



**UNIVERSITY OF
KWAZULU-NATAL**

**INYUVESI
YAKWAZULU-NATALI**

COLLEGE OF LAW AND MANAGEMENT STUDIES

SCHOOL OF ACCOUNTING, ECONOMICS AND FINANCE

Investigating the Use of Trusts in Tax Avoidance and Tax Evasion Practices in South Africa

By

Rofhiwa Tshilimandila

Student number: 224193535

**A dissertation submitted in partial fulfilment of the requirements for the Master of
Accountancy in Taxation degree at the University of KwaZulu-Natal**

Supervisor: Mrs Aarthi Algu

Co-Supervisor: Dr Frank Ranganai Matenda

2024

DECLARATION

I, Rofhiwa Tshilimandila, declare that:

a) The research reported in this dissertation, except where otherwise indicated, is my original research;

b) This dissertation has not been submitted for any degree or examination at this university or any other university;

c) This dissertation does not contain other persons' data, pictures, graphs, or other information, unless specifically acknowledged;

d) This dissertation does not contain other persons' writing, unless specifically acknowledged as being sourced from other researchers;

e) Where other written sources have been quoted, then:

(i) Their words have been re-written, but the general information attributed to them has been referenced;

(ii) Where their exact words have been used, their writing has been placed inside quotation marks, and referenced;

f) Where I have reproduced a publication of which I am author, co-author, or editor, I have indicated the part of the work I wrote alone and have fully referenced such publications;

g) This dissertation does not contain text, graphics or tables copied and pasted from the Internet, unless specifically acknowledged, and the source detailed in the bibliography section.

Signed: 

Date: 25/04/2025

Rofhiwa Tshilimandila (224193535)

DEDICATION

I dedicate this work to my daughter Urangani and my son Uhone, hoping it inspires you to strive for excellence in all that you do for the rest of your lives. Remember, everything is possible if you believe in yourselves!

SUPERVISOR'S PERMISSION TO SUBMIT

**Supervisors Permission to
Submit Dissertation for
Examination**



**UNIVERSITY OF
KWAZULU-NATAL**
**INYUVESI
YAKWAZULU-NATALI**

Name: Rofhiwa Tshilimandila		No: 224193535	
Title: Investigating the Use of Trusts in Tax Avoidance and Tax Evasion Practices in South Africa			
Qualification: Master of Accountancy in Taxation		School: School of Accounting, Economics and Finance	
Yes		Yes	No
To the best of my knowledge, the dissertation is primarily the student's own work, and the student has acknowledged all reference sources		X	
The English language is of a suitable standard for examination, the dissertation went through professional editing.		X	
Turnitin Report %		7%	
Comment if % is over 10%: Not applicable			
I agree to the submission of this dissertation for examination		X	
Supervisors Name: Mrs Aarthi Algu			
Supervisors Signature:			
Date: 25 April 2025			
Co- Supervisors Name: Dr Frank Ranganai Matenda			
Co- Supervisors Signature:			
Date: 25 April 2025			

ACKNOWLEDGEMENTS

I would like to express my heartfelt gratitude and appreciation to the following individuals for their unwavering support and encouragement during the challenging yet rewarding journey of completing my dissertation.

- Dr Ranganai Frank Matenda and Mrs Aarthi Algu: Your guidance and encouragement were crucial in shaping my research's trajectory. I am grateful for your invaluable insights and the mentorship you provided during my academic growth.
- To my beloved wife, Hulisani Tshilimandila, and my cherished daughter and son, Urangani and Uhone Tshilimandila; your unwavering support, prayers, and strength have been my pillars throughout this journey.
- My parents and greatest cheerleaders, Rendani and Nditsheni Tshilimandila, I am a product of the immense sacrifices you have made, and I will forever be grateful. My siblings Tondani, Nkhuliseni and Vhulenda, thank you for always being there through life's lessons.
- Lastly, I wish to extend my sincere gratitude to the Trust Segment team at the South African Revenue Services (SARS), under the leadership of Adv. Sam Murugan and Mr. Mohammed Abdul Haq Kajee, as well as to all those who believed in my potential and encouraged me to persist despite the challenges I faced. Your support was crucial in helping me achieve this success.

ABSTRACT

Tax avoidance and tax evasion by trusts have long been a significant challenge for governments around the world, which also led to significant losses of revenue and undermining the integrity of the tax systems. As highlighted in the literature reviewed, trusts are being used to evade and avoid taxes. Over the past three decades, it has become clear that the trust institution have been misused by both the trustees and founders. The *Trust Property Control Act No. 57 of 1988* ("the Act") is a combination of English, Roman-Dutch, and South African law, which provides the legal specifications for the creation and management of trusts in South Africa. According to the act, trusts must be created in writing and must provide a detailed description of the trust's objectives, beneficiaries, and assets ("Trust Property Control Act No. 57," 1988). The taxation of trusts in South Africa is primarily governed by Section 25B of the Income Tax Act No. 58 of 1962, which determines how trust income is taxed, either in the hands of the trust or its beneficiaries depending on the circumstances, meanwhile, (Sections 80A to 80L) of the same Act addresses tax avoidance practices. This study investigated ways in which trusts are used for tax evasion and tax avoidance and explores the underlying factors leading to such practices in South Africa. The study also investigates the systems and methods used to detect tax evasion and tax avoidance by trusts and analyses strategies that can be used to prevent tax evasion and avoidance by trusts in South Africa. The study employed a scoping review to analyse existing literature on tax avoidance and tax evasion practices by trusts in South Africa. The study reviewed papers published in peer-reviewed journals and dissertations that analysed the use of trusts in tax evasion and avoidance practices. Studies were pooled from Google Scholar, ResearchGate, Google, ScienceDirect and published reports. The Trust Property Control Act of 1988, which regulates the control of trust property, and the Income Tax Act of 1962, which governs tax obligations, were also examined for their implications on trust management and taxation. The observation period for the study spanned from 2000 to 2024. The findings from the scoping review suggested that the complexity of trust laws and the loopholes in the Income Tax Act create opportunities for tax avoidance. Trusts use discretionary and offshore structures, capital gains tax planning, and conceal income and assets to evade and avoid taxes. The complexity of tax laws, behavioural factors, regulatory issues, corruption, and economic incentives contribute to tax evasion and tax avoidance by trusts. To enhance clarity and ease for taxpayers, the South African Revenue Service (SARS) is streamlining the Income Tax Return filing process for Trusts (ITR12T). The National Treasury has proposed new laws to prevent tax avoidance through trusts, particularly concerning low-interest or interest-free loans.

The Financial Intelligence Centre (FIC) monitors trusts for suspicious activities related to money laundering and tax evasion. Trustees must maintain accurate records and report any suspicious transactions. Having an independent trustee may help deter abuse, but it does not guarantee that abuse will not occur. Implementing measures that require discretionary trusts to be taxed at the trust level, rather than allowing income to flow directly to beneficiaries, can reduce opportunities for tax avoidance and evasion. While trusts serve essential functions in estate planning and asset management, their potential for misuse necessitates ongoing oversight and legislative action. As the government seeks to improve its approach to trust taxation, it must strike a balance between allowing legitimate uses and prevent abuse in an increasingly complex and regulated environment.

Keywords: Tax evasion; Tax avoidance, Trusts, General Anti-Avoidance Rule.

TABLE OF CONTENTS

DECLARATION	i
DEDICATION	ii
SUPERVISOR’S PERMISSION TO SUBMIT	iii
ACKNOWLEDGEMENTS	iv
ABSTRACT.....	v
TABLE OF CONTENTS.....	vii
LIST OF FIGURES	ix
LIST OF TABLES	x
LIST OF ABBREVIATIONS AND ACRONYMS	xi
CHAPTER 1: INTRODUCTION	1
1.1 Introduction.....	1
1.2 Background to the study	1
1.3 Problem statement.....	4
1.4 Aim of the study.....	5
1.5 Objectives of the study.....	5
1.6 Research questions.....	5
1.7 Significance of the study.....	5
1.8 Delimitations of the study	6
1.9 Assumptions of the study	6
1.10 Limitations of the study	7
1.11 Dissertation outline	7
1.12 Summary	8
CHAPTER 2: LITERATURE REVIEW	9
2.1 Introduction.....	9
2.2 Theoretical framework.....	9
2.3 Empirical literature review	11
2.3.1 Ways in which trusts are used for tax evasion and tax avoidance.....	11
2.3.2 Underlying factors leading to tax evasion and tax avoidance by trusts.....	16
2.3.3 Systems and methods used to detect tax evasion and tax avoidance by trusts.	18
2.3.4 Strategies that can be used to prevent tax evasion and avoidance by trusts.	21
2.4 Research gaps.....	24
2.5 Conceptual framework.....	25
2.6 Summary	25

CHAPTER 3: RESEARCH METHODOLOGY	26
3.1 Introduction.....	26
3.2 Research philosophy	26
3.3 Research design	27
3.4 Data collection procedure	28
3.5 Ethical considerations	32
3.6 Summary	32
CHAPTER 4: DATA PRESENTATION AND ANALYSIS.....	33
4.1 Introduction.....	33
4.2 Summary of selected studies.....	33
4.3 Results and discussion	46
4.3.1 Ways used by trusts to avoid and evade taxation	47
4.3.2 Underlying factors leading to tax evasion and tax avoidance by trusts.....	49
4.3.3 Methods used to detect tax evasion and tax avoidance by trusts	50
4.3.4 Strategies that can be employed to prevent tax evasion and tax avoidance by trusts	53
4.5 Gaps in Literature	55
4.6 Summary	56
CHAPTER 5: SUMMARY, CONCLUSIONS AND, RECOMMENDATIONS	58
5.1 Introduction.....	58
5.2 Summary, findings, and conclusions	58
5.3 Recommendations.....	60
5.4 Future research suggestions	61
REFERENCES	63
APPENDICES	69
ETHICAL CLEARANCE	71
TURNITIN REPORT	72
EDITING CERTIFICATE LETTER.....	73

LIST OF FIGURES

Figure 1: Conceptual framework	25
Figure 2: Study selection process flowchart	31
Figure 3: Categories of reviewed studies	46

LIST OF TABLES

Table 1: Summary of the studies reviewed.....	33
--	----

LIST OF ABBREVIATIONS AND ACRONYMS

Abbreviations and acronyms used in the study

BEPS	Base Erosion and Profit Shifting
CRS	Common Reporting Standard
DTC	Davis Tax Committee
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
GAAR	General Anti-Avoidance Rule
ITA	Income Tax Act
ITR12T	Income Tax Return for Trusts
MOHC	Master of the High Court
OECD	Organisation for Economic Co-operation and Development
RFI	Reporting Financial Institution
SADC	Southern African Development Community
SARS	South African Revenue Service
TPB	Theory of Planned Behaviour

CHAPTER 1: INTRODUCTION

1.1 Introduction

The avoidance and evasion of tax by trusts have been a major problem for governments worldwide and have resulted in the loss of significant amounts of government revenue as well as compromising the integrity of tax systems (Rahman, 2021; Kumarasingam, 2023). This study aims to identify the systems and methods used to detect tax evasion and avoidance in trusts. It assesses the measures that can be taken to avoid such practices in South Africa taking into consideration the legal framework and the measures that are currently in place for detecting tax avoidance and evasion by trusts. This chapter presents the background of the study, the problem statement, the study objectives, the research questions, the delimitations of the study, the assumptions of the study, the limitations of the study, and the dissertation outline.

1.2 Background to the study

A trust is generally understood to be a legal arrangement or relationship whereby an individual or entity (referred to as the "trustee") owns and oversees assets or property that a person or legal body has entrusted to them (referred to as the "settlor"), not for their advantage or use, but rather with a fiduciary duty to behave, as required by the trust's provisions, in the beneficiary's best interests (e.g. a Trust deed) (Chhina, 2021). Section 1 of the Income Tax Act No. 58 of 1962 defines a trust as a trust fund that is administered and controlled by a person acting in a fiduciary capacity. This person is appointed either under the will of a deceased individual or through a deed of trust established by an agreement. ("Income Tax Act 58 ", 1962). *The Trust Property Control Act No. 57 of 1988* defines a "trust" as an arrangement through which ownership of property is transferred or bequeathed by one person (the founder) to another person (the trustee) for administration or disposal according to the trust instrument. In layperson's words, a trust is a structure in which property is transferred and managed by trustees for the benefit of the beneficiaries, in accordance with the trust deed or instrument.

"*The Trust Property Control Act No. 57 of 1988*" ("the Act") governs trusts in South Africa. It is a combination of English, Roman-Dutch, and South African law. The legal specifications for the creation and management of Trusts are outlined in this legislation. According to the Act, trusts must be created in writing and must provide a detailed description of the trust's objectives, beneficiaries, and assets.

Within South Africa, a discretionary trust is currently taxed at 45%. However, "Special Trusts" are taxed at the same rates as individuals. A "special trust" is established solely for the benefit of those affected by mental illness or major physical disability that prevent them from earning enough income to maintain themselves. A testamentary trust can also be established specifically to benefit the deceased's minor children. While trusts do not qualify for primary, secondary, or tertiary rebates like natural persons, they are nonetheless considered persons when assessing them for normal tax. Therefore, the question of the income tax the trust pays is governed by "Section 25B" of the Act, subject to section 7 of the Act. The capital gain component of income is governed by "Paragraph 80 of the Eighth Schedule" to the Act, which is also subject to the capital gains provisions outlined in paragraphs 68, 69, 71, and 72 of the Schedule. These rules work similarly to those in section 7 in that their purpose is to assign the capital gain realised by the trust to some other person as defined by the regulations. (Zwezwe, 2018).

The use of trusts has remained a popular practice in South Africa, as a way of managing assets, they provide several advantages, such as confidentiality, succession planning, tax advantages, and asset protection. Despite being a potential source of tax revenue in South Africa, trusts have been discovered to be used for tax avoidance and evasion Krige and Wolmarans (2022). Tax evasion and avoidance have been observed to be of great challenge across the globe. Trusts have been discovered to be exploited by organisations or individuals who have the motive of evading taxes.

Rahman (2021) propounded that the legal structures of trusts are often considered burdensome and frequently exploited as a means of "tax evasion and tax avoidance". The lack of transparency in trusts poses a significant drawback, as it prevents tax authorities and other law enforcement organisations from uncovering the presence of these trusts, because of the complexity of the trust legislation (Rahman, 2021). This situation also applies to offshore trusts, where foreign jurisdictions typically do not disclose information to third parties. This specific characteristic popularised the concept of the offshore tax haven.

However, it is undeniable that trusts also include certain advantageous implications that cannot be altered by any other legal theory, such as cases involving asset protection, business purposes, and charity trusts (Manamela, 2022). Hence, it is imperative to establish a just equilibrium and implement a system that prevents assets from being left in a state of "ownerless limbo" under the guise of trusts. In South Africa, tax evasion and tax avoidance have become a huge problem

because they restrict the South African Revenue Services (SARS) from collecting sufficient tax revenues. Hundreds of millions in tax revenue are lost annually by SARS due to tax avoidance and tax evasion (Manamela, 2022).

Tax avoidance is a legitimate practice used by trusts, individuals, and businesses to reduce their tax liability by employing legal tax planning strategies (Tamplin, 2023). It allows taxpayers to effectively manage their finances, allocate resources, and make strategic investments (Tamplin, 2023). However, tax avoidance has sparked debate and criticism. Some argue that aggressive tax avoidance practices can deplete government revenue and impede public services and infrastructure development (Tamplin, 2023).

Tax evasion is an illegal activity in which a person or entity deliberately avoids paying a true tax liability (Kagan, 2024). Tax evasion occurs when an individual or business illegally avoids paying their tax obligation, leading to criminal charges, penalties, and fines (Kagan, 2024). Those caught evading taxes are subject to criminal charges and substantial penalties. To wilfully fail to pay taxes is an offence (Kagan, 2024).

Tax avoidance and tax evasion are two distinct concepts. Tax evasion involves illegally escaping taxes by concealing the true state of financial affairs from tax authorities. On the other hand, tax avoidance refers to legally minimizing tax liability for individuals or companies by using legitimate methods (Nkadimeng, 2022).

According to Blignaut (2015) in South Africa, trust law is not consolidated into a single act, resulting in a lack of comprehensive regulation for trusts. As a result, trusts in South Africa are frequently seen as more appealing due to the freedom they provide. A trustee may also be a beneficiary, and the trust's creator may be both a trustee and a beneficiary. However, the lack of regulation has resulted in increased scrutiny by the courts, raising the possibility of legislation to prevent trust abuse. As a result of judicial rulings and common law principles, South African trust law has evolved and continues to develop.

Trusts often operate confidentially, making it easy to conceal beneficial ownership, which can facilitate money laundering and tax evasion. Trustees may breach their fiduciary duties by misusing trust assets for personal gain, resulting in financial losses for beneficiaries. Trusts can be used to hide assets during divorce or bankruptcy proceedings, undermining legal fairness. Many jurisdictions lack stringent regulations for trusts, leading to calls for reforms that enhance transparency and accountability. Addressing these issues is crucial for maintaining the integrity

of trust arrangements while ensuring they serve their intended purposes effectively (Krige and Wolmarans, 2022).

