on.

7.2.1 Historical development of CSI as a concept

South Africa has a rich history of CSR and CSI. Starting from 1917, when Ernest Oppenheimer laid down the value principle for Anglo American as a company until today, CSR has in practice changed from being a "'feel good' charitable side-show to an industry that is large, strategic and integral to South Africa's transformation effort."¹⁹⁰⁹

¹⁹⁰⁹ Fourie *Corporate Social Responsibility; Evaluating Three South African Companies Initiatives* 8. It should be noted that the terms CSR and CSI are often used interchangeably, even though they were defined separately in the King III Report. See CSI Solutions date unknown <https://www.csisolutions.co.za/why-csi.php#:~:text=Corporate%20Social%20Responsibility%20&%20Corporate%20Social,is%20generally%20improved%20and%20safeguarded.>

South Africa's CSR and CSI evolution can be divided into three distinct phases: the 'grant-making' (philanthropy-driven) phase, the 'sustainability-oriented' phase and the 'holistic/strategic' phase. Key milestones have constantly shaped the development of CSI as concept, including legislation, reporting standards, and global commitments like the Paris Agreement.

Table 7-1: A condensed summary of each development phase and the impact on CSI

Phase	Key features and events	Impact on CSI development
Phase 1: Grant-making Phase (1972–2002)	This period was initiated in 1972 by Professor Feldberg in a public lecture urging company involvement in communities. Key legislative milestones included: enacting the <i>Nonprofit Organisations Act</i> ¹⁹¹⁰ in 1997; the amendment of the <i>ITA(SA)</i> to regulate donations to PBOs and in the related section 18A allowing tax deductions for philanthropic contributions. The King II Report (2002) concluded this phase.	CSI involvement shifted from ad hoc philanthropy to a more structured approach.

¹⁹¹⁰ 71 of 1997.

Phase	Key features and events	Impact on CSI development
Phase 2: Global Sustainable Development Agenda (2002–2009)	This period was introduced by the publication of the King II Report (2002), which resulted in changes regarding CSI reporting guidelines and the JSE listing requirements. Notable events included the launch of the JSE Socially Responsible Investment Index (2004), the Companies Act (2008), and the enactment of the <i>B-BBEE</i> legislation and <i>B-BBEE</i> Code (2004–2007). The period concluded with the King III Report (2009).	The developments integrated sustainability into corporate strategies, with CSI linked to global goals and <i>B-BBEE</i> scorecard requirements, emphasising structured and strategic CSI initiatives.
Phase 3: Holistic/Strategic Phase (2009–Present)	This period was influenced by the King III Report, which defined CSR and CSI, and the King IV Report (2016), emphasising ESG and long-term sustainability. Key events included the formation of the JSE Responsible Investment Index (2015), South Africa's commitment to the Paris Agreement (2016), and the enactment of the <i>Carbon Tax Act</i>.	Companies now adopt more holistic, value-aligned and long-term CSI strategies. <i>B-BBEE</i> legislation continues to shape practices, often tying CSI efforts to <i>B-BBEE</i> scorecard requirements. Part II PBAs such as education still regarded as important.

It was assumed that these key events, which shaped CSI as a concept, would also influence the related definition. Specific themes emerged during the systematic literature review and through employing inductive research methods. One of these themes was the *B-BBEE* legislation, which was enacted to address the impact of Apartheid. Another development that was carried over from the second phase to

the current phase is the issue of sustainability. With the signing of the Paris Agreement South Africa became part of the drive against global warming and towards sustainable practices. Table 2-4 presents these themes.

7.2.2 Defining the concepts CSR, CSI, CP and CSIE for the South African context

An essential step in the drafting of any legislation (including the proposal of legislative reform to incorporate CSIE) is to ensure that the words used and the definition of concepts are clear.¹⁹¹¹ This was the second secondary objective set for Chapter 2.

Many researchers report that no universal definition exists for any of these concepts, worldwide and in South Africa. Over and above this challenge, no updated definitions for either CSR or CSI have been supplied by the King Commission since 2009. The 2016 King IV Report did define 'responsible investing', bringing in ESG and sustainability considerations, but 15 years have passed since CSR and CSI were defined in the King III Report. As indicated above, several key events have influenced the development of CSI as a concept and will affect the development of a definition.

Carroll¹⁹¹² states that a concept will be accepted and applied only if it is framed (defined) "in such a way that the entire range of business responsibilities is embraced." A definite need for updated, universally applicable, comprehensive definitions was thus identified.

For a comprehensive discussion of the methodological approach followed, refer to Paragraph 2.2.2. Data were collected through a systematic literature review, employing the software program Atlas.ti 23 to assist in the process. Inductive reasoning was further employed as a research method to identify themes and the characteristics of each concept. These were used to draft the respective definitions. It is clear from the data and the definitions that CP forms part of CSI (thus the

¹⁹¹¹ Ezzerouali and Chami 2023 *Mazahib* 37-64.

¹⁹¹² Carroll 1991 *Business Horizons* 40.

narrow definition of CSI), while CSI (the broad definition) is again a part of CSR external to the company's daily business activities.¹⁹¹³

With the formulation of three updated definitions for CSR, CSI and CP, the second secondary objective for Chapter 2 had been reached. Lastly, it was explained that CSIE "will be an amount incurred as an expense or cost, financial burden or outlay by a taxpayer" and "will relate to those activities external to the business which are indicated in Table 2-4 above as 'Broad non-CP CSI – not tax deductible' activities". Generally a company will not qualify for a deduction against taxable income.¹⁹¹⁴

*7.2.3 Proposing a new Integrated Sustainable CSR Model*¹⁹¹⁵

The last secondary objective proposed for Chapter 2 was "to re-evaluate Carroll's Pyramid model and, if possible, adopt it."¹⁹¹⁶ Theoretical and empirical evidence exists that justifies this step.¹⁹¹⁷

Six models and the latest explanation of Carroll's relationship between CSR and ESGs were examined. The new/positive contributions of each model, the data collected in Paragraph 2.2.2 and the newly drafted definitions¹⁹¹⁸ were all employed in support of the process of drafting the Integrated Sustainable CSR Model.¹⁹¹⁹ This new model¹⁹²⁰ recognises that the South African CSR landscape is shaped by global political factors and global sustainability goals, reflecting South Africa's role as a member of the global community. It acknowledges the interaction and potential overlap of responsibilities tied to specific elements. It is also adaptable, allowing for the inclusion of new elements over time. This adaptability means that the model can evolve, expanding from a pentagon to a hexagon or beyond. It is vital to note that a core CSR responsibility exists for each of the five main elements, but more importantly, a CSI-specific component was incorporated into each of these

¹⁹¹³ Refer to Figure 2-11, Paragraph 2.2.2.4.

¹⁹¹⁴ Refer to Paragraph 2.3.4.

¹⁹¹⁵ Paragraph 2.4.2.

¹⁹¹⁶ Refer to Paragraph 1.4.

¹⁹¹⁷ Silva Junior *et al* 2023 *Social Responsibility Journal* 367.

¹⁹¹⁸ Refer to Paragraph 2.3.

¹⁹¹⁹ Figure 2-19.

¹⁹²⁰ The Integrated Sustainable CSR Model.

elements, which relates to (explains) CSI-specific activities/actions or sub-responsibilities.

Concerning the proposed amendments to the *ITA(SA)* to incorporate CSIE and the legislative reform proposed in Paragraph 7.7 below: the importance of this model and the respective definitions lies in the opportunity to determine in which element of Preston's Integrated Sustainable CSR Model the planned activity will fall, and to determine in which section of the new CSI provisions the activity will resort.

7.2.4 Conclusion of Chapter 2

In summary, the final two secondary objectives were reached by presenting a refined definition of CSR and original definitions for CSI and CP. A related secondary objective involved developing a visual model to represent these definitions. As outlined in Paragraph 2.4.1 the shortcomings of Carroll's (1991) CSR Pyramid were considered by various researchers. Three of the major critiques on this model was that it was based on the American business environment, that the model is very stagnant, and lastly the hierarchy assigned to the different tiers projected the importance of that tier. Drawing on the data and definitions from Paragraphs 2.2, 2.2.2 and 2.3 and integrating positive aspects of other CSR models discussed in Paragraph 2.4.1, Preston's Integrated Sustainable CSR Model reimagines CSR as a sustainable concept encompassing economic, ethical, legal, environmental and societal dimensions within a pentangular structure (a pentagon within a circle). Unlike Carroll's hierarchical approach, this model highlights the equal importance of all elements and adopts a dynamic format, allowing for interaction and the overlapping of the different elements, and the incorporation of additional elements as and when needed. The drafting of original definitions and the design of Preston's Integrated Sustainable CSR Model provide original contributions to legal scholarship. With this, the final secondary objective of the chapter was met. This model and the proposed definitions laid the groundwork for the subsequent chapters.

The research conducted in Chapter 2 aids in meeting the primary objective. Without properly constructed definitions, especially the broad definition of CSI and related CSIE, providing a clear understanding of each concept, and an understanding of where each fits into Preston's Integrated Sustainable CSR Model, it would not be

possible to draft a workable model for adapting the *ITA(SA)* to incorporate CSIE (and by implication CSI).

In Chapter 3 the focus shifted to exploring South African companies' perspectives on CSI and CP, as outlined in Paragraphs 2.2 and 2.3. The chapter also assessed the theoretical basis and the business case for CSR using the model and definitions developed, facilitating further analysis and discussion.

7.3 CSI — Why should companies get involved?

The main objective of this chapter was to determine why companies should become involved in CSI. If there are no reasons to get involved, the *status quo* can be maintained, and there is no reason for the law to change to encourage or enforce CSI. A few specific research questions were asked in this chapter to lead the investigation and address the main objective of the chapter. The specific research questions were:

- Why should companies get involved in CSI programmes?
- To what extent should companies become involved in their communities?
- What will they gain from this involvement?
- Can companies be expected to step into the shoes of the government?
- To what extent are South African companies involved in CSI?

These questions and the main objective of this chapter were addressed by investigating applicable theories, the business case for CSR, and the state of CSR amongst South African companies.

7.3.1 Theoretical underpinning of CSI

Numerous theories explain why companies should be involved through CSI in their host communities and with stakeholders. Most of these theories are adaptations or derivatives of the 'foundational theories'. The theories referred to as the foundational theories are the 'stakeholder', 'social contract', 'resourced-based', 'institutional' and the 'triple bottom line' theories. The 'business case for CSR' was also scrutinised to determine why companies should be involved in CSR and to what

extent. The theories also explain what is perceived as the benefits that the company will gain.

The interaction between CSR, business and society can be understood through these five foundational theories, all emphasising the importance of strong community relationships. Theories like the stakeholder, resource-based and institutional theories are interconnected, shaping CSR and corporate sustainability (CS) policies. Ashrafi *et al*'s framework¹⁹²¹ highlights the role of internal and external drivers in aligning stakeholder expectations and guiding CSR strategies. Ultimately, institutions and business systems strongly influence CSR practices and stakeholder relationships.

Table 7-2 consolidates the theories, their core principles and their practical application in CSR. For a detailed discussion of each theory, refer to Paragraph 3.2.1.¹⁹²²

¹⁹²¹ Refer to Table 3-4, Paragraph 3.2.2.

¹⁹²² Paragraphs 3.2.2.1, 3.2.2.2, 3.2.2.3, 3.2.2.4 and 3.2.2.5.

Table 7-2: Summary of the findings of the theoretical framework¹⁹²³

Theoretical Framework	Key Points	Application in CSR
Stakeholder Theory¹⁹²⁴	Focus on value creation for all stakeholders, not just shareholders. It is vital to build trust and strong relationships with the host community. Mutual benefits arise when the community trusts the company to act ethically. The community provides resources (for example, labour), and the company contributes through employment, infrastructure and environmental responsibility.	Ethical and responsible use of power and resources is essential for fostering trust.
Social Contract Theory¹⁹²⁵	Suggests an implicit agreement between the company and the community based on trust and mutual benefit. The company benefits from community support, including resources, while the community gains through job creation, infrastructure and minimising environmental harm.	CSR is seen as a basic form of corporate social contract, requiring companies to act responsibly to maintain this balance.
Resource-Based Theory¹⁹²⁶	It highlights the importance of acquiring valuable, rare, and difficult-to-replicate resources that are often tied to the local community. Strong relationships with the community can help companies secure unique resources, creating a competitive advantage. These resources are critical for achieving long-term success and aligning with the community's needs and expectations.	CSR programmes and CSI in the host community can create a unique resource, leading to a competitive advantage.

