

INTERNATIONAL TAX: HYBRID MISMATCH ARRANGEMENTS AND

SHORTCOMINGS OF THE OECD BEPS ACTION 2 FINAL REPORT 2015

By

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A Thesis Submitted in Partial Fulfillment of the Requirement for the Degree of

Doctor of Business Administration

in the

Department of Business Studies

Swiss School of Business and Management Geneva

31 July 2025

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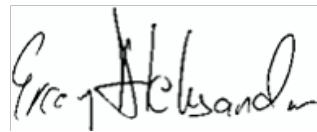
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INTERNATIONAL TAX: HYBRID MISMATCH ARRANGEMENTS AND SHORTCOMINGS
OF THE OECD BEPS ACTION 2 FINAL REPORT 2015

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ACKNOWLEDGEMENTS

Not considering the presence of the Holy Spirit who guided me all the way from developing a desire to undergo academic research in international tax thus specializing in Hybrid Mismatch Arrangements (HMA), this study would not have been a success. I bow down in awe of the Holy Spirit thus thanking God and His Son Jesus Christ for supporting me all the way till the end of this research journey. It was indeed by the Spirit of God that the project has been a success. All the glory and honour belong to the Holy Spirit.

My sincere thanks and appreciation go to Dr. Apostolos Dasilas, PhD., who supervised me critically from the beginning till the end of this research project. I really thank God to have been allocated such a resolute and an intelligent mentor. Thank you, Sir!

Thank you, my wife, Mrs. Londiwe Phiri, for supporting me and encouraging me all the way while I was busy with this research project.

Vote of thanks go to chartered accountants and tax professionals in South Africa and their MNE employers for participating in the survey. Thank you so much South Africans. I love you dearly and urge you to keep on the decent work for future researchers.

Thank you, my grand nieces, Ruth Ng'oma and Pemphero Jonazi, for calling me your Pap – Pap (now Dr. Pap-Pap) while at the same time encouraging me to focus on research.

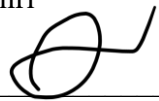
Daniel 11:32 says “but the people that do know their God shall be strong and do exploits.” Meaning doing miracles!

DECLARATION

I hereby declare that this work is my own origination, and I do understand that it is unethical to fabricate and plagiarize other people's work. This work has neither been submitted in part nor in full for any other degree or any other University.

Sincerely yours,

Golden Phiri

Signature  _____

Date: 31 July 2025.

ABSTRACT

International tax, as the name indicates, deals with taxation across the globe and those that understand and practice it enjoy it, while at the same time those that do not practice it and buy those services hate it.

In this study the researcher embarks on a project to investigate Hybrid Mismatch Arrangements and Shortcomings of the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements by incorporating the OECD Table 1.1 – General Overview of the Recommendations. The study is conducted within Multinational Enterprises (MNEs) in South Africa including the mining, manufacturing, and service industry sectors.

OECD Table 1.1 is included in the study as a guide to international tax consultants, multinational enterprises' international tax users, and international tax authorities to mention a few. The study incorporates the positivism paradigm research philosophy thus incorporating the causal research technique. Causal research seeks to understand the cause-and-effect relationship between variables and indicates that a change in one variable directly causes a change in another variable. In this study the researcher philosophizes domestic law represented by Specific recommendations on improvements to domestic law, (Top column 3 of the OECD Table 1.1), as the independent variable and the OECD Recommended Hybrid Mismatch Rules or linking rules, (Top column 4 of the OECD Table 1.1), as the dependent variable, thus depending on domestic law to neutralize the effects of hybrid mismatch arrangements. The researcher refers to Morgan (2013) causal research theories including sufficient causes and necessary causes as the requirement to effect changes between the independent and dependent variables.

The study comprises four research questions and objectives with four test items each set to answer each research question and objective. Positivism research requires science thus involving hypothesis testing to confirm reliability and validity of data. Frequency mean and standard deviation are calculated and used to test hypothesis on one hand, and the Breusch Pagan and F-test are incorporated to detect outliers within the variables and data. The study then constructs the simple linear regression and bar graphs to present graphical analyses of the findings. Both primary and secondary findings are presented in the study.

The study finds that the South African jurisprudence is not yet ready to respond to the OECD Recommended hybrid mismatch rules or linking rules thus indicating that the OECD BEPS Action 2 Final Report 2015 - Neutralizing the Effects of Hybrid Mismatch Arrangements, has some shortcomings in the South African international tax arena. There is more that must be done by the OECD than the current Recommended Hybrid Mismatch Rules or linking rules to neutralize the effects of hybrid mismatch arrangements within multinational enterprises (MNEs) in South Africa.

The study ends with conclusions on the four research questions and objectives; and four recommendations that if acted upon, the OECD Recommended Hybrid Mismatch Rules or linking rules will undoubtedly bear fruitful results.

LIST OF ABBREVIATIONS AND ACRONYMS

AFCETA: African Continental Free Trade Area

APEC: Asia-Pacific Economic Co-operation

ASA: American Statistical Association

ASEAN: Association of Southeast Asian Nations

ATAD: Anti-Tax Avoidance Directive

BEPS: Base Erosion and Profit Shifting

BMW: Bavarian Motor Works

BRICS: Brazil, Russia, India, China, and South Africa

CJEU: Court of Justice of European Union

COMESA: Common Market for Eastern and Southern Africa

DD: Double Deduction

D/NI: Deduction with no inclusion of income

EU/EC: European Union or European Community

FDI: Foreign Direct Investment

GAAR: General Anti-Avoidance Rule

GLOBE: Global Anti-Base Erosion

HMA: Hybrid Mismatch Arrangements

IFAC: International Federation of Accountants

KPMG: Klynveld, Peat, Marwick, and Goerdeler.

MERCOSUR: South American Trading Bloc with an agreement on tariffs between member nations

MNEs: Multinational Enterprises

MTC: Model Tax Convention

NAFTA: North American Free Trade Agreement

LIST OF ABBREVIATIONS AND ACRONYMS (CONTINUED)

OECD: Organization for Economic Co-operation and Development

OLS: Ordinary Least Squares

PWC: PricewaterhouseCoopers

PSD: Parent Subsidiary Directive

SADC: Southern African Development Co-operation

SAIT: South African Institute of Taxation

UK: United Kingdom

USMCA: United-States-Mexico-Canada Agreement

VAT: Value Added Tax

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CHAPTER 1

INTRODUCTION

1.1 Introduction

In this chapter, Chapter 1, the study introduces the research journey on international tax, particularly hybrid mismatch arrangements, to paraphrase it, international tax planning.

International tax planning is not novel and the challenges that come with it are barely too high not to be addressed. Most jurisdictions, particularly developing nations, find themselves lagging at the pace at which global technology evolves. Major challenges are characterized by the recent need to democratize nations, a challenge that comes with either peace or chaos, resistance, or acceptance. Of the most importance to note is the governance of these nations. Some nations are governed by dictators that rule with iron hands and are too rigid to pay attention or listen to others that are knowledgeable and skillful in certain expertise. As a result, nations are subjected to the regime in which they belong, and that has a major impact in making decisions in terms of tax planning. Not only does the political impact affect those nations but other nations that play on a global business arena as well.

Considering that the world today depends on each other in terms of scarce resources or goods and services, it is hard for nations to stand and rely on themselves. Every nation has the need to trade with another nation in exchange for goods and services. Such transactions do create taxation which in return results in international tax planning so that nations can decide what, why, when, and how to manage the transactions that are involved. Consequently, there are different tax planning categories and structures in the global market like South Africa and other countries that produce hybrid mismatches arrangements (HMA). South Africa is a partner of the Organization for Economic Co-operation and Development (OECD) and thus attracts foreign direct investments (FDI) in the form of multinational enterprises (MNEs). These MNEs have different jurisdictions (domestic law) compared to that of South Africa. As noted in the literature review of this study, MNEs have different objectives for investing offshore.

While some MNEs follow tax havens that are in those offshore investments, others follow the hybrid mismatch arrangements structures that are present and applicable in those countries and evaluate if they are beneficial for their tax arbitrage.

This study therefore focuses on international tax theories and concepts to examine hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements in South Africa.

This study investigates Hybrid Mismatch Arrangements (HMA) and Shortcomings of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations. This examination is conducted with a final sample size of 300 multinational enterprises within three industry types in South Africa namely:

1. Mining
2. Manufacturing
3. Service

Data is collected by incorporating 300 closed-ended questionnaires. A detailed academic and critical review is conducted thus reviewing literature relevant and related to Hybrid Mismatch Arrangements and Shortcomings of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1¹ – General Overview of the Recommendations. Both local and international academic sources are critically reviewed to obtain a thorough understanding of the field: Hybrid Mismatch Arrangements and the OECD BEPS Action 2 – Neutralizing the Effects of Hybrid Mismatch Arrangements. Literature dating back to 1997 to publication in 2024 is accessed.

¹ See: Table 1.1 enclosed in the study.

Table 1.1 General Overview of the Recommendations

Mismatch	Arrangement	Specific recommendations on improvements to domestic law	Recommended hybrid mismatch rule		
			Response	Defensive rule	Scope
D/NI	Hybrid financial instrument	No dividend exemption for deductible payments Proportionate limitation of withholding tax credits	Deny payer deduction	Include as ordinary income	Related parties and structured arrangements
	Disregarded payment made by a hybrid		Deny payer deduction	Include as ordinary income	Control group and structured arrangements
	Payment made to a reverse hybrid	Improvements to offshore investment regime Restricting tax transparency of intermediate entities where non-resident investors treat the entity as opaque	Deny payer deduction	-	Control group and structured arrangements
DD	Deductible payment made by a hybrid		Deny parent deduction	Deny payer deduction	No limitation on response, defensive rule applies to control group and structured arrangements
	Deductible payment made by dual resident		Deny resident deduction	-	No limitation on response
Indirect D/NI	Imported mismatch arrangements		Deny payer deduction	-	Members of control group and structured arrangements

Table 1.1 OECD BEPS Action 2 Final Report 2015

1.2 Background to the problem leading to the study

International tax is sophisticated such that there are so many jurisdictions across the digital globe and within the digital economy where at least every country plays a role. The need for scarce resources that are produced by different countries due to factor endowments that are influenced by geographical locations leads to international trade. Other countries are rich in minerals like diamond, gold, platinum, oil reserves, agricultural produce such as sugar plantations, fisheries to mention a few, whereas other countries are rich and have a competitive advantage over others in human expertise such as engineers, doctors, pilots, academic lecturers, researchers, chartered accountants, tax professionals to mention a few. The international trade that results from the exchange of these scarce resources results in transactions between two or three countries thus leading to international taxation.

While there are jurisdictions within countries, other countries' regimes are not easy to tolerate what others or global standards require to establish the accepted way of doing things right. As such global jurisdictions have their own tax policies to match their own countries depending on their own requirements. Having said so, the resultant situation is that international trade stalls. Unless at least two countries agree on the tax policy nothing progresses. To melt the ice, countries enter tax treaties whereby they agree with how to tax each other's transactions fairly. Sometimes it becomes very rigid for other countries to accept other countries' tax policies such that international trade between the two stalls. Other countries undermine other countries' jurisdiction and set unfair tax policies in a way to disappoint their counterparty to the point that if the other country doesn't have its own highly skilled tax expertise it will compromise to the unfair tax treaty or agreement just for the sake of obtaining scarce resources from the other country under the other country's tax policies or jurisdiction. This compromise results in eroding the tax base of the weaker country, that compromises, just for the sake of getting scarce resources. No wonder most countries today are the victims of tax base erosion. Because of this tax base erosion, the Organization for Economic Co-operation and Development (OECD), an international organization of 38 countries committed to setting up policies that improve the economic and social being of jurisdictions around the world. The OECD then embarked on a project that oversees the

arrangements that are made by jurisdictions. These arrangements, because of their sophistication and to some points, other countries or multinational enterprises have taken advantage and entered many countries just for the sake of eroding tax base thus profiting from the tax arbitrage. It is on these grounds that the OECD BEPS Action 2 Final Report 2015 “Neutralizing the Effects of Hybrid Mismatch Arrangements” project was actioned. This study then comes in, to investigate if there are any shortcomings within the OECD BEPS Action 2 and its Table 1.1 – General Overview of the Recommendations. The researcher critically reviews other studies that were conducted before and discovers the gap. This gap is filled by incorporating a positivism research methodology thus investigating multinational enterprises in South Africa in relation to tax planning schemes that are used to benefit from the tax arbitrage. Any shortcomings are identified and linked to theories of Hybrid Mismatch Arrangements that are discussed in the critical literature review.

1.3 Significance of the study

The investigation of shortcomings of the OECD BEPS Action 2 – Neutralizing the Effects of Hybrid Mismatch Arrangements is of paramount importance in South Africa because some MNEs benefit from the tax arbitrage and the impact that comes with erosion of tax base is not fair. Eberhartinger et al. (2015)² submit that starting 2010 – 2011, media reports drew attention to the fact that bigger multinational enterprises were not paying taxes at all in the source country, to paraphrase it, in the country in which the income was earned. According to Dharmapala (2014)³, the effective tax rates on foreign profits of Google Incorporated and Apple Incorporated, for example, were reported to be 3% and 1%, respectively. Fuest et al. (2013)⁴ advocate that the fact that some multinational enterprises are able to drastically

² See: Eberhartinger, E. and Petutsching, M. (2015). Practicing experts’ views on BEPS: a critical analysis. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2683552.

³ See: Dharmapala, D. (2014). What do we know about base erosion and profit shifting? A review of the empirical literature. https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2385&context=law_and_economics.

⁴ See: Clemens Fuest, Christoph Spengel, Katharina Finke, and Jost Heckemeyer (2013). Profit shifting and aggressive tax planning by multinational firms: issues and options for reform. DOI: [10.2139/ssrn.2303676](https://doi.org/10.2139/ssrn.2303676).

reduce their tax liability by exploiting flaws and loopholes in existing tax rules suggests that the taxation of multinational enterprises is in need of reform which is reflected in the intense public debate surrounding profit shifting and tax avoidance by multinational enterprises.

In consideration of Fuest et al. (2013) theory mentioned above, and in particular to the risk that multinational enterprises pose in relation to paying tax in the source country and erosion of tax base as unfairly practiced by Google and Apple, with lowest tax rates of 3% and 1% each respectively on foreign profits, the researcher conceptualizes the risk that South Africa suffers as a result of accommodating multinational enterprises as they incorporate hybrid mismatch arrangements or tax planning schemes in South Africa. The significance of this study then is to unlock some, if not all, hidden risks that are associated with multinational enterprises tax planning structures also known as Hybrid Mismatch Arrangements (HMA) as of the year 2025 including the following:

1. distortion of tax revenue,
2. competition,
3. obscure economic efficiency,
4. transparency,
5. fairness.

According to Eberhartinger and Petutsching (2015), the Base Erosion and Profit Shifting (BEPS) Action Plan includes 15 Actions and that some of these actions are to be implemented at the level of domestic tax law while some require change in bilateral tax treaties and a third group of Action is directed at developing new and improving existing best practice guidelines. This study, therefore, focuses on unlocking shortcomings of the OECD BEPS Action 2 – Neutralizing the Effects of Hybrid Mismatch Arrangements by incorporating the OECD BEPS Action 2 Table 1.1 – General Overview of the Recommendations which is used as a guide to international tax consultants, international tax preparers, international tax authorities and even jurisdictions.

1.4 Aims of the study

The aims of the study are to examine Hybrid Mismatch Arrangements and report any Shortcomings of the OECD BEPS Action 2 – Neutralizing the Effects of Hybrid Mismatch Arrangements and its Table 1.1 – General Overview of the Recommendations.

1.5 Objectives of the study

The study has four research objectives namely:

1. To investigate and determine whether the South African jurisdiction (domestic law) and its international tax policies or systems are compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules as per Table 1.1.
2. To investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are addressing all hybrid mismatch categories (tax planning structures) that are in the South African tax policy (domestic law) in relation to international tax as opposed to only three categories namely:
 - (a) Deduction without inclusion – (D/Ni outcome)
 - (b) Double Deduction – (DD outcome)
 - (c) Indirect deduction without inclusion – (Imported Mismatch), as indicated on the OECD Table 1.1 - General Overview of the Recommendations.
3. To investigate and determine whether the OECD BEPS Action 2 Table 1.1 is a competent and not a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs and international tax consultants.
4. To investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules really neutralize the effects of hybrid mismatch arrangements and to determine whether the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment (FDI) with regard to competent tax policy (domestic law) and fairness in complying with the OECD BEPS Action 2 by MNEs in South Africa are justified.

1.6 Problem statement

International tax planning is well known and has been in operation for centuries and decades in developed countries such as all European countries – the EU or European Union or the European Community as it is recently known. In order to address tax planning challenges that evolve within jurisdictions across the globe, the Organization for Economic Co-operation and Development (OECD) – a unique forum where the governments of 38 democracies with market-based economies collaborate to develop policy standards to promote sustainable economic growth was founded in 1961.