While both developed and developing countries grapple with issues related to tax avoidance and evasion, the scale and impact differ markedly. Developing nations like South Africa are disproportionately affected due to systemic weaknesses that allow for significant revenue losses (Mvunabandi et al., 2024). According to (Rudd, 2018; Walker, 2024) trusts can provide legitimate benefits in terms of estate planning and asset protection, their potential misuse for tax avoidance and evasion poses significant challenges for South Africa's tax system. The ongoing scrutiny from SARS and legislative measures aimed at reforming trust taxation reflect an effort to curb these practices. As regulations evolve, it will be essential for individuals utilising trusts for financial planning to remain compliant with new laws while ensuring that they do not inadvertently engage in abusive practices.

1.3 Problem statement

Tax avoidance and evasion by trusts are significant issues impacting tax revenue systems, particularly in developing countries, including South Africa. As highlighted by Blignaut (2015) it is evident that trusts are being used to evade and avoid taxes. Over the past three decades, it has become clear that the trust institution has been misused by both the trustees and founders. There is a belief that wealthy South Africans abuse trusts and trusts have long been linked to complex tax avoidance strategies (Brink, 2017). Trusts are primarily used to manage assets for wealthy families and to protect them from taxation, (Manamela, 2022). However, they have become extremely popular across the world and are being used by wealthy individuals in a way that perpetuates an increase in tax evasion and tax avoidance. In certain situations, trusts can be utilised as a part of intricate ownership chains to conceal the names of natural individuals who own or control businesses or assets (Krige and Wolmarans, 2022). In turn, this kind of obfuscation can be employed for illegal purposes such as tax evasion, money laundering, corruption, and financing terrorist endeavours. Even though this issue is a problem, the literature on the topics of the use of trusts for tax avoidance and evasion is notably fragmented and limited, with a predominant focus on developed nations, leaving a substantial gap in understanding the dynamics in less developed countries (Johann Krige, 2022).

The prevalence of tax avoidance and evasion through trusts is a problem that needs to be investigated in developing countries like South Africa. This study explores the use of trusts for

the evasion and avoidance of taxes and the regulatory measures that can be implemented to reduce these practices in the South African context. The current literature is insufficient to inform effective policymaking, highlighting the need for comprehensive studies that consider local contexts and regulatory environments.

1.4 Aim of the study

The primary aim of the study is to investigate the use of trusts in tax avoidance and tax evasion practices by examining the ways used by trusts to evade and avoid tax, factors leading to the use of trusts for tax evasion and tax avoidance, to investigate the systems and methods used to detect tax evasion and tax avoidance and to analyse strategies that can be used to prevent tax evasion and avoidance by trusts in South Africa.

1.5 Objectives of the study

- To investigate ways in which trusts are used for tax evasion and tax avoidance and to explore the underlying factors leading to such practices in South Africa.
- To investigate the systems and methods used to detect tax evasion and tax avoidance by trusts in South Africa.
- To analyse strategies that can be used to prevent tax evasion and avoidance by trusts in South Africa.

1.6 Research questions

- What are the ways used by trusts to evade and avoid taxation and the underlying factors leading to such practices in South Africa?
- What are the systems and methods used to detect tax evasion and tax avoidance by trusts?
- What strategies can be employed to prevent tax evasion and tax avoidance by trusts?

1.7 Significance of the study

The findings of this study provide guidance and insights for the following stakeholders:

1.7.1 The South African Revenue Services

The outcomes of this study provide valuable insights for SARS to effectively combat tax evasion and avoidance. This will lead to improved revenue collection, as revenue collection represents the largest source of government income.

1.7.2 The Master of the High Court

The study's outcomes significantly enhance the operational capabilities of the Master of the High Court (MOHC) in South Africa, particularly regarding trust registration and record-keeping. The study aims to bolster the MOHC's capabilities in overseeing trusts while emphasising the critical role of trustees in managing these entities responsibly and transparently.

1.7.3 Researchers

This research investigates the use of trusts in tax evasion and avoidance practices, contributing to the existing body of literature on these issues in South Africa. Additionally, it enriches the expanding discourse on taxation in the country by delivering a comprehensive analysis of the underlying dynamics. Researchers can utilise the insights from this study while expanding their analysis to include a variety of published and unpublished research on the use of trusts for tax evasion and avoidance practices in South Africa. This comprehensive examination will enhance their understanding of the issue.

1.8 Delimitations of the study

This study analysed the factors contributing to tax evasion and tax avoidance by trusts in South Africa by using secondary data sources to extract valuable insights. It examines the systems and methods used to detect these practices and strategies that can be used to prevent these practices. The sources include Books, Journal articles, and masters and doctoral dissertations on tax avoidance and tax evasion practices. The study focuses on South Africa, the observation period for the study spanned from 2000 to 2024.

1.9 Assumptions of the study

It is assumed that trusts are generally viewed as means of tax avoidance and evasion by the wealthy in South Africa. This is based on historical use of trusts to reduce the estate duties and donations tax, and the resultant assumption that they are merely a cover for more elaborate tax avoidance schemes. The study assumes that tax avoidance and tax evasion by trusts are a function of uncertainties that are introduced by tax legislation and its frequent changes. The principle that should have been followed is not well defined and the use of case law to determine the parameters creates uncertainty. Furthermore, this study's findings are also

assumed to be an accurate reflection of the current state of play with regards to trusts, especially in developing economies.

1.10 Limitations of the study

This study examined tax evasion and tax avoidance practices, the systems and methods used to detect these practices, and strategies used to prevent these practices. The study primarily depends on existing literature, which may not include all recent developments in trust legislation or emerging practices related to tax avoidance and evasion. This reliance on secondary sources can result in gaps in understanding current trends and practices in trust management and taxation. Trusts can be extraordinarily complex entities with various structures and purposes, making it difficult to draw clear conclusions about their use for tax avoidance or evasion. Due to budget constraints and time limitations, the current scoping review includes studies published only between January 2000 and December 2024. By concentrating on this period, the study aims to enhance the quality and relevance of the findings, providing a solid foundation for future research initiatives.

1.11 Dissertation outline

This section provides an overview of the study's framework.

Chapter 1: Introduction

Chapter 1 is an introductory chapter and presents the background to the study, the aim of the study, problem statement, objectives of the study, research questions, delimitations of the study, assumptions of the study, limitations of the study, dissertation outline and the summary of the chapter.

Chapter 2: Literature review

This chapter provides an in-depth review of the existing literature on tax evasion and tax avoidance by trusts, particularly in the South African context, and the regulatory measures that can be implemented to reduce these practices in South Africa. In this chapter, the theories used in this study were also examined by referencing existing literature. The focus is on three theories: Tax Compliance Theory the Tax Morale Theory, and the Theory of Planned Behaviour. The chapter explains these theories.

Chapter 3: Research methodology

Chapter 3 details the research methodology used for the study, it provides the research philosophy, Research design, data collection procedure and ethical considerations.

Chapter 4: Data presentation and analysis

This chapter presents and discusses the findings of a scoping review on the use of trusts in tax avoidance and tax evasion practices in South Africa. The chapter examines the systems and methods that detect tax evasion and tax avoidance through trusts, as well as analysing strategies that can be employed to prevent these practices in the country.

Chapter 5: Summary, conclusions, and recommendations

Chapter 5 concludes the study by presenting a summary of the study and conclusions. It offers recommendations based on the findings, discusses the study's limitations, and makes suggestions for future research.

1.12 Summary

This chapter provided a comprehensive overview of the study's foundational elements, beginning with an in-depth background that contextualizes the research within its field. It articulated the problem statement, clearly outlining the challenges that prompted this investigation. The study objectives were defined to establish precise goals, while the research questions were formulated to guide the inquiry. Furthermore, the chapter detailed the delimitations, offering clarity on the scope of the study, and laid out the key assumptions that underpin the research framework. It also identified the limitations inherent in the study, acknowledging potential constraints that could impact the findings. Lastly, an organised outline of the dissertation was presented, offering a roadmap for the subsequent chapters.

The next chapter outlines the literature review.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

This chapter provides an in-depth review of the current literature on tax evasion and tax avoidance by trusts and the regulatory measures that can be implemented to reduce these practices. It also identifies the gaps in the literature that the study sought to fill. In this chapter, we also closely examined the theories used in this study. The focus is on three theories: the Tax Compliance Theory, the Tax Morale Theory, and the Theory of Planned Behaviour (TPB).

2.2 Theoretical framework

An evaluation was conducted of relevant theories that could be applied to comprehend tax evasion and tax avoidance by trusts. Three theories, namely the Tax Morale Theory, the Tax Compliance Theory and the Theory of Planned Behaviour were considered the most relevant for fulfilling the research objectives. Theoretical perspectives give information on the underlying motivations and factors influencing trust tax behaviour and these perspectives have been used in understanding and explaining trust tax evasion and avoidance practices.

2.2.1 Tax Compliance Theory

The Tax Compliance Theory has been used to explain why some people and businesses pay their taxes while others evade taxes. It has been used to design tax administration and policies that help enhance tax compliance, like streamlining tax laws and regulations, boosting accountability and transparency in the tax system, and enhancing taxpayer services. The tax compliance theory also acknowledges the influence of social norms and cultural values on the behaviour of individuals and businesses, as well as on their choices about tax law compliance (Reddy et al., 2024).

According to Tax Compliance Theory, a cost-benefit analysis is used by people and businesses to determine how compliant they are with tax regulations (Bako, 2021). The Theory of Tax Compliance offers a more thorough explanation of why people and businesses comply with tax laws or avoid them, as well as how tax laws might be created to encourage compliance, by taking these non-economic variables into account (Mvunabandi et al., 2024). Incorporating the tax compliance theory into this study enhances our understanding of taxpayer behaviour. This theoretical framework can inform effective policymaking that improves compliance rates while safeguarding legitimate uses of trusts.

2.2.2 Tax Morale Theory

The concept of tax morale was first introduced in the 1960s by the "Cologne School of Tax Psychology", but did not receive much attention from tax researchers for several decades (Alm and Torgler, 2004). However, starting in the 1990s, tax morale began to attract increasing attention and has become a central issue in empirical research on tax compliance (Alm and Torgler, 2011; Torgler et al., 2008).

Tax Morale Theory is a concept that investigates the social and psychological factors that influence tax compliance and the willingness of taxpayers to comply with the tax law (Martinez and Pereira, 2021; Svetlozarova Nikolova, 2023). In its optimal form, this theory highlights the connection between tax compliance and morale. Tax Morale Theory also highlights how individuals' attitude, beliefs, and perceptions of the taxation system impact their tax compliance and tax avoidance. Owusu et al. (2022) stated that factors such as trust in tax institutions, perceptions of fairness about the systems of tax, and adherence to social norms have a significant role in shaping tax morale. Low tax morale and avoidance practices can have a negative impact on tax revenue and huge implications for tax evasion, it can lead people to engage in non-compliant behaviours, exploit loopholes in the systems of tax, and undermine the overall effectiveness of tax collection efforts (Martinez and Pereira, 2021). Addressing and understanding the tax morale theory is important in the context of tax avoidance and evasion to foster a culture of compliance and accountability among taxpayers. Applying the tax morale theory to this study offers a framework for understanding the motivations behind taxpayer behaviour. It emphasises the significance of intrinsic motivations, perceptions of fairness, trust in authorities, and social norms in influencing compliance decisions related to trusts used for tax purposes.

2.2.3. Theory of Planned Behaviour

The Theory of Planned Behaviour is widely used as a framework to understand human behaviour. It is an extension of the Theory of Reasoned Action, which was also developed by (Ajzen, 1985). This theory considers behavioural control and attitude as predictors of behaviour. According to the Theory of Reasoned Action (TRA), when a person views a suggested behaviour positively (attitude) and believes that significant others expect them to engage in that behaviour (subjective norm), their motivation to perform the behaviour increases, making it more likely for the individual to act. Attitudes and subjective norms are intricately linked to behavioural intention, and behavioural intention is connected to actual behaviour. Several factors play a crucial role in explaining behavioural intention (Al-Zaqeba

and Al-Rashdan, 2020). Attitude has been identified as having a direct effect on tax compliance status. Ajzen (2020) has emphasised that when utilizing this theory, the behaviour should first be defined to correspond with all its elements. According to Al-Zaqeba and Al-Rashdan (2020) tax fairness and the complexity of the tax system are expected to affect attitudes towards compliance. Attitude and subjective norms are also anticipated to impact behavioural intention. Graskie (2019) propounded that tax complexity undermines tax certainty and convenience, imposing an additional economic burden on taxpayers through higher compliance and administrative costs. The consequences of a complex tax system may lead to taxpayers' perceptions of the fairness of the tax burden, influencing their decision to comply with taxes. According to Al-Zaqeba and Al-Rashdan (2020) complexity has a negative impact on taxpayers' willingness to comply with tax regulations. In simpler terms, when a taxpayer perceives the filing system as complex and anticipates making errors, they are less likely to comply with tax laws.

This study incorporates the theory of planned behaviour to provide a valuable perspective on taxpayer behaviour concerning trusts. Applying the Theory of Planned Behaviour to the study of trust related tax evasion and avoidance in South Africa enables a comprehensive understanding of how tax knowledge interacts with psychological attitudes, social influences, and control perceptions to drive tax compliance behaviour. This approach supports the design of targeted interventions that address not only legal and economic factors but also behavioural and trust related dimensions critical to reducing tax evasion and tax avoidance (Brink, 2017; Mishi and Tshabalala, 2023). By focusing on attitudes, subjective norms, and perceived behavioural control, researchers and policymakers can better understand the motivations behind tax compliance or avoidance related to trust usage. This insight can ultimately lead to more effective strategies for promoting compliance and addressing potential abuses associated with trust structures. These theories were the most appropriate frameworks for this study as they offer a structured approach to comprehending the impact of tax evasion and tax avoidance in South Africa.

2.3 Empirical literature review

2.3.1 Ways in which trusts are used for tax evasion and tax avoidance.

Blignaut (2015) researched the curbing of the abuse of trusts. Where for tax purposes, trusts are used as a mechanism for estate planning, including the avoidance of estate duty and donations tax. The founder of a trust typically transfers assets to the trust by selling these assets

to the trust and granting an interest-free (or low-interest-bearing) loan (Brink, 2017). Brink's (2017) study states that the estate duty is a tax levied on the total value of assets of a person who has deceased. Therefore, by moving assets to a trust, each person can reduce the taxable value of their estates and reduce the liabilities of their tax but the benefits of tax of trusts have also raised concerns and questions about their misuse for tax evasion (Kanagaretnam et al., 2018).

Blignaut (2015) propounded that abuse occurs when there is no clear distinction between use and enjoyment. However, he emphasised that it goes beyond that. As explained, the abuse of trusts happens when trustees do not fulfil their core duties or follow the basic principles of trust administration. These principles were outlined by Blignaut (2015) as follows: firstly, the trustees are obligated to exercise independent discretion. Secondly, the trust deed must be properly interpreted and implemented by the trustee. Finally, in performing their duties and exercising their powers, trustees must act with diligence, care, and skill.

Rahman (2021) investigated the use of trusts as vehicles for tax evasion and tax Avoidance. The study aimed to critically evaluate how trusts are often used as a vehicle for tax evasion and avoidance, particularly considering the political, social, and moral contexts in which trusts operate. The study conducted by Rahman (2021) stated that it could be placed that the legal processes related to trusts are proved to be complicated and many also abuse this mechanism as a vehicle of tax evasion and avoidance

The study conducted by Roux (2020) critically examined the provisions of the “Income Tax Act, 58, of 1962” concerning the taxation of interest-free loans granted to companies or trusts. The aim of this study was to conduct a critical analysis of Section 7C provisions, taking into account their historical development, as well as a review of the Income Tax Act's ancillary provisions, in order to identify potential weaknesses, inconsistencies, and/or anomalies and provide workable solutions to them. Roux (2020) discovered that the addition of “Section 7C to the Income Tax Act” had a significant effect on the use of trusts and financial planning. It also provides an excellent illustration of how a section's wording should be carefully considered before being added to an existing piece of legislation. It is effectively a wealth tax that has been put in place to prevent individuals from transferring assets into a trust by way of making use of an interest-free loan. The same may be stated about the interpretation of legislation due to its inherent complexity; in fact, The Interpretation Act was drafted specifically to address this issue.

However, while the rules of Section 7C may discourage persons who are unfamiliar with the terms of S7C from using an interest-free or low-interest loan account, it is maintained that the usage of trusts as a flexible estate planning tool would remain unaffected. Section 7C could be totally avoided by using long-term planning tactics such as simply bequeathing the necessary assets to an existing trust, which achieves the same aim while having no effect on the provisions of Section 7C because there was no loan, advance, or credit. Once the assets are in the trusts, future generations can simply borrow from the trust to establish more trusts, because trusts offering interest-free or low-interest loans are not subject to Section 7C. The study used a historical methodology together with a thorough qualitative literature review of the relevant sections of the Income Tax Act, case law, and the Davis Tax Committee's recommendations. The study concurs with the notion that Trust tax legislation is complex.