¹⁹²³ Refer to Paragraph 3.2.1 and the respective theories. It was indicated that these theories are the theories linked to CSR which are the most discussed theories.

¹⁹²⁴ Paragraph 3.2.2.1.

¹⁹²⁵ Paragraph 3.2.2.2.

¹⁹²⁶ Paragraph 3.2.2.3.

Theoretical Framework	Key Points	Application in CSR
Institutional Theory ¹⁹²⁷	Examines how companies operate within social, political and economic frameworks.	CSR strategies must navigate cultural norms, government regulations, shareholder expectations and economic conditions. In complex environments like South Africa compliance with frameworks such as B-BBEE and addressing societal challenges are integral to effective CSR implementation.
Triple Bottom Line (TBL) ¹⁹²⁸	Integrates social (people), environmental (planet), and economic (profit) aspects.	TBL emphasises balancing financial performance with social and environmental responsibilities. Companies committed to TBL prioritise addressing poverty, inequality and community development while minimising ecological impacts.

The TBL captures the essence of the four other theories to some extent and best answers the first three questions posed above. Table 7-3 summarises the essence of the three P's in TBL (people or social, planet or environment, and profit or economic gain). The focal areas, objectives and actionable recommendations for companies to balance social, environmental and economic responsibilities are presented below.

¹⁹²⁷ Paragraph 3.2.2.4.

¹⁹²⁸ Paragraph 3.2.2.5.

Table 7-3: The essence of the TBL theory

	Essence	CSI activities	CSI Strategy
Social Bottom Line	Strive towards fair labour practices, diversity, inclusivity and community engagement.	Create meaningful change by addressing poverty and inequality, improving access to education and healthcare, and supporting local communities.	Companies should prioritise initiatives that uplift communities and enhance quality of life while fostering equity and inclusivity.
Environmental Bottom Line	Reducing ecological impact through carbon emission reduction, natural resource conservation and waste management.	Promote sustainability by minimising environmental harm and mitigating ecosystem-wide impacts.	Managers should adopt long-term strategies focusing on pollution control and sustainability. Companies should integrate environmental CSR initiatives into broader operational planning.
Economic Bottom Line	Financial performance, including revenues, profits and shareholder returns.	Ensure long-term economic viability by balancing profitability with social and environmental responsibilities.	Sustainable practices should complement financial success. Companies should align profit generation with social and environmental goals for comprehensive business success.

To answer the first three questions asked above:

1) Why should companies get involved in CSI programmes, and to what extent?

Companies should participate in CSI in their host communities because fostering trust through ethical and responsible practices creates mutual benefits for both parties. The main reasons include: (i) Communities offer vital resources like labour, and local knowledge, while companies contribute by providing job opportunities, and building infrastructure. (ii) CSI reflects a social contract, where companies must act responsibly and balance their goals with the community's needs. (iii) Meaningful CSI addresses socio-economic problems, promoting community well-being and development and paving the way for long-term business success which can take the

form of non-financial benefits.¹⁹²⁹ The considerations of the TBL should guide sustainable CSI strategies.

What will the company gain from being involved?

Apart from trust and reputational gain and access to valuable community resources, loyal employees the company can also create a competitive advantage.

By embracing a holistic vision of success [incorporating the TBL principles] and committing to fostering positive social and environmental outcomes, companies contribute to a more sustainable future and position themselves for enduring success.¹⁹³⁰

Incorporating frameworks like B-BBEE and addressing societal challenges builds credibility and fosters alignment with governmental and stakeholder expectations.

7.3.2 Business case for CSR

A fundamental principle supporting the business case for CSR suggests that stakeholders are more likely to trust companies engaged in philanthropic activities, favouring them as preferred exchange partners.

The business case for CSR remains contested, with some researchers questioning its impact on corporate financial performance (CFP). Machine¹⁹³¹ argues that ethical conduct and shareholder support for CSR can enhance CFP. The business case for CSR relies on managing stakeholder relationships, which are crucial to maintaining a company's licence to operate.¹⁹³²

¹⁹²⁹ Ashrafi *et al* 2020 *Sustainability* 11. This study is of particular interest for this research because it can be linked to the discussion of sustainability as per Paragraph 2.2.1.1 above, as well as the discussion of the *outer sustainable CSR circle* of *The Integrated Sustainable CSR Model*, as discussed in Paragraph 2.4.2.2 above.

¹⁹³⁰ Farooq *et al* 2021 *Corporate Social Responsibility and Environmental Management* 969; refer to Paragraph 3.2.6.

¹⁹³¹ Refer to Paragraph 3.3.3.1.

¹⁹³² Tyagi 2024 <https://askelsustainabilitysolutions.com/7-key-drivers-the-motivation-behind-stakeholder-engagement/#:~:text=Where%20corporate%20social%20responsibility%20is,cost%2C%20much%20like%20quality%20management.>

However, the European Commission notes that many SMEs struggle to incorporate CSR into their daily operations, adding complexity to its adoption.¹⁹³³ Ndlovu¹⁹³⁴ emphasises the need for CSR policies to align with South Africa's unique economic and political environment to maximise stakeholder engagement and CFP. Littlewood and Holt,¹⁹³⁵ and Ndlovu¹⁹³⁶ stress the financial benefits of B-BBEE compliance for South African companies, particularly when working with the government. It was found that South African companies acknowledge the significant potential benefits of CSR, particularly relating to the *B-BBEE* scorecard activities, justifying their pursuit of these initiatives.¹⁹³⁷

7.3.3 Answering the last two questions – CSI involvement in South Africa

The last two questions to be addressed are: can companies be expected to step into the shoes of the government, and to what extent are South African companies involved in CSI.

The last question will be addressed first. Several reasons for corporate involvement were examined to understand the state of CSI in South Africa. One key factor is the government's apparent inability to fully address residents' socio-economic needs and invest in infrastructure.¹⁹³⁸ Large companies have recognised the need to collaborate with the government, leveraging their strengths to support these efforts, as exemplified by the 'CEO Initiative' and 'CEO-government partnership'.

Research on corporate CSI involvement, including studies by Trialogue, has revealed that most companies believe in their ability to positively impact communities and feel a moral obligation to do so. However, B-BBEE-related opportunities and potential tax benefits are also significant drivers of CSI spending.

Mills,¹⁹³⁹ in his research on failing states, argues that countries facing challenges like those in South Africa can improve, but this requires collective action from citizens

¹⁹³³ European Commission *Uptake of Corporate Social Responsibility (CSR) by European SMEs and start-ups* 1, 14.

¹⁹³⁴ Refer to Paragraph 3.3.3.5.

¹⁹³⁵ Refer to Paragraph 3.3.3.3.

¹⁹³⁶ Refer to Paragraph 3.3.3.5.

¹⁹³⁷ Refer to Paragraph 3.3.4.

¹⁹³⁸ Refer to Paragraphs 3.4.1 and 3.4.2.

¹⁹³⁹ Mills *Why States Recover: Changing Walking Societies into Winning Nations – from Afghanistan to Zimbabwe* 1.

and private entities such as companies. The government alone cannot shoulder the responsibility of addressing poverty and other socio-economic issues.

In addressing the first question posed for this paragraph, the discussion of Paragraph 3.4 concluded that, regardless of whether the private sector is more efficient than the public sector, businesses must step in by sharing their skills, resources and knowledge with the public sector. This collaboration is crucial to address South Africa's challenges and fostering "market-friendly policies, best practices, and improved security,"¹⁹⁴⁰ which are essential for better business outcomes.

In conclusion, this chapter addressed 'why' companies should be involved in CSI. If there were no need or motivation for companies to be engaged through CSI in their host communities or society at large, there would be no motivation for creating CSI-specific taxation legislation. From the above theoretical and South Africa-specific discussion, it can be concluded that companies need to be involved in the host communities and countries through CSI.

7.4 Can tax incentives or tax levies be utilised to encourage CSI involvement?

Chapter 4 aimed to assess the extent to which tax incentives or tax measures (such as rates or levies) could enhance CSI involvement. Two secondary objectives support this primary objective. The first was to define key taxation terms, providing a foundation for this chapter and subsequent ones. The second was to examine the relationship between CSI and taxation by (i) determining to what extent tax incentives are utilised to encourage CSI and (ii) determining to what extent a compulsory tax percentage, rate or levy is utilised to prompt CSI involvement. These dual sub-objectives addressed the idea that governments can use either or both incentives or penalties (for example, levies or higher tax rates) to influence taxpayer behaviour and encourage engagement in specific CSR practices or CSI activities.¹⁹⁴¹

¹⁹⁴⁰ Maggs *Moneyweb* <https://www.moneyweb.co.za/moneyweb-podcasts/moneyweb-midday/government-and-private-sector-partnership-is-crucial-silke/>.

¹⁹⁴¹ Preston and Kloppers 2018 *IJSSHS* 153.

The research objective for this chapter was: "To determine to what extent tax incentives or taxes can encourage CSI."¹⁹⁴² The findings can be summarised as follows. Firstly, this chapter explored how governments can employ tax incentives and levies to encourage CSI, in alignment with the proposed definition of CSI, the explanation of CSIE and Preston's Integrated Sustainable CSR Model. It was concluded that tax incentives and tax levies could be employed to target specific key areas and in the process encourage behavioural change. Tax incentives can be utilised to target sustainable practices (for example energy efficiency, renewable energy and climate change mitigation). Tax incentives can also address socio-economic challenges such as unemployment and humanitarian needs. The *Employment Tax Incentive Act*¹⁹⁴³ and in the case of CP, the section 18A (of the *ITA(SA)*) deduction, are two examples of tax incentives in South Africa. Another example is the so-called sugar tax. It seems as if both the *ETI Act* and the sugar tax levy had the desired effect.¹⁹⁴⁴

A second observation relates to the effectiveness of these tax policy instruments. While tax incentives can encourage voluntary investment, their effectiveness varies. SMEs, for instance, have been hesitant to use incentives like the ETI. Two reasons for them not engaging in the uptake of the incentive were found to be the administrative burden and perceived unfair treatment by SARS in the form of regular audits.¹⁹⁴⁵ It was also found that SMEs often keep an employee in employment after the person has reached retirement age, leaving limited options for additional or new job opportunities to employ those who would qualify for the ETI.¹⁹⁴⁶

It was also concluded that the government should design incentives with specific economic sectors in mind to create the most significant impact. It was indicated, for example, that the motor vehicle industry and the agricultural sector's response to incentives are significant compared to those of other sectors.¹⁹⁴⁷

¹⁹⁴² Refer to Paragraph 1.4.

¹⁹⁴³ 26 of 2013 (*ETI Act*).

¹⁹⁴⁴ Refer to paragraph 4.3.1.

¹⁹⁴⁵ Van Manen *TaxTalk* 38; Paragraph 4.2.4

¹⁹⁴⁶ Van Manen *TaxTalk* 38; Paragraph 4.2.4

¹⁹⁴⁷ Refer to Paragraph 4.2.1.

Tax levies, in contrast, can drive quicker behavioural change, as seen with the sugar tax. A combination of both incentives and levies is often necessary for long-term solutions, such as addressing climate change. However, exemptions (for example, Eskom's exemption from paying the carbon tax (the CO₂T) and the subsidy they receive) undermine the effectiveness of these measures, necessitating policy reform.