While the OECD is doing excellent work, there is some sluggish progress in most of the countries in the world in responding to the OECD's plans and requirements that fit the standards that are proposed and approved by the OECD. Most recently there is the OECD BEPS Action 2 Final Report 2015 which deals with "Neutralizing the Effects of Hybrid Mismatch Arrangements". Hybrid mismatch arrangements are plans or categories that are favoured by multinational enterprises (MNEs) and jurisdiction as their tax policies to benefit from the tax arbitrage. The OECD BEPS Action 2 Table 1.1⁵- General Overview of the Recommendations includes three hybrid mismatch (tax planning) categories including the deduction without inclusion (D/Ni outcome); double deduction (DD outcome); and the indirect or imported mismatch (Indirect D/Ni outcome). Because of political regime nations such as South Africa and others have their favourite tax policies, and they are these policies that pose challenges in responding to the OECD BEPS Action 2 2015 Final Report effectively. Depending on the jurisdiction's tax policy or system the OECD can succeed or fail to neutralize the effects of hybrid mismatch arrangements that are in the global market today.

Nevertheless, there have been previous studies regarding hybrid mismatch arrangements with different topics and aims but the examination of hybrid mismatch arrangements and

⁵ See: OECD (2015). Neutralizing the effects of hybrid mismatches. <https://www.google.co.za/search?q=oeed+beps+action+2+2015&ie=UTF-8&oe=UTF-8&hl=en-za&client=safari>.

shortcoming of the OECD BEPS Action 2 Final Report 2015, has barely attracted attention to researchers both in South Africa and global by February 2025. This study seeks to examine the facet of reality at which shortcomings of the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules or linking rules, that were set in 2015 and that are regarded as the most recent approved and functional policy, in the global market today and as a guide to international tax consultants, MNEs, and international tax authorities or jurisdictions, affect MNEs in South Africa.

Although there might be some studies in relation to Hybrid Match Arrangements in the academic community since publication of the OECD BEPS Action 2 Final Report 2015, very little, if not none, is addressed concerning shortcomings of the OECD BEPS Action 2 Final Report 2015, and concomitantly⁶ the incorporation of causal research techniques.

As far as causal research is concerned, there should be some variables including independent variable, dependent variable, confounding variable and of course the control variable. This study conceptualizes domestic law represented by Specific recommendations on improvements to domestic law (Top column 3 of the OECD Table 1.1), as the independent variable also called explanatory variable, while the OECD Recommended Hybrid Mismatch Rules (Top column 4 of Table 1.1), as the dependent variable and the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements which is outside Table 1.1, as the confounding variable.

Thomas (2023)⁷ advocates that in a study that investigates a potential cause-and effect relationship, a confounding variable is an unmeasured third variable that influences both the supposed cause and the supposed effect and that it is important to consider potential confounding variables and account for them in research design to ensure results are valid because unchecked confounding variables can introduce many research biases thus causing

⁶ Simultaneously or at the same time.

⁷ See: Thomas, L. (2023). Confounding variables | Definition, examples & controls. <https://www.scribbr.com/methodology/confounding-variables/>.

misinterpretation of research results. This study submits that causal research technique is associated with hypothesis testing thus establishing reliability and validity of data thus collected which are factors that assist with controlling the confounding variables thus making sure the hypothesis is measuring what it is supposed to measure regarding causal research. The researcher then identifies four ways of controlling effects of the confounding variable as recommended by Thomas (2023) including the following:

- (a) **Randomization:** the study randomly assigns participants to diverse groups to ensure that confounding variables are distributed evenly across groups. Such groups include MNEs in manufacturing, MNEs in mining, MNEs in service industry.
- (b) **Restriction:** the study limits the population to a group that is less likely to have the confounding variables to control effects of the confounding variables. Such population includes international tax consultants, international tax preparers and international tax advisors.
- (c) **Matching:** the researcher selects participants who are similar in terms of the confounding variable to control effects of confounding variables. Such participants include MNEs in different industries that are obliged to hybrid mismatch arrangements.
- (d) **Statistical analysis:** the researcher incorporates techniques like regression analysis, standard deviation, arithmetic mean, to mention just a few which are used to adjust the effects of confounding variables thus establishing validity and reliability of the data.

It is then, therefore, postulated that by the incorporation of causal research techniques, this study is or can be identified as unique and novel since publication of the OECD BEPS Action 2 Final Report 2015– Neutralizing the Effects of Hybrid Mismatch Arrangements and thus add to the body of knowledge in the year 2025.

1.7 Research questions

According to McCombes (2022),⁸ the design of your research question can depend on what method you are pursuing research. This study incorporates the positivism research. The researcher refers to the following research questions to formulate the research questions in the study:

- What are the important research questions in the field of study?
- What areas need further exploration?
- Could the study fill the gap?
- Has the study been done before? If so, is there any room for improvement?

In relation to McCombes (2022), this study indicates that research questions are linked to research objectives. This then means that the study needs to focus on important research questions in the field; the study needs to identify areas that need further exploration; the study needs to evaluate whether the study could fill the gap; and to assess whether the study has been done before and establish if there is a room for improvement on the study.

The researcher then asks the following important questions in relation to research objectives:

1. Why is the study conducted within MNEs in South Africa in relation to the OECD BEPS Action 2 - Neutralizing the Effects of Hybrid Mismatch Arrangements?
2. Is the OECD BEPS Action 2 not a misleading action plan when it includes in its action only three tax planning schemes or hybrid mismatch categories including: deduction without inclusion (D/Ni outcome); double deduction (DD outcome); and imported mismatch (Indirect D/Ni outcome) out of many other hybrid mismatches⁹ or tax planning schemes that also result in hybrid mismatch such as:

⁸ See: McCombes, S. (2022). 10 research question examples to guide your research project. <https://www.scribbr.com/research-process/research-question-examples/>.

⁹ See: Harris, P. (2014). Neutralizing the effects of hybrid mismatch arrangements. https://www.un.org/esa/ffd/wp-content/uploads/2014/09/20140923_Paper_-_HybridMismatchArrangements.pdf.

- (a) Mismatch in maker of payment (double dip deduction outcome)
 - (b) Mismatch in timing payment (early deduction but late income outcome)
 - (c) Mismatch in characterizing payment (deduction but specific tax relief outcome)
 - (d) Mismatch of earning activities (no source state tax but tax relief outcome)
 - (e) Mismatch of who contracts (no income but foreign tax relief outcome)
 - (f) Mismatch of who owns the asset (double dip depreciation outcome)
 - (g) Mismatch in characterizing assets (double dip dividend relief outcome)
 - (h) Mismatch as to residence (deduction but no residence taxation outcome) and
 - (i) Mismatch as to residence (double dip deduction outcome)?
3. How competent is the OECD BEPS Action 2 Table 1.1 General Overview of the Recommendations as a guide of “Neutralizing the Effects of Hybrid Mismatch Arrangements”?
 4. How will the study benefit South Africa and MNEs within South Africa in terms of key tax issues that arise from hybrid mismatches arrangements including:
 - tax revenue,
 - tax policy concerns,
 - competition,
 - economic efficiency,
 - transparency, and
 - fairness?

Alternatively, the research questions are simplified in relation to research objectives and presented as follows:

1. Is the South African jurisdiction and its tax policies (domestic law) compatible with the jurisdiction of MNEs in South Africa (foreign tax policies) in relation to the OECD BEPS Action 2 Recommended hybrid mismatch rules as per Table 1.1?
2. Do the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules address all hybrid mismatch categories that are in the South African tax policy (domestic law) in relation to international tax as opposed to only three categories namely:

- (a) Deduction without inclusion – (D/Ni outcome)
 - (b) Double deduction – (DD outcome)
 - (c) Indirect deduction without inclusion – (Indirect D/Ni outcome)?
3. Is the OECD BEPS Action 2 Table 1.1 a competent and not a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs and international tax consultants?
 4. Do the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules really neutralize the effects of hybrid mismatch arrangements and can they be relied upon to determine whether the distortion of tax revenue, transparency, within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment with regard to competent tax policy (domestic law) and fairness in complying with the OECD BEPS Action 2 by MNEs in South Africa justified?

1.8 Research philosophy

The study incorporates the positivism paradigm and involves the use of numerical measurements and statistical analyses. The researcher involves science to establish the facet of reality at which shortcomings of the OECD BEPS Action 2 Final report 2015 affect the jurisdiction and its tax policies (domestic law) in South Africa. Saunders et al. (2003:83)¹⁰ advocate that if the research philosophy reflects principles of positivism, then the researcher adopts the philosophical stance of natural scientists. In this study science is incorporated such that the study conducts hypothesis testing to establish reliability and validity of data thus collected.

1.8.1 Positivism paradigm

¹⁰ See: Saunders, M., Phillip, L., and Thornhill, A. (2003). Research methods for business students. 3rd Edition. London: Pearson Education Limited.

According to Hussey and Hussey (1997:51),¹¹ the positivism paradigm is historically, in the social sciences, based on the approach used in natural science, such as biology, botany, and physics. Hussey and Hussey (1997:52) contend that the approach used by natural scientists is phenomenally successful and it is not surprising that when the social scientists emerged towards the end of the nineteenth century, social scientists adopted their practices from the positivism paradigm. This study bases on science to establish the facet of reality at which shortcomings of the OECD BEPS Action 2 Final Report 2015 affect the jurisdiction and tax policies (domestic law) in South Africa.

1.8.2 Objectivity of positivism paradigm

According to Hussey and Hussey (1997:52), social scientists adopt the role of observers of an independent and pre-existing reality; they should remain distant when conducting their research and not allow values and bias to distort their objective views. This study then adopts the role of a social scientist; remains independent; and does not allow distortion of objective views. The objective views in this study are that shortcomings of the OECD BEPS Action 2 Final Report 2015 - Neutralizing the Effects of Hybrid Mismatch Arrangements, affect the jurisdiction and its tax policies (domestic law).

1.8.3 Characteristics of the positivism approach

According to Hussey and Hussey (1997:52), the positivism approach seeks the facts or causes of social phenomena, with little regard to the subjective state of an individual. Thus, logical reasoning is applied to the research so that precision, objectivity, experience, and intuition are incorporated as the means of investigating research problems. As Hussey and Hussey (1997:52) mention, this study then applies logical reasoning and conceptualizes theories to investigate shortcomings of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 –

¹¹ See: Hussey, J. and Hussey, R. (1997). Business research: a practical guide for undergraduate and postgraduate students. Basingstoke: Macmillan Business.

General Overview of the Recommendations regarding neutralizing the effects of hybrid mismatch arrangements within MNEs in South Africa.

1.9 Outline of the study

1.9.1 Chapter 1: Introduction

The opening chapter of the study introduces Hybrid Mismatch Arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations. The chapter also highlights the significant objectives that the researcher intends to achieve. The background of the problem and the significance of the study are also mentioned in the opening chapter. The remaining chapters are then outlined as follows:

1.9.2 Chapter 2: Literature review

This chapter studies and reviews related literature. Sources from various authors across the globe are accessed and critically reviewed. The objective of a critical review is to establish previous theoretical perspectives, conceptualize, and relate them to the study. The study then puts more emphasis on theories relating to hybrid mismatch arrangements and the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations. In this study domestic law represented by Specific recommendations on improvements to domestic law (Top column 3 of Table 1.1) is the independent variable while the Recommended hybrid mismatch rule (Top column 4 of Table 1.1) is the dependent variable, and the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements is the confounding variable that is outside Table 1.1. Domestic law is considered as the determinant of examining shortcomings within the OECD BEPS Action 2 Final Report 2015 since the study is based on causal research that subsumes¹² the involvement of variables. Two causal research theories including sufficient causes and necessary causes are incorporated as the requirement to make changes happen in the

¹² Comprises or incorporates.

independent and dependent variables in the study. The study refers to Morgan (2013) theories of sufficient causes and necessary causes. This is explained in detail in Chapter 3, Research Methodology. (Refer to section 3.9.3 – Explanation and examples of causal research).

1.9.3 Chapter 3: Research methodology

The third chapter presents the method used to study Hybrid Mismatch Arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015. The positivism paradigm is applied.

1.9.4 Chapter 4: Statement of findings and analysis of data

This chapter presents findings in graphic forms of tests conducted on responses received in the questionnaire. The findings encompass¹³ quantitative data that is allocated to test items consequentially¹⁴ showing frequency scores of each test item in the questionnaire. Tables indicating frequency scores of test items from the highest to the lowest frequency scores are used to present questionnaire responses. Simple linear regression analysis is presented in this chapter.

1.9.5 Chapter 5: Discussion of findings and linking to literature review.

The fifth chapter continues to interpret, discuss, and analyze findings from chapter 4. The chapter then encompasses an analytical approach of linking primary findings with literature review and ascertain that the aim and objectives of the study are achieved.

1.9.6 Chapter 6: Conclusion and recommendations

¹³ Include or comprise.

¹⁴ Thus, or as a result, or hence.

The sixth and terminal¹⁵ chapter of the study recapitulates¹⁶ the findings of the study in relation to literature reviewed and primary findings. The chapter then provides recommendations to the OECD, on how to respond to shortcomings of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations in relation to “Neutralizing the Effects of Hybrid Mismatch Arrangements” in South Africa and global.

1.10 Conclusion

The effective administration of neutralizing the effects of hybrid mismatch arrangements solely relies on the competent skills of the local jurisdiction and its tax policies (domestic law). The aims of the study are to establish the facet of reality at which shortcomings of the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements, continues to erode the tax base thus allowing MNEs to perpetuate¹⁷ in realizing tax arbitrages resulting from tax planning structures or hybrid mismatch arrangements in South Africa and to report the findings. The requirement of study is to urge MNEs and jurisdiction (domestic law) to work hand in hand with the OECD until such a time when shortcomings are rectified.

In the next chapter, Chapter 2, the study presents literature that is critically reviewed. Sources relating to hybrid mismatch arrangements or tax planning structures and the OECD BEPS Action 2 Final Report 2015 are accessed, critically reviewed, and conceptualized.

¹⁵ Final

¹⁶ Summarizes or synopsis.

¹⁷ To continue indefinitely.

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

In the preceding chapter, to paraphrase it, Chapter 1, the study discussed introduction, and it summarily encompassed the research methodology, research techniques, and research literature reviewed as well as a conclusion that links to this chapter, Chapter 2. In this chapter the study focuses more on literature relating to hybrid mismatch arrangements and how the study conceptualizes theories that unlock shortcomings within the OECD BEPS Actions 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations.

The study then presents the preliminary literature from the research proposal before it continues with the critical review of hybrid mismatch arrangements thus studied by various authors as below:

2.2 Preliminary literature review objectives

The study reviews several sources mostly authored by the academic in relation to hybrid mismatches. But none of the authors have examined hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015 by February 2025. Five such authors are:

(1) Harris (2014)¹⁸ who advocates that the difficulty with hybrid mismatch arrangements is that they can and most commonly do involve countries (local jurisdictions) which the researcher philosophizes that domestic law is an independent variable that could be incorporated in the study to examine shortcomings of the OECD BEPS Action 2 – “Neutralizing the Effects of Hybrid Mismatch Arrangements”.

¹⁸ See: Harris, P. (2014). Neutralizing the effects of hybrid mismatch arrangements. https://www.un.org/esa/ffd/wp-content/uploads/2014/09/20140923_Paper_HybridMismatchArrangements.pdf.

This study then conceptualizes that Harris (2014) had a different view in that his focus was on the limiting part of hybrid mismatch structures by the OECD which is part of the objectives or questions of this study which need the answer.

(2) Parada (2018)¹⁹ clarifies that while the OECD's proposed target is the hybrid entity itself, the existence of a hybrid or reverse hybrid entity is not sufficient to initiate the linking rules set out. According to Parada (2018), it requires payment to generate a D/NI or DD outcome. Parada (2018) advocates that the core of the problem, to paraphrase it, a disparity in the tax characterization of entities, is not addressed and the focus of the OECD lies on the outcome of the transaction and not on the hybrid element which leads to a consequentialist approach adoption by the OECD.

This study then indicates that Parada (2018) had a different view, he had no intention of addressing the shortcomings of the OECD BEPS Action 2.

(3) Lindeque (2019)²⁰ asserts that Base Erosion and Profit Shifting (BEPS) has become an increasingly important matter for both multinational enterprises (MNE) and the countries in which they operate (local jurisdiction). The tax avoidance strategies used to exploit gaps and mismatches in tax rules have become progressively complex and advanced over the past decade. This study then submits that Lindeque (2019) explored the importance and relevance of addressing BEPS via branch mismatch arrangements as proposed by the OECD, to an emerging economy such as South Africa. According to Lindeque (2019), South Africa does not have specific legislation that can be applied to neutralize branch mismatch arrangements. The general anti-avoidance rule (GAAR) as Lindeque (2019) contends, can be used to address branch mismatch arrangements but would not be successful in counteracting most

¹⁹ Parada, L. (2018). Hybrid entity mismatches and the international trend of matching tax outcomes: a critical approach. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3384555.

²⁰ Lindeque, A. (2019). Neutralizing the effects of branch mismatch arrangements: a South African perspective. <https://wiredspace.wits.ac.za/server/api/core/bitstreams/a31318e7-4e7e-44da-a7a6-a6b83d7169a3/content>.

branch mismatch arrangements as the crucial element of whether its sole or main purpose was to obtain a tax benefit will not be met with the majority of arrangements.