A study was conducted by Jeaven (2015) to assess whether trusts truly pose a significant risk of eroding the tax base and whether they are as problematic as they are often portrayed. The study looked at how trusts are taxed in South Africa and analysed the different anti-avoidance provisions in the Income Tax Act. The study concluded that it might be beneficial for all parties involved to introduce specific legislation in the Income Tax Act to address trust-related tax issues. This would simplify the process of creating a new tax regime for trusts, which would otherwise be quite complex and require careful drafting. It's likely that this legislation would need to be amended several times to ensure that it works effectively for both the South African Revenue Service (SARS) and the taxpayers.

Bain (2018) conducted a study on the taxation of trusts in South Africa, critically analysing Section 7C. The purpose of the study was to critically analyse Section 7C of the Income Tax Act, 58, of 1962, to determine whether Section 7C achieved its stated objective. Section 7C was introduced on January 19, 2017, and effective as of March 1 2017. This provision attempted to regulate the use of certain interest-free loans to trusts, a vehicle that has been impacted by several legislative amendments over the last few decades. The study used doctrinal methodology, which included an exhaustive assessment of case law and pertinent sections of applicable legislation, such as Acts and interpretation notes. The study found that the addition of Section 7C to the ITA is directly aligned with the current Section 7 as well as international trends such as the "Base Erosion and Profit Shifting" (BEPS) final reports. As globalisation accelerates and data becomes more widely available to both rich and emerging countries, structural transparency will become more apparent, and previously exploited loopholes will be

closed. Furthermore, the current economic slowdown in South Africa and elsewhere is likely to result in more aggressive revenue authorities.

Mukoma (2017) investigated the impact of Section 7C, which was added to the Income Tax Act to deter tax avoidance via the use of trusts. South Africans have used trusts as part of their estate planning, and this practice continues. In the setup of trusts, various structures are put in place based on the taxpayer's needs. SARS and the National Treasury developed an unsupported view that there is estate duty and tax avoidance resulting from the use of trusts, with the primary concern being tax avoidance. Section 7C is designed to curb the avoidance of estate duty, but its promulgation was mainly influenced by the perceived avoidance of taxation. Mukoma (2017) primarily focused on tax avoidance, particularly concerning estate duty. Section 7C has been a contentious topic, leading taxpayers to question trusts' future viability. However, is this section genuinely worthy of the attention and worry it has garnered? Taxpayers still have several choices for supporting a trust, and it may be premature to regard Section 7C as the main explanation for a fall in interest in trust structures for estate planning purposes. According to the analysis, "Section 7C" is likely to contribute to the avoidance of inheritance and donation taxes through the use of trusts. This, however, does not resolve the position for trusts that have successfully eliminated or reduced their loans to a minimal level in relation to the value of their assets. These trusts can still achieve the purpose of avoiding estate tax by skipping numerous generations. As a result, Section 7C is not effective in preventing tax avoidance. This may suggest that future legislation could be introduced in the Act to tackle tax avoidance more effectively.

Donations are considered a transfer of wealth and are thus subjected to Donations Tax, as outlined in "Sections 54 to 64 of the Income Tax Act". The donor is required to pay Donations Tax at a rate of 20%. According to Section 56(1)(l) of the IT Act, trusts are exempt from donations tax when they transfer or distribute assets to the beneficiaries of the trusts. For individuals, the first R100,000 of donations per year is exempt from Donations Tax, while trusts have an annual exemption of R10,000. According to Section 7C(3), if a Trust receives a loan with no or low interest, the loan provider is required to treat the difference between the interest rate charged and the official interest rate which is considered to be the market rate as a donation to the trust for the assessment year. Mukoma (2017) maintains that if a trust is not created to avoid tax, then the donor should not be deterred from paying donations tax.

Zwezwe (2018) contends that taxpayers have taken advantage of a number of South African tax law provisions in trusts, including the common law conduit pipe principle. Unfortunately, this exploitation has led to the principle's true purpose being muddled by the perception of tax avoidance. As per the principle, a discretionary trust serves as a conduit for dividends received by a resident taxpayer from a South African corporation, as well as interest income from a South African investment. These amounts, along with any capital gains realised by the trust, maintain their identity until they reach the hands of the beneficiary. The study conducted by (Zwezwe, 2018) aimed to find the true purpose and value of the conduit pipe principle in the South African tax regulatory system. The study positively determined that the underlying aim of the “conduit pipe principle” is to prevent double taxation of income that has already been taxed at its original source when it is received by its beneficial owner. The study further suggests that the conduit pipe principle should remain in our law. Its elimination was recommended based on a misunderstanding of its true purpose, which is to prevent double taxation on income that has already been taxed at its source, rather than for tax avoidance. The study examined only at the conduit pipe principle to the extent required to establish its application and operation. The study included a qualitative analysis of tax cases in which the courts used the “conduit pipe principle,” legislation dealing with the “conduit pipe principle,” and literature on trust taxes.

Trusts face a higher capital gains tax (CGT) inclusion rate of 80% compared to individuals. However, individuals can strategically use trusts to defer or minimize CGT liabilities. By holding assets within a trust structure, they can wait until the assets can be sold at a more favourable tax rate or under more advantageous circumstances (Walker, 2024).

Capital gains tax was enacted on October 1, 2001, and it applies to the sale of assets sold for proceeds after that date. A trust that is a tax resident in South Africa is obligated to pay capital gains tax on any net capital gain from the sale of an asset under the conditions provided in the Act's Eighth Schedule.

When you sell an asset for more than the amount you paid for it, you incur a capital gain. On the other hand, if you sell an asset for less than what you paid for it, you incur a capital loss. According to the “Eighth Schedule of the Income Tax Act,” capital gains or losses are calculated using a basic formula.

$$\textit{Proceeds} - \textit{Base Cost} = \textit{Capital Gain} / (\textit{Loss})$$

It is important to understand that a trust cannot distribute a capital loss to a beneficiary, just as it cannot distribute an assessed loss. According to the relevant provisions, the capital gain should be disregarded for the trust if the rules in “paragraphs 68, 69, 71, and 72 of the Eighth Schedule” do not apply. Instead, the capital gain should be recognized in the hands of the beneficiary who received the benefits from the vesting of that asset.

According to Section 25B (3) of the “Income Tax Act, 58 of 1962” (IT Act), Paragraph 80(3) of the Eighth Schedule applies to non-resident trusts with resident beneficiaries. The Eighth Schedule applies to non-residents who dispose of immovable property within South Africa or have an interest in immovable property located in the country, as defined in Paragraph 2 of the same schedule.

Paragraph 80(3) specifically applies when a Non-resident trust disposes of an asset to a beneficiary who receives an interest in that asset in the following year of assessment. This provision is applicable only if the capital gain from the transaction was not subject to taxation in South Africa.

2.3.2 Underlying factors leading to tax evasion and tax avoidance by trusts.

A significant factor that influences tax evasion and avoidance is the complexity of tax laws. Trusts often operate within intricate legal frameworks, which can create opportunities for tax avoidance due to loopholes or misunderstandings of the law. This complexity can result in unintentional non-compliance or deliberate manipulation of tax obligations (Dlamini, 2011; Mvunabandi et al., 2024). According to Mvunabandi et al. (2024) the inability to benefit from paying taxes leads taxpayers to evade or legally avoid them. To lessen their tax exposure, taxpayers get involved in tax evasion. Many governments are facing the issue that some taxpayers, due to various challenges, are unwilling to pay the correct amounts of tax owed. Instead, they seek to minimize their tax payments as much as possible. This often leads to tax evasion, as evidenced by the increasing number of tax evaders over the years (Dlamini, 2011).

Graskie (2019) examined the trust tax legislation in selected Southern African Development Community (SADC) countries to determine which aspects, if any, contain complexity. The study aimed to investigate the complexity of trust tax legislation using the Davis Tax Committee (DTC) report as the point of origin, with a specific focus directed towards the simplification of Trust tax legislation within the context of SADC countries. The study found that three jurisdictions (Lesotho, Mauritius, and Tanzania) do not use the common law or legislative flow-through (or conduit pipe) attribution of income to beneficiaries. It was noted

that the sections used in these countries were simpler to read and included limited or no anti-avoidance measures applicable to the taxation of Trusts. In eight jurisdictions namely (South Africa, Eswatini, Malawi, Namibia, Seychelles, Zambia, Zimbabwe, and Botswana), tax legislation includes the flow-through or conduit pipe principle. While the application and wording differ among these jurisdictions, the essence of the flow-through system is that either the beneficiary or the trust will be taxed on the income generated by the trust. Jurisdictions with the flow-through principle need a substantial number of anti-avoidance measures in their legislation. The study provided an overview of the complexity found in the legislation of the chosen SADC countries. The study employed a qualitative analysis, and the doctrinal research method was selected to critically analyse the data.

According to Kassa (2021) several factors influence tax avoidance. High tax rates can incentivize individuals and firms to engage in tax avoidance to reduce their tax liability. The complexity of tax laws and regulations may increase compliance costs and create opportunities for tax avoidance. Additionally, perceptions of fairness, economic incentives, and the potential for financial gain can motivate individuals and firms to pursue tax avoidance strategies. Government enforcement and the perceived likelihood of getting caught also play a significant role in the decision to avoid taxes. Ethical considerations may influence behaviour, as well. Furthermore, international tax laws can differ between countries, providing incentives for multinational firms to engage in tax avoidance by shifting profits to low-tax jurisdictions. Kassa (2021) emphasises that these factors can interact in complex ways, affecting tax avoidance behaviour. Understanding these factors is crucial for policymakers in designing tax policies and administration aimed at reducing tax avoidance.

Bako (2021) conducted a survey research study that assessed several factors that influence tax avoidance and evasion, with a focus on Wukari, Taraba State in Nigeria. The study's particular aim was to ascertain the influence of corruption on individual tax avoidance and evasion. This involved investigating whether lack of transparency and accountability in public institutions influences individual tax avoidance and evasion, examining the influence of tax system injustice on individual tax avoidance and evasion, and evaluating the impact of tax system complexity on individual tax avoidance and evasion. A sample size of 308 questionnaires was administered and 230 questionnaires were collected, representing a 75% response rate. The study found that corruption, lack of transparency and accountability, tax system injustice and tax system complexity all have a substantial impact on tax avoidance and evasion. The findings suggest that tax avoidance and evasion lead to government revenue loss, which could severely

impact the public sector's ability to finance public expenditure. This study was incorporated to highlight the fact that tax evasion and tax avoidance practices are not just a South African problem. Trusts primarily concentrate on managing assets for private beneficiaries, but their principles of fiduciary duty and resource management also align with the functions of public institutions that aim to serve the broader community. This connection between these entities emphasises the importance of trust in promoting effective governance and enhancing societal well-being.

Naape (2023) conducted a study in South Africa to evaluate the impact of taxpayers' knowledge of tax matters and the complexity of the taxation system on compliance. The study used a structured questionnaire to gather the opinions of personal taxpayers. The findings showed that taxpayers' understanding of tax matters influenced their willingness to comply. Additionally, when taxpayers perceived the tax system as less complex, it had a positive effect on compliance. Taxpayers often find it difficult to understand the various tax laws and changes related to tax administration and compliance (Richardson and Sawyer, 2001). According to Cox and Eger III (2006) tax complexity can emerge in different ways, including compliance complexity, computational complexity, procedural complexity, rule complexity, and forms complexity. The six probable causes of tax complexity were first identified by Long and Swingen (1987) and they include record keeping, frequent changes to tax laws, calculations, details, ambiguity, and forms.

Nkadimeng (2022) investigated the effects of tax avoidance practices on tax revenue collection in South Africa and specifically analysed tax avoidance within the South African context. Nkadimeng (2022) found that there has consistently been a significant struggle to strike a balance between the government's needs and those of taxpayers concerning the fundamental principles of tax avoidance. Taxpayers will always try to find creative ways to reduce their tax liability while staying within the boundaries of the law, while the South African government continuously tries to improve the tax legislation to prevent taxpayers from reducing their tax liabilities through avoidance practices. Tax evasion and avoidance by trusts are affected by a range of factors, including legal complexities, perceptions of fairness, economic incentives, trust in government, cultural norms, enforcement effectiveness, and ideological biases.

2.3.3 Systems and methods used to detect tax evasion and tax avoidance by trusts.

South Africa has approved many different measures of legislation and policies to address this issue of trust tax evasion and avoidance practices (Lam et al., 2020). In the “Income Tax Act,

58 of 1962”, the “General Anti Avoidance Rules” (GAAR) are of particular importance in this regard. The study conducted by Sitardja and Waluyo (2020) states that the GAAR is a set of provisions that allow SARS to challenge the systems of tax avoidance that are deemed to be abusive or contrary to the purpose of the intended tax laws. The GAAR can be used both domestically and cross-border and its purpose is to make sure that taxpayers pay their fair share of taxes (Kanagaretnam et al., 2018). The GAAR is based on the principle of substance over form meaning tax avoidance systems that have no commercial substance or purpose other than to reduce taxes can be challenged by SARS. The GAAR is linked with tax evasion and tax avoidance, and this is made to ensure that taxpayers pay their taxes fairly. The provisions on controlled foreign companies and the transfer pricing with also thin capitalisation, GAAR is complemented by other provisions in the Income Tax Act that work directly with tax evasion and avoidance (Lam et al., 2020).

These anti-base erosion provisions were created to restrict taxpayers to not shifting profits to low-tax jurisdictions or artificially inflating their deductions. The study by Sitardja and Waluyo (2020) states that to address trust and tax evasion other policies and initiatives in addition to the GAAR and other provisions in the Income Tax Act have been adopted. For instance, Kanagaretnam et al. (2018) state that many different measures have been proposed to strengthen the systems of tax and develop compliance and have also published documents of reports and discussions on the avoidance and evasion of tax.

The Common Reporting Standard (CRS) is an international standard for the automatic exchange of financial account information between jurisdictions. In South Africa, financial institutions are required to identify reportable accounts held by trusts and their beneficiaries. The key steps involved include:

- **Due Diligence:** Reporting Financial Institutions (RFIs) must conduct due diligence to identify account holders and controlling persons of trusts. This involves assessing whether these individuals are tax residents in other jurisdictions.
- **Reporting Obligations:** RFIs report the identified accounts and relevant information to the South African Revenue Service (SARS), facilitating cross-border information sharing that can uncover hidden assets or income. (SARS, 2024a).

The National Treasury also engaged with other international organisations to learn from their experiences and best practices, and it has also engaged with the “Organisation for Economic Co-operation and Development” (OECD) (Brink, 2017; Kanagaretnam et al., 2018). Despite

these initiatives and efforts, in South Africa trust avoidance and evasion of tax practices remain a significant challenge because of the intricacy of the tax legislation, the absence of awareness and understanding of systems of tax, and the perceived weaknesses in the legislation and enforcement mechanisms and all these contribute to the problem of tax evasion and avoidance. In order to tackle these issues, Brink (2017) has suggested initiatives for improvements in legislation and policies in terms of trust tax evasion and avoidance practices within South Africa.

Brink (2017) examined the future of discretionary trusts in South Africa. The primary goal of the study was to clarify the reform ideas (which were ambiguous and hence reliant on certain assumptions) and to compare them to the final revisions. This analysis helps tax professionals and taxpayers make more informed tax and estate planning decisions. The proposed reforms and final revisions may have an influence on South Africa's discretionary trusts. To achieve this goal, a qualitative approach based on a literature review of pure theoretical components was utilised. The study showed that if the reform plans became law, many trusts would become useless from a tax-planning perspective, and these changes may weaken other benefits trusts offer, jeopardising the future of discretionary in South Africa.

Recent legislative reforms mandate that trusts maintain a register of beneficial ownership, which includes the identities of individuals who control or benefit from the trust. Although this register is not public, it is accessible to regulatory authorities, such as SARS. This access helps in identifying hidden ownership structures that could be used for tax evasion (Honiball, 2023).

SARS uses advanced data analytics tools to examine tax returns and financial transactions related to trusts. By identifying patterns that suggest tax evasion or avoidance, SARS can better target audits. Educational initiatives designed to inform trustees and beneficiaries about their tax obligations promote compliance. By increasing awareness of the legal consequences of using trusts for tax evasion, these campaigns can deter illicit activities (SARS, 2024c).

The detection of tax evasion and avoidance involving trusts in South Africa relies on a combination of regulatory frameworks, international cooperation, technological advancements, and public education efforts. These systems aim to enhance transparency and accountability within trust structures while ensuring that legitimate uses of trusts are not negatively impacted by strict regulations. As enforcement mechanisms evolve, it will be essential to continuously improve compliance monitoring in order to address potential abuses associated with trusts.

Rudd (2018) emphasises that the rules regulating the taxation of trusts in South Africa have faced significant scrutiny and require adjustments. On one hand, these rules must be robust enough to prevent tax evasion; on the other hand, they should not be so stringent that they hinder the legitimate use of trusts. The widespread use of trusts for tax avoidance in various countries raises the question of how other jurisdictions tax trusts and whether South Africa can adopt their principles to inform its legislation.