Lastly, this chapter investigated mandatory CSR legislation, compelling companies to contribute financially to specific pre-determined (by the respective governments) areas of intervention. Globally, mandatory CSI contributions linked to tax policies are rare, the exceptions being Mauritius, India and Seychelles.¹⁹⁴⁸ These countries use compulsory CSR financial contributions mainly to fund philanthropic initiatives and, to some extent, socio-economic initiatives. While these are effective in generating an immediate impact (generating additional income specifically earmarked for CSI), criticisms include their limited flexibility and inadequate numbers of government-prioritised areas.¹⁹⁴⁹

The recommendations made were as follows. Tax incentives are more flexible and could be designed to support specific CSI objectives. If integrated into a broader management framework, tax incentives can offer long-term solutions for sustainable socio-economic development and environmental challenges. "To increase company participation in CSI aligned with government objectives, it is recommended that incentives fully cover associated costs, as seen with Section 12B (and 12BA), rather than partially offset them, as with subsidies or the *ETI Act*."¹⁹⁵⁰

In conclusion, the opinion is that tax incentives will have a more favourable financial benefit for the company, although the cost to the government may outweigh the impact. Tax incentives, however, allow the company to step into the government's shoes and take over the role of the government in providing for the needs of society at large. It was also stated, however, that a combination of tax incentives and a tax might provide the most benefit for countries in the long run.¹⁹⁵¹

¹⁹⁴⁸ A comprehensive discussion of these countries' CSR legislation can be found in Chapter 5.

¹⁹⁴⁹ Refer to Paragraph 5.4.2.

¹⁹⁵⁰ Refer to Paragraph 4.4.

¹⁹⁵¹ Refer to Paragraph 4.4.

Chapter 6 closely links to the discussion in Chapter 4 and will therefore first be discussed before this discussion concludes with the findings of Chapter 5.

7.5 The deductibility of CSIE under the Income Tax Act South Africa

The main objective for this chapter, as proposed in Chapter 1, was: "To determine to what extent and how CSIE is incorporated in the current South African taxation framework."¹⁹⁵²

The first secondary objective of this chapter was to determine to what extent a company may deduct CP expenditure¹⁹⁵³ from its taxable income under section 18A of the *ITA(SA)*. The second secondary objective of the chapter was to determine to what extent a company can deduct CSI expenses incurred if the broad definition of CSI is considered.¹⁹⁵⁴

Specific sections included in Table 6-1 were scrutinised. These sections of the *ITA(SA)* can be divided into three groups: (i) The incentive allowing for a deduction of cash and non-cash contributions to PBOs (therefore CSIE of a philanthropic nature);¹⁹⁵⁵ (ii) general deductions because the expense incurred was closely related to the traded operations of the company and met the criterion of the general deduction formula;¹⁹⁵⁶ and (iii) specific incentives allowing deductions and allowances for trade-related CSR (therefore mainly internal adjustments of operation processes). The incentives (discussed in Paragraphs 6.1.4.1, 6.1.4.2 and 6.1.4.3) are generally introduced to mitigate climate change-related challenges. One of the sections, section 12BA, was introduced to assist in alleviating the electricity crises. (iv) The last two sections (sections 37C and 37D) considered relate to the conservation of land for the public interest. (v) A few binding rulings, mainly private, which relate to the above were also discussed. Some other incentives, not necessarily linked to the *ITA(SA)*, had already been discussed in Chapter 4, in which paragraphs 4.2.4, 4.3.1 and 4.3.2 were again briefly referred to. (vi) The last secondary objective was to discuss the working of South Africa's Solidarity Fund and

¹⁹⁵² Refer to Paragraph 1.4.

¹⁹⁵³ The narrow definition of CSI refers to CP. For the narrow definition of CSI refer to Paragraph 2.3.3.

¹⁹⁵⁴ CSI per the broad definition as proposed in Paragraph 2.2.5.

¹⁹⁵⁵ Refer to Paragraph 6.1.1.

¹⁹⁵⁶ Section 11(a) read with s 23(g) of the *ITA(SA)*; Refer to Paragraph 6.1.2.

its link with the *ITA(SA)*, because similar funds/foundations are in operation in Mauritius.

The findings will now be revisited for each secondary objective and in relation to the main objective of this study, namely, to propose legislative reform for incorporating CSIE into the South African taxation framework.

7.5.1 CP and its deductibility

The first secondary objective is the deductibility of CSIE under section 18A of the *ITA(SA)*. Two major findings relating to section 18A and the Ninth Schedule of the *ITA(SA)* were made. Firstly, although all NPOs which provide public benefit activities (PBAs) as listed in Part I of the Ninth Schedule can apply and be registered as PBOs as per the requirements of section 30, only donations to PBOs providing those PBAs listed in Part II of the Ninth Schedule will qualify for a deduction in the calculation of taxable income. Although a company has met all the other requirements, the PBO will not be allowed in this case to supply the company with the necessary section 18A(2)(a) receipt.

As was illustrated by way of an example under Paragraph 6.1.1, CSIE incurred for the general good of the public would not be deductible, because it is excluded in terms of section 18A(1)(a) and 18A(1)(c) read with Part II of the Ninth Schedule. Based on previous observations it is concluded that South African companies tend to structure their CSI activities to their advantage per legislative measures (such as the section 18A deduction and also the *B-BBEE* Code and related *B-BBEE* scorecard points). It was recommended that at least the exclusions of PBAs under Part II of the Ninth Schedule should be revised to include these activities.¹⁹⁵⁷

It was also illustrated that community-based organisations (CBOs) often step in to undertake community upliftment initiatives, such as cleaning parks, filling potholes, replacing road signs, etc. Local municipalities should have performed all of these functions, but as indicated in Chapter 3, Paragraphs 3.4.1 and 3.4.2, the municipal government is in many cases unable to fulfil its obligations for financial reasons. These organisations can also register as PBOs provided that the PBAs delivered

¹⁹⁵⁷ Refer to Paragraph 6.1.1.

resort under Part I of the Ninth Schedule listed PBAs. The question is, however, whether taxpayers/companies will still be willing to donate to these CBOs if the organisation cannot supply them with a section 18A certificate, allowing the company a deduction against taxable income for the donation made. If the community upliftment project is not one of the Part II (of the Ninth Schedule) listed PBAs, then the CBO (as a registered PBO) will not be allowed to issue a section 18A certificate for the value of the donation received. Considering the financial constraints of the government and the work done by CBOs on behalf of the government, it is suggested that the list of PBAs qualifying for a section 18A deduction be expanded to include the type of activities done by the CBOs and to ensure that donors to these organisations will benefit in this regard.¹⁹⁵⁸

Furthermore, the ceiling imposed on the maximum deduction, which equals to 10 per cent of taxable income, can be discouraging. It was seen that with the COVID-19 Fund managed by the Solidarity Fund of South Africa an additional 10 per cent ceiling was imposed, allowing an effective maximum of 20 per cent of taxable income as a deduction. Without further empirical research, it is not possible to determine whether companies will indeed donate more with a higher ceiling in place, but it is deduced, based on the findings in Chapter 4, that companies are more susceptible to incentives, and that such a higher ceiling might therefore incentivise companies to get involved. This inference is further supported by the rand amount legal entities (companies) donated to the COVID-19 Solidarity Fund.¹⁹⁵⁹

7.5.2 The deductibility in terms of the general deductions formula (GDF)

The second secondary objective was to determine the deductibility of CSIE under the related sections and in terms of some binding rulings and case law.¹⁹⁶⁰

The major obstacles that eliminate the deductibility of CSIE are firstly the requirement/criterion that the expense should be incurred in relation to the trade of the company. It was determined that the specific business operations of the

¹⁹⁵⁸ Refer to Paragraph 6.1.1.

¹⁹⁵⁹ Naspers for example donated R500 million to the fund. See Davids 2023 https://ipa-sa.org.za/wp-content/uploads/2023/04/Leila-Davids-The-Solidarity-Fund_Philanthropy_FINAL.pdf 3.

¹⁹⁶⁰ Refer to Paragraphs 6.1.2 and 6.1.3.

company will be considered,¹⁹⁶¹ and that there should be a close enough link between the act that resulted in the expense and the 'income-earning operations' (therefore it should be 'in the production of the income' of the company).¹⁹⁶² Because CSI is generally external to the business operations, the related CSIE will not meet this criterion and will therefore not be deductible in the calculation of the company's taxable income under the provisions of the GDF.

It was deduced from the discussion relating to the 'Binding Rulings' that a company might be able to prove that the CSIE relating for example to social development activities listed under the *B-BBEE*-scorecard was indeed in the production of income,¹⁹⁶³ and if these expenses are not of a capital nature¹⁹⁶⁴ it should therefore be deductible under the GDF against taxable income. It was further underscored by the *Warner Lambert* case¹⁹⁶⁵ that expenses of this type would establish a close enough link to the business operations of the company. It is, however, the opinion that the taxpayer would either have to obtain a binding ruling in this regard to be on the safe side if it would like to deduct such expenses, or the deduction thereof would have to be tested in court.

Goldswain and Swart¹⁹⁶⁶ reasoned that the courts have over time expanded the interpretation of in the 'production of income' criterion to include and hence allow the deduction of CSIE relating to community involvement activities.¹⁹⁶⁷ Once again, it should be remembered that SARS is inclined to apply a narrow interpretation of these criteria, as laid down by Watermeyer AJP in the *PE Electric Tramway* case. The possibility that community upliftment, socio-economic development, sustainable development and environmental CSIE (external to the normal trade activities) would be allowed as a deduction under the provisions of the GDF remains slim for the time being. It is therefore suggested that a new all-encompassing article be incorporated in the *ITA(SA)* to make provision for CSIE in this regard.

¹⁹⁶¹ Refer to, amongst others, Paragraph 6.1.2.1.1.

¹⁹⁶² Refer to the discussion of Paragraph 6.1.2.1.3

¹⁹⁶³ Refer to the discussion under Paragraph 6.1.3.

¹⁹⁶⁴ Refer to Paragraph 6.1.2.1.4.

¹⁹⁶⁵ Refer to Paragraph 6.1.2.3.

¹⁹⁶⁶ Goldswain and Swart 2015 *Southern African Business Review Special Edition Tax Stories* 71-96.

¹⁹⁶⁷ Refer to the discussion under Paragraph 6.1.2.1.3.

7.5.3 Testing the deductibility of CSIE under the provisions of other selected sections of the ITA(SA)

The provisions of the following sections all incentivise investment in ecologically friendly capital assets (addressing to some extent behaviours that have an impact on climate change): sections 12B(1)(h) – renewable energy, section 12BA – a super once-off allowance for new and unused renewable energy plants, section 12U – related infrastructure, section 12L – expenditure incurred to make operations more energy efficient, 37B – allowances relating to waste disposal plants. Unfortunately, again, the legislation provides that the depreciation allowances/incentive deductions will be allowed only if the expense is directly linked to the company's business operations/trade. The provisions of these sections are also very similar, which raises the question of why the *ITA(SA)* could not provide one general section which is supplemented with regulations that can be more easily adjusted. This option is suggested, but specifically as an option of expanding the scope of the legislative provisions to include CSIE which is not directly trade-related.

The only two sections related to CSIE incurred for the greater good of society are sections 37C and 37D, which make provision for land conservation or land specifically withdrawn/set aside and declared as a conservation area or park. In this case the company would for the better part lose the right of occupation and use and would incur expenses. The company is then compensated by the expenses incurred as a deduction, and a capital allowance is permitted as a deduction for the value of the land given up. These sections confirm that provision for the deduction of CSIE incurred for the greater good of society can be made.

7.5.4 The Solidarity Fund¹⁹⁶⁸

The last secondary objective was to discuss the working of South Africa's Solidarity Fund and its link with the *ITA(SA)*, because similar funds/foundations operate in Mauritius.

Although the Solidarity Fund was created with the specific objective of sourcing/collecting money and procuring resources to assist the government in the

¹⁹⁶⁸ For the comprehensive discussion refer to Paragraph 6.2.