In view of Lindeque (2019) above, and in relation to Harris (2014), there is a similarity in statements regarding the variety of hybrid mismatches. In this study Harris (2014) mentions thirteen examples of hybrid mismatches while Lindeque echoes Harris (2014) and advocates that there are many branch mismatch arrangements. The researcher tends to conceptualize that the hybrid mismatch structures that the OECD BEPS Action 2 are based on, to Neutralize Hybrid Mismatch Arrangements, need answers to understand the actual overall categories and hence the involvement of this study. Lindeque (2019) recommends, that since South Africa does not have sufficient safeguards in place to protect its tax base against BEPS arising through the use of branch mismatch arrangements the implementation of some of the recommendations of the branch report through the use of tailored approach will allow South Africa to reduce its exposure to lost tax revenue arising from branch mismatch arrangements. As indicated in the study, Lindeque (2019) discusses and analyses the concept of branch mismatch arrangements, the concerns and challenges arising from the use of those arrangements, the recommendations from the OECD in addressing those mismatches and the approaches taken by selected countries but doesn't address hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015 hence the need for this study.

(4) Nyatsambo (2019)²¹ advocates that South Africa has not been safe from the overarching impact of globalisation and that as the National Treasury observes, the biggest companies in the South African economy are foreign owned subsidiaries of major international multinational enterprises (MNE). A big part of the nation's capital, as Nyatsambo (2019) advocates, is therefore foreign-sourced, a position that results in foreign enterprises holding deep interests in the operations of South Africa's fiscal system. From a taxation perspective it is this foreign vested interest that results in most of these companies adopting some

²¹ See: Nyatsambo, N.G. (2019). Seizing the BEPS: an assessment of the efficacy of South Africa's thin capitalization regime in combating base erosion and profit shifting (BEPS) through excessive interest deduction. <https://open.uct.ac.za/server/api/core/bitstreams/8dab9960-c266-4b2b-bb1e-507375a4b9b8/content>.

aggressive tax planning and avoidance strategies to exploit gaps in the nation's transfer pricing and thin capitalisation regimes whose success effectively results in the deprivation of much needed revenue to the national fiscus (Nyatsambo, 2019).

According to Nyatsambo (2019), current trends in the international tax domain show that most countries are seized with the base erosion and profit shifting (BEPS) phenomenon and that South Africa, as the second biggest economy in Africa and an affiliate of the Organisation for Economic Co-operation and Development (OECD), is still riddled with challenges in its BEPS regulatory framework. Despite Nyatsambo (2019) explanation, still the examination of Hybrid Mismatch Arrangements and Shortcomings of the OECD BEPS Action 2 is not attended to hence the need of this study.

(5) De Koker (2021)²² examined whether the OECD had effectively neutralized trust-based hybrid mismatch arrangements with the recommendations incorporated in Action 2 of the BEPS Action Plan. According to De Koker (2021), the OECD employed a consequentialist approach to hybrid mismatch arrangements thus focusing on mending the outcomes of mismatch transactions as opposed to the source of the mismatches. De Koker (2021) advocates that since trusts comprise several distinctive attributes, the OECD encountered difficulties in addressing trust-based mismatched systematically through the consequentialist approach. Slow convergence from the international community as De Koker (2021) asserts, represents a further threat to the success of the OECD initiative. This, according to the researcher indicates that there is still a gap that needs to be addressed in terms of the OECD BEPS Action 2 – Neutralizing the Effects of Hybrid Mismatch Arrangements.

²²See: De Koker, L.A. (2021). Trusts in hybrid mismatch arrangements: does the OECD BEPS action plan adequately address the unique attributes of trusts? <https://wiredspace.wits.ac.za/server/api/core/bitstreams/7da66ea9-9b08-43f5-ac48-a77a515a2834/content>.

The researcher therefore indicates that most, if not all, authors that were visited, discuss about the weaknesses of the OECD BEPS Action 2, either in the context of tax planning schemes²³ or in the limiting or consequential²⁴ use of the international tax laws due to the pressure by the OECD such that it is not all hybrid mismatch structures that are involved in the global market that the OECD addresses in its BEPS Action 2 Final Report 2015.

The literature thus reviewed helps to conceptualize that the OECD is not addressing the objective of the BEPS Action 2 – Neutralizing the Effects of Hybrid Mismatch Arrangements, clearly. As mentioned earlier in the study, Harris (2014) presents thirteen examples of hybrid mismatch categories and structures that are on the global market within cross border jurisdictions. Only a few, less than 13, are included on Table 1.1 of the OECD BEPS Action 2 Final Report 2015.

Furthermore, and surprisingly, the literature thus reviewed has not considered taking research to examine the shortcomings of BEPS Action 2 Final Report 2015 by incorporating domestic law (tax policy) represented by Specific recommendations on improvements to domestic law as the independent variable and the OECD Recommended Hybrid Mismatch Rules as the dependent variable. Neither are there any studies in the field to date, to paraphrase it, as of March 2025, that have incorporated causal research to explain the cause and effect of domestic law as the independent variable nor examine hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 by incorporating the causal research technique. However, this does not indicate that there is totally no research in the field somehow somewhere but the addition to the knowledge of this study does add value. Nevertheless, there are some critics from various authors about the inconsistency of the OECD in terms of combating international tax base erosion. There is extraordinarily little that is done in

²³ See: Davis Tax Committee (2014). Addressing base erosion and profit shifting in South Africa. https://www.taxcom.org.za/docs/New_Folder/3%20DTC%20BEPS%20Interim%20Report%20on%20Action%20Plan%202%20-%20Hybrid%20Mismatches,%202014%20deliverable.pdf.

²⁴ See: Lindeque, A. (2019). Neutralizing the effects of branch mismatch arrangements: A South African perspective. <https://wiredspace.wits.ac.za/server/api/core/bitstreams/a31318e7-4e7e-44da-a7a6-a6b83d7169a3/content>.

research to examine Hybrid Mismatch Arrangements and Shortcomings of the OECD BEPS Action 2 Final Report 2015. This study then, stands up to close the gap.

2.3 Critical literature review

2.3.1 Introduction

In this chapter the researcher refers to international tax theories to critically review, conceptualize theories, and discuss hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015. Because international tax is broad and involves many jurisdictions, and tax structures, this study is limited in scope. The scope of the study is to focus on the three hybrid mismatch arrangements (tax planning) structures namely as targeted by the OECD:

1. Deduction/no inclusion (D/Ni outcome),
2. Double deduction (DD outcome), and
3. The imported mismatch deduction/no inclusion (Imported D/Ni outcome).

The researcher then discusses and acknowledges the authors and philosophizes theories of hybrid mismatch arrangements in relation to shortcomings of the OECD BEPS Action 2 Recommendations. The study then compares theories of hybrid mismatch arrangements with the OECD BEPS Action 2 Recommendations and its Table 1.1 - General Overview of Recommendations in relation to research literature gaps and the four research questions and objectives that are incorporated to address the shortcomings (literature gaps) of the OECD BEPS Action 2.

Sources from various authors of international tax, particularly hybrid mismatch arrangements (tax plans) and the BEPS Action 2, are then consulted. These sources comprise online academic research reports, such as thesis, dissertations, articles, journals, and non-academic reports such as journals, publications from the Big Four accounting and tax firms including Deloitte, Ernst & Young, KPMG, and PWC.

2.4 Theoretical framework

Grant and Osanloo (2014²⁵) advocate that the theoretical framework provides a grounding base, or anchor, for the literature review, and most importantly, the methods and analysis. Melendez (2002)²⁶ submits that over the past 30 years, there has been an increasing trend to include a theoretical framework in the thesis. Salmons (2019)²⁷ advocates that the theoretical framework relates to the research design, helps researchers to situate themselves within their methodology and epistemological²⁸ position. The theoretical framework of this study is focused on hybrid mismatch arrangements literature review; the OECD Recommended Hybrid Mismatch Rules as the dependent variable; the OECD Table 1.1; domestic law as the independent variable and methods of conducting research as below:

- (1) Hybrid Mismatch Arrangements (HMA) literature review.
- (2) OECD Recommended Hybrid Mismatch Rules as the dependent variable.
- (3) OECD Table 1.1 as a guide to international tax users.
- (4) Domestic law as the independent variable.
- (5) Methods of conducting research including designing the questionnaire, data collection and analysis.

Hybrid Mismatch Arrangements: Sansuttavijit (2022) submits that in general, Hybrid Mismatch Arrangements are increasingly used by tax advisory dramatically in international tax planning because it is one way for tax optimization by using disparities of tax regulation between jurisdictions. Hybrid mismatch arrangements become popular structures in the context of international tax planning because it can use the loopholes of disparities between national tax laws to obtain tax benefits from hybrid financial instruments or hybrid entities

²⁵ See: Cynthia Grant and Azadeh Osanloo (2014). Understanding, selecting, and integrating a theoretical framework in dissertation research: creating the blueprint for your house. <https://files.eric.ed.gov/fulltext/EJ1058505.pdf>.

²⁶ See: Melendez, J. (2002). Doctoral scholarship examined: dissertation research in the field of higher education studies. <https://scholarship.shu.edu/dissertations/375>.

²⁷ See: Salmon (2019). Find the theory in your research. Thousand Oaks. California: SAGE Publications Inc.

²⁸ In this context **epistemological** refers to the theory of knowledge relating to its methods, validity, scope and the distinction between justified belief and opinion.

which may result in double taxation, double non-taxation, double deductions, or deduction without inclusion schemes (Sansuttavijit, 2022).

In this study the researcher philosophizes that, Hybrid Mismatch Arrangement (HMA) are based on the theory that at least for a mismatch to happen there should be two or more entities called hybrid entities because these enterprises are not operating in the same jurisdiction or country but they are entities that belong to one group; and at least two or three financial instruments, to paraphrase it, instruments, because they are contractual arrangements within the same transaction but happen in two or three different countries .

In this context, instruments are financial arrangements or facilities that are mutually agreed upon between two or three parties with the aim of settling financial transactions or honouring financial obligations. For example, Dr. Phiri and Ndilo Phiri enter into an agreement on a business transaction or activity whereby Dr. Phiri, a resident South Africa, who studies in Switzerland, agrees with his wife, Ndilo Phiri, a resident of Switzerland, to pay tuition fees on behalf of Dr. Phiri in Switzerland. If the domestic law of South Africa does not allow South African residents to pay tuition fees more than R150,000 outside South Africa as a tariff to promote local higher education. Dr. Phiri then agrees with Ndilo Phiri, to pay any amount of tuition fees more than R150,000 to the Swiss School of Business and Management on behalf of Dr. Phiri. Assuming that the domestic law of Switzerland doesn't restrict foreign workers residing in Switzerland to declare invoices when paying fees on behalf of their foreign students such that any amount above R150,000 should be treated as general expenses in order to promote higher education and attract foreign students to study in Switzerland and the resultant transaction ends in a mismatch whereby Ndilo Phiri sees the amount in excess of R150,000 as a loan to Dr. Phiri while Dr. Phiri sees the amount in excess of R150,000 as general expenses and discloses it in his annual tax return in South Africa as an allowable tax expense and deducts it from his annual taxable income in South Africa such that the tax base is reduced. In the case of Ndilo Phiri who is resident in Switzerland the payment in excess of R150,000 on behalf of Dr. Phiri is treated as a general expense in Ndilo Phiri's financial statements and the Swiss government allows it to be deducted from taxable income such that the mismatch results in a double deduction – (DD outcome) because the amount in excess of

R150,000 was deducted in South Africa based on the payment made by Ndilo in Switzerland as general expenses instead of a loan to Dr. Phiri which is a balance sheet item as a current asset in the financial statements of Ndilo Phiri.

Assuming the same scenario – South African resident and Swiss resident, but in a corporate business perspective whereby Dr. Phiri Pty Ltd is considered as an MME whose head office is in South Africa and has a branch in Switzerland, in this context, Ndilo Phiri Plc which deals with accounting services in Switzerland whereby Dr. Phiri Pty Ltd holds equity in Ndilo Phiri Plc at a consideration of R1 million, and Ndilo Phiri Plc treats the R1million as startup costs such that the R1 million is deducted from the taxable income in Switzerland and the resultant transaction gives a mismatch in that it is characterized as a capital expenditure instead of equity whereby dividends are supposed to be issued to Dr. Phiri Pty Ltd and the resultant transaction erodes the tax base of Switzerland while in Dr. Phiri Pty Ltd the R1 million is treated as equity thus resulting in a deduction no inclusion – (D/Ni outcome) in the books of Ndilo Phiri Pty Plc in Switzerland.

With the same scenario but with a third-party involvement where by Ndilo Phiri Plc enters into an agreement with a Swiss company (Swiss Plc) that resides and operates in South Africa to deliver medical equipment to Dr. Phiri Pty Ltd at the purchase price equivalent to R1 million that was invested by Dr. Phiri Pty Ltd in Ndilo Phiri Plc and assuming that the Swiss domestic law doesn't allow enterprises that specialize in services such as accounting services that are offered by Ndilo Phiri Plc, to export goods to any other country outside Switzerland. The mismatch then results such that neither Ndilo Phiri Plc discloses, to paraphrase it, characterizes it as accounts payable in its books in Switzerland nor does the Swiss company (Swiss Plc) that resides in South Africa records in its books as revenue from Ndilo Phiri Plc but as revenue from Dr. Phiri Pty Ltd at the invoice with an equivalent amount to the Swiss Francs on that day thus resulting in an imported mismatch, to paraphrase it, indirect deduction no inclusion – (Indirect D/Ni Outcome or imported mismatch) either due to foreign exchange loss/gain which is not recorded in Ndilo Phiri Plc nor in Dr. Phiri Pty Ltd or due to the debt repayment via a foreign enterprise (Swiss Plc) that was not initially involved in the loan

agreement as is the case between Dr. Phiri Pty Ltd of South Africa and Ndilo Phiri plc of Switzerland such that the mismatch result in a complex transaction.

Colson (2024)²⁹ defines an imported hybrid arrangement as an arrangement put in place between foreign participants resulting in a double deduction or deduction without inclusion outcome such that the effects of which are extended to the local country, to paraphrase it, domestic law, in which foreign entities operate and this happens when the deduction of some payments in connection with such arrangements are transferred to a local taxpayer through a standard financial instrument such as a typical loan taken out by a local entity from foreign participants.

According to Scherleitner (2021),³⁰ the imported Mismatch Rule in the European Union is characterized by differences between Member States' implementation and interpretation of Article 9 of the ATAD and that it is possible that the Imported Mismatch Rule applies and that all that is needed is that one Member State does not regard a certain transaction to fall under its anti-hybrid rules while the other involved Member State does and that the most obvious example is the structured arrangements rule. Scherleitner (2021) advocates that even though the OECD tried to provide specific guidelines as to what is to be considered a structured arrangement and thus fall within the scope of BEPS Action 2, to paraphrase it, Neutralizing the Effects of Hybrid Mismatch Arrangement (and by extension, should guide the interpretation of Article 9 of the ATAD), it is natural that the required case-by-case analysis has a potential to create disagreement and that if a member State does not neutralize direct mismatch that another Member State would have neutralized, payments from the latter to the former Member State can fall within the scope of the Imported Mismatch Rule and as a consequence, the deductions would be denied to the extent that it is set off against the mismatch.

²⁹ See: Colson, J. (2024). Belgian circular letter on hybrid mismatch arrangements has been released. <https://www.twobirds.com/en/insights/2024/belgium/belgian-circular-letter-on-hybrid-mismatch-arrangements-has-been-released>.

³⁰ See: Scherleitner, M. (2021). The imported mismatch rule in light of the fundamental freedoms. *Intertax*, 49(5), pp. 393 – 407. <https://doi.org/10.54648/taxi2021039>.

Considering theories of Colson (2024) and Scherleitner (2021) above, the researcher philosophizes that the dominance of other anti-hybrid mismatch schemes that are practiced by Member States, to paraphrase it, domestic law, the independent variable, represented by Specific recommendations on improvements to domestic law on the OECD Table 1.1, has preference over guidelines recommended by the OECD BEPS Action 2, the OECD Recommended Hybrid Mismatch Rules, the dependent variable, including the application of linking rules or defensive rules such that Member States do not uniformly apply them to the point that one Member State applies it while the other Member State does not and as a result the deductions, to paraphrase it, defensive rules are ineffective, in other words, they don't work and hence the Imported Mismatch fails to be neutralised, to paraphrase it, the effects of hybrid mismatch arrangements are not neutralised by Member States, or domestic law thus resulting in the OECD BEPS Action 2 ineffectiveness.

OECD Recommended Hybrid Mismatch Rules: In consideration of the scenarios above and practically philosophizing the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations, the OECD Recommended Hybrid Mismatch Rules, to paraphrase it, linking rules, where applicable by states, the primary rules should deny the payer in order to neutralize the mismatch. This indicates that the OECD recommendations are able to neutralize the effects of hybrid mismatch arrangements, but it depends on the domestic law as is the case with Colson (2024) and Scherleitner (2021), who indicate that Member States prefer other anti-tax avoidance schemes such as ATAD, more than the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules.