2.3.4 Strategies that can be used to prevent tax evasion and avoidance by trusts.

Trusts have come under more scrutiny in South Africa, with new laws and tax initiatives cracking down on non-compliance. Following the legislative fallout of the Financial Action Task Force (FATF), an international watchdog, finding South Africa insufficiently regulated in terms of counter-terrorist financing and money laundering mitigation strategies, the country embarked on a speedy legislative process amending various finance laws, including the Trust Property Control Act, 1998. Improving the effectiveness of the GAAR provisions in the Income Tax Act can deter tax avoidance schemes involving trusts. In this way, understanding and preventing such structures and ensuring safe and legal financial transactions become possible. By clearly defining the prohibited structures and enhancing the watch on the deals meant for tax evasion, authorities can prevent abusive application. Requiring trusts to maintain and submit registers of beneficial owners to the South African Revenue Service (SARS) can enhance transparency and assist authorities in tracking the actual owners of trust assets.

The new amendments, as outlined in The General Laws (Anti Money-Laundering and Combating Terrorism Financing) Amendment Act, seek to address a shortcoming in the transparency of beneficial ownership in South Africa's regulatory framework. President Cyril Ramaphosa signed the amendments into law on 1 April 2023. They primarily relate to defining beneficial ownership in line with international standards – which refers to people who benefit from and have ownership rights over assets held in a trust (Businessstech, 2023). Section 25B of the Income Tax Act has also been amended with effect from 1 March 2024 whereby vesting of benefits in non-resident beneficiaries will now be taxed at source (within the trust).

Both Paragraph 80 of the Eighth Schedule to the Income Tax Act and Section 25B of the Income Tax Act contain the income tax requirements that control how funds vested in beneficiaries of trusts are taxed. While vested capital gains are covered in paragraph 80, non-capital sums like interest and rental income are dealt with in section 25B. Capital gains tax is still applied to capital gains vested in non-resident beneficiaries under the terms of the trust.

The upshot is that capital gains vested in resident beneficiaries only face an 18% maximum effective tax rate, whereas profits vested in non-resident beneficiaries are subject to a higher flat tax rate of 36%. The way that non-capital amounts invested in non-resident beneficiaries are treated differently from capital profits in terms of income tax is a source of worry for the government. The government has highlighted the issue as SARS's increased complexity and difficulty in collecting and enforcing the recovery of income tax that non-resident beneficiaries are supposed to pay. There is a suggestion that section 25B be changed to better align it with paragraph 80 in the manner mentioned above considering these worries. This modification will have the effect of keeping the ordinary income of trusts taxed at a fixed rate of 45% even if it is vested in non-resident beneficiaries in the future. This rate is higher than what non-resident beneficiaries would typically pay in taxes (Musviba, 2023).

Section 7(8) of the Income Tax Act, 58, of 1962 was incorporated into the law through the Revenue Laws Amendment Bill, 2004 to address tax avoidance by South African taxpayers who used foreign Trusts. It aims to ensure that these taxpayers are liable for South African tax on income they receive from such trusts. Prior to the implementation of this provision, South African tax residents could transfer assets offshore, often to low-tax nations, and protect the income generated by such assets from South African taxes. If there are any conflicting provisions, Section 7(8) takes precedence and must be observed. It is crucial for taxpayers to grasp how these sections interact to ascertain the tax implications of income obtained from foreign trusts and prevent any unintended tax problems. The phrase "subject to the provisions of section 7 in Section 25B (1) must be construed to mean that only section 7(8) must be applied to the extent that both section 7(8) and section 25B (1) may be applicable". The remainder of any income not received as a consequence of a donation, settlement, or other disposition is subject to Section 25B(1) (SARS, 2021).

South Africa's Financial Intelligence Centre (FIC) has also committed itself to enhancing transparency through changes to the beneficial ownership framework. The FIC plans to revamp the process of investigating trusts, companies, and partnerships to ascertain the individuals involved or having an interest in such entities. In response to the FATF findings, the online system was introduced in mid-February this year. SARS said that its recent enhancements of online registration for trusts (eFiling) now allow foreign trusts and collective investment schemes trusts to register without the mandatory trust registration number. According to SARS, a Trust registration number will still be needed for the following types of trusts: Special Trusts, Estate CGT Trusts, Testamentary Trusts, and Inter Vivos Trusts (Businessstech, 2023).

Nkadimeng (2022) found that the South African Revenue Service would profit from the application of “The General Anti-Avoidance Rule” (GAAR). This implementation was intended to boost the collection of revenue by granting more powers to the commissioner to regulate the tax affairs of South African taxpayers. However, this also practically limits or eliminates the rights of the taxpayers. The South African Revenue Service manages the risk of permitting taxpayers to participate in different tax evasion methods by creating and enforcing laws and regulations that are intended to deter such activities.

Herbst (2023) conducted a comparative evaluation of the South African investment income tax regime using trusts. The study assesses the South African income tax regime related to investments made through trusts. It explores whether reforms are necessary and, if so, how to establish a tax framework that promotes investment, limits tax avoidance, and curtails capital outflows, all while considering South Africa's unique context and challenges. The study highlights that trusts are valuable institutions, and it is unfortunate that negative perceptions about them have emerged. Nevertheless, the unique characteristics of South African trusts offer an unparalleled level of flexibility and adaptability. When utilised properly, trusts can effectively address a variety of situations and serve as a preferred investment vehicle. However, to improve the utilisation of trusts, it is essential that the tax framework is supportive. The study proposed a new tier-based tax framework for trusts. The proposal seeks to reverse the negative narrative surrounding trusts and establish a new agreement between taxpayers and revenue authorities. Finally, the choice is between an investment-friendly government and a responsible jurisdiction. Nonetheless, Herbst (2023) exclusively examines investments made through trusts. As a result, does not consider any other types of legal entities or ownership structures and only focuses on income tax and does not address other taxes.

As proposed by Blignaut (2015) requiring trusts to appoint independent trustees can help mitigate conflicts of interest and ensure that trusts are administered properly. This measure is particularly important when all trustees are also beneficiaries, as it can lead to abuses of the trust structure. An independent trustee can provide an impartial perspective and help ensure compliance with tax laws. Governments should invest in educational programs aimed at financial advisors and taxpayers about the legal implications of using trusts for tax purposes. Understanding the risks associated with aggressive tax planning can discourage individuals from engaging in potentially illegal activities (Walker, 2024).

SARS can utilise data analytics tools to identify patterns that indicate tax evasion or avoidance among trusts. By analysing financial transactions, trust distributions, and beneficiary income levels, authorities can focus audits on high-risk trusts. Partnering with banks and financial institutions to share data about trust accounts can improve monitoring capabilities (Honiball, 2023). This integration facilitates better tracking of funds moving through trusts. SARS should conduct regular audits of trusts to ensure they comply with tax obligations. This process should involve a thorough review of trust deeds and transactions to uncover any indications of tax evasion or avoidance. By increasing scrutiny, we can discourage the misuse of trusts as mere vehicles for tax avoidance (Honiball, 2023).

2.4 Research gaps

There is a need for more comprehensive studies on how complex trust structures are designed specifically for tax evasion and avoidance. Current literature often highlights the existence of such structures but lacks a detailed analysis of their operational mechanics and the legal loopholes exploited by taxpayers. (Arksey and O'Malley, 2005) emphasised the importance of identifying research gaps in the existing evidence base, which may or may not culminate in a comprehensive systematic review. There is a gap in understanding the psychological and social factors that drive individuals to use trusts for tax avoidance. Investigating how increased transparency requirements impact the operational aspects of trusts, including record-keeping and compliance burdens, would provide valuable insights into taxpayer behaviour and trust administration (Brink, 2017). Insights into taxpayer morality, social norms, and perceived legitimacy of tax avoidance strategies could enhance understanding of why certain demographics resort to these methods.

The effectiveness of legislative measures aimed at curbing tax avoidance through trusts varies by jurisdiction. More research is needed to evaluate the impact of specific legislative reforms on trust usage and tax compliance, particularly in countries with high-net-worth individuals who are often implicated in trust abuse. The role of technology in detecting and preventing tax evasion through trusts is a critical area that requires further investigation. Research could focus on how tax authorities can use data analytics to identify suspicious activities related to trusts and enhance compliance monitoring. Research should explore how proposed tax reforms affect special trusts specifically, as well as their intended beneficiaries, to ensure that protective measures remain effective without being exploited for tax avoidance (Rudd, 2018; Swart, 2021). This is the first comprehensive study of this calibre in this field, highlighting the

fragmented nature of the existing literature. As a result, there is a significant need for consolidation of the findings and a deeper investigation into this specific topic. By bringing together various insights and perspectives, future research can build a more cohesive understanding and address the gaps currently present in the body of knowledge.

2.5 Conceptual framework

Figure 1 below presents the conceptual framework that illustrates the interactions between the key variables of this research. It underscores the relationship between trusts, tax evasion, and tax avoidance, and how these factors collectively impact trust tax legislation.

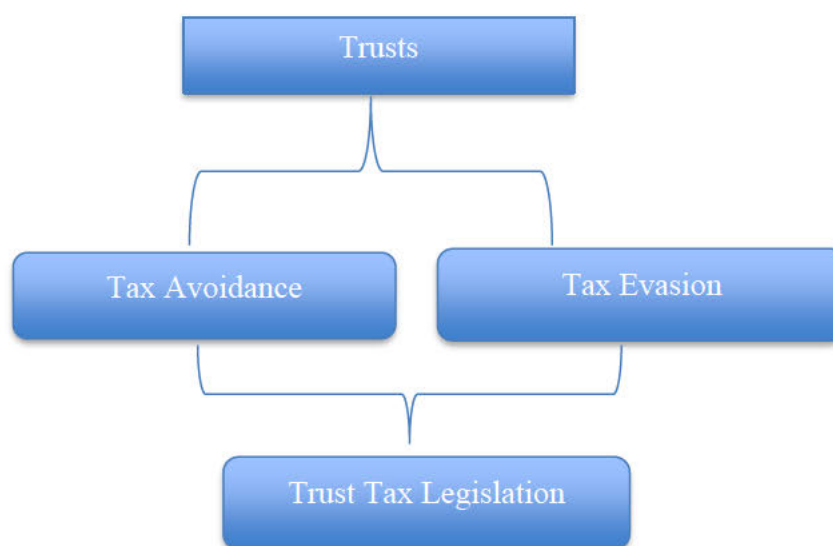


Figure 1: Conceptual framework

2.6 Summary

This chapter presents a comprehensive evaluation of the theoretical literature concerning tax evasion and tax avoidance by trusts. It delves into the various methods that trusts employ to evade taxation, such as the use of complex financial structures, offshore accounts, and manipulating legal loopholes. Additionally, the chapter examines the systems and techniques that tax authorities and regulatory bodies use to detect instances of tax evasion and avoidance. Moreover, the discussion highlights effective strategies that can be employed to prevent these practices, such as implementing stricter regulations. Finally, it identifies critical research gaps, emphasising the need for further studies on the evolving tactics used by trusts to evade taxes and the effectiveness of current detection and prevention measures.

The next chapter provides a detailed overview of the methodology used for the study.

CHAPTER 3: RESEARCH METHODOLOGY

3.1 Introduction

The study employed the scoping review methodology to establish the use of trusts in tax avoidance and tax evasion in South Africa; to establish the systems and methods used to detect tax evasion and avoidance through trusts; and to establish the strategies that can be used to avoid tax evasion and avoidance through trusts in South Africa. This chapter includes the following sections: Research Philosophy, Research Design, Data Collection Procedure, and Chapter Summary.

3.2 Research philosophy

One underlying factor in selecting a specific research design is the concept of research philosophy. The term research philosophy, or philosophy of science, encompasses how knowledge is developed and the nature of that knowledge within a particular research context (Saunders et al., 2009). Creswell and Creswell (2017) also refers to this as a "philosophical worldview. " A research philosophy is important because it helps researchers understand their approach to their studies and assists in comprehending the work of other researchers. Positivism is primarily linked to the ability to extract an absolute truth from quantitative data (Saunders et al., 2009). Realism remains closely tied to the philosophy of natural science, as "what we experience through our senses accurately depicts the world" (Saunders et al., 2009). Pragmatism is a blend of philosophies that holds the view that it is possible to work with potentially conflicting assumptions regarding the nature of reality (ontology) as well as variations in how knowledge can best be reproduced (epistemology) (Saunders et al., 2009). This implies that the situation will dictate which philosophy is most relevant to follow.

The research philosophy that resonates most closely with this study is that of interpretivism, which is also a postmodern theory, like positivism, but it is opposite to it; therefore, it is also called anti-positivism (Flick, 2022). Interpretivism is a paradigm that originated in the 18th century with the philosopher Giambattista Vico, who opposed Descartes' philosophy (Ryan, 2018). He argued that there is a distinction between the natural and social worlds. But, most importantly, he stated that the ways of perceiving reality and truth are shaped by social organisation and experiences (Ryan, 2018). Interpretivism is the approach that holds the view that truth and knowledge are constructed and relative to cultural and historical situations. They are born and developed during an individual's experience and interpretation. This means that the researchers cannot avoid embedding themselves in their values and beliefs, which in turn

influences how they collect, evaluate, and analyse evidence (Ryan, 2018). The advantage of interpretivism is that it provides a meaningful framework for examining trusts and taxation based on the everyday experiences and cultural situations of taxpayers. Qualitative research methods can be used to explore the reasons behind tax compliance and avoidance with regards to trusts in South Africa because they pay attention to the context. This approach finally helps to expand the knowledge of the processes that occur in the society regarding taxation.

3.3 Research design

Wilson (2014, p. 132) defines research design as a systematic process that a researcher follows, outlining distinct stages from the start to the completion of a study, thereby enhancing the chances that the research will be successfully carried out. The study used secondary data to establish and explain the factors that lead to tax avoidance and evasion by trusts, the measures put in place to prevent such practices in South Africa. The qualitative method was used to analyse the data collected. Qualitative research is a methodological approach that is used to gain an understanding of human experiences, behaviours, and social phenomena without using numerical data. It explores the “how” and the “why” of human behaviour rather than the concentration on quantifying the variables which is the case with quantitative research (Tenny et al., 2017). This study adopts a qualitative research method to explore tax evasion and tax avoidance by trusts in South Africa because the subject involves complex legal, financial, and social dimensions that require detailed, contextual understanding beyond quantitative measurement. Qualitative research enables an in-depth examination of how trusts are used in tax planning, the interpretation and application of anti-avoidance rules, and the perceptions and behaviours of relevant stakeholders such as taxpayers, trustees, and tax authorities.

Qualitative research helps in the understanding of people’s experiences by focusing on the meaning that people give to their actions and beliefs. Multi-methods are employed in qualitative research which enables the researcher to choose the method according to the study context and goals. However, qualitative research has the disadvantage of time convenience because data collection, analysis and interpretation may take a long time (Ugwu and Eze, 2023). Moreover, in qualitative analysis, the researcher’s interpretation was important, and this may lead to bias. There were tendencies of the researcher’s experiences and views affecting the data collection and analysis in qualitative research, which may result in some differences in the findings. Qualitative research is based on small samples of purposefully selected participants, which limits the ability to extrapolate findings to other populations. Qualitative

data is usually subjective in nature and therefore findings from one context may not be applicable to another context (Ochieng, 2009; Ugwu and Eze, 2023).

3.4 Data collection procedure

This study utilised the methodological framework advocated by Arksey and O'Malley (2005) to conduct a scoping review. A scoping review aims to explore the existing literature in a specific research area. Its goal is to identify crucial concepts, research gaps, and the necessary evidence to inform policymaking and practical implementations (Arksey and O'Malley, 2005; Pham et al., 2014). According to Munn et al. (2018), a scoping review provides a systematic approach to consolidating existing evidence using rigorous and transparent methods, which promotes, validates and assess reliable outcomes. This study used textual data, and a scoping literature review process to address the research questions.

Arksey and O'Malley (2005) defines scoping review as a research approach that systematically surveys and explores existing literature on a specific subject to identify and summarise available evidence, clarify key concepts, and provide an overview of current literature. It is particularly valuable for complex topics or areas with limited research in a particular field. A Scoping review aims to identify gaps in the literature and determine evidence sources for research, practice, and policymaking (Pham et al., 2014).

A scoping review has a framework that provides guidance on the best way to utilise this approach as proposed by Arksey and O'Malley (2005). The flow is as follows:

Phase 1. Research questions.

The scoping review aims to address three research questions:

- What methods do trusts use to evade or avoid taxation and what are the underlying factors leading to such practices?
- What systems and techniques are employed to detect tax evasion and tax avoidance by trusts?
- What strategies can be implemented to prevent tax evasion and tax avoidance by trusts?

Phase 2. Relevant articles

For this study, a thorough search across primary bibliographic databases was conducted. Google Scholar, ResearchGate, Google, ScienceDirect were utilised, these sources were chosen for their diverse range of articles and the capability to directly request articles from authors to ensure consistency and reliability while avoiding duplication (Matshona, 2023). Due

to time constraints, the observation period for the study spanned from 2000 to 2024. The period from 2000 to 2024 encompasses significant legal, economic, and global changes that have influenced the use of trusts in tax evasion and avoidance. The period has seen discussions and proposals for trust reform, which could impact their future use in tax planning (Brink, 2017; VanderMerwe, 2023). The research only considered literature written in English due to the costs and time associated with translation. The data search utilised keywords (tax evasion by trusts, tax avoidance by trusts, trust tax complexity, trust tax compliance and taxation of trusts within South Africa) derived from the research questions. The search strategy was first evaluated on Google Scholar. Based on the number and relevance of the articles identified, the approach was refined to make it effective. The final approach was used to gather data from all designated search engines. The investigation focused on keywords: tax evasion, tax avoidance, trusts, and the General Anti-Avoidance Rule.