COVID-19 battle, a few positive comments regarding the management of such a fund can be made. These will be taken into consideration in the proposal of legislative reform to incorporate CSIE. The first directly relates to the deduction of donations by taxpayers to this fund. As previously indicated, this Fund was registered as a PBO, and donations to this fund would qualify for section 18A of the *ITA(SA)* deduction. The difference is that this deduction was not limited under the normal provisions of this section, as an additional ceiling of 10 per cent relating only to donations to this Fund was implemented. Effectively the taxpayer/company would be able to deduct a maximum of 20 per cent of its taxable income for the 2020/2021 year of assessment. This provision was implemented as a once-off, with the obvious objective of generating more donation income for the Fund. The government is therefore willing in some cases to increase the ceiling limit. It is suggested that a specific adjustment regarding CSIE (concerning socio-economic development and aiming at improving the living conditions of communities) should be considered.

Lastly, the Solidarity Fund proved to be an effective vehicle to manage large-scale projects aimed at impacting on society at large. It is believed that the strength and success of this Fund vested in the qualifications and experience of the management team and the governance structure. The team included specialists in specific fields that would aid in reaching the goals set. With the shutting down of the Fund, the managing team reflected on the whole process, indicated what lessons had been learned, and will employ the lesson to guide future projects. One of these lessons was:

Figure 7-1: Procurement lesson learned



Therefore, it is important to use the knowledge, experience and capacity of the private sector to ensure achieving the best results. Secondly, strict quality control should be enforced at all times.

As was concluded: "The Solidarity Fund is an example of a project (or projects) that has been devised and managed for national impact."¹⁹⁶⁹

¹⁹⁶⁹ Paragraph 6.2.

7.5.5 Conclusion – ITA(SA)

It is believed that South Africa's taxation framework did not keep up with global developments, specifically in relation to the sustainable development goals (which also influenced the development of CSI in South Africa). The limited number of these goals addressed in the *ITA(SA)* relate mainly to humanitarian aid.¹⁹⁷⁰ It should be acknowledged, however, that Part I of the Ninth Schedule does allow for PBOs to provide services related to the conservation of the environment and fauna and flora. The limitation relates to the fact that no tax benefit is available for a private organisation if its activities in this regard are undertaken in person and, therefore, not by way of a donation to a PBO.¹⁹⁷¹ Only a few isolated provisions/sections incentivise sustainable practices, aiming in general at addressing the use of green energy and climate change. This reflects a lack of comprehensive support for investments aimed at broader socio-economic and environmental benefits.

In conclusion, the *ITA(SA)* does not sufficiently incentivise companies to invest in sustainable development or broader public benefit initiatives. Section 18A is the primary mechanism for CSI, in the form of CP, deductions and is therefore very limiting.

7.6 Mandatory CSR legislation of three countries – lessons learned

This section relates to the discussion in Chapter 5.¹⁹⁷² The lessons learned from the respective CSR legislation of Mauritius, India, and Seychelles will be applied to the model proposed in Paragraph 7.7 below.

The main objective of this chapter was to scrutinise the respective legislative provisions of the three states concerned "aiming at establishing the potential application of such tax legislation in South Africa."

The following are noted for the sake of review: (i) The legislation of all three countries discussed imposes a CSR levy in some way, mandating companies to incur/contribute towards CSI (defined in a broad way).¹⁹⁷³ Under its income tax legislation (*ITA(MAU)*) Mauritius imposed a CSR contribution tax levy of two per cent calculated as an amount

¹⁹⁷⁰ Refer to Part II of the Ninth Schedule of the *ITA(SA)*.

¹⁹⁷¹ Refer to Table 5-4, Paragraph 5.4.

¹⁹⁷² Refer to the discussion of Paragraph 5.4.2.

¹⁹⁷³ Refer to Paragraph 2.3.3.

equal to taxable income as calculated under the *ITA(SA)*.¹⁹⁷⁴ The two per cent contribution imposed by India was introduced (and managed) under the provisions of their *Companies Act*, 2013. The CSR contribution is calculated on profit after tax.¹⁹⁷⁵ Seychelles (when the legislation was still enforced) had a specific *CSR Tax Act*, which provided that a tax of zero point five per cent should be paid, calculated on turnover.¹⁹⁷⁶ (ii) Only Mauritius used a public Fund and Foundation to manage the funds received as a CSR tax levy. The Fund and Foundation distribute the funds received to NPOs. The Fund/Foundation is therefore only an independent vehicle (independent from the government) to manage the funds for the greater good of society (similar to South Africa's Solidarity Fund). (iii) The distribution of the CSR funds received by the Mauritius Revenue Authority, as well as the 25 per cent¹⁹⁷⁷ the company may distribute (or apply) in its own discretion, must be awarded as per the prescribed list of pre-determined 'priority areas of intervention'.¹⁹⁷⁸ The other two countries have similar lists,¹⁹⁷⁹ but there are definite areas considered to link closely to the broad definition of CSI: for example (a) the restoration of national buildings, (b) road safety and security, (c) environmental and sustainable development, (d) social business projects, (e) community and cultural development (including sport, leisure and recreation), (f) and socio-economic development and relief funds (as in South Africa's Solidarity Fund). (iv) The respective income tax acts of the different countries also have limited provisions regarding the deductibility of CSI expenditure. More detail will be provided below.

The first lesson learned is that the specific priority areas determined and enforced by the government are perceived as very limiting. This was observed in the case of all three countries, but specific remarks were made for Mauritius and India.¹⁹⁸⁰ It is advised that an option should be available for a company to motivate the need for a particular project. This option was seen to some extent under the provisions of sections 35CCC and 35CCD of the *ITA(IND)*¹⁹⁸¹ and *Seychelles 2017 CSR Tax Qualifying Sectors and Approved*

¹⁹⁷⁴ Paragraph 5.1.1.

¹⁹⁷⁵ Paragraph 5.2.1.

¹⁹⁷⁶ Paragraph 5.3.1.

¹⁹⁷⁷ The 25 per cent can be a maximum of 50 per cent, depending on the date the company had registered its own Fund.

¹⁹⁷⁸ Paragraph 5.1.3.

¹⁹⁷⁹ Refer to Table 5-4 for a comparison of these prescribed priority areas with Part II of the Ninth Schedule of the *ITA(SA)*; Paragraph 5.4.

¹⁹⁸⁰ Refer to Paragraph 5.4.2.

¹⁹⁸¹ Paragraph 5.2.4.

Programmes.¹⁹⁸² However, the legislation of these countries made provision for a company to register a programme with a specific authority, and then the cost incurred was managed accordingly. In the case of India, the programmes related to capacity building in agriculture and any other training programme.¹⁹⁸³ In the case of Seychelles there were different options, but the one considered in Figure 5-2 is related to the 'protection and preservation of the environment pre-approved programmes'. The rules prescribed by Seychelles provided that a national agency should first endorse/approve the programme before the project could be registered with the CSR committee. India is very specific regarding the documentary proof and audit process that should be followed before a refund/deduction of cost against income under the *ITA(IND)* will be approved.

The second lesson learned is that these governments allowed 100 per cent or more of the cost of the investment in areas/cases where urgent intervention was needed. For example:

- (a) Mauritius allows the company a deduction of three times the cost, to a maximum of Rs 1 million,¹⁹⁸⁴ for a donation to an NGO (PBO) "involved in supporting persons with health issues and disabilities, protection of street children ..."¹⁹⁸⁵
- (b) Originally, sections 35CCC and 35CCD of the *ITA(IND)* allowed for a deduction of 150 per cent of the cost incurred by the company in the calculation of taxable income. Currently the company is allowed to deduct 100 per cent of the cost.

Section 80G of the *ITA(IND)* (relating to donations for charitable purposes) allows a 50 per cent or 100 per cent deduction of the value of the donation in the calculation of taxable income, depending on the NGO (PBO) partner's activities. It should be noted that provisions similar to section 18A of the *ITA(SA)* exist in the Indian case too, requiring that a certificate should be issued and kept.

¹⁹⁸² Paragraph 5.3.2; Figure 5-2.

¹⁹⁸³ Sections 35CCC and 35CCD; refer to Paragraph 5.2.4.

¹⁹⁸⁴ With the exchange rate of one Rs to R0.39 on 26 November 2024, Rs 1 million equals 863.50.

R387

¹⁹⁸⁵ *Budget Speech 2023/2024* of 2 June 2023 70.

(c) Seychelles has provisions similar to those of section 80G of the *ITA(IND)* and section 18A of the *ITA(SA)*. Under its legislation (section 23 of the *Business Act*)¹⁹⁸⁶ the company will be allowed a 100 per cent discount of costs.

Thirdly, during the run-up to implementing its CSR tax levy, Mauritius dropped the corporate income tax (CIT) rate by two per cent. If the statistics published by SARS¹⁹⁸⁷ and the government's financial situation is considered, it is assumed that this will not be a viable option for South Africa.

These lessons learned, as well as the lessons learned from South Africa's Solidarity Fund and the suggestions made in Chapter 6, will now be applied to suggest a model for incorporating CSIE in the taxation framework of South Africa.

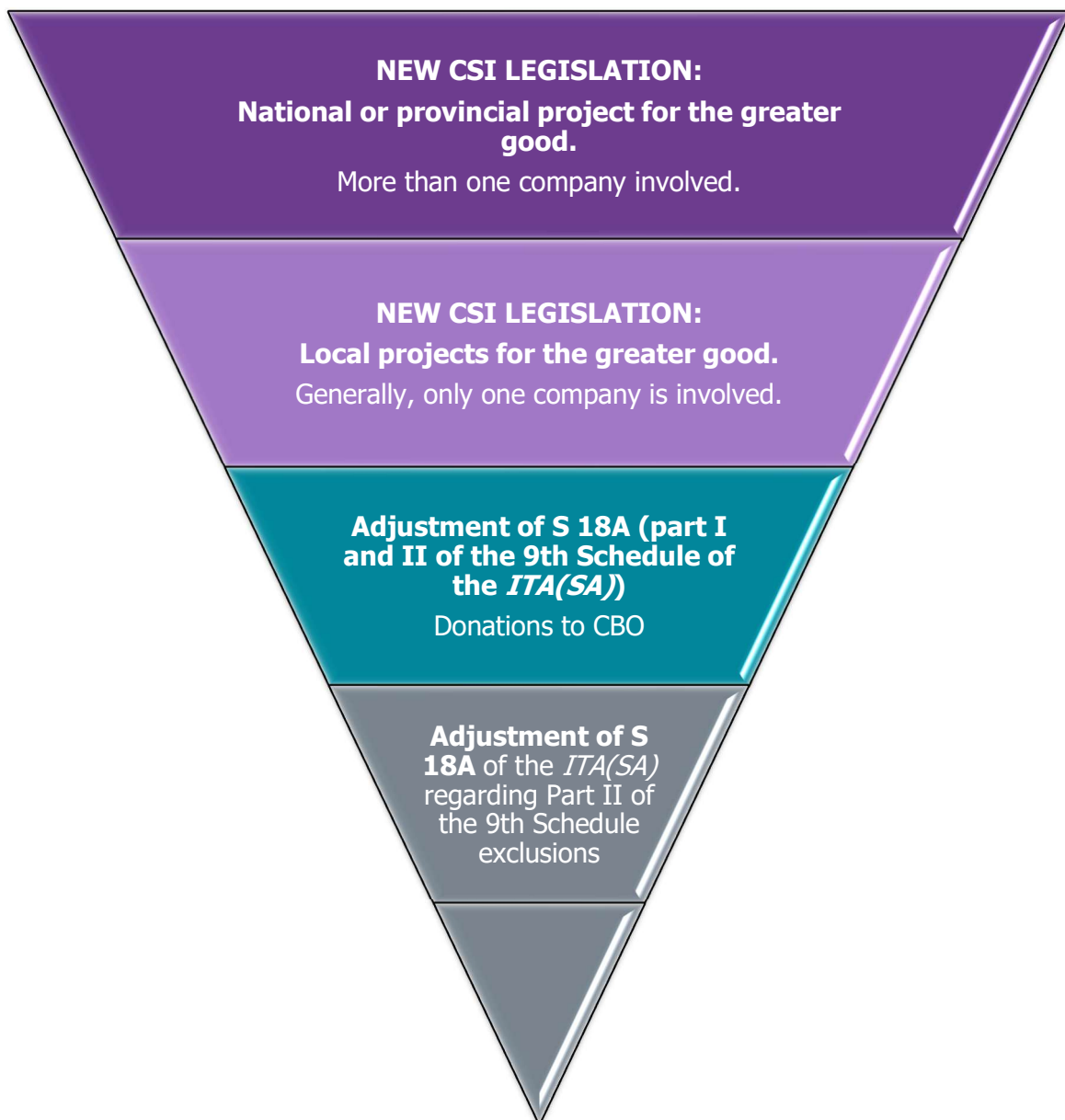
7.7 Legislative reform of the ITA(SA) proposed for the incorporation of CSIE

Based on the lessons learned and proposals made immediately above and in Chapters 5 and 6, the following model for incorporating CSIE in the *ITA(SA)* is proposed. The explanation of the model presented in Figure 7-2 follows below.