OECD BEPS Action 2 and its Table 1.1: The OECD BEPS Action 2 Table 1.1 is given as a guide to international tax users including MNEs, international tax consultants, international tax authorities, the academic community, to mention a few. Should there be Specific recommendations on improvements to domestic law which is represented by Top column 3 of the OECD Table 1.1, the independent variable, then the effects of hybrid mismatch arrangements will be neutralized, the opposite will not work, as a result the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations will not neutralize the effects of hybrid mismatch arrangements.

In the case of South Africa as the government or its tax agents such as tax treaties, the OECD Recommended Hybrid Mismatch Rules including primary and defensive rules have to be given substantial attention in order to cause the necessary requirement (necessary causes) to neutralize the effects of hybrid mismatch arrangements within MNEs (stakeholders such as Anglo American, Deloitte, Johnson & Johnson, Apple, Google) that are in South Africa. While the OECD Recommended Hybrid Mismatch Rules (Top column 4 of the OECD Table 1.1) are necessary (necessary causes) to neutralize the effects of hybrid mismatch arrangements within MNEs, South Africa and its tax treaty partners (agents) such as unilateral and multilateral including the Double Taxation Agreement (DTA) should switch from those treaties and comply with the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules in order to be sufficient (sufficient causes) to cause Specific recommendations on improvements to domestic law (top column 3 of the OECD Table 1.1).

Blom (2017)³¹ submits that Du Plessis (2012) and Arnold (2002) agree that the OECD Model Tax Convention (OECD MTC) is the most prominent model that is used by most countries when negotiating and drafting tax treaties and that most treaties that are concluded by South Africa are based on the OECD MTC which means that although the actual treaty does not follow the exact wording of the OECD MTC, the format, arrangement of sections and many of the terms of the OECD MTC are used in the treaty between the contracting countries.

Considering Blom (2017) theory above, the South African international tax system (domestic law), like any other country, is more committed to other anti-tax avoidance schemes or treaties such as the OECD Model Tax Convention which has multilateral treaties than the OECD BEPS Action 2 which emphasizes the application of the OECD Recommended Hybrid Mismatch Rules, the motive which renders the OECD BEPS Action 2 and its Table 1.1 ineffective.

³¹ See: Blom, O.J.J. (2017). The legal status of tax treaties in South Africa. <https://repository.up.ac.za/server/api/core/bitstreams/7cf08002-72bc-416c-bf4f-3c9ce75785e1/content>.

Domestic law: In consideration of Blom (2017) the researcher philosophizes that the South African jurisdiction (domestic law) is far from the OECD Specific recommendations on improvements to domestic law, the independent variable, that is sufficient (sufficient cause) to cause changes in the OECD Recommended Hybrid Mismatch Rules, the dependent variable, that is necessary (necessary causes) to neutralize the effects of hybrid mismatch arrangements, in that South Africa is more committed to tax treaties such as the OECD Model Tax Convention than on the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements. The study then philosophizes that out of the two continuum of the OECD including the OECD BEPS Action 2 Final Report 2015 and the OECD Model Tax Convention (OECD MTC) South Africa favours the later even though the two don't cater for the same tax purpose – the OECD MTC deals with income tax which results in tax planning arrangements or hybrid mismatch arrangements; and the OECD BEPS Action 2 deals with neutralizing the effects of hybrid mismatch arrangements, the arrangements that result in the tax base erosion and tax arbitrage by those MNEs that unfairly practice or erode the tax base of countries such as South Africa for the benefit of their parent MNEs hence South Africa uses the General Anti Avoidance Rule (GAAR) in the same way European nations use the Anti – Tax Directive (ATAD) to avoid tax abuse systems such as hybrid mismatch arrangements thus indicating the lack of necessary requirement for the OECD Recommended Hybrid Mismatch Rules to neutralize the effects of hybrid mismatch arrangements in South Africa.

Sigurdardottir (2016)³² indicates that from a European Union (EU) perspective, taxation power of Member States is characterized by its sovereignty, to paraphrase it, domestic law, and protected as such. Taxation has a determining effect in the means of financing national budgets including deciding economic policy. An important feature of taxation policy, as Sigurdardottir (2016) contends, can also be seen as a competition instrument which has been increasing within the EU Member States for the last few decades. The increase in cross-border investments has given multinational enterprises (MNEs) opportunities to use hybrid

³²See: Sigurdardottir, M. A. (2016). Hybrid mismatch arrangements within EU: under what conditions could single taxation be secured? <https://lup.lub.lu.se/student-papers/search/publication/8879690>.

financial instruments, taking advantage of mismatches of different national tax treatments and from international standard rules to relieve double taxation.

Gonzalez-Barreda (2024)³³ advocates that in 2012, public opinion focused on what has been called “aggressive tax planning of multinational enterprises” and that since then, the G20 and OECD developed the BEPS Action Plan, a phenomenon that has received enormous attention but despite the attention, the efforts, methodology and outcomes, and instruments used to implement them pose very little innovation. The study therefore philosophizes that South Africa is discouraged by the efforts and methodologies as well as the instruments that are available from the OECD such as the linking rules which pose very little innovation in that they are optional and not mandatory such that they do not pressure countries like South Africa from choosing other anti-tax schemes such as Double Tax Agreements (DTA), GAAR and ATAD.

Diep (2024)³⁴ advocates that it is imperative to enhance the effectiveness of tax management by adopting advanced technology and comprehensive workforce training and that implementing stringent regulations on transfer pricing and deploying measures to deter tax avoidance can mitigate profit shifting and tax evasion perpetrated by multinational enterprises and that international collaboration such as tax treaties also holds a pivotal role, involving the ratification of tax treaties and active engagement in global initiatives such as the OECD’s BEPS framework. The researcher professorates that information technology has a role to play in change management such that countries like South Africa require the upgrade of tax systems (domestic law) such that the OECD linking rules are easily incorporated within MNEs that are in South Africa. Training of international tax professionals such that academic higher education in International Tax Specialization such as Hybrid Mismatch Arrangements

³³ See: Pablo Hernández González-Barreda (2024). A historical analysis of the BEPS action plan: old acquaintances, new friends and the need for a new approach. Reprinted from *intertax*, 46(4) with permission of Kluwer Law International. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4762545.

³⁴ See: Bui Hong Diep (2024). Some solutions to combat tax base erosion in Vietnam. 58(1) DOI: [10.2478/wsbjbf-2024-0020](https://doi.org/10.2478/wsbjbf-2024-0020)

is of paramount importance if the OECD linking rules are to be fully activated as a means of neutralizing the effects of hybrid mismatch arrangements in South Africa.

According to Gonzalez-Barreda (2018),³⁵ the abuse of tax conventions and their use to circumvent domestic tax law rules has been a major concern since the development of modern tax treaties in the 1960s and that the OECD pointed out as early as 1977 that international tax planning schemes were contrary to fiscal equity such that they harmed public budgets and distort international competition. To resolve such issues as Gonzalez-Barreda (2018) asserts, States developed two reasoning lines including the application of rules and doctrines that were developed against the abuse of domestic tax rules to tax treaties on one hand and countries claimed and started to introduce measures in treaties against their abuse on the other hand but then questions and issues arose as soon as they began to apply such rules. The researcher conceptualizes that South Africa and MNEs that are in South Africa are more lenient on tax treaties than on the OECD linking rules.

Preble and Preble (2017)³⁶ advocate that as part of systems of tax law, general anti-avoidance rules (GAAR) frustrate transactions that contrive to avoid tax and that if tax avoidance is in this manner an attack on the rule of law a legislature may be justified in responding by enacting a general anti-avoidance rule. The researcher contends that South Africa is one of the countries that apply GAAR (domestic law) to mitigate the tax avoidance issue. The researcher therefore conceptualizes that the OECD linking rules are less likely to be incorporated in terms of fighting tax abuse within MNEs in South Africa.

³⁵ See: Pablo Hernandez Gonzalez-Barreda (2018). On the interaction of international tax law and domestic law: A plea for a step back to theory of law. [https://www.researchgate.net/publication/325763437 On the interaction of international tax law and domestic law: a plea for a step back to theory of law](https://www.researchgate.net/publication/325763437_On_the_interaction_of_international_tax Law_and_domestic_law:_a_plea_for_a_step_back_to_theory_of_law).

³⁶ See: Rebecca Preble and John Preble (2017). Does the use of general anti-avoidance rules to combat tax avoidance breach principles of the rule of law? [https://www.researchgate.net/publication/228136563 Does the Use of General Anti-Avoidance Rules to Combat Tax Avoidance Breach Principles of the Rule of Law](https://www.researchgate.net/publication/228136563_Does_the_Use_of_General_Anti-Avoidance_Rules_to_Combat_Tax_Avoidance_Breach_Principles_of_the_Rule_of_Law).

According to Dumiter and Nicoara (2018),³⁷ the taxation of non-resident entities supposes the establishment of an administrative framework as fair, efficient, effective and comprehensive as possible due to the multifaceted nature of the concept of income generated by enterprises which depends on source of income, methods of valuing such income, taxation policies (domestic law), and establishment policies such as permanent establishment. The researcher professorates that multinational enterprises such as Google and Apple to mention just two have domestic law that they apply to declare tax in foreign countries such as South Africa. These apply different characterization of income sources hence the resultant of hybrid mismatch arrangements which result in tax base erosion and arbitrage, to paraphrase it, unfair profits from the mismatch arrangements.

Parada (2021)³⁸ submits that it has recently been argued in the international tax literature that the OECD Base Erosion and Profit Shifting project (BEPS) reflects and effectuates full taxation, to paraphrase it, an international norm that would suggest that all of a company's income should be taxed in places where it has real business activities thus representing a modern approach to the single-taxation paradigm. The researcher philosophizes that the best way to alleviate hybrid mismatch arrangements is to incorporate a local system (domestic law) that allows to declare countries where multinational enterprises generate income such that those countries will have a fair tax treatment as opposed to tax arbitrages and tax base erosions that result from the well-known hybrid mismatch arrangement system which deprives nations of their fair tax income, to paraphrase it, income generated from taxation of MNEs.

³⁷ See: Florin Cornel Dumiter and Stefania Amalia Nicoara (2018). [\(PDF\) Taxation of non-resident legal entities in Romania. Case: RMMs vs. ANAF Braila.](#)

³⁸ See: Leopoldo Parada (2021). Full taxation: The single tax emperor's new clothes. [Full Taxation: The Single Tax Emperor's New Clothes.](#)

Katharina et al. (2020)³⁹ advocate that several empirical studies suggest that companies allocate profits regardless of the underlying real activity to avoid taxes and that the OECD BEPS Action Plan with its first formal document published in 2014, requires the taxation of profits where economic value is created. The researcher philosophizes the theory that MNEs in South Africa are allocating profits in a manner that true profit values are not fairly declared which brings to mind the theory of deduction no inclusion (D/Ni outcome), double deduction (DD outcome), and imported mismatch (Imported D/Ni outcome).

In consideration of the theoretical framework discussed herein and the tax treaties that South Africa joined, also discussed herein, the study indicates that the effects of hybrid mismatch arrangements including the deduction no inclusion of income (D/Ni outcome), double deduction (DD outcome), and imported mismatch (Imported D/Ni outcome) are far from being neutralized in South Africa because South Africa is more focused on tax treaties that are under the OECD Model Tax Convention than on the OECD BEPS Action 2 Recommendations.

Method: The method of conducting this study is based on the theory that the OECD Table 1.1 is used as a guide to international tax professionals, MNEs' tax consultants including Apple, Google, Caterpillar, Komatsu, BMW, Mercedes Benz, Coca-Cola, McDonald, Toyota, Land Rover, Anglo American, BHP Billiton, to mention a few, and other international tax users such as international tax consultants including but not limited to Deloitte, Klynveld Peat Marwick and Goerdeler (KPMG), Ernst and Young, PricewaterhouseCoopers (PWC), Pannell Kerr Forster (PKF), on how to identify hybrid mismatch arrangements and how to apply the OECD Recommended Hybrid Mismatch Rules in order to neutralize the effects of hybrid mismatch arrangements. Table 1.1 is used to design the questionnaire thus setting four research objectives with four research questions on a

³⁹ See: Schulte Sasse, Katharina and Watrin, Christoph and Weiß, Falko, (2020). The alignment between reported profits and real activity in times of the BEPS Action Plan. <https://ideas.repec.org/a/eee/jiaata/v40y2020ics1061951820300318.html>.

Likert scale with closed-ended questions such that each question is represented by one test item. Test items are numbered from 1 to 4 and are given research objectives to represent within the study. Data analysis is based on the theory of quantitative research and conducted by tallying the responses from participants in five categories including the following: Very unsatisfied, unsatisfied, not sure, satisfied and very satisfied. Frequency distribution tables and graphs are drawn to analyze the findings. The study incorporates the simple linear regression model where there is only one independent variable that is used to construct the cross-sectional regression analysis. The study uses the Breusch-Pagan test, and the F-test by incorporating Microsoft Excel to calculate tests that are then used to detect heteroscedasticity in a simple linear regression model and the F-test that is used to determine if the variances of two samples or ratios of variances among multiple samples are significantly different. In this study there are three hundred samples which are not that many and there are only two variables including the independent and dependent hence the incorporation of a simple linear regression analysis model of the cross-sectional regression analysis.

Ouelhadj and Bouchetara (2021)⁴⁰ submit that globalization and digitalization lead to flaws and asymmetries, to paraphrase it, imbalance, in tax rules which are used by multinational companies for their own benefits which then lead to tax avoidance and tax losses which represent 100 to 240 billion dollars per year such that the OECD and G-20 implemented the Base Erosion and Profit Shifting (BEPS) project, which is the most important international reform that the global tax system has known and that the study to understand whether the BEPS project's transfer pricing actions mitigate tax avoidance by MNEs through a literature review and a qualitative approach whereby interviews of 5 international tax specialists working in MNEs and Tax Administration Department was conducted and the study found that the project's transfer pricing reforms mitigate tax avoidance in the short term as it was confirmed through the first hypothesis testing, and following the results thus obtained the

⁴⁰ See: Anissa Ouelhadj and Mehdi Bouchetara (2021). Contributions of the base erosion and profit shifting BEPS project on transfer pricing and tax avoidance ([PDF\) Contributions of the Base Erosion and Profit Shifting BEPS Project on Transfer Pricing and Tax Avoidance.](#)

second hypothesis that Base Erosion and Profit Shifting actions dealing with transfer pricing do not mitigate tax avoidance was refuted.

In consideration of the hypothesis testing theory as Ouelhadj and Bouchetara (2021) mention above, the researcher philosophizes that the incorporation of hypothesis and other tests such as Brausch-Pagan test, and the F-test assist in the confirmation of validity of data used in the analysis of findings of the study by incorporating cross-sectional regression analysis hence the incorporation of the simple linear regression model.

Theories of primary and secondary findings thus linking to literature review are incorporated whereby findings are cross referenced to literature review and then incorporated in research objectives and questions by incorporating test items 1 to 4 in chapters 4, 5 and 6 thus concluding the research journey.

2.5 Conceptual framework

The researcher refers to Table 1.1⁴¹ of BEPS Action 2 – General Overview of the Recommendations to discuss the conceptual framework of the study.

In this section the study conceptualizes ideas from literature thus critically reviewed to put together theories and arguments that are used to conduct this study. Literature thus reviewed is cross referenced, compared and applied in this study with the aim of developing the researchers' critical thinking and thus successful research. The researcher, where necessary, debates, argues, and concludes theories as if they were in a real-world scenario.

The researcher philosophizes the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules to neutralize the effects of hybrid mismatch arrangements by incorporating Table 1.1 as a guide to international tax consultants and other tax professionals as well as jurisdictions of many countries.

⁴¹ See: OECD (2015). Neutralizing the effects of hybrid mismatches. <https://www.google.co.za/search?q=oeed+beps+action+2+2015&ie=UTF-8&oe=UTF-8&hl=en-za&client=safari>.

The researcher incorporates the three categories of hybrid elements or tax planning schemes including the deduction/no inclusion (D/Ni outcome); that is used in this study to examine the completeness of neutralizing the effects of hybrid mismatch arrangement including the following:

- (a) hybrid financial instrument,
- (b) disregarded payment made by a hybrid,
- (c) and payment made to a reverse hybrid in relation to BEPS Action 2 Recommendations.

The second category is the double deduction (DD outcome). This is incorporated to examine the completeness of neutralizing the effects of hybrid mismatch arrangements including the following:

- (a) deductible payment made by a hybrid, and
- (b) deductible payment made by a dual resident.

The last category is the imported (Indirect D/Ni outcome) which is incorporated in this study to examine the completeness of neutralizing the effects of hybrid mismatch arrangements including the following:

- (a) the imported mismatch arrangement.

With reference to Harris (2014), these categories are not complete. They are limited by the OECD BEPS Action 2 Final Report 2015. The study notes that the OECD put recommendations, to paraphrase it, filled some of the blank spaces in all required sections of Table 1.1 on the top line including the Specific recommendations on improvements to domestic law (Top Column 3 of Table 1.1) and on all three columns under Recommended hybrid mismatch rule including the response, defensive rule, and the scope. In practice this shows that the hybrid financial instrument mismatch arrangement is fully neutralized.