The search terms and phrases are the following:

- Tax evasion by trusts in South Africa
- Tax avoidance by trusts in South Africa
- The taxation of trusts in South Africa
- Strategies that can be employed to prevent tax evasion and tax avoidance by trusts.
- Systems and methods that can be used to detect tax evasion and avoidance by trusts.
- Ways used by trusts to avoid and evade taxation.
- Underlying factors leading to tax evasion and avoidance by trusts.

Phase 3. Study selection

The inclusion criteria were articles that included statements about the taxation of trusts, evasion and avoidance of taxes, strategies that can be employed to prevent tax evasion and avoidance by trusts, the systems and methods used to detect these practices and the ways used by trusts to evade and avoid tax in South Africa. Only papers written in English were considered appropriate for inclusion. The study originally aimed to only use peer-reviewed journal articles to ensure the validity of the results. Peer-reviewed studies are considered high-quality, and their findings are deemed reliable (Böckel et al., 2021). However, due to the scarcity of peer-reviewed articles, academic dissertations, such as masters and doctoral dissertations were also included.

Pham et al. (2014) emphasised the importance of carefully reviewing articles to exclude irrelevant ones. They determined suitability by examining titles and abstracts to collect articles and identify their unique characteristics. They characterised the data by evaluating the relevance of abstracts and citations. Full articles were obtained through search engines. If the title and abstract were not sufficient, the introduction and conclusion were reviewed to decide on the inclusion. In the initial stage of the vetting process, the titles and abstracts of studies were evaluated to avoid wasting resources on research articles that do not meet the minimum inclusion criteria, as explained by Pham et al. (2014). A form was created to assess the suitability of titles and abstracts; this form is pretested and revised as needed before it is applied (see Appendix A).

The criteria for including and excluding articles in this review were carefully chosen to allow for an unbiased comparison and ensure adequate quality. Arksey and O'Malley (2005) suggested that reliable decision-making depends on inclusion and exclusion criteria based on the key research question. One reason for employing a scoping review method was to enable the incorporation of a wide variety of sources that fall outside the typical peer-reviewed studies (Sucharew and Macaluso, 2019).

Phase 4. Data charting

In this phase, the data collected from search engines were carefully organised and reviewed to ensure it meets the specific criteria. This organised data was important for addressing the research questions. According to Arksey and O'Malley (2005) this process provided the framework for analysing the selected and reviewed studies. The data collected was documented on a 'data charting form' (see Appendix B). This chart records the following pieces of information:

- Author(s),
- Year of publication,
- Title of the study,
- The study's aims,
- Data sources,
- Methodology,
- Research findings

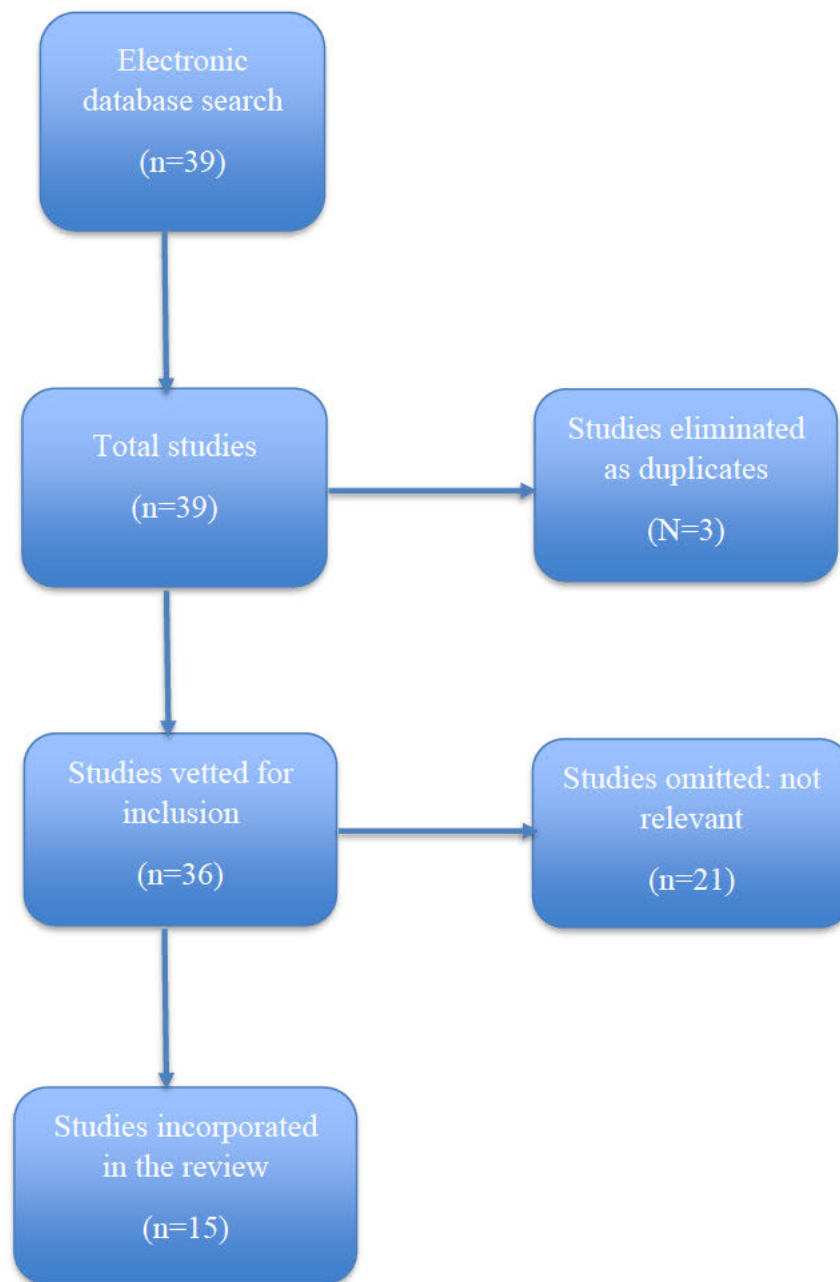


Figure 2: Study selection process flowchart

The Trust Property Control Act of 1988, which regulates the control of trust property, and the Income Tax Act of 1962, which governs tax obligations, were also reviewed for their effects on trust management and taxation.

Phase 5. Compiling, summarising, and chronicling the research results

This phase represents the final stage of the scoping review. It involves summarising and compiling all the findings and relevant information to draw appropriate conclusions and

chronicling the research results. The goal is to present a clear overview of the study and highlight what the researcher obtained from existing studies. Sucharew and Macaluso (2019) argued that the results of a scoping review typically focus on the variety of content found, while the quantitative analysis often limits itself to counting the number of sources that document a specific recommendation or issue. This scoping review provided an overview of all the materials examined. After charting the information from the articles and reviewing the selected studies, a narrative account of the findings is presented. The results were clarified, and discussions were supported by the extensive available literature.

3.5 Ethical considerations

In order to make sure that this study is conducted ethically and carefully, the researcher acquired an ethical clearance (Ethical clearance no. 00026677) before the information gathering. Additionally, this ensured that neither any individuals nor institutions suffered any sort of damage. The study's data is publicly available, and findings are reported with honesty and transparency. The collected data is securely stored in a password-protected file.

3.6 Summary

This chapter examined the key components of the research process, including the research philosophy, which outlined the fundamental beliefs guiding the inquiry; the research design, which detailed the overall strategy for conducting the study; the data collection procedures, which described the specific methods used to gather information; and the ethical considerations, which addressed the moral principles and guidelines that ensured the protection of participants' rights and the integrity of the research.

The next chapter presents the data presentation and analysis of the study.

CHAPTER 4: DATA PRESENTATION AND ANALYSIS

4.1 Introduction

This chapter provides a comprehensive analysis of the literature reviewed and presents the key findings derived from the analysis. It is structured into three main sections: firstly, it discusses the descriptive statistics that summarised the data; secondly, it details the results and engages in a thorough discussion of their implications; and finally, it identifies the gaps in the existing literature that warrant further exploration. Each section aimed to clarify the insights gained from the research and contextualised these insights within the broader academic discourse.

4.2 Summary of selected studies

This study reviewed papers published in peer-reviewed journals and a published dissertation that analysed the use of trusts in tax evasion and tax avoidance practices in South Africa. The reviewed studies were published between January 2000 and December 2024. From several articles identified in this review, only 15 were selected for review. This section provides a narrative account of the key characteristics of the reviewed studies, including the author(s), publication year, study title, study's aim, data sources, methodology used, and research results.

Table 3 summarises these key characteristics namely, the author(s), publication year, study title, study's aim, data sources, sample, and methodology for the articles included in this analysis.

Table 1: Summary of the studies reviewed.

Author(s) (ye.ar): Title	Aim of the study	Data sources	Methodology	Research findings
Bako, P. M. (2021). Factors influencing tax avoidance and tax evasion in Nigeria: A case study of	The study's particular aim was to ascertain the influence of corruption on individual tax avoidance and evasion.	A sample size of 308 questionnaires was administered and 230 questionnaires were collected,	The study adopted a survey research design. Descriptive statistics like mean, standard deviation and	Corruption, lack of transparency and accountability, tax system injustice and tax system complexity all

<p>Wukari, Taraba State.</p>		<p>representing a 75% response rate.</p>	<p>percentages, and inferential statistics like multiple regressions were used.</p>	<p>have a substantial impact on tax avoidance and evasion. Tax avoidance and evasion lead to government revenue loss, which could severely impact the public sector's ability to finance public expenditure.</p>
<p>Graskie, M. A. (2019). A comparative study of the complexity of trust tax legislation in selected Southern African Development Community countries.</p>	<p>The study aimed to investigate the complexity of Trust tax legislation using the Davis Tax Committee (DTC) report as the point of origin, with a specific focus directed towards the simplification of Trust tax legislation</p>	<p>The study commenced with a review of relevant literature to clarify and underpin the relevant theoretical literature for the study, followed by a critical analysis of the sections in the legislation of the different SADC countries</p>	<p>The study employed a qualitative analysis, and the doctrinal research method was selected to critically analyse the data.</p>	<p>While the application and wording differ among these jurisdictions, the essence of the flow-through system is that either the beneficiary or the trust will be taxed on the income generated by the Trust. Jurisdictions with the flow-</p>

	within the context of SADC countries.	pertaining to Trusts.		through principle need a substantial number of anti-avoidance measures in their legislation.
Blignaut, L. (2015). Curbing the Abuse of Trusts: Is the Independent Trustee the Solution?	The study aimed to explore and define the concept of “Independent Trustee” and whether it will aid in preventing the abuse of Trusts. The beneficial purpose of a Trust can make it vulnerable to abuse. When a Trust is abused, it undermines the fundamental concept of the Trust.	The study Analysed the Parker judgment, comparing similar case law and conducting an in-depth analysis of previous academic writings such as journal articles, internet articles, theses, and legislation.	The study involved the critical analysis of the Parker Judgement and comparing similar case law.	Abuse occurs when there is no clear distinction between use and enjoyment. However, the study emphasised that it goes beyond that. As explained, the abuse of Trusts happens when trustees do not fulfil their core duties or follow the basic principles of Trust administration.
Rahman, M. H. (2021). Trusts as Vehicles for Tax Evasion and Tax	The study aimed to critically evaluate how Trusts are often	The case study took place in the United Kingdom.	The methodology used in this study is a systematic	The legal arrangements related to trusts can be cumbersome,

<p>Avoidance: a Critical Study.</p>	<p>used as a vehicle for tax evasion and avoidance, particularly considering the political, social, and moral contexts in which trusts operate.</p>		<p>literature review and collection of data from the public domain.</p>	<p>and many people abuse this mechanism as a means of tax evasion and avoidance.</p>
<p>Kassa, E. T. (2021). Factors influencing taxpayers to engage in tax evasion: evidence from Woldia City administration micro, small, and large enterprise taxpayers. Journal of innovation and entrepreneurship.</p>	<p>The main purpose of this paper was to investigate factors that influence taxpayers to engage in tax evasion.</p>	<p>From the target population of 4979, a stratified and simple random sampling technique, 370 respondents were selected</p>	<p>The researcher used descriptive and explanatory research design and followed a quantitative research approach. To undertake this study, primary and secondary data has been utilised.</p>	<p>Several factors influence tax avoidance. High tax rates can incentivize individuals and firms to engage in tax avoidance to reduce their tax liability. The complexity of tax laws and regulations may increase compliance costs and create opportunities for tax avoidance. Additionally, perceptions of fairness,</p>

				economic incentives, and the potential for financial gain can motivate individuals and firms to pursue tax avoidance strategies
Naape, B. (2023). Tax Knowledge, Tax Complexity and Tax Compliance in South Africa.	The study aimed to evaluate the impact of taxpayers' knowledge of tax matters and the complexity of the taxation system on compliance.	The study used a structured questionnaire to gather the opinions of personal taxpayers.	The methodology of this study utilised primary data collected through self-structured questionnaires specifically designed for personal income taxpayers in South Africa.	Taxpayers' understanding of tax matters influenced their willingness to comply. Additionally, when taxpayers perceived the tax system as less complex, it had a positive effect on compliance. Taxpayers often struggle to understand the various tax laws and reforms related to tax administration and compliance.
Nkadimeng, H. L. (2022). The	The study aimed to	The study analysed data	A qualitative research method	In South Africa, there has long

<p>Impact of tax avoidance practices on tax revenue collection in South Africa.</p>	<p>examine how tax avoidance affects tax revenue collection by the South African government.</p>	<p>from court cases, academic articles, books, media releases, and theses.</p>	<p>was adopted for the study.</p>	<p>been a significant struggle to maintain a balance between the needs of the government and those of the taxpayers regarding the fundamental principles of tax avoidance. Taxpayers often seek creative methods to minimize their tax liability while remaining within legal boundaries. Meanwhile, the South African government continually works to enhance tax legislation to prevent taxpayers from reducing their liabilities</p>
---	--	--	-----------------------------------	---

				through avoidance practices.
Roux, E. (2020). A Critical Analysis of the Provisions Contained in the Income Tax Act 58 of 1962 Relating to the Taxation of Interest-Free Loans Made to Trusts or Companies.	This study aimed to conduct a critical analysis of the provisions outlined in Section 7C, considering their historical development alongside a review of the related provisions in the ITA. The goal was to identify potential weaknesses, inconsistencies, or anomalies, and to propose practical solutions to address these issues.	A literature review of relevant sections of the ITA, case law, and the DTC recommendations.	The research employed a historical approach along with a thorough qualitative literature review of the relevant sections of the ITA, case law, and the DTC's recommendations.	The addition of S7C to the Income Tax Act had a significant effect on the use of Trusts and financial planning. It also provides an excellent illustration of how a section's wording should be carefully considered before being added to an existing piece of legislation. It is essentially a wealth tax designed to prevent individuals from transferring assets into a Trust through the use of

				interest-free loans.
Jeaven, P. (2015). South African trusts: eroding the tax base	To assess whether Trusts truly pose a significant risk of eroding the tax base and whether they are as problematic as they are often portrayed.	The study looked at the taxation of Trusts in South Africa and analysed the different anti-avoidance provisions in the Income Tax Act.	A literature review of the relevant anti-avoidance provisions in the Income Tax Act.	It might be beneficial for all parties involved to introduce specific legislation in the Income Tax Act to address Trust-related tax issues. This would simplify the process of creating a new tax regime for Trusts, which would otherwise be quite complex and require careful drafting. It's likely that this legislation would need to be amended several times to ensure that it works effectively for both the South African Revenue

				Service (SARS) and the taxpayers.
Zwezwe, M. (2018). The common law conduit pipe principle: should we retain this principle in our South African law?	The study aimed to clarify the purpose and significance of the conduit pipe principle within the South African tax law system.	Analysis of tax cases where the conduit pipe principle was applied by the courts, legislation concerning the conduit pipe principle, and literature on the taxation of trusts.	The study involved a qualitative analysis of tax cases where the conduit pipe principle was applied by the courts, along with legislation concerning the conduit pipe principle and literature on the taxation of trusts.	The primary purpose of the 'conduit pipe principle' is to prevent double taxation on income that has already been taxed at its original source when it is received by its beneficial owner. This principle should be preserved in our laws. Its proposed abolition stems from a misunderstanding of its true purpose, which is to prevent double taxation on income that has already been taxed, rather than

				serving as a mechanism for tax avoidance.
Bain, C. (2018). The taxation of trusts in South Africa: Critical analysis of Section 7C.	The purpose of the study was to critically analyse Section 7C of the Income Tax Act, 58 of 1962, to determine whether Section 7C achieved its stated objective.	Extensive reviews of case law and the relevant sections of the applicable legislation including Acts and interpretation notes	The study applied a doctrinal methodology, conducting an extensive review of case law and relevant sections of applicable legislation, including Acts and interpretation notes.	The introduction of Section 7C of the ITA aligns with the existing Section 7 and international trends, including the Base Erosion and Profit Shifting (BEPS) final reports.
Mukoma, T. L. (2017). The effectiveness of the introduction of Section 7C into the Income Tax Act to curb the avoidance of taxation through the use of trusts	To investigate the effects of Section 7C, added to the Income Tax Act, aimed at preventing tax avoidance through Trusts.	Section 7C of the Income Tax Act and relevant legislation.	The study investigated the impact of Section 7C, added to the Income Tax Act, aimed at preventing tax avoidance through the use of trusts.	Section 7C may help in avoiding estate duty and donations tax through the use of Trusts. However, it does not resolve the issue for Trusts that have significantly reduced or eliminated loans in relation to the

				value of their assets.
Brink, S. M. (2017). An investigation into the future of discretionary trusts Part 2. South African Journal of Economic and Management Sciences.	The primary objective of the study was to clarify the reform proposals, which were initially vague and based on certain assumptions, and to compare these proposals with the final amendments.	Literature on the reform proposals	A qualitative approach utilizing a literature review focused on theoretical aspects was employed.	If the reform proposals are enacted, many trusts would lose their effectiveness for tax planning, and these changes could undermine the other benefits that trusts provide, threatening the future of discretionary Trusts in South Africa.
Rudd, R. (2018). The taxation of trusts: a comparative study of South Africa and the United Kingdom	The study aimed to identify the key differences in taxation regimes among the states.	Tax legislations of the UK and SA and relevant literature.	A comparative analysis of the taxation rules for Trusts in South Africa and the United Kingdom.	South Africa and the United Kingdom have markedly different approaches to taxing trusts. Despite these differences, similar

				outcomes are often achieved for comparable transactions in both countries.
Herbst, H. (2023). A comparative evaluation of the south african income tax regime for investments using trusts.	The study seeks to reverse the negative narrative surrounding trusts and establish a new agreement between taxpayers and revenue authorities. Finally, the choice is between an investment-friendly government and a responsible jurisdiction.	Legislation, case law, administrative rulings internet sources, academic textbooks and journal articles.	The dissertation follows a traditional legal research approach	It is evident that trusts are very useful institutions, and it is regrettable that such negative perceptions of trusts have been created. Notwithstanding, the unique nature of South African trusts allows unmatched flexibility and adaptability. If trusts are used correctly, they can address a range of circumstances and be a preferred investment vehicle. However, to

				enhance the use of trusts, it is paramount that the tax framework is supportive.
--	--	--	--	--

In addition to the 15 studies in the table above, the Trust Property Control Act of 1988, which regulates the control of trust property, and the Income Tax Act of 1962, which governs tax obligations, were also reviewed for their effects on trust management and taxation.