¹⁹⁸⁶ 28 of 2009.

¹⁹⁸⁷ SARS *Tax Statistics 2023*; CIT is the third largest source of tax income. vi; Although the amount of CIT collected increased from 16.6 per cent to 20.6 per cent, a decline in the tax income collected from individuals, VAT and other sources reported a decline compared to the previous tax year. 1; most of the companies that submitted their tax returns had made no profit or a taxable loss. 22.

Figure 7-2: Model for legislative reform



It is recommended that a new section be introduced in the *ITA(SA)* to make provision for the deduction of CSIE. It is further suggested that the structure and wording of this section should be similar to those of section 35CCC of the *ITA(IND)* and sections 37C and 37D of the *ITA(SA)*.

The following is a concept of the suggested wording of such a section:

Section ... Deductions in respect of corporate social investment expenditure.

(1) For the purposes of this section—

"corporate social investment" defined in the broad sense, is a more focused version of CSR and therefore an aspect of being a good corporate citizen. CSI is a company's cash as well as non-cash investment in development projects to bring about meaningful change in society at large, creating a measurable social return on investment and enhancing the company's strategic position. The investment projects will have as goals the responsible and sustainable use of the Earth's resources, sustainable socio-economic development and growth, improving infrastructure, the upliftment of society at large and the improvement of the quality of life of the company's employees (with an underlying purpose of addressing past injustices), contributing towards food security, promoting the arts, and preserving cultural heritage.

"corporate social investment expenditure" means an amount of expenditure incurred as an expense or cost, a financial burden, or an outlay by a taxpayer for activities external to the ordinary trade of the taxpayer and relating to CSI.

(a) utilised for the greater good of society, and registered with the CSR Committee; and
(b) a project registered with the CSR Committee as per the requirements contained in the CSI Rules and Regulations.

(2) There shall be allowed to be deducted an amount equal to 100 per cent of the cost incurred from the income of the taxpayer, in respect of any year of assessment, provided that the requirements as prescribed and published from time to time by the Minister in the CSI Rules and Regulations were met.

It is suggested that the greater part of the specific provisions and requirements are contained in a set of regulations, because it is easier to adjust regulations than legislation.

The following specific suggestions, based on the sections 35CCC and 35CCD Regulations of the *ITA(IND)*, as well as section 12L of the *ITA(SA)* provisions relating to SANEDI, concern the administration of CSI-related projects.

1. It is suggested that an independent CSR Committee be established, with members from the private and public sectors, specifically including SARS, because the legislation as a component of the *ITA(SA)* is to be managed by SARS. The National Social Inclusion Foundation of Mauritius illustrated this model. The lessons learned from the South Africa Solidarity Fund¹⁹⁸⁸ also indicates that a "Technical Operating Model allows for a steady staff/capacity component ..." ¹⁹⁸⁹ This committee will consider and approve projects.
2. For national and provincial CSI projects, more than one company is expected to be involved because of the size and cost of the project. In such cases it is recommended that a national authority be identified per economic sector relating to the project's core objective, which will consider and endorse the project. For example, if the project relates to a maintenance project of a provincial road, the national authority to be appointed will be the *Engineering Council of South Africa*. The proposal will be similar to a business proposal. After the project is endorsed, it will be registered with the CSI Committee.
3. Over and above the fact that the CSI Committee will be responsible for the registration of these projects, it will also be responsible for monitoring the projects and ensuring that the requirements regarding documentary proof are adhered to.¹⁹⁹⁰ Once the project is completed, it has to sign off on it before deductions against taxable income will be approved by SARS.
4. Once the project is completed, the audit completed too, and the CSI Committee has signed off on the project, the taxpayer will be allowed a deduction of the cost/CSIE against taxable income. If the project extends over more than one financial/tax year, then it is suggested that, based on progress reports submitted and approved, the taxpayer will be allowed a deduction for that specific year's CSIE against taxable income.

¹⁹⁸⁸ Figure 6-5.

¹⁹⁸⁹ Solidarity Fund 2020 https://static.pmg.org.za/201201SOLIDARITY_FUND.pdf 22.

¹⁹⁹⁰ This process will be similar to that prescribed in sections 35CCC and 35CCS of the *ITA(IND)* as well as the CSR-2 document which should be submitted by Indian companies to the Minister of Corporate Affairs. Refer to Paragraphs 5.2.1 and 5.2.4. Section 12L of the *ITA(SA)* can also provide guidance in this regard.

5. Finance: especially for large national and provincial projects, which are expected to be more expensive, it is suggested that institutions such as the Development Bank of South Africa, the National Development Agency and the Social Development Fund be involved. For example, an initial loan (at a very low interest rate) may be granted for the duration of the project. This will assist with the cash flow of the company/companies until a refund against taxable income is granted. It will also oblige the company to complete the project because if it does not, the loan must be repaid. For these bigger (national and provincial) projects, especially where more than one company is involved, it is suggested that (as in the case of the South African Solidarity Fund) a bank account not linked directly to the trade operations of any of these companies is opened and managed by an independent authority such as an audit firm. This will (that is the hope) ensure that the funds are not misused.
6. Smaller local projects: it is still suggested that the project should be registered with the CSI Committee and that documentary evidence proving progress towards or the completion of the project and that CSIE was actually incurred should be required to be submitted to the Committee.
7. It is, however, not suggested that a national list of priority areas be published because it is perceived that a company operating within a host community will be able to identify its CSI needs better than the government, which is not daily involved in specific communities. The government can, however, make provision for an allowable deduction of more than 100 per cent to initially incentivise companies to get involved in CSIE. This incentive should be available to all companies.
8. Lastly, as was indicated above, the government can also consider to adjust/expand the Part II¹⁹⁹¹ PBAs to make provision for and include the activities provided by CBO, currently excluded from the accepted Part II PBAs. As such, a 100 per cent deduction (with no ceiling limitation) is suggested for donations to CBOs.

Regarding the second adjustment of section 18A, it is proposed that Part II should be amended to include those Part I PBAs currently excluded from the Part II¹⁹⁹² PBAs. The reasons for the amendments were discussed as suggestions in Paragraphs 7.5.1

¹⁹⁹¹ of the Ninth Schedule of the *ITA(SA)*.

¹⁹⁹² of the Ninth Schedule of the *ITA(SA)*.

and 7.5.5 above. It is suggested, however, that a higher ceiling of for example 20 per cent be implemented in such cases where the government wants to incentivise donations to specific PBOs.

It should be remembered that these CSI projects will relate mainly to areas where the government lacks the ability to adhere to its obligations to provide for the needs of the country and its communities.

7.8 Revisiting the research question and main objective

In Chapter 1, the research question for this study was set as:

"How can the South African taxation framework be reformed to incorporate corporate social investment expenditure?"¹⁹⁹³

The related primary objective was "to propose legislative changes to the South African taxation framework, which will incorporate corporate investment expenditure (CSIE), either by introducing tax incentives and/or by introducing a compulsory tax."¹⁹⁹⁴

With the new CSI legislation proposed in Paragraph 7.7 above, this research question has been answered and the main objective reached.

7.9 Limitations and further research

The applicability of the proposed definitions and use of Preston's Integrated Sustainable CSR Model by jurisdictions (other than South Africa) have not been empirically tested. It is believed, however, that other jurisdictions would be able to adjust the definitions to their own unique cultures and circumstances. Many countries have similar tax legislation allowing a deduction for philanthropic donations (similar to section 18A of the *ITA(SA)*). It is further believed that Preston's Integrated Sustainable CSR Model could be applied in all jurisdictions because of its dynamic structure.

The financial implications of the new CSI legislation, allowing for related CSIE to be deducted against taxable income for both the Government and companies were also not empirically tested. Further follow-up research in this regard is suggested.

¹⁹⁹³ Paragraph 1.3.

¹⁹⁹⁴ Paragraph 1.4.

It is believed that the acceptance of Preston's Integrated Sustainable CSR Model and the newly proposed definitions for CSR and CSI, as well as the implementation of the proposed legislative reform, could make a profound impact on companies' willingness to address social issues and society at large.

ANNEXURES

ANNEXURE 1

The following sub-codes, applied in the coding of the documentation, making use of the ATLAS.ti 23, were based on the public benefit services as set forth in Part II of the Ninth Schedule to the *Income Tax Act* 59 of 1962.

Table A1-1: Corporate Philanthropy codes

Corporate Philanthropy main sub-codes	
WH	Welfare and Humanitarian Services
HC	Health Care
ED	Education and Development
CEAW	Conservation, Environment and Animal Welfare
LH	Land and Housing
Sub-codes Welfare and Humanitarian Services (WH)	
WH1	Care (counselling/education) for abandoned, abused, neglected, orphaned or homeless children
WH2	Care/counselling poor and needy persons of which at least ≥ 60 years old
WH3	Care (counselling / education/programmes) for physically or mentally abused and traumatised persons
WH4	Disaster relief
WH5	Rescue/care persons in distress
WH6	Poverty relief
WH7	Accused / imprisoned / former: Rehabilitation, care, counselling, education for
WH8	Substance abuse and dependency related programmes
WH9	Conflict resolution, the promotion of reconciliation
WH10	Programmes promoting human rights
WH11	The protection of the safety of the general public
WH12	The promotion or protection of family stability
WH13	Provision of legal services for poor and needy persons
WH14	Pre-school care for the children of poor families
WH15	Promotion and protection of (rights) of asylum seekers / refugees
WH16	Community development for poor and needy persons and anti-poverty initiatives, including
WH17	The promotion of access to media and a free press

Sub-codes Health Care (HC)	
HC1	Provision of health care services to poor and needy persons.
HC2	The care or counselling of terminally ill persons or persons with a severe physical or mental disability, and the counselling of their families in this regard.
HC3	HIV/AIDS related programmes
HC4	Blood transfusion, organ donor, similar services
HC5	HC education
Sub-codes Education and Development (ED)	
ED1	Schools
ED2	Higher education institutions
ED3	Adult education
ED4	Continuing education and training" provided by a "private college
ED5	Training for unemployed persons with the purpose of enabling them to obtain employment.
ED6	The training or education of persons with a severe physical or mental disability.
ED7	The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph
ED8	Early childhood development
ED9	Buildings and equipment - public schools and educational institutions
ED10	Addressing needs / gaps in educational system
ED11	Training / capacity building in government
ED12	Career guidance and counselling
ED13	Accommodation / students of a PBO - sections 30 or 10(1)(cA)(i)
ED14	Scholarships and bursaries
ED15	Educational programmes - Public Finance Management
Sub-codes Conservation, Environment and Animal Welfare (CEAW)	
CEAW1	Protection of natural habitat
CEAW2	Care of animals
CEAW3	Environmental awareness, greening, clean-up or sustainable development projects.
CEAW4	The establishment and management of a trans frontier area
Sub-codes Land and Housing (LH)	
LH1	Provision of housing / building supplies for the benefit of persons monthly household income ≤R15 000
LH2	Building and equipping of clinics or crèches for the benefit of the poor and
LH3	Protection of rights of needy / poor tenants
LH4	The promotion, facilitation, and support of access to land