The study uses it as a control variable⁴² since all required spaces are filled and there is no blank space on the first line. While the hybrid financial instrument is used as a control, the heading “OECD BEPS Action 2 – Neutralizing the Effects of Hybrid Mismatch Arrangements” is used as a confounding variable, to paraphrase it, a variable that exists outside the experiment’s parameters and influences both the independence and dependent variables. The researcher sees the relationship between the Specific recommendations on improvements to domestic law (Top column 3 of Table 1.1) and the OECD Recommended Hybrid Mismatch Rule (Top column 4 of Table 1.1) of the OECD. The study sees the dependent variable and the independent variable. The researcher philosophizes the Mismatch (Top column 1 of the table) as the category, to paraphrase it, tax planning scheme; the Hybrid Mismatch Arrangement (Top column 2 of Table 1.1) as the element of the tax planning scheme such as hybrid financial instruments used by MNEs in different jurisdictions; the Specific recommendations on improvements to domestic law (Top column 3 of Table 1.1) as the independent⁴³ variable; and the OECD Recommended Hybrid Mismatch Rules (Top column 4 of Table 1.1) together with its sub columns (response, defensive rule, and scope) as the dependent⁴⁴ variable. The study debates that if the dependent variable which is the Recommended Hybrid Mismatch Rules (Top column 4 of Table 1.1) of the OECD are incomplete, the hybrid mismatch arrangements (Top column 2 of Table 1.1), which are tax plans arrangements set in place by MNEs jurisdictions in practice, will not be neutralized and the categories of the hybrid mismatch including the D/Ni, DD, and Indirect D/Ni will still result in eroding the tax base and profits of the other jurisdictions. Other MNEs will still benefit from the tax arbitrage arising from hybrid mismatch arrangement.

⁴² Control variables refer to additional factors included in statistical analyses to account for potential confounding effects and to isolate the relationship between the independent and dependent variables on interest (Bernerth and Aguinis, 2016). See: Memon et al. (2024). Control variables: a review and proposed guidelines. https://www.researchgate.net/publication/383272073_CONTROL_VARIABLE_A_REVIEW_AND_PROPOSED_GUIDELINES.

⁴³ Bhandari (2023) states that the independent variable is the cause. Its value is independent of other variables in your study. See: Bhandari, P. (2023). Independent vs. dependent variables | Definition & examples. <https://www.scribbr.com/methodology/independent-and-dependent-variables/>.

⁴⁴ Ibid.

The philosophy of the study is that the tax planning systems of MNEs are incorporating the three hybrid mismatch categories to prepare the six hybrid mismatch arrangements in their tax planning system. In this context the study indicates that the six hybrid mismatch arrangements that are planned by MNEs include the following:

- (1) hybrid financial instrument - (D/Ni outcome),
- (2) disregarded payment made by a hybrid - (D/Ni outcome),
- (3) payment made to a reverse hybrid - (D/Ni outcome),
- (4) deductible payment made by a hybrid – (DD outcome),
- (5) deductible payment made by a dual resident – (DD outcome) and
- (6) the imported mismatch arrangements – (Indirect D/Ni outcome) to benefit from tax arbitrage.

Depending on the jurisdiction or domestic law which falls under independent variable and the OECD BEPS⁴⁵ Action 2 Recommended Hybrid Mismatch Rules including the response, defensive, and scope (which fall under the dependent variable), MNEs can erode or not erode the tax base⁴⁶ of the countries or they can benefit from hybrid mismatch arrangements tax arbitrage.

The OECD (2015) advocates that because of concerns raised by several OECD member countries, the OECD undertook a review⁴⁷ with interested member countries⁴⁸ to identify examples of tax planning schemes involving hybrid mismatch arrangements and to assess

⁴⁵ Domestic tax base erosion and profit shifting (BEPS) relate to tax planning strategies that MNEs use to exploit loopholes in tax rules to artificially shift profits to low or no-tax locations as a way of avoiding paying tax. See: OECD (2024). base erosion and profit shifting (BEPS). <https://www.oecd.org/en/topics/base-erosion-and-profit-shifting-beps.html>.

⁴⁶ The tax base of an asset or liability is the amount attributed to that asset or liability for tax purposes. See: Deloitte (1996). IAS 12 – income taxes – IAS plus. <https://www.iasplus.com/en/standards/ias/ias12>.

⁴⁷ Reviews are intended to provide independent, comprehensive, and comparative assessment of OECD member and non-member countries' tax systems as well as concrete recommendations for tax reform. See: OECD (2022). OECD Tax policy reviews. https://www.oecd.org/en/publications/oecd-tax-policy-reviews_de3719f2-en.html.

⁴⁸ The OECD has 38 member countries. See: OECD (2025). Members and partners. <https://www.oecd.org/en/about/members-partners.html>.

the effectiveness of response strategies adopted by those countries. That review culminated in a report on Hybrid Mismatch Arrangements: Tax policy and Compliance Issues (Hybrids Report, OECD-2012). With reference to OECD (2015) above, this study refers to international tax challenges that are happening in the digital economy and notes that most multinational enterprises (MNEs) shift to geographical locations where there are tax havens⁴⁹ so that they can maximize profits and take advantage of the hybrid mismatch arrangements that might be attractive in those jurisdictions. Some do not even just follow the tax haven, but they also consider the political regime, to paraphrase it, the independent variable represented in the study by Specific recommendations on improvements to domestic law. Other countries are very volatile⁵⁰ in terms of the political system while others are unsettled. It has become an issue of international business culture. Table 1.1 indicates some requirements to disclose Specific recommendations on improvements to domestic law. This then shows that the political regime that is locked in the Specific recommendations on improvements to domestic law is an independent variable. Not only does the Table indicate the Specific recommendations on improvements to domestic law as an independent variable, but it also shows the Recommended Hybrid Mismatch Rules of the OECD as the dependent variable. In consideration of the concepts of this study, any incompleteness found as a shortcoming within the OECD recommendations report will result in the incompleteness of neutralizing the effects of hybrid mismatch arrangements.

OECD (2012) submits that the Hybrid Report set out several policy options to address such hybrid mismatch arrangements and concluded that domestic law rules which link the tax treatment of an entity, instrument, or transfer to the tax treatment in another country had significant potential, to paraphrase it, an independent variable, as a tool to address hybrid

⁴⁹ Tax havens are low-tax jurisdictions that offer businesses and individuals opportunities for tax avoidance. See: James, R. and Hines, Jr. (2007). Tax havens. <https://www.bus.umich.edu/otpr/wp2007-3.pdf>.

⁵⁰ Regime changes and political shocks. See: University of Oxford (2019). Political volatility. <https://www.oii.ox.ac.uk/research/projects/political-volatility/>.

mismatch arrangements. The Report concluded that although such linking rules⁵¹ make the application of domestic law more complicated, the Hybrid Report noted that such rules are not a novelty; to paraphrase it, they have been there for a while. This study therefore asserts that the political regime or domestic law of many jurisdictions has an influence on neutralizing the effects of hybrid mismatch arrangements.

KPMG (2014)⁵² advocate that in July 2014, it reported on the OECD's annual tax conference, where the main discussion was on the joint OECD and G20 Base Erosion and Profit Shifting project (BEPS). On 20-21 September 2014, the G20 Finance Ministers endorsed the progress being made towards completing the two-year BEPS Action Plan and committed to finalizing all action items in 2015. Prior to this, the OECD released the first seven deliverables of the OECD action plan on 16 September 2014. This study advocates that even though the OECD has BEPS Action 2 as the final report for neutralizing the effects of hybrid mismatch arrangements, the completeness of the system remains in question. The researcher therefore examines the competence, to paraphrase it, shortcomings of the BEPS Action 2 and reports any gaps that require completeness.

As indicated in the earlier sections of this research above the use of hybrid mismatch arrangements is recommended by the Organization for Economic Co-operation and

⁵¹ OECD linking rules are recommendations for governments and businesses on how to conduct business responsibly. The rules aim to encourage positive economic, environmental, and social change, while reducing negative impacts. In response, the 2015 BEPS Action 4 report focused on the use of all types of debt giving rise to excessive interest expense or used to finance the production of exempt or deferred income. In particular, the Action 4 final report established rules that linked an entity's net interest deductions to its level of economic activity within the jurisdiction, measured using taxable earnings before interest income, tax, depreciation and amortisation. This included three main elements:

- A fixed ratio rule based on a benchmark net interest/EBITDA ratio.
- A group ratio rule allowing an entity to deduct more interest expense based on the position of its worldwide group.
- Targeted rules to address specific risks not addressed by the general rule.

See: Dourado, A.P. (2016). Tax avoidance revisited in the EU BEPS context.

https://www.ibfd.org/sites/default/files/2021-04/17_036_tax_avoidance_revisited_EATLP_15_final_web.pdf

⁵² KPMG (2014). BEPS alert. Briefing on base erosion and profit shifting. <https://assets.kpmg.com/content/dam/kpmg/pdf/2015/02/beps-alert-1409-03-BEPS-The-2014-Deliverables.pdf>.

Development (OECD) and its Base Erosion and Profit Shifting (BEPS) Action 2 Final Report 2015⁵³ as a common ground to resolve international tax differences arising from different jurisdictions and that hybrid mismatch arrangements may be used to exploit differences in countries' tax rules and achieve results such as: the deduction of a payment in the country of the payer without a corresponding inclusion in the country of the payee (D/NI outcome); the double deduction of the same expense in different countries (DD outcome); and indirect mismatch (Indirect D/NI outcome). Because of the difference in tax treatment between two or more jurisdictions, hybrid structures arise.

With reference to the OECD (2015) above, this study will examine MNEs within South Africa, including the mining industry, the manufacturing; and the service industry such as the big four accounting and tax firms including Deloitte, Ernst & Young, KPMG and PWC to mention a few as they use the three categories of hybrid mismatch arrangements for their tax plan in South Africa. The study debates that if the mismatch arrangements in South Africa are found to be incomplete and that the OECD Action 2 does not neutralize the mismatch then there is a substantial risk of distortion of tax revenue, competition, economic efficiency, transparency, and fairness. PWC (2012)⁵⁴ submits that hybrid mismatch arrangements (HMA) are arrangements which exploit differences in the tax treatment of instruments, entities or transfers on cross-border trade and investment and often lead to “double non-taxation”. They may significantly reduce overall tax for taxpayers and therefore decrease tax revenues of countries.

This study therefore aims at unlocking shortcomings of the OECD BEPS Action 2 through research. Causal relationship between variables is applied in relation to hybrid mismatch arrangements (refer to top column 2 of the OECD Table 1.1) to establish and report the shortcoming of the OECD. The study incorporates quantitative research designs to explain

⁵³ OECD (2015). Neutralizing the effects of hybrid mismatches. https://books.google.com/books/about/OECD_G20_Base_Erosion_and_Profit_Shifting.html?id=12OQDwAAQBAJ.

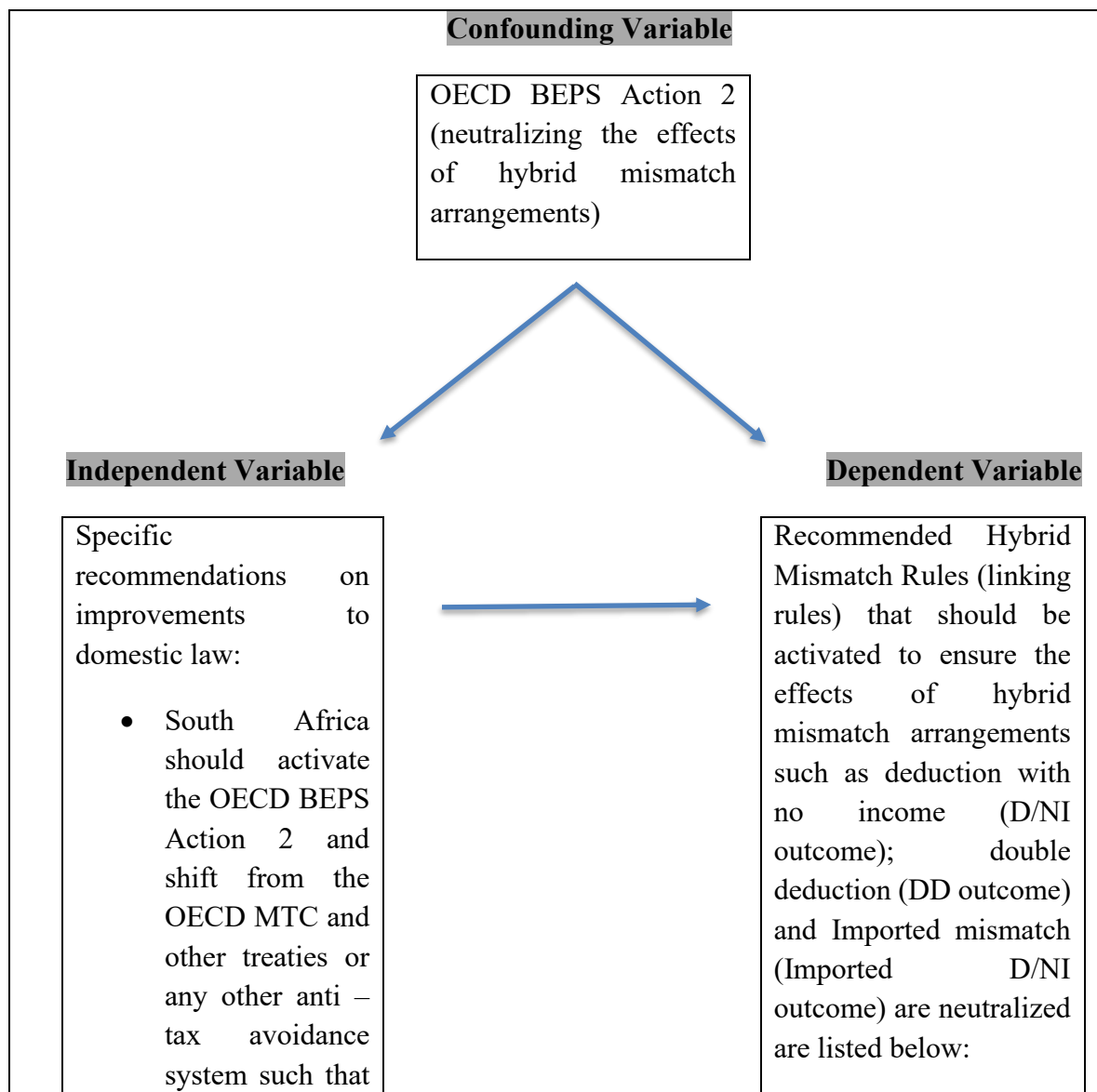
⁵⁴ See: PWC (2012). Tax policy. <https://www.pwc.com/cz/cs/danove-sluzby/danova-politika/assets/hybrids-mismatch-en.pdf>.

the findings (shortcomings) of the OECD BEPS Action 2 Final Report 2015 and answer the research objectives and questions.

The researcher incorporates the causal research method as per figure 1 that follows.

Figure 1. Causal or Explanatory Research Diagram

Figure 1 below, indicates Specific recommendations on improvements to domestic law (the independent variable) and the OECD Recommended Hybrid Mismatch Rules (the dependent variable) or linking rules necessary to neutralize the effects of hybrid mismatch arrangements.



	the OECD BEPS Action 2 gains preeminence in the South African domestic law that is sufficient to cause changes in the OECD Recommended Hybrid Mismatch Rules such as the below: • Denial of MNEs and individuals to pay the parent of an MNE or relative in the case of an individual, any amount that is realized because of hybrid mismatch arrangements. • Individuals get restrictions from paying cross border instruments that are opaque in South Africa but transparent in other countries. • Defensive rules are applied such that transactions		• Denial of payer • Uniform characterization of instruments such that there is no arrangement resulting in hybrid mismatch arrangement. • Transparency of entities such that there is no opaque of entities in other countries. • Clear definition of scope of payment such that opaqueness is exposed and hence enables the denial of opaque transactions within MNEs and individuals.
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	are characterized uniformly without causing hybrid mismatch arrangements within MNEs and individuals in different countries. • Clarity of the scope for denying offshore transactions such as third-party transactions and group related transactions as indicated on the OECD Table 1.1.		
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Source: Created by the researcher

In the study the OECD BEPS Action 2 Final Report 2015 - neutralizing the effects of hybrid mismatch arrangements (the confounding variable) affects the relationship between Specific recommendations on improvements to domestic law and the OECD Recommended Hybrid Mismatch Rules (linking rules). For example, if country A's (head office) domestic law has hybrid mismatch arrangement structures that are compatible with those in country B (subsidiary) with regard to a hybrid financial instrument which is under category D/NI (Column 1 of the OECD Table 1.1), Specific recommendations on improvements to domestic law (tax policy), the independent variable, denies the dividend exemption for deductible payment in the subsidiary which implies higher taxable income in country B the linking rule (OECD Recommended Hybrid Mismatch Rule), the dependent variable, denies the payer deduction and the defensive rule characterizes the dividend as other income in the payee jurisdiction/country A (head office) and the reason which is in this context, the scope, indicates that because they are related party transactions and structured arrangements are in

place, that squares up the hybrid mismatch arrangement theory and thus neutralizes the effects of hybrid mismatch arrangement.