The distribution of the reviewed studies according to outlets is illustrated in **Figure 3**. Of the reviewed studies, 60% (9 out of 15) are master's dissertations, 33% (5 out of 15) are peer-reviewed journal articles, and doctoral theses comprise 7% (1 out of 15).

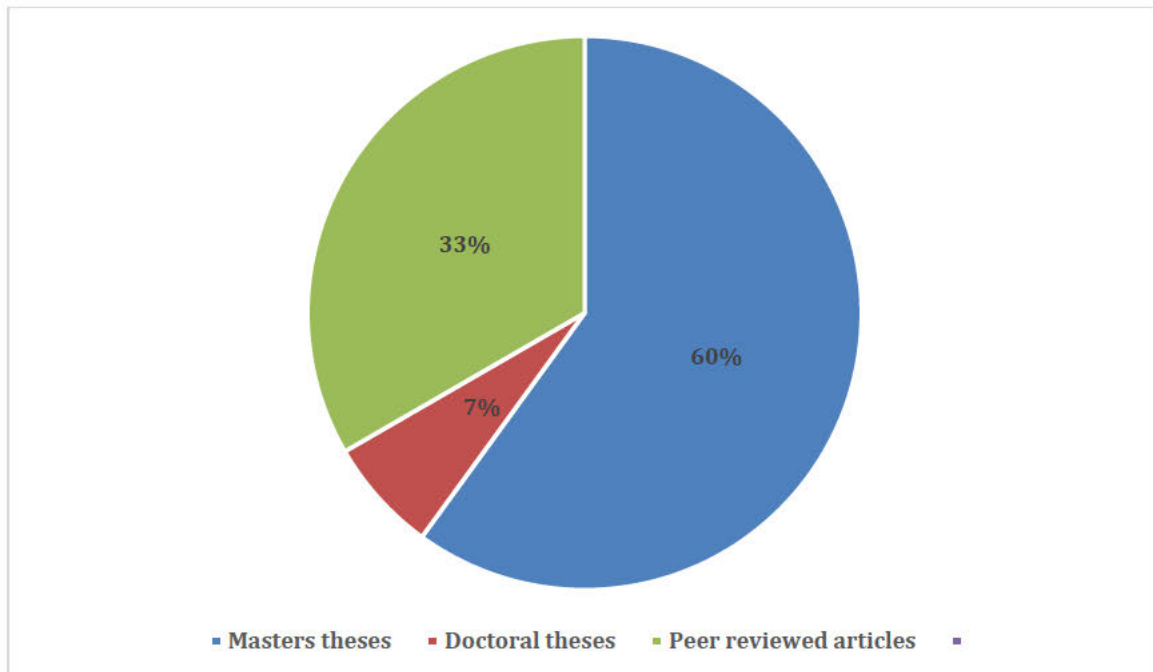


Figure 3: Categories of reviewed studies

4.3 Results and discussion

Research indicates that while tax evasion and avoidance are fundamentally different, they may influence each other. For instance, individuals who evade taxes may also seek legal avenues for tax avoidance once caught, or vice versa (Alstadsæter et al., 2022). This study integrates both tax evasion and avoidance to provide a comprehensive view of the use of trusts for tax evasion and avoidance practices. By analysing both practices together, this study aims to investigate the use of trusts in tax evasion and tax avoidance practices in South Africa.

4.3.1 Ways used by trusts to avoid and evade taxation

Exploiting tax loopholes

The complexity of trust laws and the loopholes in the Income Tax Act create opportunities for tax avoidance. For example, certain provisions allow income generated by a trust to pass directly to beneficiaries without being taxed at the trust level. This can lead to potential underreporting of taxable income by the beneficiaries. Individuals can place assets into a trust to conceal ownership, making it harder for tax authorities to trace income or assets back to them. By establishing multiple layers of trusts, individuals can further complicate the ownership structure, making it increasingly difficult for tax authorities to determine the true ownership of the assets (du Plessis, 2024).

Tax evasion occurs when individuals fail to report income generated by trust assets or improperly claim deductions that are not legally authorised. Entities may improperly claim deductions through trusts that do not accurately reflect their financial activities, leading to reduced taxable income illegally (Kumarasingam, 2023). Trusts have been labelled as instruments for tax avoidance both in South Africa and globally. The perception is that they facilitate schemes designed to exploit legal loopholes for tax benefits (Rudd, 2018).

It has been suggested that abuse occurs when there is no clear distinction between use and enjoyment. However, it goes beyond that. The abuse of trusts happens when trustees do not fulfil their primary responsibilities or follow the fundamental principles of Trust administration. Over the past three decades, it has become clear that the trust institution has been misused by both the trustees and founders. In response, the courts have expressed their disapproval of these abuses and have recommended various safeguards to protect trusts from being misused (Blignaut, 2015).

The use of offshore & discretionary trusts

Discretionary trusts enable trustees to determine how income and capital are distributed among beneficiaries. This flexibility can be utilised to reduce tax liabilities by allocating income to beneficiaries in lower tax brackets or those who may not have any taxable income. By managing distributions, trustees can effectively control the overall tax burden on the trust's income (du Plessis, 2024; Rudd, 2018).

Founders of trusts often transfer assets to the trust by selling them and accepting interest-free or low-interest loans as payment Rudd (2018). This approach helps avoid triggering donation

tax because the transaction is considered a sale rather than a gift. As a result, the assets are not counted as part of the founder's estate upon their death.

According to Section 7C(3) of the Income Tax Act, if a trust receives a loan at no or low interest rate, the loan provider must treat the difference between the interest rate charged and the official interest rate, which is deemed to be the market rate, as a donation to the trust for that year of assessment and according to Mukoma (2017), if a trust is not established to avoid taxation, the donor should not object to paying the donation tax. However, donors do not pay their taxes. Typically, a trust's founder transfers assets to the trust by selling them and giving an interest-free (or low-interest-bearing) loan (Brink, 2017).

Wealthy individuals may utilise intricate arrangements involving multiple layers of trusts and companies, sometimes incorporating offshore entities in tax havens. This makes it difficult for tax authorities to track income and enforce tax obligations, enabling both avoidance and evasion (Johann Krige, 2022). According to a reviewed study by Rudd (2018) Offshore trusts can be set up in jurisdictions with favourable tax systems, enabling individuals to postpone taxes on income generated by those assets. This practice can also be used to hide wealth from local tax authorities. Some trusts may be involved in cross-border transactions that take advantage of differences in tax laws between countries, making enforcement and compliance efforts by South African tax authorities even more challenging. (Honiball, 2023).

The current attribution rules in South Africa were initially created to prevent tax avoidance, but they have been exploited to enable tax evasion. For example, trustees can strategically assign income to beneficiaries to reduce tax obligations. The attribution principle plays a significant role in the way in which trusts are taxed in South Africa. It primarily serves as a mechanism to prevent tax avoidance and ensure that income generated from trusts is appropriately taxed (Brink, 2017).

Reviewed study Zwezwe (2018) states that the “*common law conduit pipe principle* “ is just one of several South African tax law principles that taxpayers have exploited within trusts. Unfortunately, this exploitation has led to the principle's true purpose being muddied by the perception of tax avoidance. Beneficiaries and trustees may attempt to exploit the conduit principle by timing distributions strategically to maximize tax benefits. For example, if a beneficiary has a lower income year, they might receive distributions during that time to take advantage of lower tax rates.

Capital gains tax planning

Trusts often avoid paying taxes by engaging in capital gains tax avoidance. Beneficiaries of discretionary trusts can receive distributions of capital gains that have not been taxed at the trust level. This is particularly advantageous because capital gains taxes may not apply to these distributions, especially if they are structured correctly. It is significant to note that a trust cannot distribute a capital loss to a beneficiary, just as it cannot distribute an assessed loss. Both these provisions indicate that the capital gain should be marginalised for the trust if the conditions outlined in paragraphs 68, 69, 71, and 72 of the Eighth Schedule do not apply. Instead, the capital gain should be reported by the beneficiary who received the benefit from the vesting of the asset.

Concealing income and assets

Trusts can conceal the identities of the actual owners of assets, enabling individuals to hide their income and wealth from tax authorities. This lack of transparency makes it challenging for revenue agencies to trace the sources of income or identify beneficiaries who might be responsible for paying taxes (Johann Krige, 2022). Due to the high cost of dying, many people use a trust to protect some or all of their assets from estate duty tax. This can be done by either transferring assets from the individual's estate to a trust through a disposal or a bequest. Once the assets are transferred, they will no longer be considered part of the individual's estate and will not be liable to estate duty tax (Jeaven, 2015).

4.3.2 Underlying factors leading to tax evasion and tax avoidance by trusts.

Complexity of tax laws

Graskie (2019) examined the intricacies of trust tax legislation in selected SADC countries which continues to be a source of worry for both academics and politicians. Furthermore, governments that recognise the flow-through principle, such as South Africa, have enacted anti-avoidance legislation to prevent the misuse of income ascribed to trust beneficiaries. However, this anti-avoidance legislation complicates the already complex legal framework. High tax rates and complex tax regulations can encourage individuals to engage in tax avoidance strategies. Trusts are often viewed as beneficial for preserving wealth and minimising tax liabilities because they allow for a separation between ownership and control. The intricacies of the tax system may lead people to exploit loopholes, which can create opportunities for both legal tax avoidance and illegal tax evasion (Rudd, 2018).

Behavioural factors, regulatory factors, corruption & economic incentives

Kassa (2021) propounded that several factors influence tax avoidance. High tax rates can drive individuals and businesses to minimize their tax obligations. Complex tax laws may increase compliance costs and create opportunities for avoidance. Economic incentives, perceptions of fairness, and the potential for financial gain also motivate such strategies. Government enforcement and the perceived likelihood of being caught play significant roles in these decisions. Additionally, varying international tax laws encourage multinational companies to shift profits to lower-tax jurisdictions (Kassa, 2021). According to Bako (2021) tax evasion is influenced by several factors: (1) Perception of Fairness: Taxpayers are more likely to evade taxes if they believe the tax system is unfair or unequal. (2) Complexity of the Tax System: Complex tax laws and regulations can create opportunities for individuals to evade taxes by exploiting loopholes or misunderstandings. (3) Corruption in Tax Administration: Corruption can undermine tax compliance, allowing taxpayers to avoid taxes through bribery or other unethical behaviours. (4) Lack of Law Enforcement and Penalties: A weak enforcement system and lenient penalties can encourage tax evasion by lowering the risks associated with non-compliance. (5) Economic Factors: Economic downturns, high unemployment, and other financial pressures can increase incentives for tax evasion as individuals try to protect their financial well-being. (6) Cultural Norms and Values: Societal attitudes, such as a general disregard for tax obligations or a belief that evading taxes is acceptable, can significantly influence tax evasion. (7) Privacy Concerns: The need to protect personal privacy can hinder tax authorities' ability to identify and penalise those who evade taxes.

Weak enforcement of tax laws and insufficient oversight of trust activities can create a favourable environment for tax evasion. When taxpayers perceive a low risk of being detected or punished for using trusts to evade taxes, they are more likely to take advantage of these mechanisms (Hossain et al., 2024). The combination of structural complexities, attitudes towards taxation, and weaknesses in regulation creates an environment conducive to both tax avoidance and evasion through trusts. To address these issues, comprehensive reforms are needed to enhance transparency, improve enforcement mechanisms, and ensure that the legal frameworks governing trusts are strong enough to prevent abuse.

4.3.3 Methods used to detect tax evasion and tax avoidance by trusts

To give clarity and certainty so that taxpayers can easily fulfil their tax obligations, the procedure for filing Income Tax Returns for Trusts (ITR12T) is being streamlined by SARS (SARS, 2024b). Each year, the Commissioner of the South African Revenue Services issues a

notice mandating that all trusts submit an ITR12T. Trustees, who serve as the representative taxpayers for the trusts, must ensure full compliance. All necessary supporting documentation must be uploaded and included with the trust's tax return starting in the 2023 assessment year. Resolutions or minutes from trustee meetings, the trust instrument, and annual financial statements are all included in this. The specific requirements may differ based on the type of trust (SARS, 2024b). SARS has intensified its efforts to recover outstanding taxes from non-compliant taxpayers, including those using trusts for tax evasion. This includes issuing ITA88 notices that allow them to directly access the bank accounts of non-compliant individuals.

To ensure that certain asset transfers are included in the estate of the founder upon death, particularly focusing on interest-free loans given to trusts, Section 7C of the IT Act deals with the prevention of avoiding donations tax and estate duty through trusts. The National Treasury in South Africa has proposed new laws to prevent the avoidance of tax through trusts. These laws focus on addressing the use of low-interest or interest-free loans. The proposed changes are related to amendments to Section 7C of the IT Act. According to Mukoma (2017) Section 7C is designed to curb the avoidance of estate duty, but its promulgation was mainly influenced by the perceived avoidance of taxation. According to Bain's (2018) study the implementation of "Section 7C of the Income Tax Act", closely resembles the current Section 7 and is in line with global trends, such as the BEPS final reports. Furthermore, the current South African economic downturn and around the world is likely to result in more aggressive actions from revenue authorities. In the same vein Roux (2020) examined the provisions of the "Income Tax Act, 58, of 1962" concerning the taxation of interest-free loans granted to companies or Trusts critically. The addition of S7C to the IT Act had a significant effect on the use of trusts and financial planning.

Nkadimeng (2022) found that SARS would benefit significantly from the enactment of the GAAR. The National Treasury has proposed important changes to how trusts are taxed, focusing on discretionary trusts and trading trusts (Treasury, 2022). The proposed changes involve considering distributions as taxable income at the trust level, rather than letting them pass on to beneficiaries without being taxed. The Financial Intelligence Centre (FIC) also plays a critical role in monitoring trusts for suspicious activities related to money laundering, tax evasion, and other financial crimes. Trustees are required to maintain proper records and report any suspicious transactions (Treasury, 2022).

SARS utilises advanced data analytics tools to detect patterns indicating tax evasion or avoidance among trust beneficiaries and founders (SARS, 2024b). This involves analysing financial transactions and cross-referencing them with reported incomes. SARS also collaborates with other government agencies, such as the FIC and law enforcement, to investigate complex cases involving trusts suspected of facilitating tax evasion or other illicit activities (SARS, 2024c).

Consistent with the reviewed study by Zwezwe (2018), Mckenzie (2023) states that the conduit pipe principle was formalised in statute after being introduced into South African common law from English tax decisions in 1938. If the beneficiaries have a vested right to the trust's income or underlying assets, this concept states that trusts are exempt from paying taxes on the income or capital gains they receive. This holds true whether the beneficiaries are a part of a vested trust or whether the trustees have used their discretion. Rather, these vested beneficiaries pay taxes on their income or capital gains.