ANNEXURE 2:

The following is a list of all documents analysed using ATLAS.ti 23:

Anwana E "Social justice, corporate social responsibility and sustainable development in South Africa" 2020 *HTS Teologiese Studies/Theological Studies* 1-10

Babarinde OA "Bridging the Economic Divide in the Republic of South Africa: A Corporate Social Responsibility Perspective" 2009 *Thunderbird International Business Review* 355-368

Beebeejaun A "The Corporate Social Responsibility: Legislative Provisions in Mauritius" 2020 *International Journal of Law, Humanities & Social Science (IJLHSS)* 9-19

Carroll AB "The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders" 1991 *Business Horizons* 39-48

Betancourt DS "Exporting corporate social responsibility into Africa? The experiences of South African companies in Swaziland" 2016 *Journal of Contemporary African Studies* 538-556

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<https://www.csisolutions.co.za/why-csi.php>

Deloitte Consulting (Pty) Ltd *The economic & socio-economic benefits of R&D-based multinational pharmaceuticals on the South African economy* (Johannesburg 2007)

Dharmapala D and Khanna V "The impact of mandated corporate social responsibility: Evidence from India's Companies Act of 2013." 2018 *International Review of law and Economics* 92-104

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Fourie N *Corporate Social Responsibility – Evaluating Three South African Companies' Initiatives* (MBA-dissertation Nelson Mandela Metropolitan University 2005)

- Gardberg NA *et al* "The Impact of Corporate Philanthropy on Reputation for Corporate Social Performance" 2017 *Business in Society* 1177-1208
- Gautier A and Pache A "Research on Corporate Philanthropy: A Review and Assessment" 2015 *Journal of Business Ethics* 343-369
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- Gokulsing RD "CSR matter in the development of Mauritius" 2011 *Social Responsibility Journal* 218-233
- Hinson RE and Ndhlovu TP "Conceptualising corporate social responsibility (CSR) and corporate social investment (CSI): the South African context" 2011 *Social Responsibility Journal* 332-346
- Hole Y, Pawar-Hole S and Bendale S "Corporate Social Responsibility (CSR) In India: A Conceptual Framework" 2019 *GIS Business* 330-340
- Horn R, De Klerk M and De Villiers C "The association between corporate social responsibility reporting and firm value for South African firms" 2018 *South African Journal of Economic and Management Sciences* 1-10
- Institute of Directors Southern Africa *King Report on Governance for South Africa 2002* (Sandton 2002)
- Institute of Directors Southern Africa *King Report on Governance for South Africa 2009* (Sandton 2009)
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- Jadiyappa N, Iyer SR and Jyothi P "Does social responsibility improve firm value? Evidence from mandatory corporate social responsibility regulations in India." 2021 *International Review of Finance* 653-660
- Jain CAMK "Is Companies Act 2013 forcing corporate to do Charity? A critical Analysis of CSR regime of new Corporate Legislature of India" 2015 *International Journal of Multidisciplinary Approach and Studies* 208-217

Jain A, Kansal M and Joshi M "New development: Corporate philanthropy to mandatory corporate social responsibility (CSR)—A new law for India." 2021 *Public Money & Management* 276-278

Kabir MdH, Mukuddem-Petersen J and Petersen MA "Corporate social responsibility in South Africa" 2015 *Problems and Perspectives in Management* 281-289

Kubíčková K "Strategic philanthropy: Literature review." 2018 *Acta Oeconomica Pragensia* 70-89

Kumar RB and Kumar M "Corporate Social Responsibility in Indian Tour Operation Industry" 2018 *International Journal of Hospitality & Tourism Systems* 82-88

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Lideikyte-Huber G "An Act of Love? Tax Aspects of Corporate Philanthropy" in Trigo Trindade R, Bahar R and Neri-Castracane G *Vers les sommets du droit: Liber amicorum* (Henry P Genève; Zurich 2019)

Marx JD "Corporate philanthropy: What is the strategy?" 1999 *Nonprofit and Voluntary Sector Quarterly* 185-198

Mei MQ and Wang T "Place and corporate philanthropy: A systematic review" 2021 *International Journal of Management* 376-393

Mueller-Hirth N "Corporate social responsibility and development in South Africa: socio-economic context and contemporary issues" in Vertigans S, Idowu SO and Schmidpeter R (eds) *Corporate social responsibility in sub-Saharan Africa: sustainable development in its embryonic form* (Springer, online 2016)

Ndhlovu TP "Corporate Social Responsibility and Corporate Social Investment: The South African Case" 2011 *Journal of African Business* 72-92

Ndiweni E and Sibanda W "CSR governance framework of South Africa, pre, during and post-apartheid: a manifestation of *ubuntu* values?" 2020 *International Journal of Business Governance and Ethics* 363-383

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Nxumalo LK *Investigating a South African listed company's corporate social responsibility initiatives in varying economic conditions* (M. Com-dissertation University of Kwazulu-Natal 2020)

Ouma WN "Corporate Philanthropy and Firm Value in Africa: A case study of Selected Firms in South Africa" 2020 *International Review of Philanthropy and Social Investment* 45-56

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Ramdhony D *The Influence of Corporate Governance Practices on Corporate Social Responsibility (CSR) Reporting – Evidence from Mauritius* (PhD-Thesis University of Southern Queensland Australia 2017)

Ramlall S "Corporate social responsibility in post-apartheid South Africa" 2012 *social Responsibility Journal* 270-288

Siyobi BA *An assessment of Corporate Social Responsibility in South Africa's mining industry: A case study of Anglo American Platinum's Corporate Social Investment programmes in the area of Education* (Master of Philosophy minor-dissertation University of Cape Town 2016)

Skinner C and Merham G "Corporate social responsibility in South Africa: emerging trends" 2008 *Society and Business Review* 239-255

Sonnenberg D and Hamann R "The JSE Socially Responsible Investment Index and the state of sustainability reporting in South Africa" 2006 *Development Southern Africa* 305-320

Sulek M "On the Modern Meaning of Philanthropy" 2010 *Nonprofit and Voluntary Sector Quarterly* 193-212

Tkachenko A *et al* "Evaluation of the Efficiency of Social Investments of Metallurgical Enterprises According to the Decoupling Approach" 2021 *Naukovyi Visnyk Natsionalnoho Hirnychoho Universytetu* 147-153

Triologue date unknown *What is Corporate Social Investment*
<https://trialogueknowledgehub.co.za/index.php/307-csi-resources/what-is-csi>

Triologue *The CSI Handbook* (Cathy Duff and Nick Rockey Cape Town 2012)

Triologue *Business in Society Handbook 2021* (Cathy Duff and Nick Rockey Cape Town 2021)

Triologue *Business in Society Handbook 2022* (Cathy Duff and Nick Rockey Cape Town 2022)

Van Cranenburgh KC and Adenas D "Strategic and Moral Dilemmas of Corporate Philanthropy in Developing Countries: Heineken in Sub-Saharan Africa" 2014 *Journal of Business Ethics* 523-536

Van Den Ende L *Corporate Social Responsibility in South Africa: Fact or Fiction* (M.Com-Dissertation University of Johannesburg 2004)

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Warhurst A "Corporate Citizenship and Corporate Social Investment: Drivers of Tri-Sector Partnerships" 2001 *The Journal of Corporate Citizenship* 57-73

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Yusuf RK, Ojewuyi NO and Afolabi KO "Customers Perception of Corporate Philanthropy Activities of Firms in Nigerian Fast Moving Consumer Goods (FMCG)" 2021 *International Journal of Management Sciences* 17-27

Zafar S *Corporate Social Responsibility* (Honors Baccalaureate Degree Accountancy Northern Illinois University 2008)

ANNEXURE 3:

The following table represents the assistance required by Government from the private sector. All 'State of the Nation Address' speeches by former president JG Zuma (for the fiscal years 2014 to 2017) and those of President C Ramaphosa (for the fiscal years 2018 to 2024) were analysed. The 'x' is an indication of how many times and in which years the specific request was mentioned in the respective documents. If a new 'request' was noted in a specific year, it was brought in and listed in the far left column.

Table A3-1: Analysis of the State of the Nation Addresses and National Budget Speeches — 2014-2024

National Budget Speech:	P Gordhan ¹⁹⁹⁵	N Nene ¹⁹⁹⁶	P Gordhan ¹⁹⁹⁷	M Gigaba ¹⁹⁹⁸	T Mboweni ¹⁹⁹⁹	E Godon- gwana ²⁰⁰⁰
State of the Nation Address:	JG Zuma ²⁰⁰¹			C Ramaphosa ²⁰⁰²		

- ¹⁹⁹⁵ Gordhan 2014 <https://www.gov.za/news/speeches/minister-pravin-gordhan-2014-budget-speech-26-feb-2014>.
- ¹⁹⁹⁶ Nene 2015 <https://www.treasury.gov.za/documents/national%20budget/2015/speech/speech.pdf>.
- ¹⁹⁹⁷ Gordhan 2016 <https://www.treasury.gov.za/documents/national%20budget/2016/speech/speech.pdf>;
Gordhan 2017 <https://www.treasury.gov.za/documents/national%20budget/2017/speech/speech.pdf>.
- ¹⁹⁹⁸ Gigaba 2018 <https://www.treasury.gov.za/documents/national%20budget/2018/speech/speech.pdf>.
- ¹⁹⁹⁹ Mboweni 2019 <https://www.treasury.gov.za/documents/national%20budget/2019/speech/speech.pdf>;
Mboweni 2020 <https://www.treasury.gov.za/documents/National%20Budget/2020/speech/speech.pdf>;
Mboweni 2021 <https://www.treasury.gov.za/documents/National%20Budget/2021/speech/speech.pdf>.
- ²⁰⁰⁰ Godongwana 2022 <https://www.treasury.gov.za/documents/National%20Budget/2022/speech/speech.pdf>; Godongwana
2023 <https://www.treasury.gov.za/documents/National%20Budget/2023/speech/speech.pdf>;
Godongwana 2024 <https://www.treasury.gov.za/documents/National%20Budget/2024/speech/speech.pdf>.
- ²⁰⁰¹ Zuma 2014 <https://www.gov.za/state-nation-address-his-excellency-jacob-g-zuma-president-republic-south-africa-occasion-joint-0>; Zuma 2015 <https://www.gov.za/news/events/government-activities/state-nation-address-2015>; Zuma 2016 <https://www.gov.za/speeches/president-jacob-zuma-state-nation-address-2016-11-feb-2016-0000>; Zuma 2017 <https://www.gov.za/SONA2017>.
- ²⁰⁰² Ramaphosa 2018 <https://www.gov.za/news/speeches/president-cyril-ramaphosa-2018-state-nation-address-16-feb-2018>; Ramaphosa 2019 <https://www.gov.za/news/speeches/president-cyril-ramaphosa-state-nation-address-2019-20-jun-2019>; Ramaphosa 2020 <https://www.gov.za/news/speeches/president-cyril-ramaphosa-2020-state-nation-address-13-feb-2020>; Ramaphosa 2021 <https://www.stateofthenation.gov.za/sona-2021>; Ramaphosa 2022 <https://www.gov.za/news/speeches/president-cyril-ramaphosa-2022-state-nation-address-10-feb-2022>; Ramaphosa 2023 <https://www.gov.za/news/speeches/president-cyril-ramaphosa-2023-state-nation-address-10-feb-2023>.