If the domestic law (tax policy) of country A (the head office) is not compatible with the OECD BEPS Action 2, for example using Anti-Tax Avoidance Directive (ATAD) whereas country B (the subsidiary) is incorporating General Anti-Avoidance Rules (GAAR) which are not compatible with country A (the head office) which is also the payee, even if it responds by denying the payer's deduction and include it as ordinary income in their financial statements there will still be a hybrid mismatch and the head office will still benefit from the tax arbitrage arising from the differences in hybrid arrangement structures between the two countries until the domestic law in both countries has laws (tax policies) that are compatible with each other.

The causality or explanatory research explanation is that there should be sufficient causes and necessary causes to make compatibility happen. Morgan (2013) indicates that there are two causes that make the causal research happen including the sufficient causes and necessary causes. This study philosophizes that the more the compatibility of tax policies between jurisdictions (represented by Specific recommendations on improvements to domestic law) the more the neutrality of the effects of hybrid mismatch arrangements due to the necessary causes (represented by the OECD Recommended hybrid mismatch rules or linking rules) and vice versa.

This study conducts a survey to establish domestic law or tax policy – (represented by Specific recommendations on improvements to domestic law) including hybrid mismatch arrangement structures and elements of the subsidiaries and head offices of MNEs in South Africa and establish compatibility, addressing of hybrid mismatch structures (tax planning structures), competence, and reality of neutralizing the effects of hybrid mismatch arrangements in South Africa by incorporating the OECD Table 1.1 and report any shortcomings within the OECD BEPS Action 2 Final Report 2015.

2.6 Review of prior studies

Harris (2014) states that the use of hybrid mismatch arrangements is one of the ways in which large multinationals end up paying effectively lower tax rates than the small domestically bound enterprises that multinationals often compete with, to paraphrase it, distort tax revenue and hinder competition in relation to foreign direct investment (FDI).

This study indicates that this is a major concern for most developing countries like South Africa and hence the need of the study so that research questions should be answered while at the same time research objectives should be achieved.

According to Harris (2014), hybrid mismatch arrangements are not new in international tax, and it is conceptualized that it has always been possible to engage hybrid mismatch arrangements with the purpose of minimizing tax.

Harris (2014) submits that what has changed in the proliferation of hybrid mismatch arrangements is the ease with which they can be achieved and their comparative importance. This change, as Harris (2014) asserts, is a function of the increase in electronic commerce and globalization. Such arrangements are not wrong per se - they are simply a function of two countries having, typically unilaterally, decided not to tax a particular cross-border dealing or give some other favourable tax effect (such as a double deduction). What might be considered 'wrong' as Harris (2014) asserts, is the way in which tax advisers and multinational enterprises have in recent years relentlessly engaged in exploiting hybrid mismatch arrangements.

As Harris (2014) further advocates that before discussing manners in which hybrid mismatch arrangements can be neutralized, it is necessary to identify exactly what such arrangements are, this study conceptualizes it as, to access and find out what exactly are MNEs looking for in a particular tax planning structure such as a deduction without inclusion (D/Ni - outcome) which results in a deduction in one state but without an inclusion of income in the financial statements in the other state for tax calculation and thus unfairly benefiting from the mismatch.

Another example as the researcher indicates, is a double deduction (DD - outcome), to paraphrase it, exclusion of a particular income resulting from the hybrid mismatch or tax planning structure from the financial statements of a source state as well as in the home country or in the second state that receives the income from that source state in the financial statements of the home country or that other state thus unfairly resulting in a double deduction and then benefiting from the hybrid mismatch arrangement.

This then discloses an act of not being taxed in the source state and not being taxed in the home country or that other state, be it either for the purpose of eroding the tax base at zero 0% tax in both states: or for benefiting from the arbitrage of a hybrid mismatch arrangement in that other state than the source state. Nevertheless, it is for benefitting from the arbitrage of hybrid mismatch arrangements that this study is more focusing on.

Harris (2014) contends that this act of eroding the tax base and benefiting from the hybrid mismatch tax arbitrage is not an easy task because the phrase hybrid mismatch arrangement is not logically found from a tax perspective as such it is only possible to discuss an understood meaning. According to Harris (2014), the hybrid part of the phrase means that, in a particular case that is taken to be an arrangement, two countries do not agree on the classification or characterization of some features of the arrangement that is fundamental for income tax purposes.

As the study mentions that other countries, because of their weaknesses or low content in factor endowments or factors of production such as land, minerals like gold, diamond and platinum, they end up compromising tax planning schemes without knowing that they will suffer tax base erosion and tax arbitrage from such schemes down the line due to shortages of experts such as international tax consultants, international tax authorities within their jurisdiction (domestica law) that specialize in international tax such as hybrid mismatches, transfer pricing to mention just two.

According to Harris (2014), all the fundamentals of income taxation give rise to hybrid arrangements. So, to understand the scope for hybrid arrangements, as Harris (2014) contends, it is necessary to investigate the fundamentals of income taxation.

Harris (2014) advocates that the mismatch feature is different and suggests that the diverse ways in which two countries view the arrangement produce some sort of inconsistent outcome when looked at fully. According to Harris (2014), not all hybrid arrangements give rise to mismatches because in some cases the differing views of the two countries do not produce an inconsistent outcome. One of the complexities in seeking to establish rules to neutralize the effects of hybrid mismatch arrangements is identifying which arrangements give rise to inconsistent outcomes.

With reference to Harris (2014), this study then indicates that hybrid mismatch arrangements are used for tax planning within multinational enterprises (MNEs). According to the researcher, this study then indicates that tax planning is part of strategies in business and there is nothing wrong with it. This study then postulates that while there are tax planning arrangements in place there are some non-compliance within MNEs either due to shortcomings within the OECD BEPS Action 2 Final Report 2015, or due to lack of knowledge, to paraphrase it, lack of specialized skills in international tax. The study conceptualizes that if tax planning is meant not to tax a particular cross-border dealing or give some other favourable tax effects such as a deduction / no inclusion (D/Ni outcome) the tax planning system should do exactly that, and not vice versa. Doing things vice versa implies intentional non-compliance or lack of knowledge. With reference to Harris (2014), the study then indicates that in practice, MNEs must identify hybrid categories and then formulate tax plans that would lead to their required outcome which is mostly to profit from the tax arbitrage.

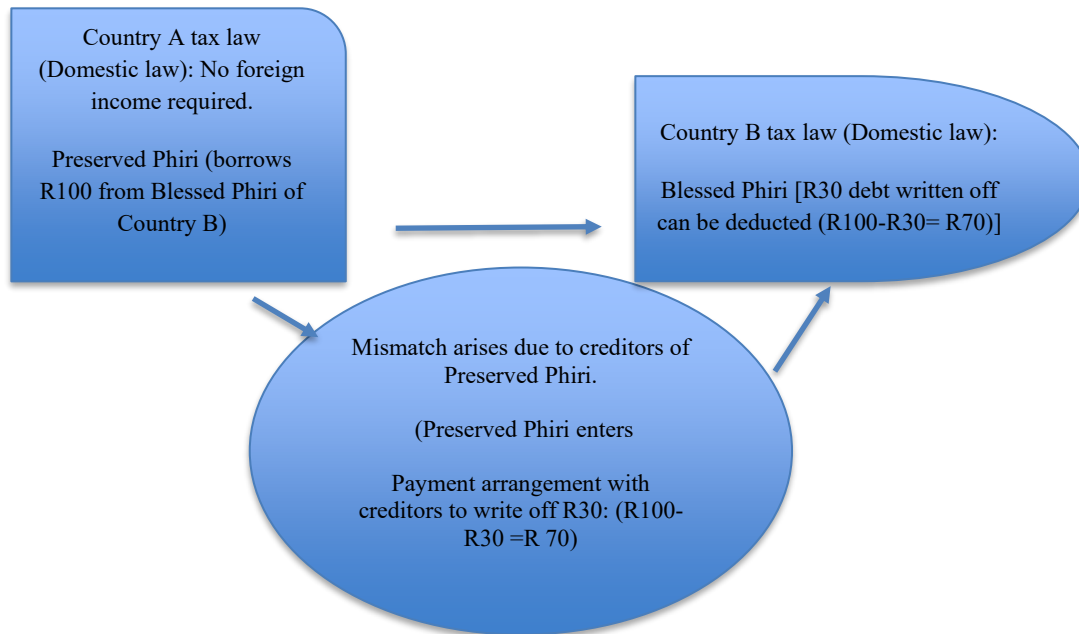
As Harris (2014) indicates, tax planning does not come with ease, meaning that there are some considerations that come into play such as domestic law –local jurisdiction and of course mismatch arrangements such as the following:

- (1) financial instruments,
- (2) disregarded payment made by a hybrid,
- (3) payment made to a reverse hybrid,
- (4) deductible payment made by dual resident, and
- (5) imported mismatch arrangements and many others.

The study refers to Harris (2014) and gives the following examples in relation to each tax plan and arrangements for considerations. Note that the study adds some value, to paraphrase it, closes literature gaps, to Harris (2014) by sketching the scenarios as below:

Example 1⁵⁵

1. Mismatch in Identifying Payment - Deduction but No Income (D/NI outcome)



Source: Created by the researcher

Preserved Phiri, a resident of Country A, owes money to Blessed Phiri, a resident of Country B. Preserved Phiri enters an arrangement with its creditors whereby part of the debt owed to Blessed Phiri is written off. Under Country B tax law Blessed Phiri can deduct the amount of the debt that is written off. Under the Country A tax law Preserved Phiri is not required to report any income. If the reduction in the debt is looked at in isolation, there is a mismatch that gives rise to a cross-border tax benefit (deduction in Country B) without any trace in Country A and therefore, no income due to tax laws in country A. According to Harris (2014),

⁵⁵ See: Harris, P. (2014). Neutralizing effects of hybrid mismatch arrangements. https://www.un.org/esa/ffd/wp-content/uploads/2014/09/20140923_Paper_HybridMismatchArrangements.pdf.

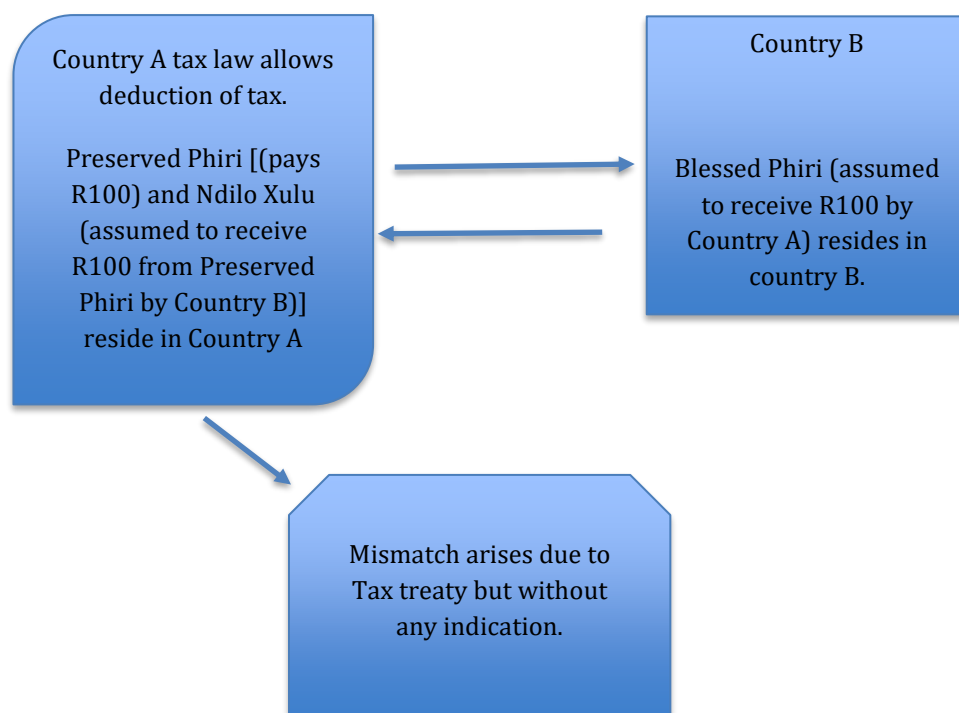
such a scenario is not abusive, if Preserved Phiri has cancelled losses in Country A. However, the mismatch can result in untaxed funds from a tax perspective providing that Preserved Phiri has managed to set off all the negative results that gave rise to the arrangement against income. This income might be in either Country A or elsewhere, through carryback of losses or setting losses against income from other activities, including those of related parties.

Harris (2014) states that example 1 above is a simple illustration of a mismatch between two countries as to whether a payment exists for tax purposes. In this example, Country B (Creditor's country) sees value passing from Blessed Phiri (creditor) to Preserved Phiri (debtor) when Blessed Phiri forgives part of the debt. Country B also sees this payment as having a sufficient business purpose and grants a deduction for it. By contrast, Country A (Debtor's country) does not recognize the payment received by Preserved Phiri in the form of a reduction in liability. The result is a cross-border mismatch.

Harris (2014) advocates that the above example focuses on countries disagreeing as to the very nature of whether there is a payment that should be recognized for tax purposes. This case should not be confused with similar examples that focus on other income tax fundamentals, such as where both countries recognize a payment but characterize it differently, e.g. Country A characterizes the forgiven debt as a payment of capital and does not tax it because Country A does not tax capital gains (Harris, 2014).

Example 2

Mismatch in Recipient of Payment -D/NI Outcome



Source: Created by the researcher

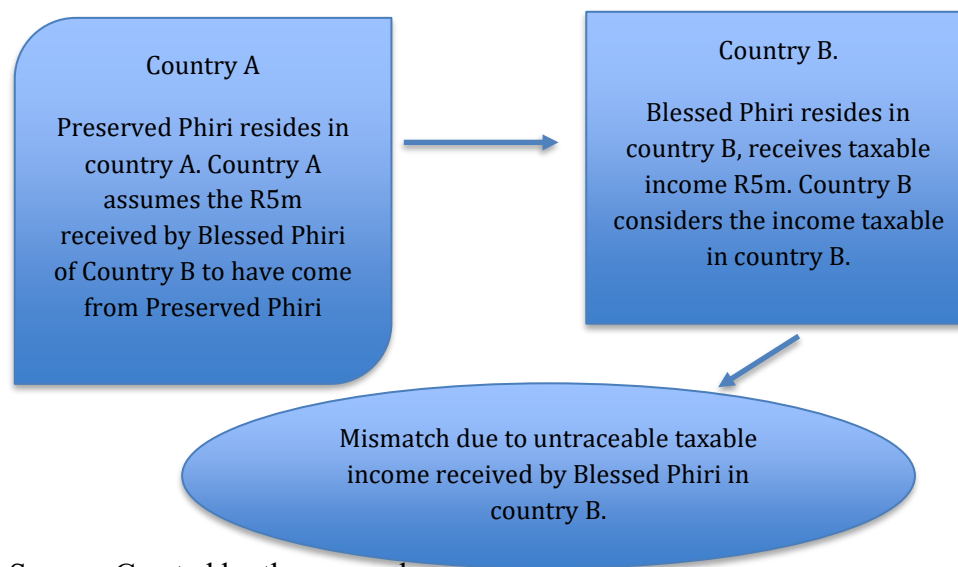
Preserved Phiri, a resident of Country A, makes a payment that is deductible for Country A tax purposes. Country A considers that the payment is made to Blessed Phiri, a resident of Country B. Country B considers that the payment is made to Ndilo Xulu, a resident of Country A. If the taxation of the recipient in their state of residence is looked at in isolation, there is a mismatch that gives rise to a cross-border tax benefit (deduction in Country A) without any realization of income to the recipient in a residence state. If Country A taxes the payment at source (e.g., by withholding) there may be little or no benefit. However, if that tax at source has been eroded (whether unilaterally or by tax treaty) then the cross-border benefit can be substantial.

Harris (2014) advocates that a usual form of this type of mismatch is where the two countries do not agree on what constitutes a tax subject, to paraphrase it, a hybrid entity. However, this style of mismatch is generic and not limited to the use of hybrid entities. For example, it can also arise where two countries disagree as to which of two related parties receives a payment.

In this study example 2 above is a simple illustration of a mismatch between two countries that recognize a payment but disagree as to which country should be treated as receiving it. In this example, both Country A and Country B see a payment as being made by Preserved Phiri, but they do not agree on who receives the payment. So, Country A grants a deduction for the payment but neither country taxes the receipt because neither country considers the recipient of the payment to be a resident. The study then notes that this is particularly a problem when source state taxation of the payment has been eroded. The study also notes that this style of mismatch is commonly triggered in the context of hybrid entities, to paraphrase it, where one country considers an artificial entity or a tax treaty as a tax subject, but another country does not.

Example 3

Mismatch in Maker of Payment - Double Dip Deduction



Source: Created by the researcher

Blessed Phiri, a resident of Country B, receives a payment that is included in income. Country A considers that the payment is made by Preserved Phiri, a resident of Country A, and that the payment is deductible for Country A purposes. Country B considers that the payment is made by Blessed Phiri, a resident of Country B, and that the payment is deductible for Country B purposes. Presuming that both Preserved Phiri and Blessed Phiri can deduct the payment against taxable income, there is a cross-border mismatch that gives rise to two tax benefits including deduction in Country A for Preserved Phiri and in Country B for Blessed Phiri with only one traceable income for Blessed Phiri in Country B.