Section 25B of the Income Tax has also been amended with effect from 1 March 2024 whereby vesting of benefits in non-resident beneficiaries will now be taxed at source (within the trust). Section 25B is an important framework for understanding how trusts are taxed in South Africa, particularly when it comes to differentiating between income and capital gains. The proposed amendments to this section show that SARS is working to make tax collection more efficient and address differences between resident and non-resident beneficiaries. The proposed changes aim to limit the conduit principle. This means that income held in trust for non-resident beneficiaries would be taxed at a flat rate of 45% within the trust, rather than being passed through to the beneficiaries for potential taxation at lower rates (Mgoboli, 2023).

South Africa uses a variety of methods, including changes to laws, regulatory supervision, and strong enforcement strategies, to uncover and prevent tax evasion and avoidance through trusts. These actions are intended to improve adherence to tax regulations and safeguard the tax system from being manipulated by affluent individuals who employ intricate trust setups. The integration of AI into SARS's operations enhances its ability to detect patterns indicative of tax evasion. AI models analyse tax submissions for inconsistencies, enabling SARS to identify potential cases of non-compliance more efficiently (Mahdi, 2024). SARS monitors social media and other public platforms for signs of unreported wealth or income. Public displays of wealth that do not match declared income can prompt further investigation into trusts (SARS, 2024c)

4.3.4 Strategies that can be employed to prevent tax evasion and tax avoidance by trusts

The implementation of measures that require discretionary trusts to be taxed at the trust level rather than allowing income to flow through to beneficiaries can reduce opportunities for tax avoidance as proposed by (Rudd, 2018). This means that taxable income or losses are fully assessed in the trust, with distributions to beneficiaries recognised as deductible payments solely to the extent of taxable income. Under the same line of reasoning Brink (2017) and Harriparsad (2016) proffered that the current rules for attributing income, allowing it to be taxed in the hands of beneficiaries, have been exploited for tax avoidance. Revising these rules to tax undistributed income at the maximum individual tax rate could prevent misuse.

As proffered by Graskie (2019) tax complexity weakens tax certainty and convenience, imposing an additional economic burden on taxpayers through increased compliance and administrative costs. This complexity can also affect taxpayers' perceptions of the fairness of the tax burden, influencing their willingness to comply with tax obligations. Al-Zeqeba and Al-Rashdan (2020) argue that complexity negatively impacts taxpayers' readiness to follow tax regulations. In simpler terms, if a taxpayer views the SARS e-filing system as complicated and fears making mistakes, they are less likely to comply with tax laws. Musimenta (2020) agrees that tax complexity adversely affects tax compliance due to its associated costs. With new tax systems, taxpayers may require additional support, such as training, tax advisors, or specialists, to help them navigate compliance. This support could, in turn, improve their perspective and willingness to comply.

An "independent trustee" would be required for the registration and lodging of an inter vivos family business trust as determined by The Parker Judgement, reviewed by (Blignaut, 2015). The circular stated as follows:

“To ensure that the registration of trusts and appointment of trustees by the Master of The High Court is in line with the judgement of the Supreme Court of Appeal of South Africa in Land and Agricultural Bank of South Africa and TT Parker, Case no:186/2003, the JM21E and the acceptance of trusteeship form have been amended to exercise stricter control in respect of the independence of trusts and compliance with the Trust Property Control Act, 57 of 1988, and to assist the Master of The High Court when making an appointment”

Having an independent trustee may help deter abuse, but it does not guarantee the absence of abuse. All the offices of the MOHC should implement judge Cameron JA's suggestions in the

Parker case. Trustees must offer security if they fail to select an independent trustee for a family business trust. However, the MOHC currently does not have any follow-up procedures in place to guarantee that the "independent trustee" is fulfilling their responsibilities. As a result, it is unclear whether this implementation is successful in preventing abuse, as the level of oversight by the MOHC is not clearly defined by legislation and remains uncertain. Blignaut (2015) further concludes that the MOHC is overwhelmed and does not possess the necessary skills, infrastructure, or resources to effectively supervise trusts. Blignaut (2015) suggested establishing an independent agency dedicated to managing trusts. This change would help balance the interests of the founder, trustees, and beneficiaries, thereby reducing the potential for abuse of the trust.

The Trust Property Control Act should be comprehensively amended to align it to the Companies Act (Blignaut, 2015). This is necessary because the act does not fully codify trust law in South Africa; many aspects are still governed by common law. The MOHC uses specific mechanisms to regulate trusts, ensuring that the wishes of the founder are upheld. These mechanisms are outdated and need modification to impose harsher liabilities on the trustee (Blignaut, 2015). The Trust Property Control Act governs the relationships between the MOHC and the trustee, as well as between the trustee and the beneficiary ("Trust Property Control Act No. 57," 1988). However, it does not provide any regulations for third parties that interact with the trust. Therefore, the Trust Property Control Act should be amended to include provisions that regulate the relationship between the trustee and third parties (Blignaut, 2015).

SARS should enforce stricter requirements for disclosing beneficial ownership information during trust registration and tax return submissions (Honiball, 2023). This is consistent with international standards set by the FATF and helps ensure transparency in trust operations. Regular audits of this information would enhance compliance and deter potential tax evasion (SARS, 2024b). SARS should collaborate closely with the National Treasury to create legislation that tackles loopholes trusts use to avoid taxes. By exchanging insights on new trends in trust taxation, both entities can develop policies that fill gaps in the existing legal framework. (Treasury, 2022).

Herbst (2023) proposes a new tier-based tax framework designed to foster a more positive narrative around trusts and establish a constructive relationship between taxpayers and revenue authorities. The goal is to balance an investment-friendly regime with responsible taxation practices. This comprehensive evaluation underscores the need for a supportive tax

environment to maximize the benefits of trusts as investment instruments in South Africa while addressing concerns about misuse and capital flight. The framework should include measures to limit tax avoidance strategies that exploit loopholes within the current system. This could involve stricter enforcement of anti-avoidance rules and clearer definitions of taxable activities related to trusts. A thorough review of existing anti-avoidance rules is necessary to identify weaknesses and implement more effective regulations that deter misuse while allowing legitimate investment activities through trusts (Herbst, 2023).

The DTC advocates for comprehensive reforms that would fundamentally transform the taxation of trusts, aiming to close loopholes and ensure that trusts cannot be exploited for tax benefits. In contrast, the government's approach seems more cautious and focused on specific measures, which may not fully address the broader issues highlighted by the DTC. Judge Dennis Davis is the chair of the Davis Tax Committee, which was founded in 2013 with the goal of evaluating and improving South Africa's tax policy framework to promote employment, development, inclusive growth, and fiscal sustainability. As part of its responsibility to review South African tax policy, the committee urgently needed to address BEPS (Base Erosion and Profit Shifting). This involved examining ways to avoid estate duty and taxes through trusts (Mukoma, 2017).

This recommendation by the DTC is based on the understanding that Section 7 of the Act governs the attribution principle. To stop trusts from being exploited as a tool for income splitting, Section 7 was first created as an anti-avoidance measure. The original intent of this clause is being undermined, though, by the current use of the attribution principle to evade taxes.

This first interim report of the DTC detailed several recommendations in this area, including the following:

- Maintain the flat rate for trusts and tax them separately,
- Repeal deeming provisions of Section 7 and 25B in respect of local trusts should remain in respect of offshore trusts; and
- Not attempt to make transfer pricing changes for interest-free loans to trusts.

4.5 Gaps in Literature

While there was substantial global research on tax evasion and avoidance, studies that specifically focused on trusts within the South African context were limited. The existing literature often fails to address the unique socio-economic landscape of South Africa

influencing how trusts are used for tax avoidance and evasion. There is a lack of thorough analysis on how South Africa's legal framework, particularly the “Trust Property Control Act” and the “Income Tax Act, 58 of 1962” influences trust management and tax compliance (Blignaut, 2015; Roux, 2020). To identify research gaps in this study, the articles reviewed and other relevant studies in the field were used. Future research directions may be informed by the gaps identified in the evidence of this study on the use of trusts for tax evasion and avoidance practices. Arksey and O’Malley (2005) emphasised the importance of uncovering research gaps within the existing evidence base, which could contribute to a comprehensive systematic review.

Most reviewed studies by Graskie (2019), Blignaut (2015) and Zwezwe (2018) for instance depend primarily on qualitative analyses or anecdotal evidence, lacking robust quantitative data to support their findings. This leads to a lack of quantitative empirical data, making it difficult to draw definitive conclusions about the effectiveness of current regulatory measures against trust-related tax evasion.

To address the gaps in literature, future research should focus on the following areas: Conducting comprehensive empirical studies to quantify the impact of trusts on tax revenue in South Africa. Exploring behavioural economics perspectives to understand the motivations that drive taxpayers to use trusts for tax avoidance. Developing comparative studies that examine how different jurisdictions manage trust-related tax issues, which could provide insights for policy improvements in South Africa. With impending legislative reforms, there is an urgent need for thorough studies that not only evaluate the implications of these changes but also investigate effective regulatory frameworks. These frameworks should balance legitimate estate planning needs with the necessity of preventing tax abuse. The challenges that South Africa encounters with trust taxation are not unique. Other countries have also struggled with the complexities surrounding trusts and their potential for misuse. Comparative studies indicate that South Africa could learn from how various jurisdictions regulate trusts and enforce anti-avoidance measures. This insight could help shape future policy decisions in the country (Rudd, 2018).

4.6 Summary

This chapter offers a comprehensive analysis, including descriptive statistics, the key findings, and an in-depth discussion regarding the investigation into the use of trusts for tax evasion and tax avoidance practices in South Africa. It also identifies specific gaps in the existing literature,

illuminating areas where further research is needed to better understand the implications and effectiveness of trusts in the South African context.

The final chapter of the study presents a summary, conclusion, and recommendations.

CHAPTER 5: SUMMARY, CONCLUSIONS AND, RECOMMENDATIONS

5.1 Introduction

This chapter presents the findings of the scoping review. The chapters covers the summary, conclusions, recommendations, and further research suggestions. Summarises the study and presents conclusions based on the results of this study. Recommendations are provided in line with these conclusions and finally outlines potential areas for future research.

5.2 Summary, findings, and conclusions

The primary aim of this study was to investigate the use of trusts in tax avoidance and tax evasion practices in South Africa. It examined the systems and methods employed to detect tax evasion and avoidance by trusts and analyse strategies that can be implemented to prevent these practices. Trusts have come under increased scrutiny as vehicles for tax avoidance, leading to legislative responses aimed at curbing these activities.

The study aimed to answer the following questions: What are the ways used by trusts to evade and avoid taxation and the underlying factors leading to such practices in South Africa? What are the systems and methods used to detect tax evasion and tax avoidance by trusts? What strategies can be employed to prevent tax evasion and tax avoidance by trusts?

To gain a deeper understanding of how trusts are used for tax evasion and avoidance practices, the researcher conducted a literature review that focused on both theoretical and empirical studies. The theoretical literature revealed how beliefs shape intentions and behaviours. The tax compliance theory acknowledges the influence of social norms and cultural values on the behaviour of individuals and businesses, as well as on their choices about tax law compliance. Taxpayers show greater willingness to comply with tax regulations when they perceive fair, equitable, and respectful treatment. The Tax Morale Theory highlights how individual's attitude, beliefs, and perceptions of the taxation system impact their tax compliance and tax avoidance. The Theory of Planned Behaviour is widely used as a framework to understand human behaviour; it provides a structured approach to understanding the influence of tax knowledge on tax-related behaviour. It takes into account factors such as attitudes, subjective norms, and perceived behavioural control, among others.

The results of this study showed that while trusts are valuable investment vehicles with unique flexibility in South Africa, negative perceptions hinder their potential. It is evident that trusts

are being used to evade and avoid taxes. Over the past three decades, it has become clear that the trust institution has been misused by both the trustees and founders.

There are studies in literature that highlight that trusts are often used to avoid paying taxes. This makes it difficult for tax authorities to track income and enforce tax obligations, enabling both avoidance and evasion. The current attribution rules in South Africa were initially created to prevent tax avoidance, but they have been exploited to enable tax evasion. The Income Tax Act contains provisions aimed at preventing tax avoidance through trusts. These rules are designed to combat schemes that exploit loopholes in tax legislation. The GAAR provisions allow the South African Revenue Service to challenge transactions that are primarily aimed at avoiding tax liabilities.

It has been revealed that The tax system's inequity, complexity, lack of accountability, and corruption significantly affect tax avoidance and evasion. The intricacies of trust tax legislation in selected SADC countries continue to be a source of worry for both academics and politicians. Furthermore, governments that recognise the flow-through principle, such as South Africa, have enacted anti-avoidance legislation to prevent the misuse of income ascribed to trust beneficiaries. However, this anti-avoidance legislation complicates the already complex legal framework. The legal arrangements governing trusts could be cumbersome, and many individuals misuse this mechanism for tax evasion and avoidance. The findings of this study indicate that tax complexity undermines tax certainty and convenience, placing an additional economic burden on taxpayers due to higher compliance and administrative costs. This complexity can also impact taxpayers' perceptions of the fairness of the tax system, influencing their willingness to meet their tax obligations.

Due to the inflated cost of dying, many people use a trust structure to protect some or all of their assets from estate duty tax. Which can be done by either transferring assets from the person's estate to a trust through a disposal or a bequest. Once the assets are transferred, they will no longer be considered part of the person's estate and will not be subject to estate duty tax. This implies that trusts are being used for tax avoidance practices.

Taxpayers often seek creative ways to minimise their tax liabilities while operating within the law. Meanwhile, the government of South Africa continuously works to amend tax legislation to prevent taxpayers from reducing their tax liabilities through avoidance practices. The framework must implement measures to curb tax avoidance strategies that exploit loopholes in the current system. This could involve stricter enforcement of anti-avoidance rules and clearer

definitions of taxable activities concerning trusts. As proposed by Blignaut (2015) an independent trustee can provide an impartial perspective and help ensure compliance with tax laws.

SARS can use data analytics tools to identify patterns that suggest tax evasion or avoidance among trusts. By analysing financial transactions, trust distributions, and beneficiary income levels, authorities can target audits on high-risk trusts. Collaborating with banks and financial institutions to share data about trust accounts can enhance monitoring capabilities. This integration allows for better tracking of funds flowing through trusts. SARS should perform regular audits of trusts to ensure compliance with tax obligations. This process should include a comprehensive review of trust deeds and transactions to uncover any signs of tax evasion or avoidance. By increasing scrutiny, we can deter the misuse of trusts as vehicles for tax avoidance.

5.3 Recommendations

The investigation into the use of trusts for tax evasion and avoidance in South Africa has revealed the need for urgent change. However, while trusts are indispensable in estate planning and asset management, they are also prone to abuse and therefore need constant supervision and legal measures. As the government works to refine its approach to trust taxation, it must find a balance between permitting legitimate uses and preventing abuses in a landscape that is becoming increasingly complex and demanding in terms of regulation.

The following recommendations are based on the findings of this study regarding tax evasion and tax avoidance practices of trusts in South Africa. These measures aim to enhance transparency, enforce stricter regulations, and ensure that trusts are not misused as tools for tax evasion and avoidance.

Requiring all trusts to maintain a register of beneficial owners, which must be submitted to the MOHC, would improve transparency about who controls trust assets. This register should be accessible to regulatory authorities, such as the South African Revenue Service, for compliance checks. The Trust Property Control Act should be thoroughly amended to align with the Companies Act. This is essential because the current act does not fully codify trust law in South Africa; many aspects are still governed by common law. Enhancing current anti-avoidance rules and adding provisions aimed at specific schemes used to protect income from taxation will help close loopholes exploited by trusts. Improving SARS's ability to monitor trust

activities, especially regarding cross-border transactions and adherence to tax regulations, will enhance the detection and prevention of fraudulent activities. Conducting regular audits of trust accounts and transactions by SARS can help reveal irregularities or violations of tax laws, ensuring adherence to established regulations.

Providing clear information about the legal use of trusts for estate planning, as opposed to their misuse for tax avoidance, can help promote a culture of compliance among taxpayers. Collaborating with banks and financial service providers to ensure they understand their responsibilities in monitoring trust accounts for suspicious activities related to money laundering or tax evasion can strengthen overall compliance efforts. Hold trust service providers, such as attorneys and financial advisors, accountable for ensuring compliance with tax laws. This could involve regulatory oversight, where professionals would face penalties for facilitating tax evasion through trusts.

By adopting these recommendations, South Africa can enhance its regulatory framework regarding trusts, minimising opportunities for tax avoidance and evasion while ensuring that legitimate uses of trusts for estate planning remain effectively supported.

5.4 Future research suggestions

This study focused on examining the use of trusts for tax evasion and tax avoidance, the underlying factors leading to the evasion and avoidance of tax by trusts, the systems and methods used to detect these practices, and the strategies implemented to prevent these activities in South Africa.

Although the study produced positive outcomes, its scope was confined to the context of South Africa and the focus on a specific time period. A scoping review was conducted primarily based on existing literature, which may not include all recent developments. Future research could focus on extending this study to all developing countries or SADC, increasing the observation period, including gray literature and literature on how advancements in data analytics and artificial intelligence are transforming tax administration and compliance monitoring. More advanced techniques can also be used to uncover the evasion and avoidance of tax by trusts. Additional research articles can be found by exploring other databases, including gray literature, and considering studies published in languages other than English. This scoping review has provided sufficient evidence to warrant a full systematic review in this field of study.