National Budget Speech:	P Gordhan	N Nene	P Gordhan		M Gigaba	T Mboweni			E Godongwana		
State of the Nation Address:	JG Zuma				C Ramaphosa						
2014	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Private investment in:	x	x	x		x						
* To support sustainable growth and development	x		xx			xx		x			
* General infrastructure	x	x	xxx	x							
* Renewable energy		x									x
Private sector -job creation:	x	x	x	x	x	xx					
* tax incentive to encourage youth employment	x										
National Development Plan:	x	x									
* Private sector needed to implement	x										
Housing investment:	x		x	xx			x				
SME and entrepreneurs support:	x	x		x	x						
Private investment - urban development:	x	xx	x	x							
"The next phase of growth is about the dynamism and agility of the private sector and the synergies created with government."	x				x						
Tax incentives:					x						
* Manufacturing business to expand operations	x										

nation-address-09-feb-2023; Ramaphosa 2024 <https://www.gov.za/news/speeches/president-cyril-ramaphosa-2024-state-nation-address-08-feb-2024>.

National Budget Speech:	P Gordhan	N Nene	P Gordhan		M Gigaba	T Mboweni			E Godongwana		
State of the Nation Address:	JG Zuma				C Ramaphosa						
* Growth, jobs and development	x										
* employee training	x										
Infrastructure:											
* fibre-optic cable - internet access	x							x			
National Development Plan:											
* Growth and infrastructure	x										
* Promotion of regional economic integration, infrastructure development, intra-African trade and sustainable development in the continent.	x										
2015											
Revitalising agriculture:						x					
Adding value to miniral wealth:											
Enhancing IPA:											
Infrastructure:		x									
* state-owned companies		x	x		x						x
** other public sector dominated industries				x							
* municipalities		x						x			
** reshape cities			x	xx							
Economic growth and development (nine point plan):			x								
* Job creation / livelihood		x	x			x	x	x	x	x	x
* Revitalising agriculture and the agro-processing value chain		xx									
* Encouraging private sector investment.		x	x								

National Budget Speech:	P Gordhan	N Nene	P Gordhan		M Gigaba	T Mboweni			E Godongw ana		
State of the Nation Address:	JG Zuma				C gwanaRamaphosa						
* Unlocking the potential of small, medium and micro enterprises (SMMEs), cooperatives, township and rural enterprises.		x	x								
Renewable energy:		x	x x								
Industrial development: * In automotive Investment		x									
2016											
Private investment in:											
* Expansion of trade and social enterprise											
* Move away from green energy * Independent Power Producers Programme * to include coal and gas power projects											
* Tourism											
* Agriculture				x							
* Mining											
* Energy											
* Transport				x	x						
* Telecommunication											
Special Planning and Land Use Management Act – for development of inner city											
PPPs								x		xx	x
Invest SA Initiative (service) - in partnership with private sector			x								
Transnet port infrastructure - PPP			x			x			x		
Aquaculture farms - private sector investment			x							x	
commercialising private sector ideas			x								

National Budget Speech:	P Gordhan	N Nene	P Gordhan	M Gigaba	T Mboweni	E Godongw ana					
State of the Nation Address:	JG Zuma				C gwanaRamaphosa						
2017											
Infrastructure in:											
* Social				x							
* Economic				x							
* New industries											
Inclusive growth:											
* Education											
* Industrial and enterprise support											
Economy-drive transformation											
Private sector transformation (B-BBEE)			x	x		x					
Joint ownership (new companies: mining and agriculture sector)			x	x		x					
Private/community partnership with police to fight crime			x				x				
2018											
Private and civil society:											
* grow economy				x							
CEO Initiative (small business fund)				xx							
Digital Industrial Revolution Commission (to include private sector and civil society)				x							
Public-private sector providers				x							
Private sector involved to fight cancer (symilar to HIV)				x							
Fight corruption				x							
Investment - greater scale:				xx	x						
* Infrastructure				x							

National Budget Speech:	P Gordhan	N Nene	P Gordhan	M Gigaba	T Mboweni			E Godongwana			
State of the Nation Address:	JG Zuma				C gwanaRamaphosa						
Paid internships (youth employment)					x		x				
Presidential economic advisory council - business, civil society, academia - better equipped to respond to economic changes					x						
Small business support					x						
2019											
Specific sector economic growth - involve private sector in planning						x	x	x			
2020											
Infrastructure fund (inclusive of private sector funding):										x	
* Projects: private investment involvement							x	x			
* Social housing project (funds for 37 000 apartments)							x				
* Student accommodation (R64 billion pledged/private funding)							x	x			
* Local development (District Development model)							x				
Job summit: find solutions for unemployment							x				
Invest in industries with the greatest growth potential							x.				
Eskom - financial problems - business part of social partners							x				

National Budget Speech:	P Gordhan	N Nene	P Gordhan	M Gigaba	T Mboweni	E Godongw ana				
State of the Nation Address:	JG Zuma			C Ramaphosa						
2021										
Economic Reconstruction and Recovery plan										
* Reduce reliance on imports							x			
* Manufacture and produce local							x			
GBVF Response fund (led by private sector)							x			
Investment conference: to generate new investment into our economy							x		x	
Business involved with mass vaccination drive							x			
2022										
Transnet - rail infrastructure, cable theft etc								x		xx
PPP investment agreements								x		
School education infrastructure								x		
Prosecuting authority needs private sector cooperation.								x		
2023										
Private sector resources in public infrastructure									x	x
* Pipeline projects										
Investment in (electricity) generation capacity									xxx	xxx
SA SME Fund - private sector investment									x	
2024										
Climate Change Response Fund										x

ANNEXURE 4:

The data (published by Trialogue in the respective handbooks)²⁰⁰³ relating to CSI expenditure incurred by companies, and received and spend by NPOs, for the financial years 2014 to 2023, was summarised.

The financial years of companies ending in the period July of the previous year till June of the 'current year' (for example July 2022 till June 2023). Where the annual integrated statement of the company is not yet available by en June, then Trialogue uses the previous year's data.²⁰⁰⁴

As far as possible, Trialogue has focused on South African expenditure on CSI at group level. However, it is not always possible to distinguish South African from multinational expenditure. Reported figures are also not consistent in how CSI is defined but, where possible, we have excluded expenditure on nonCSI-related activities (such as housing for employees or enterprise and supply chain development).²⁰⁰⁵

²⁰⁰³ Trialogue *The 2015 CSI Handbook 18th edition*; Trialogue *The Trialogue CSI Handbook 19th edition*; Trialogue *The Business in Society Handbook – A Trialogue Publication* (2017); Trialogue *Business in Society Handbook 2018*; Trialogue *Business in Society Handbook 2019*; Trialogue *Business in Society Handbook 2020*; Trialogue *Business in Society Handbook 2021*; Trialogue *Business in Society Handbook 2022*; Trialogue *Business in Society Handbook 2023*.

²⁰⁰⁴ Trialogue *Business in Society Handbook 2023* 73.

²⁰⁰⁵ Trialogue *Business in Society Handbook 2023* 73.

Table A4-1: Summary of related data extracted from Trialogue Handbooks for the period 2014 to 2024

Year	How many participants		Total estimated expenditure				Top 100 listed		Expenditure relating to the Ninth Schedule of the Income Tax Act															CSI income to NPOs/PBOs	NPO data - income received from companies	B-BBEE Elements accessed for funding by NPO (% of NPO respondents)			
	Companies	NPOs	Rand value (billion)	% growth/decline	% real growth/decline (inflation adjusted)	Non-Cash as % total CSI spend	Rand value (billion)	%	Arts and culture	Disaster relief	Education (ED)	Entrepreneur and small business support	Conservation, Environment and Animal Welfare (CEAW)	Food security and agriculture	Health Care (HC)	Land and Housing (LH) & Living conditions	Safety and security	Social and community development	Sport development	Social justice and advocacy	Other	Total %	Socio-economic development			Skills development	Enterprise and supplier development	Unknown	
2014	99	171	8.02			12			2	0	49	5	3	6	12	1	1	16	3		1	99	56	22	81	30	25	12	
2015	81	123	8.1	-1	-6	10	5.4	67	2	0	47	5	3	7	12	1	0	17	4		2	100	52	18	82	31	25	12	
2016	82	147	8.6	6	0	13	5.8	68	2	1	48	5	3	7	9	2	1	15	3		3	99	?	26	79	24	13	18	
2017	92	198	9.1	6	0	10	6.6	78	1	1	48	6	2	7	12	2	1	15	3		2	100	?	21	57	32	27	16	
2018	74	254	9.7	6.8	2.5	11	6.9	71	2	2	44	7	2	9	9	2	0	17	2	0	4	100	51	24	?	?	?	?	
2019	79	139	10.2	5	0	6	6.9	68	1	2	50	6	5	9	7	1	0	15	2	0	2	100	57	29	?	?	?	?	
2020	75	115	10.7	4.9	1.2	16	7.4	69	1	4	50	5	4	7	9	1	1	15	2	0	1	100	54	27	?	?	?	?	
2021	40	117	10.3	-4	-7	13	6.9	68	1	9	39	6	4	10	8	1	1	17	1	0	1	98	53	28	?	?	?	?	
2022	65	114	10.9	6	0	13	8.6	79	1	8	44	8	3	10	7	3	0	13	2	1	0	100	58	27	?	?	?	?	
2023	68	89	11.8	8	1	?	8.7	74	1	6	48	8	3	9	6	4	1	13	1	0	0	100	63	27	?	?	?	?	
	75.5	146.7	9.7	4.2	-0.9	11.6	7.0	71.3	1.4	3.3	46.7	6.1	3.2	8.1	9.1	1.8	0.6	15.3	2.3	0.0	1.6	99.5	42.0	16.2	74.8	29.3	22.5	14.5	

ANNEXURE 5:

The following is an extract from a Table²⁰⁰⁶ compiled of the CSI expenditure of 116 companies, which contains

published figures on CSI expenditure of over R5 million during the period 1 July 2022 to 30 June 2023, where available. Where 2023 June year-ends were not available, 2022 data was used.²⁰⁰⁷

For the full Table, as well as additional information on how the data was collected and which data was used, please refer to Trialogue's *Business in Society Handbook 2023* pages 73 to 77.

Figure A5-1: Extract of CSI expenditure published by 116 companies for the 2022 and 2023 financial periods

Company name	2022/23 published CSI spend	2021/22 published CSI spend	2022/23 development focus areas	Source for 2022/23
	(RSA, unless otherwise stated) Rm	(RSA, unless otherwise stated) Rm	(not in order of investment)	

Agriculture/forestry and fishing

Kaap Agri	5.9	4.6	Education, community development, Covid-19 relief, robotics and coding	Kaap Agri Integrated Annual Report 2022, pg7
Mondi Group	153.1 ¹³	175.5	Infrastructure, education, environment	Mondi Group Integrated Annual Report 2022, pg61
Oceana Group	4.7	6.3	Food security, maritime safety, community development, environmental sustainability	Oceana Group Integrated Annual Report 2022, pg92

Banking/Financial services

Absa Group	266.7	194.8	Education, skills development, humanitarian relief, SMME support	Absa Group Limited Integrated Annual Report 2022, pg67
Nedbank Group	127.0	121.7	Renewable energy, water, waste and recycling, agriculture	Nedbank Group Integrated Annual Report 2022, pg90

Building and construction

Aveng Group	Not available	2.3	Education, community development	Aveng Group Integrated Annual Report 2022, pg4

²⁰⁰⁶ Trialogue *Business in Society Handbook 2023* 73-77.

²⁰⁰⁷ Trialogue *Business in Society Handbook 2023* 73-77.