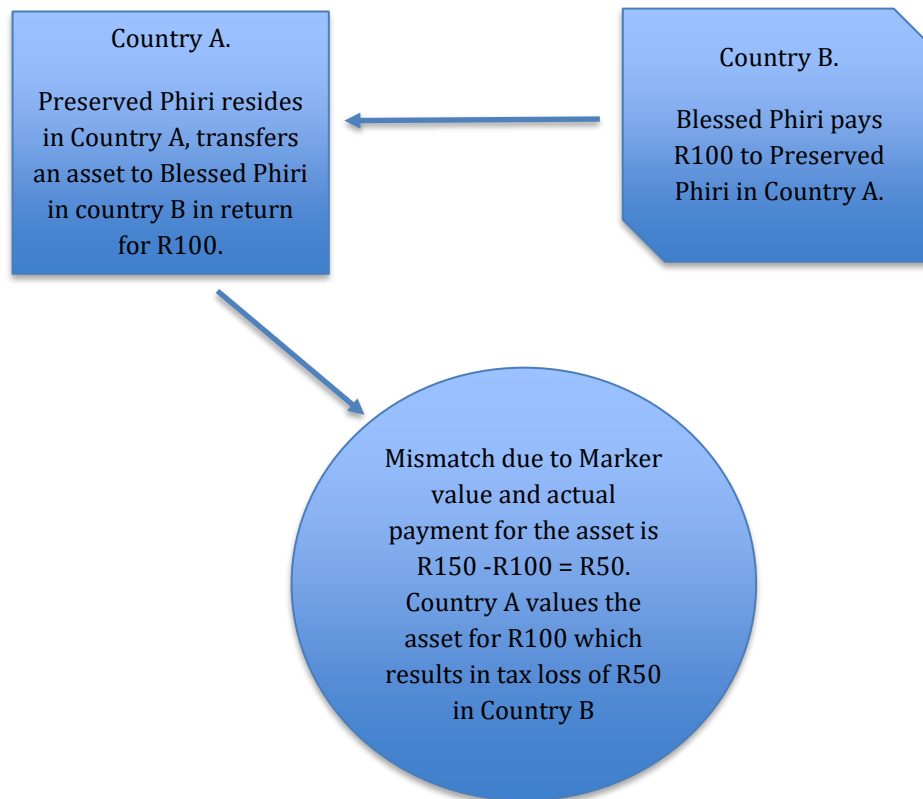
Based on the example above, this study indicates that if country A taxes the payment at source by withholding tax, there may be little or no benefit. However, if tax at source has been eroded, whether unilaterally or by tax treaty, or if Country B grants Blessed Phiri foreign tax relief for that taxation at source whether unilaterally or by tax treaty then the cross-border benefit can be meaningful. A usual form of this type of mismatch is where the two countries do not agree on what constitutes a tax subject, or hybrid entity. However, this is a generic mismatch issue and is not limited to the use of hybrid entities. For example, it can also arise where two countries disagree as to which of two related parties makes a payment.

This study then indicates that example 3 above is another illustration of a mismatch between two countries that recognize a payment but disagree as to which country should be treated as making it. In this example, both Country A and Country B see a payment as being received by Blessed Phiri, but they do not agree on who makes the payment. The income tax fundamental in issue is based on the allocation of payment, which is the same as in Example 2, but this is a different variation involving double dip deductions.

So, Country B includes the payment in calculating Blessed Phiri's income, but both Country A and Country B grant a deduction for the payment to different entities, to paraphrase it, two deductions from one income. The study therefore indicates that this type of mismatch is often triggered in the context of payments made by hybrid entities in real world scenarios.

Example 4

Mismatch in Quantifying Payment - Large Deduction but Small Income



Source: Created by the researcher

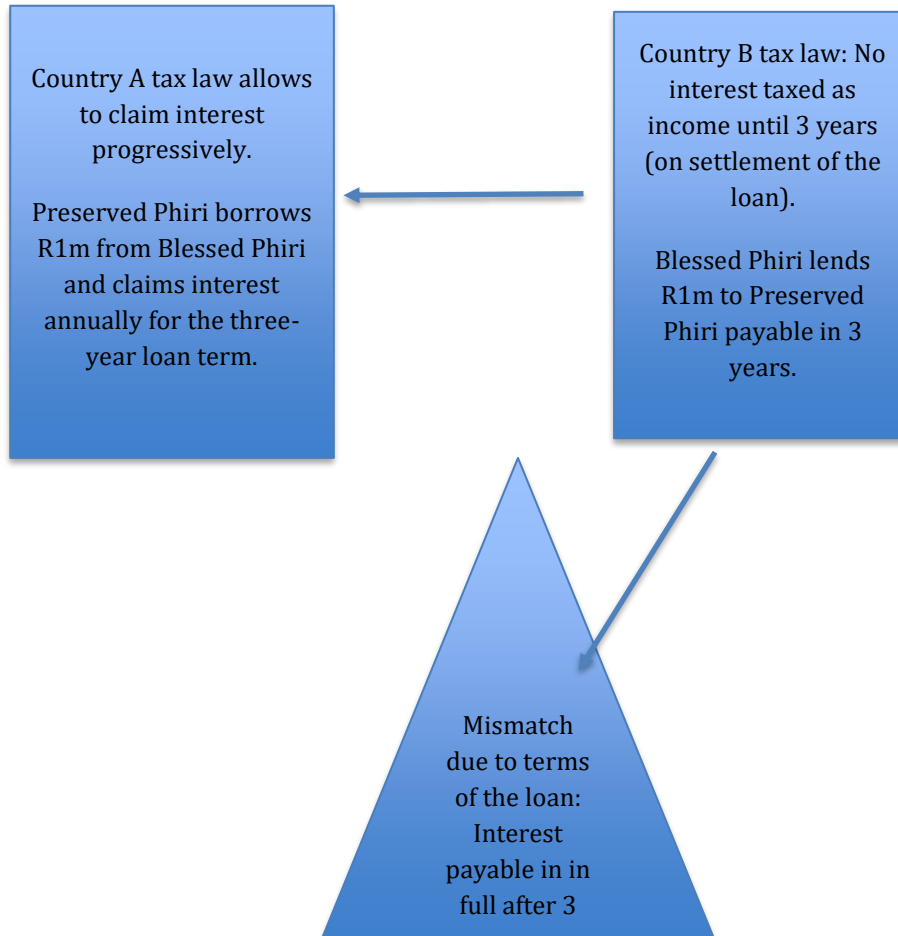
Preserved Phiri, a resident of Country A, transfers an asset to Blessed Phiri, a resident of Country B, in return for a payment of R100 in cash, which is equal to the tax cost of the asset for Country A purposes. Preserved Phiri and Blessed Phiri are related, and both Country A and Country B agree on the market value of the asset is R150. Country A accepts the transaction at the price of R100 for tax purposes and considers that Preserved Phiri has no gain or loss. Because Preserved Phiri and Blessed Phiri are related, Country B applies a market value rule to the transaction and so considers the asset to have been purchased for R150. Country B proceeds to grant a deduction for that R150 either through depreciation or on sale of the asset by Blessed Phiri. There is a mismatch between Country A and Country B as to the price paid for the asset for tax purposes. The discrepancy of R50 (the difference

between R100 and R150) results in a tax benefit, or deduction in Country B with no trace of the R50 in Country A resulting in no income or gain. In a reverse scenario, the price consideration is higher than what is paid. In real world scenarios there is a scope for application of corresponding adjustment rules in the transfer pricing provisions of tax treaties. Harris (2014) postulates that while transfer pricing rules protect taxpayers from many types of double taxation, in most countries they have no application of this kind of scenario where the application of domestic rules results in under taxation. This study indicates that transfer pricing erodes tax revenue through mismatches of this nature, to paraphrase it, through valuation of assets where different countries agree with each other without knowing that the other country is profiting from the market valuation whereby related party transactions like the case of Preserved Phiri and Blessed Phiri indicated in the study come into play.

This study indicates that example 4 above is an illustration of a mismatch between two countries that recognize a payment but disagree with the actual cash payment. In this example, there are two payments; one being the transfer of the asset from Preserved Phiri to Blessed Phiri; and the second being the cash payment from Blessed Phiri to Preserved Phiri. Both Country A and Country B agree to the first payment for the asset. However, they disagree on quantification of the market consideration paid for the transfer in cash. Country A accepts the payment at its face value and calculates Preserved Phiri's gain/loss from the transaction accordingly. By contrast, Country B deems Blessed Phiri to have paid an amount equal to the market value of the asset received in this context, R150. The result is that Country B grants a deduction, either present or in the future for an amount that is more than what was brought into account in Country A in calculating Preserved Phiri's gain or loss. Concomitantly, this case should not be confused with similar examples that focus on other income tax fundamentals but also result in a smaller amount being brought into account in one country than is deducted in another country. One such similar example is where one country considers a payment received as wholly capital in nature, but the country of the payer considers it as a mixture of revenue and working capital.

Example 5

Mismatch in Timing Payment - Early Deduction but Late Income



Source: Created by the researcher

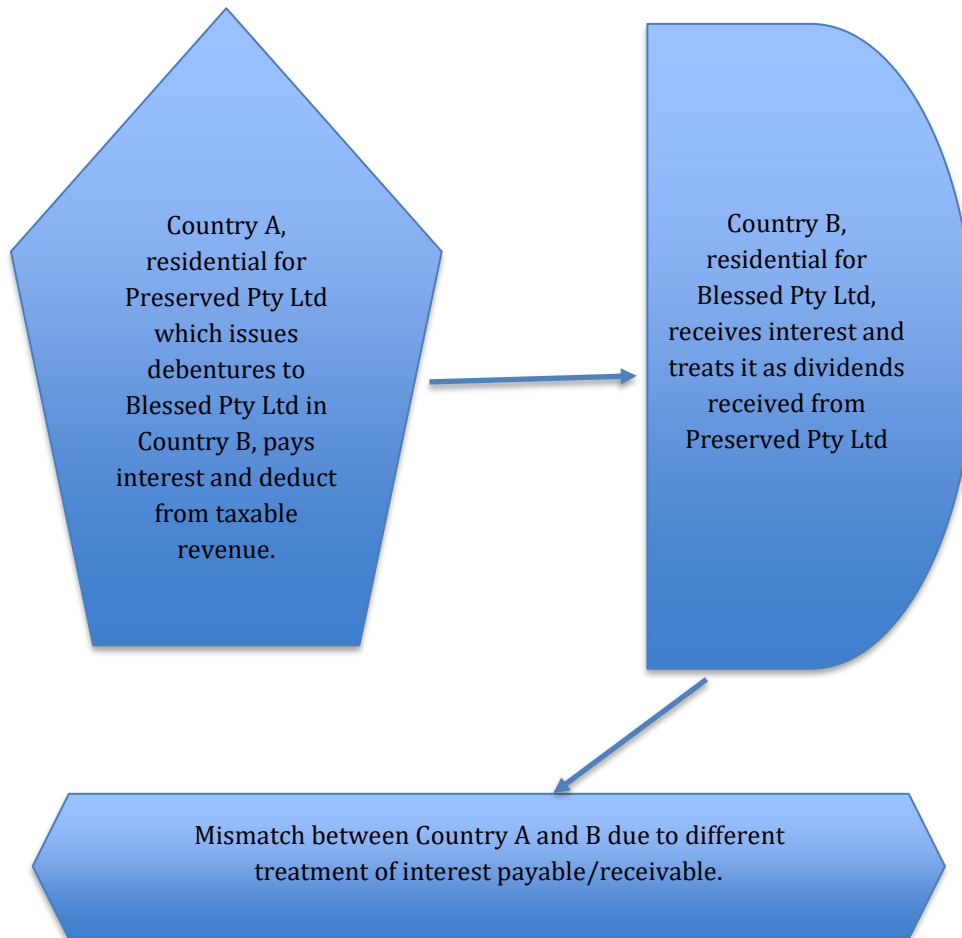
Preserved Phiri, a resident of Country A, borrows money from Blessed Phiri, a resident of Country B. The loan is for a term of three years and the agreement requires Preserved Phiri to pay interest in one lump sum at the end of the three-year period. Country A permits Preserved Phiri to deduct the interest in purposes as it accrues annually till fully paid in three years' time. Country B does not tax the interest as income to Blessed Phiri until it is received in year three. There is therefore a mismatch between Country A and Country B as to the time at which the interest should be recognized for tax purposes. This gives rise to a cross-border

tax benefit because most of the interest is deductible in Country A in tax years before it is included in income in Country B. In real world scenario, this timing benefit is not resolved if Country A taxes the interest at source by withholding tax because withholding tax is typically only at the point the interest is paid, in this context, when Country B also taxes Blessed Phiri.

In this study example 5 is an illustration of a mismatch between two countries that recognize a payment but disagree on terms of interest charges payment that should be recognized for tax purposes. In this context, Country A grants Preserved Phiri a deduction for interest payments as they accrue over the three-year term of the loan, because Country A tax law follows financial reporting in this regard. By contrast, Country B requires Blessed Phiri to include the interest in calculating income when it is fully received. The study then notes that source state taxation of the interest often does not resolve the timing mismatch because taxation is imposed on income basis within the tax year. This case should not be confused with similar examples that focus on other income tax fundamentals but also result in timing benefits across borders, where two countries don't agree as to who is the owner of an asset and so simultaneously both grant depreciation deductions for the asset as it is in example 9 in this study – Mismatch of who owns the asset.

Example 6

Mismatch in Characterizing Payment - Deduction but No Specific Tax Relief



Source: Created by the researcher

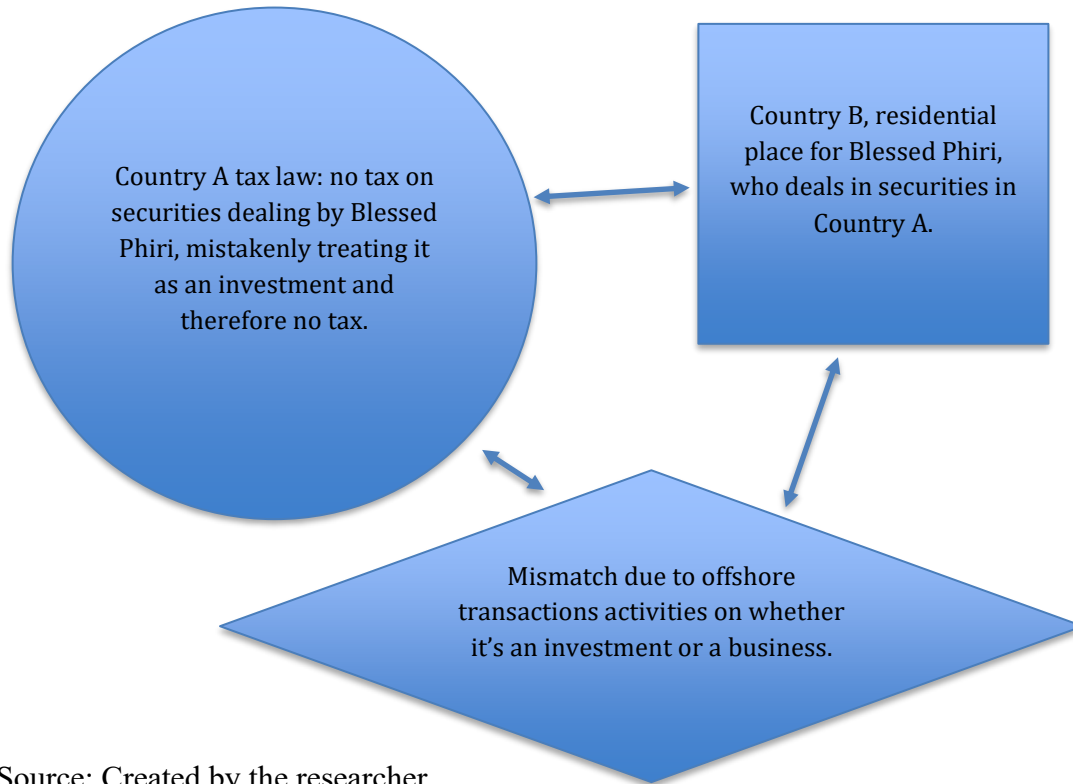
Preserved Pty Ltd, a company resident in Country A, issues perpetual, subordinated, profit-sharing debentures to Blessed Pty Ltd, a company resident in Country B. Country A characterizes the return payable on the debentures as deductible interest. Country B characterizes the return as dividends and grants a participation exemption, to paraphrase it, exemption for dividends paid between two companies, to Blessed Pty Ltd with respect to receipt of the dividends. There is a mismatch between Country A and Country B due to different treatments of interest arising from the debentures. This gives rise to a cross-border

tax benefit, deduction in Country A, with no trace record in Country B due to exemption thus granted. In real world scenarios there are many variations on this type of mismatch. This study asserts that even though the two countries classify the investment in the same manner as debenture with interest receivable and payable, other countries (domestic law) would classify it as debt or equity.