Future researchers should investigate how various jurisdictions address tax avoidance and evasion through trusts. A comparative analysis with developed countries could uncover best practices and innovative approaches that might be adapted to South Africa's context. Additionally, insights from related fields such as economics, sociology, and behavioural finance can help understand the motivations behind the use of trusts for tax. By addressing these limitations, researchers can contribute to a deeper understanding of trust-related tax evasion and avoidance. This, in turn, may lead to more effective regulatory frameworks and improved compliance strategies in South Africa.

REFERENCES

- Ajzen, I. (1985). From intentions to actions: A theory of planned behavior. In *Action control: From cognition to behavior* (pp. 11-39). Springer. https://doi.org/10.1007/978-3-642-69746-3_2
- Ajzen, I. (2020). The theory of planned behavior: Frequently asked questions. In *Human behavior and emerging technologies* (Vol. 2, pp. 314-324). <https://doi.org/10.1002/hbe2.195>.
- Al-Zaqeba, M. A. A., & Al-Rashdan, M. (2020). Extension of the TPB in tax compliance behavior: The role of moral intensity and customs tax. *International Journal of Scientific and Technology Research*, 9(4), 227-232.
- Alm, J., & Torgler, B. (2004). Estimating the determinants of tax morale. *Proceedings. Annual conference on taxation and Minutes of the annual meeting of the National Tax Association*, 97, 269-274.
- Alm, J., & Torgler, B. (2011). Do ethics matter? Tax compliance and morality. *Journal of Business Ethics*, 101, 635-651.
- Alstadsæter, A., Johannesen, N., Herry, S. L. G., & Zucman, G. (2022). Tax evasion and tax avoidance. *Journal of Public Economics*, 206, 104-587.
- Arksey, H., & O'Malley, L. (2005). Scoping studies: towards a methodological framework. *International journal of social research methodology*, 8(1), 19-32.
- Bain, C. (2018). *The taxation of trusts in South Africa: Critical analysis of Section 7C* [University of Cape Town].
- Bako, P. M. (2021). Factors influencing tax avoidance and tax evasion in Nigeria: A case study of Wukari, Taraba State. *Journal of Accounting Research, Organization and Economics*, 4(2), 114-126.
- Blignaut, L. (2015). *Curbing the Abuse of Trusts: Is the Independent Trustee the Solution* [University of Pretoria (South Africa)].
- Böckel, A., Hörisch, J., & Tenner, I. (2021). A systematic literature review of crowdfunding and sustainability: highlighting what really matters. *Management review quarterly*, 71, 433-453.
- Brink, S. M. (2017). An investigation into the future of discretionary trusts Part 2. *South African Journal of Economic and Management Sciences*, 1-12.

- Businesstech. (2023). *Major changes for trusts in South Africa, affecting wealthy taxpayers*. <https://businesstech.co.za/news/finance/688227/major-changes-for-trusts-in-south-africa-affecting-wealthy-taxpayers/>
- Chhina, R. K. (2021). An introduction to trusts. 1-18.
- Cox, S. P., & Eger III, R. J. (2006). Procedural complexity of tax administration: The road fund case. *Journal of Public Budgeting, Accounting & Financial Management*, 18(3), 259-283.
- Creswell, J. W., & Creswell, J. D. (2017). *Research design: Qualitative, quantitative, and mixed methods approaches*. Sage publications.
- Dlamini, S. R. (2011). *Analysis of tax avoidance legislation in South Africa: developments over a five year period* University of Kwazulu Natal].
- du Plessis, I. (2024). The recent history of the taxation of trust income in South Africa. *Trusts & Trustees*, 30(8), 515-524.
- Flick, U. (2022). *An introduction to qualitative research*. Freie Universität Berlin, Germany.
- Graskie, M. A. (2019). *A comparative study of the complexity of trust tax legislation in selected Southern African Development Community countries*. University of Pretoria (South Africa).
- Harriparsad, R. (2016). *The effectiveness of a trust as a tax planning tool in light of our current legislation and proposed amendments* University of Kwazulu Natal].
- Herbst, H. (2023). *A comparative evaluation of the south african income tax regime for investments using trusts* Stellenbosch University].
- Honiball, M. (2023). The FAFT, trusts and transparency in South Africa. <https://www.werksmans.com/legal-updates-and-opinions/the-faft-trusts-and-transparency-in-south-africa/>
- Hossain, M. S., Ali, M. S., Ling, C. C., & Fung, C. Y. (2024). Tax avoidance and tax evasion: current insights and future research directions from an emerging economy. *Asian Journal of Accounting Research*, 9(3), 275-292.
- Income Tax Act 58 (1962). https://www.acts.co.za/income_tax_act_1962
- Jeaven, P. (2015). *South African trusts: eroding the tax base* University of the Witwatersrand].
- Johann Krige, A. W. (2022). An introduction to trusts in South Africa: A beneficial ownership perspective. *Open Ownership*. <https://www.openownership.org/en/publications/an-introduction-to-trusts-in-south-africa/overview/>
- Kagan, J. (2024). Tax Evasion: Meaning, Definition, and Penalties. *Investopedia*. <https://www.investopedia.com/terms/t/taxevasion.asp>

- Kanagaretnam, K., Lee, J., Lim, C. Y., & Lobo, G. J. (2018). Societal trust and corporate tax avoidance. *Review of Accounting Studies*, 23, 1588-1628.
- Kassa, E. T. (2021). Factors influencing taxpayers to engage in tax evasion: evidence from Woldia City administration micro, small, and large enterprise taxpayers. *Journal of innovation and entrepreneurship*, 10(1), 8.
- Krige, J., & Wolmarans, A. (2022). An introduction to trusts in South Africa: A beneficial ownership perspective. <https://www.openownership.org/en/publications/beneficial-ownership-transparency-of-trusts-in-south-africa/overview/>
- Kumarasingam, S. (2023). Tax avoidance and tax evasion explained and exemplified. In S. T. Guide (Ed.). *SA Tax Guide: SA Tax Guide*.
- Lam, B. M., Lui, G. M., & Shum, C. (2020). Social trust, market competition, and tax avoidance: Evidence from contemporary China. *Journal of Forensic Accounting Research*, 5(1), 94-122.
- Long, S. B., & Swingen, J. A. (1987). An Approach to the Measurement of Tax Law Complexity. *Journal of the American Taxation Association*, 8(2).
- Mahdi, M., Steyn. (2024). SARS Cross - Referencing with AI Closes Tax Net Further. *MMS Group*. <https://www.mmsgroup.co.za/ai-and-cross-referencing>
- Mak, C. H. W., & Chippin, M. (2024). Comparative analysis of trust taxation: a deep dive into Australian and Canadian regimes. *Trusts & Trustees*, 30(4), 189-193.
- Manamela, P. (2022). Advantages & Disadvantages Of Trusts In South Africa. <https://www.pmattorneys.co.za/advantages-and-disadvantages-of-trusts-in-south-africa/>
- Martinez, A. L., & Pereira, I. R. F. (2021). Tax Morale as Perceived by Accounting Professionals. *Advances in Scientific and Applied Accounting*, 215-229.
- Matshona, Z. (2023). *Assessing the tax knowledge and tax behaviour of individual taxpayers in South Africa: A scoping review* University of Kwazulu Natal].
- Mckenzie, B. (2023). South Africa: A thorny issue - the Thistle Trust case creates concerns. *Lexology*. <https://www.lexology.com/library/detail.aspx?g=60d81b9b-1b82-411c-becd-628993665bcd>
- Mgoboli, T. (2023). Changes to the Tax Treatment of Non-resident Beneficiaries of Trusts. <https://www.bdo.co.za/en-za/insights/featured-insights/changes-to-the-tax-treatment-of-non-resident-beneficiaries-of-trusts>

- Mishi, S., & Tshabalala, N. (2023). Public finance in South Africa: Tax compliance and behavioural responses to tax increases. *Africa's Public Service Delivery & Performance Review*, 11(1), 15.
- Mukoma, T. L. (2017). *The effectiveness of the introduction of Section 7C into the Income Tax Act to curb the avoidance of taxation through the use of trusts* University of the Witwatersrand,].
- Munn, Z., Peters, M. D., Stern, C., Tufanaru, C., McArthur, A., & Aromataris, E. (2018). Systematic review or scoping review? Guidance for authors when choosing between a systematic or scoping review approach. *BMC medical research methodology*, 18, 1-7.
- Musviba, N. (2023). SA Budget 2023 – Proposed Changes to the Tax Treatment of Non-Resident Beneficiaries of Trusts. *South African Tax Guide*. <https://www.sataxguide.co.za/sa-budget-2023-proposed-changes-to-the-tax-treatment-of-non-resident-beneficiaries-of-trusts/>
- Mvunabandi, J. D., Nomala, B., & Marimuthu, F. (2024). The Effect of Tax Avoidance and Tax Evasion on the Performance of South African Economy. *International Journal of Economics and Financial Issues*, 14(1), 52-63.
- Naape, B. (2023). Tax Knowledge, Tax Complexity and Tax Compliance in South Africa. *Finance, Accounting and Business Analysis*, 5(1), 14-27.
- Nkadimeng, H. L. (2022). *The impact of tax avoidance practices on tax revenue collection in south africa* University of the witwatersrand]. Johannesburg.
- Ochieng, P. A. (2009). An analysis of the strengths and limitation of qualitative and quantitative research paradigms. *Problems of Education in the 21st Century*, 13, 1-6.
- Owusu, G. M. Y., Bart-Plange, M.-A., Koomson, T. A. A., & Arthur, M. (2022). The effect of personality traits and tax morale on tax evasion intention. *Journal of Financial Crime*, 29(1), 272-292.
- Pham, M. T., Rajić, A., Greig, J. D., Sargeant, J. M., Papadopoulos, A., & McEwen, S. A. (2014). A scoping review of scoping reviews: advancing the approach and enhancing the consistency. *Research synthesis methods*, 5(4), 371-385.
- Rahman, M. H. (2021). Trusts as Vehicles for Tax Evasion and Tax Avoidance: a Critical Study. *SSRN*, 1-10.
- Reddy, D., Moodley, A., & Olugbara, O. (2024). Factors informing tax compliance: A meta-analytical study. *South African Journal of Economic and Management Sciences*, 27(1), 11.

- Richardson, M., & Sawyer, A. J. (2001). A taxonomy of the tax compliance literature: Further findings, problems and prospects. *Austl. Tax F.*, 16, 137.
- Roux, E. (2020). *A Critical Analysis of the Provisions Contained in the Income Tax Act 58 of 1962 Relating to the Taxation of Interest Free Loans Made to Trusts or Companies* University of Pretoria (South Africa)].
- Rudd, R. (2018). *The taxation of trusts: a comparative study of South Africa and the United Kingdom* University of the witwatersrand].
- Ryan, G. (2018). Introduction to positivism, interpretivism and critical theory. *Nurse researcher*, 25(4), 41-49.
- Interpretation Note 114, 2 March 2021 (2021). <https://www.sars.gov.za/legal-counsel/interpretation-rulings/interpretation-notes/>
- How does CRS reporting work, (2024a). <https://www.sars.gov.za/businesses-and-employers/third-party-data-submission-platform/automatic-exchange-of-information/how-does-crs-reporting-work/>
- Trusts, (2024b). <https://www.sars.gov.za/businesses-and-employers/trusts/>
- What is a tax crime?, (2024c). <https://www.sars.gov.za/targeting-tax-crime/what-is-a-tax-crime/>
- Saunders, M., Lewis, P., & Thornhill, A. (2009). *Research methods for business students*. Pearson education.
- Sitardja, M., & Waluyo, W. (2020). Pengaruh Trust Terhadap Tax Avoidance. *Jurnal Ekonomi: Journal of Economic*, 11(02).
- Sucharew, H., & Macaluso, M. (2019). Methods for research evidence synthesis: the scoping review approach. *Journal of hospital medicine*, 14(7), 416-418.
- Svetlozarova Nikolova, B. (2023). Strengthening the integrity of the tax administration and increasing tax morale. In *Tax Audit and Taxation in the Paradigm of Sustainable Development: The Impact on Economic, Social and Environmental Development* (pp. 157-180). Springer.
- Swart, M. (2021). *An analysis of the South African tax treatment of interests in foreign companies held through foreign trusts* North-West University (South Africa)].
- Tamplin, T. (2023). Tax Avoidance. *Finance Strategists*. <https://www.financestrategists.com/tax/tax-planning/tax-avoidance/>
- Tenny, S., Brannan, J. M., & Brannan, G. D. (2017). Qualitative study. 1-3.
- Torgler, B., Demir, I. C., Macintyre, A., & Schaffner, M. (2008). Causes and consequences of tax morale: An empirical investigation. *Economic Analysis and Policy*, 38(2), 313-339.

- Treasury, N. (2022). *Fiscal leakages and measures taken by nt.* Retrieved from <https://www.parliament.gov.za>
- Trust Property Control Act No. 57, (1988). <https://www.gov.za/documents/trust-property-control-act-18-may-2015-1117>
- Ugwu, C. N., & Eze, V. H. (2023). Qualitative research. *IDOSR Journal of Computer and Applied Sciences*, 8(1), 20-35.
- VanderMerwe, R. (2023). Tax Avoidance and Income Tax Act. *Fincor*. <https://fincor.co.za/tax-avoidance-and-income-tax-act/>
- Walker, G. (2024). Taxation of Trusts in South Africa. <https://www.olemera.com/Resources/Blog/entryid/2403/taxation-of-trusts-in-south-africa>
- Zwezwe, M. (2018). *The common law conduit pipe principle: should we retain this principle in our South African law?* University of KwaZulu-Natal].

APPENDICES

Appendix A: Title and abstract relevance screening form

	Assessment	Comments
1. Does the study analyse the use of trusts for tax evasion and avoidance in South Africa?	Yes <input type="checkbox"/>	
	No <input type="checkbox"/>	
	Can't tell <input type="checkbox"/>	
2. Does the study describe research in English?	Yes <input type="checkbox"/>	
	No <input type="checkbox"/>	
Reviewer Decision: <ul style="list-style-type: none">• The study will be incorporated for further screening and assessment if the answer is “Yes” to both questions, i.e., 1 and 2.• The entire study will be acquired for further evaluation and decision-making at this stage if the answer is “Can't tell” for question 1.		

Appendix B: Data characterisation form

Variable	Category	Explanation
1. Publication type	Thesis <input type="checkbox"/>	
	Journal Article <input type="checkbox"/>	
	Book/Book Chapter <input type="checkbox"/>	
	Report <input type="checkbox"/>	
	Conference Proceeding <input type="checkbox"/>	
	Other:	
	(Specify:) <input type="checkbox"/>	
2. Author(s)/ Year		
3. Country of data origin		
4. Study industry setting	Financial sector <input type="checkbox"/>	
	Non-financial sector <input type="checkbox"/>	
5. Does the study examine the use of trusts for tax evasion and tax avoidance practices in South Africa?	Yes <input type="checkbox"/>	
	No <input type="checkbox"/>	
	Can't tell <input type="checkbox"/>	
ONLY carry on if the answer to question 5 is "Yes"		

Author(s), Year, Title of the study	Aim of the study	Data Sources	Methodology	Research findings

ETHICAL CLEARANCE



28 August 2024

Mr Rofhlwa Tshilimandla (224193535)
School Of Acc. Economics&Fin
Westville

Dear Mr Rofhlwa Tshilimandla,

Original application number: 00026677

Project title: Investigating the use of trusts in tax avoidance and tax evasion practices in south africa.

Exemption from Ethics Review

In response to your application received on 5 August 2024, your school has indicated that the protocol has been granted EXEMPTION FROM ETHICS REVIEW.

Any alteration/s to the exempted research protocol, e.g., Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through an amendment/modification prior to its implementation. The original exemption number must be cited.

For any changes that could result in potential risk, an ethics application including the proposed amendments must be submitted to the relevant UKZN Research Ethics Committee. The original exemption number must be cited.

In case you have further queries, please quote the above reference number.

PLEASE NOTE:

Research data should be securely stored in the discipline/department for a period of 5 years.

I take this opportunity of wishing you everything of the best with your study.

Yours sincerely,

A black rectangular box redacting the signature of Prof. Claire Lauren Vermaak.

Prof Claire Lauren Vermaak
Academic Leader Research
School Of Acc. Economics&Fin

UKZN Research Ethics Office
Westville Campus, Govan Mbeki Building
Postal Address: Private Bag X54001, Durban 4000
Website: <http://research.ukzn.ac.za/research-ethics/>

Founding Colleges:  Edgewood  Howard College  Medical School  Pietermaritzburg  Westville

INSPIRING GREATNESS

TURNITIN REPORT

Thesis Rofhiwa 2025.01.29.docx

ORIGINALITY REPORT

7 %
SIMILARITY INDEX

6 %
INTERNET SOURCES

2 %
PUBLICATIONS

1 %
STUDENT PAPERS

PRIMARY SOURCES

EDITING CERTIFICATE LETTER