Italtile	85.2	57.0	Education, skills development, sports, environment and conservation	Italtile Integrated Annual Report 2023, pg99
Murray & Roberts Holdings	6.9	12.6	Education, skills development, community development	Murray & Roberts Holdings Integrated Annual Report 2023, pg41

Food

Astral Foods	5.6	5.2	Food security, health, wellness, community development, emerging farmers	Astral Foods Integrated Annual Report 2022, pg100
Famous Brands	16.9	3.7	Childhood development, children fighting cancer	Famous Brands Integrated Annual Report 2023, pg32
Tiger Brands	25.8	22.9	Food security, community development, education, enterprise development, employee volunteerism	Tiger Brands Integrated Annual Report 2022, pg71
Pick n Pay Stores	46.6 ¹⁷	38.0	Education, food security, environment, sports, culture	Pick n Pay Stores Integrated Annual Report 2023, pg45
Shoprite Holdings	409.0 ¹⁸	335.0	Early childhood development, community development, hunger relief, skills development, education, youth unemployment	Shoprite Holdings Sustainability Report 2023, pg54

Mining

Anglo American	1 782.8 ⁴	1 080.3	Health, education, economic and environment, water and sanitation	Anglo American Integrated Annual Report 2022, pg55
Glencore	1 472.0 ⁹	1 005.0	Community development, health, humanitarian relief, education, capacity building, enterprise development and job creation	Glencore Integrated Annual Report 2022, pg19
Kumba Iron Ore	399.5	257.5	Health, education, infrastructure	Kumba Iron Ore Integrated Annual Report 2022, pg8

Oil and Petroleum

Engen	33.0	27.0	Education, health, safety, environment, community wellbeing, people who are differently abled	Engen Integrated Annual Report 2022, pg26
Sasol	857.3	743.3	Skills development, environment, education, community development	Sasol Integrated Annual Report 2023, pg5

Pharmaceutical and Healthcare

Aspen Pharmacare	21.5	16.0	Health, education, sports, community development	Aspen Pharmacare Integrated Annual Report 2022, pg94
Dis-Chem Pharmacies	12.5	17.1	Social development, nutrition, health, education	Dis-Chem Pharmacies Integrated Annual Report 2023, pg73

Mediclinic International	Not available	20.9	Health, training and education	Mediclinic International Sustainable Development Report 2022, pg37
Netcare	35.0	31.0	Healthcare, disaster management	Netcare Limited Integrated Annual Report 2022, pg124

Retail and wholesale

Mr Price Group	23.0	37.0	Education, skills development, disaster relief	Mr Price Group Integrated Annual Report 2023, pg77
Pepkor Holdings	64.6 ¹⁶	57.3	Education, early childhood development, health and nutrition, community development	Pepkor Holdings Integrated Annual Report 2022, pg2
Woolworths Holdings	1 031.0 ²²	970.0	Food security, education, health, environmental awareness	Woolworths Good Business Journey 2023, pg30

ANNEXURE 6:

The following example explains the ETI calculation.

Example:²⁰⁰⁸

Facts:

On 10 June 2019, an eligible employer appointed a qualifying employee, Employee F. Employee F was employed for 85 hours in June 2019. The employer was not subject to a wage regulating measure as contemplated in section 4.

Employee F's employment contract provided for remuneration of R22 per hour. Employee F was remunerated a total of R1 870 for the hours worked in June 2019.

Result:

Since Employee F was employed and paid remuneration for less than 160 hours in the month, the minimum monthly wage of R2 000 prescribed by section 4(1)(b)(i) must be apportioned under section 4(1)(b)(ii) so as to arrive at the applicable minimum monthly wage. The applicable minimum monthly wage was calculated as follows:

$$R2\ 000 \times 85 / 160 = R1\ 062,50$$

Since the actual wage paid to Employee F (R1 870) was greater than the determined minimum monthly wage of R1 062,50, the eligible employer was not prohibited from claiming ETI in relation to Employee F under section 4.

Employee F's monthly remuneration for June 2019 was arrived at by grossing up the actual remuneration to 160 hours in the month ($R1\ 870 \times 160 / 85 = R3\ 520$). Because Employee F earned more than R2 000 but less than R4 500 during the first 12-month period, the incentive amount was R1 000.

Apportionment under section 7(5) according to the number of hours employed and paid remuneration for:

$$85 / 160 \times R1\ 000 = R531,25$$

The eligible employer was therefore entitled to claim the ETI of R531,25 for Employee F for June 2019.

ANNEXURE 7:

The *Approved Guidelines by Sectors for Projects and Programmes Qualifying Under Corporate Social Responsibility Tax* of 15 February 2017 issued by The Ministry of Finance, National Planning and Trade.

APPROVED GUIDELINES BY SECTORS FOR PROJECTS AND PROGRAMMES QUALIFYING UNDER CORPORATE SOCIAL RESPONSIBILITY TAX

All projects undertaken in accordance with the programmes defined in the Corporate Social Responsibility (CSR) Guidelines below for the targeted groups specified, shall qualify for sponsorships and donations by businesses with CSR Tax liability.

The objectives are:-

- i. To promote the sense of social engagement and partnership by all national stakeholders in assisting the country to socio-economic goals
- ii. To ensure the Business Community's support to National and Community Based Programmes.
- iii. To support Community Based Organisations (CBOs), Non Governmental Organisations, Registered Associations with the implementation of their respective actions plans that is relevant to the community and national development programmes.
- iv. To enhance working relationships between the business community and actors involved in the development and promotion of corporate social responsible actions.

Qualifying Sectors and Approved Programs

Qualifying Sectors	Approved Programmes	Notable particulars
Protection and Preservation of the Environment	• Maintenance of Environment and Natural Conservation Sites • Resource waste management projects • Coastal Management activities • Climate change programs • Cleaning and construction of facilities • Support energy efficient projects/programs	• Restricted to sites classified by the Government • Planting of coastal vegetation, construction of costal facilities and infrastructures



A handwritten signature in blue ink, appearing to be 'Jhu', is written next to the official stamp.

Education and Capacity Development	• Training and Capacity building • Support for learning centers and schools • Provide scholarships to students to attend local or international approved tertiary institution • Promote civic education and responsibility for career guidance • Support to schools and students in terms of school materials and equipments • Educational facilities and supports to schools in need • Assists school in renovation and upgrading of infrastructures	• After school centers, vocational and holiday programs and remedial classes • The Agency for National Human Resources Development must endorse all project • Requests should be made by the School Council or Parents and Teachers Association to the CSR committee
Community Development	• Local initiatives to bring benefits to the community • Activities for the disadvantaged group • Activities for promotion and enhancing community values • Development of community based projects/programs – culture related, health, sports, recreational, environment, education, safety etc/	• Programs undertaken by CBO's, NGOs and charities




Sports, leisure and recreational activities.	- Sponsorships and donations to registered sports clubs, federations and associations - Athletes performing in major games locally and internationally - Organization of sports activities and major events - Excellence in sports programmes. - Maintenance and adoption of regional, district sports and recreational facilities (including play grounds and parks)	The National Sports Council must endorse and administer all CSR donations and sponsorships
Health needs	- Support projects on health care awareness and healthy lifestyle in general - Provide medical checkups and assistance – in special cases overseas treatment - Support to health centers, clinic, hospitals and staffs in terms of materials and equipments - Health facilities and supports to health centers, clinic and hospitals in need - Assists health centers, clinic and hospital in renovation and upgrading of infrastructures	- The Overseas Treatment Board from the Health Care Service Agency of the Ministry of Health must endorse all request made and approval must be granted by the CSR Committee. - Requests should be made by the Health Care Service Agency, the Public Health Authority or the Ministry of Health to the CSR Committee
Social needs	Support home for the elderly, disadvantages persons like orphans, special needs and people with disabilities	- Assistance can be in the form of donations and financial assistance. - Support can be in the form of programs, activities to facilitate integration in the community.



Developments of Arts and Crafts	- Programs and projects for the development of performing arts and crafts (including music, poetry, dance, drama, painting etc) - Maintenance of National Heritage Sites	The National Arts Council must endorse all request made and approval must be granted by the CSR Committee. A breakdown of costing for the project and programs must also be submitted.
Prevention of Drug Abuse and Rehabilitation	- Provide assistance for the rehabilitation and integration of victims of substance abuse and prisoners. - Programs and projects to support advisory and counselling initiatives for victims of substance abuse and prisoners.	

Businesses with CSR Tax liability, could work with public sector organizations; for the example the Government Ministries, departments and parastatals, in order to assist in terms of sponsorships and donations, human resources and technical assistance in carrying out projects in line with the above approved programs. However, such request must be subjected to approval of the CSR Committee.

In the event that sponsorships, donations, financial assistance, human resources and technical assistances is being requested to be offset against CSR liability, but does not fall within the above approved programs for the various sectors, such request must be subjected to approval of the CSR Committee.

Qualifying National Events

- Festival Creole
- National Day
- Carnival International
- Youth Festival

Non - Qualifying Sectors

The following shall not be qualified under CSR scheme

- Sponsorship for Marketing purposes
- Promotion of religious causes and related activities
- Contribution to political parties
- Contribution for operational and administrative purposes of the requesting entity
- Contribution to Trade Unions
- Staff welfare such as staff parties
- Activities which are against public safety and national interest.



Beneficiaries of donations and sponsorships under CSR should:-

- at all cost keep proper records which maybe required for audit purposes by the Seychelles Revenue Commission (SRC), Ministry responsible for Finance and Auditor General.
- Present any financial reports at any given time whenever requested by the CSR committee, Seychelles Revenue Commission (SRC), Ministry responsible for Finance and Auditor General.

Failure to keep proper records and to present any reports could prevent the beneficiaries of receiving future CSR donations and sponsorships.

The CSR Guidelines may be subjected to amendments from time to time, and such amendments will be published on the website of the Seychelles Revenue Commission (www.src.gov.sc)



ANNEXURE 8

Examples of CSIE linked to Integrated Sustainable CSR Model.

CSIE will relate to activities external to the business, which are indicated in Table 2-4 above as mainly Broad non-CP CSI—not tax-deductible activities. It was assumed in Chapter 2 that companies will, in general, not be allowed a deduction against taxable income in terms of the ITS(SA) for these expenses.²⁰⁰⁹ This assumption will be tested in this chapter.

The elements representing the *broad* definition of CSI include philanthropic contributions but are not limited to it. CSIE concerning each of these elements are:²⁰¹⁰

- (a) Economic: CSIE, in this regard, will relate to expenditures incurred by the company to meet or contribute to community needs, which will (hopefully) create a measurable return on investment. Chapter 3 shows that the "economic" element is closely linked to the stakeholder, social contract, and triple bottom line theories.²⁰¹¹
- (b) Responsible/Ethical: Related CSIE incurred by the company will most likely be expended to avoid or mitigate harm its operations cause to its workforce, the community, society at large, and the environment. This element and the related expenses will overlap with the remaining three elements.
- (c) Legal: The CSIE incurred will relate to the cost of complying with local legislation, international norms, and guidelines. This will include, but is not limited to, legislation such as B-BBEE, the *Carbon Tax Act*, education and training of designated groups, and enterprise development (incubator programmes for small businesses).
- (d) Environment: In the broad sense of the CSI definition, the related CSIE will be expended to address environmental and ecological concerns and issues in the

²⁰⁰⁹ Refer to Section 2.2.6.

²⁰¹⁰ Refer to Section 2.3.2.2.

²⁰¹¹ Refer to Section 3.2.1.

community of which they are part, as well as issues of the greater society. It will be incurred, for example, to support the conservation and protection of the natural environment, including flora, fauna and the biosphere in general. Companies are also encouraged to provide training to local communities in mitigating pollution (for example, water resources) and conserving and protecting natural resources. Companies can also provide infrastructure and facilities to store and provide clean water. In the narrow sense of CSI definition, companies can fund registered PBOs (involved with conserving natural resources, including land water, sea water and life, flora, fauna, and the biosphere) or higher educational institutions to undertake research in this regard. These expenses will probably be deductible against taxable income in terms of section 18A's provisions.

- (e) Society at large: Expenses relating to CSI under this heading will resort under the obligations in the broader definition of CSI. This obligation has a strong developmental perspective, promoting sustainable socio-economic development and growth. It will, among other things, involve assisting local governments, or even the provincial and central government, to address areas of government inefficiency (through public-private partnerships, for example).

These CSIE might be in the form of small business grants, entrepreneurship assistance, skills development and training, small farmer assistance, agricultural development programmes to ensure food security, job creation, infrastructure development and improvement. They might even include programmes/activities similar to the public benefit activities listed in the Ninth Schedule. If the programmes/activities are managed and carried out by the company itself, and the money is therefore not channelled through a PBO, the CSIE will probably not be deductible in terms of section 18A against taxable income.

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