In this study example 6 above, is an illustration of a mismatch between two countries that recognize a payment but disagree on the treatment of the payment for tax purposes. In this context, Country A treats the payment as interest for tax purposes and so grants Preserved Pty Ltd a deduction for it. In contrast, Country B treats interest received as a dividend, grants indirect foreign tax relief, cross-border dividend relief, and so does not tax Blessed Pty Ltd with respect to the receipt. The result is a deduction in one country with no inclusion in income (D/Ni Outcome) in the other country. This case should not be confused with similar examples that focus on other income tax fundamentals but also result in a deduction with no inclusion in income, as in Examples 1 and 2 of this study.

Example 7

Mismatch of Earning Activities - No Source State Tax but Foreign Tax Relief



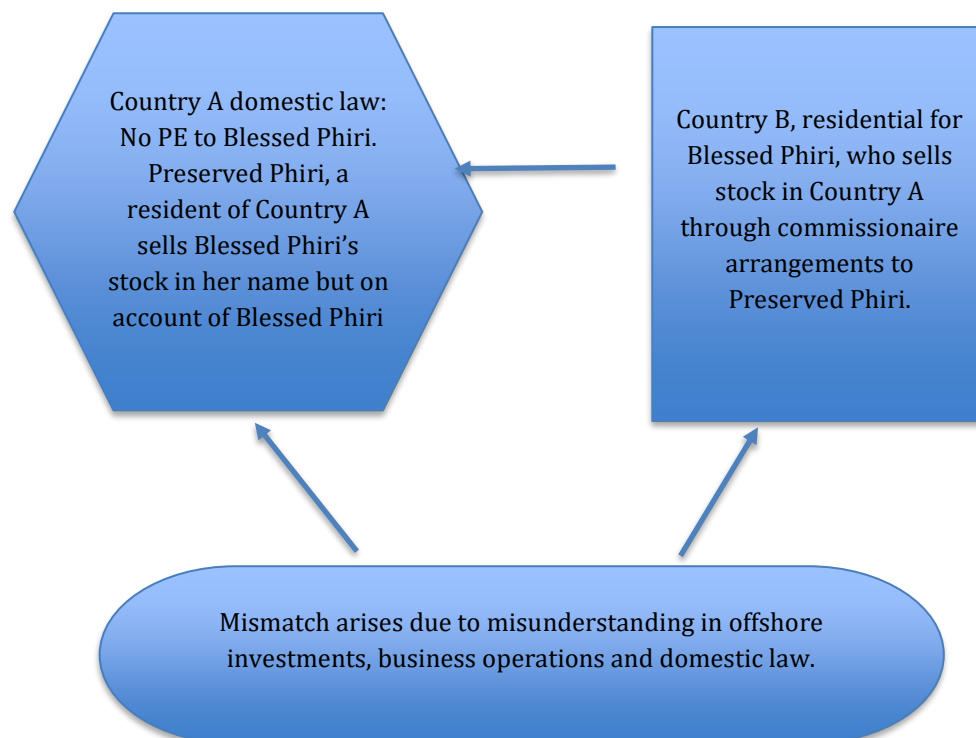
Source: Created by the researcher

Blessed Phiri, a resident of Country B, deals in stock trading in Country A. Country A does not consider that the activities of Blessed Phiri are sufficient to conduct a business and so classify them as an investment. As a result, Country A does not tax Blessed Phiri with respect to the dealings. In contrast, Country B considers that Blessed Phiri is conducting a business in Country A through a permanent establishment (PE) and so grants Blessed Phiri foreign tax relief in the form of an exemption. There is a mismatch between Country A and Country B arising from the earning activity of Blessed Phiri who is conducting an investment or business. This gives rise to a cross-border tax benefit in that country taxes income derived from the dealing in securities. In real world scenarios, there are many variations of this kind of mismatch. Some occur even though the two countries classify the activity in the same manner, as in example 8 in the study.

Based on example 7 above, this study indicates that disagreement between countries in identifying earning activities gives rise to cross-border mismatches. In example 7, Country A treats Blessed Phiri's activities as investment while Country B, her residential Country, treats her activities as business. This then results in Country A not taxing Blessed Phiri and Country B also not taxing her due to the provision of foreign tax relief thus given as a PE. In real world business scenario this type of mismatch results in double non-taxation in a similar scenario as in example 6 above, but in this case Country B is providing direct foreign tax relief as opposed to indirect foreign tax relief, dividend relief. Similar scenarios in real world business arise where the residence state considers a person to engage in an earning activity such as employment, and the source state considers a person to have insufficient activity to constitute an earning activity such as private activity or private enterprise.

Example 8

Mismatch of Who Contracts - No Income but Foreign Tax Relief



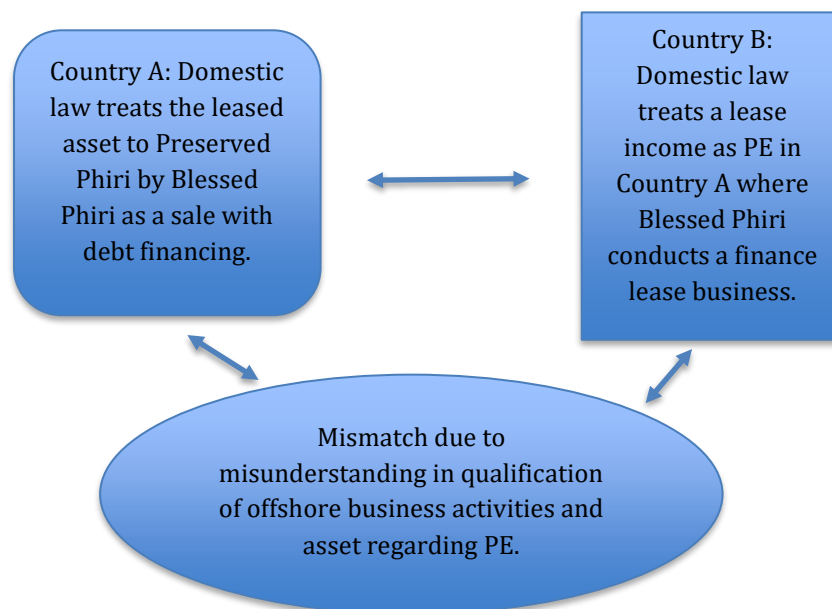
Source: Created by the researcher

Blessed Phiri, a resident of Country B, sells stock in Country A through a commissionaire arrangement. Under this arrangement, the commissionaire, Preserved Phiri who is resident in Country A, sells Blessed Phiri's products to third parties in Preserved Phiri's name but on account of Blessed Phiri. Country A considers that Blessed Phiri is not bound by the contracts with third parties and so is not conducting the activity associated with these contracts. As a result, Country A does not consider Blessed Phiri to have a Permanent Establishment (PE) there and does not tax Blessed Phiri but tax Preserved Phiri on commission received from the sales. On the other hand, Country B considers Blessed Phiri to be conducting business in Country A through an agent Preserved Phiri and so considers that Blessed Phiri does have a PE in Country A. As a result, Country B grants Blessed Phiri foreign tax relief in the form of an exemption for profits from sales. This study conceptualizes the mismatch in this scenario to arise in the same way as it is in example 7 in this study.

The study therefore indicates that misunderstanding between domestic law of the two Countries A and B over the source state tax and nature of business transactions such as permanent establishment (PE) gives rise to a mismatch. In this context the two countries agree on the nature of earning activity thus conducted and who is conducting it. However, the two countries do not agree on sufficient activity to constitute PE. This is due to disagreement as to which transactions are conducted or assets owned by the person. This kind of transaction or nature of business activity is like the one in example 9 of this study. In example 8 above, Country A and Country B do not agree as to who contracted with the customers of Blessed Phiri's goods. As a result, Country A considers the activity of Blessed Phiri insufficient to constitute PE, while Country B considers it sufficient and grants foreign tax relief to Blessed Phiri.

Example 9

Mismatch of Who Owns Asset - Double Dip Depreciation



Source: Created by the researcher

Blessed Phiri, a resident of Country B, leases by way of finance to Preserved Phiri, a resident of Country A. Country A considers the substance of the lease and treats it as a sale with debt financing. Accordingly, Country A grants Preserved Phiri tax depreciation and a deduction for notional interest paid to Blessed Phiri with respect to the debt financing. Country B accepts the form of the agreement as a lease and treats Blessed Phiri as the owner and grants Blessed Phiri tax depreciation. Country B requires Blessed Phiri to include the rent payments received from Preserved Phiri in income but also grants foreign tax relief as offshore PE. In this context Country B considers that the rent is derived through a PE in Country A. Concomitantly, it is argued that an accurate rate of depreciation for a leased asset is equal to the rent charged for the asset minus a notional interest charge. In real world business scenario, there is a tax advantage in a business case like this one. However, most countries grant tax depreciation at a rate more than economic depreciation and sometimes for more than 100 percent of the cost of an asset. In such a situation, a mismatch such as in this example that gives rise to two sets of depreciation gives rise to substantial cross-border timing advantages

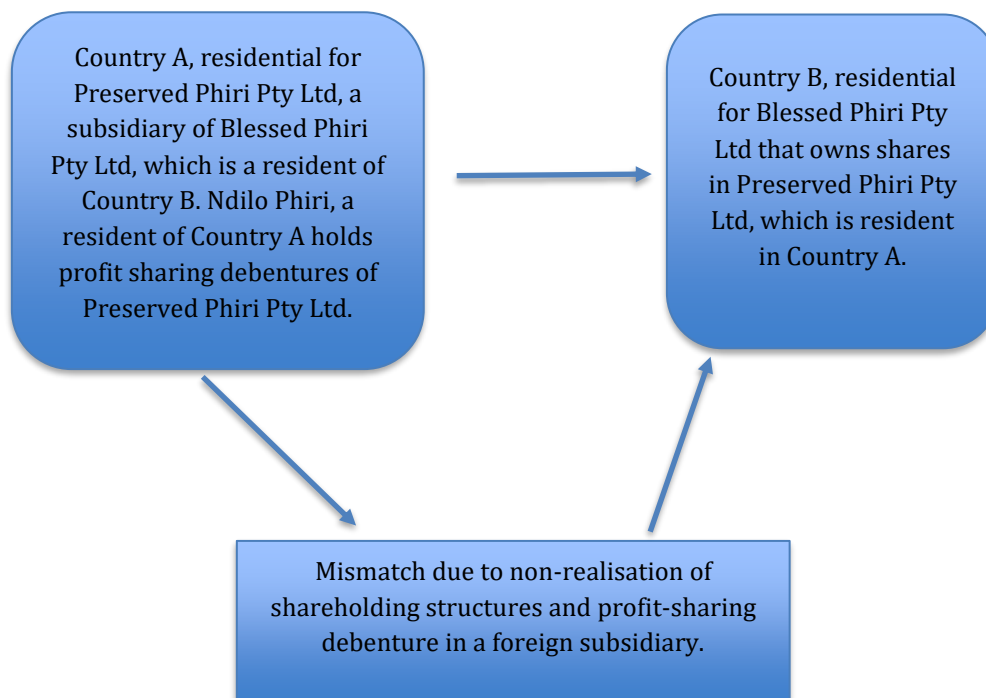
irrespective of whether there is a mismatch in the tax treatment of the rent payments due to different domestic law treatment.

In this study example 9 above, demonstrates a mismatch over ownership of an asset, which gives rise to double dip depreciation, to paraphrase it, double declining balance⁵⁶ method of depreciation. Like in example 8 above the study relates example 9 in terms of the type of mismatch particularly, the fundamentals of a provision of resources, in this case whether the provision of an asset is by way of transfer or lease. In this context, Country A classifies a finance lease as a transfer of an asset with debt financing. In contrast, Country B classifies the finance lease as a lease, such that Country A considers Preserved Phiri as the owner of the asset and Country B considers Blessed Phiri as the owner of the asset to the point that both countries grant tax depreciation to two different entities. The same scenario can in the real business world be a reverse scenario that can give rise to tax benefits, where Country A considers Blessed Phiri to be the owner of the asset and Country B considers Preserved Phiri to be the owner of the asset. If the asset is an appreciating asset, neither country may tax a gain arising on the disposal of the asset. The study further asserts that example 9 is a good demonstration of disagreement between two Countries under different domestic law to decide who is the owner of an asset that results in a mismatch pertaining to the nature of a payment, but such mismatch may also result in a disagreement regarding the type of an asset that can be used to determine whether it constitutes a PE that qualifies for foreign tax reliefs or credits. In this context the mismatch in ownership causes Country A to consider the payments under the finance lease as a mixture of interest and capital, the purchase price, whereas Country B considers the payments purely rent. A mismatch arises between two countries due to the nature of an asset, even if they agree on ownership of the asset. For example, if Country A considers a particular financial instrument as debt and Country B considers it as equity, this gives rise to mismatches like example 6 in this study.

⁵⁶ In this context double dip depreciation means double declining balance (DDB) method which is an accelerated depreciation method that depreciates asset faster in their early years. The method is also referred to as the 200% declining balance indicating that it depreciates at twice the rate of the straight-line method.

Example 10

Mismatch in Characterizing Asset - Double Dip Dividend Relief⁵⁷



Source: Created by the researcher

Blessed Phiri Pty Ltd, a company resident in Country B, owns shares in Preserved Phiri Pty Ltd, a company resident in Country A, such that Preserved Phiri Pty Ltd is a subsidiary of Blessed Phiri Pty Ltd. Ndilo Phiri, a resident of Country A, holds profit sharing debentures in Preserved Phiri Pty Ltd. Country A treats the profits sharing debentures as shares for Country A tax purposes. As a result, Country A denies Preserved Phiri Pty Ltd a deduction for interest paid on the profit-sharing debentures but grants Ndilo Phiri dividend relief with respect to receipt of the interest in the form of dividend tax credits. In contrast, Country B considers that blessed Phiri Pty Ltd is the only shareholder in Preserved Phiri Pty Ltd such

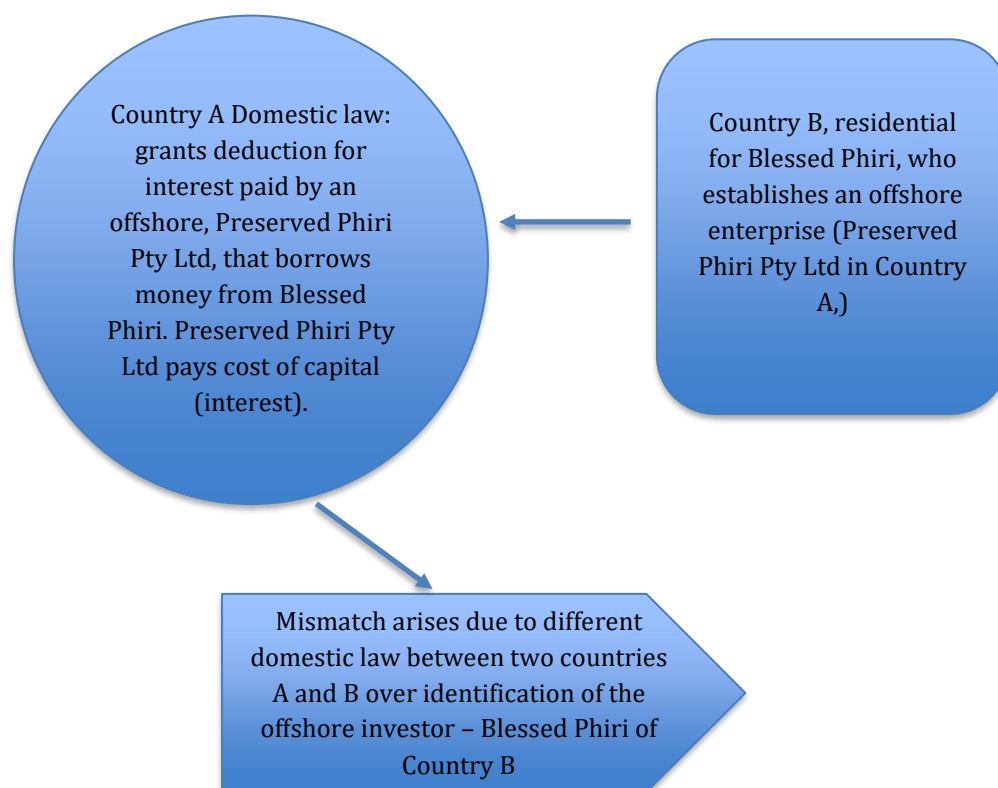
⁵⁷ In this context double dip dividend relief refers to a situation where a company due to specific tax rules can receive a dividend from its subsidiary while also benefiting from tax deductions or credits related to the same earnings. This essentially means the company gets to dip into the earnings twice, one as a dividend and again as through tax benefits potentially leading to a lower overall tax burden.

that when Blessed Phiri Pty Ltd receives a dividend from Preserved Phiri Pty Ltd, Country B grants Blessed Phiri Pty Ltd an indirect foreign tax credit for all of the Country A corporate tax paid by Preserved Phiri Pty Ltd. There is a mismatch between Country A and Country B due to the treatment of the investment, shares or debt held by Ndilo Phiri and the return payable on it, dividends, or interest. In this context, this then, gives rise to two tax benefits in the form of crediting the same corporate tax paid by Preserved Phiri Pty Ltd to both Ndilo Phiri in Country A and Blessed Phiri Pty Ltd in Country B. According to Harris (2014), this type of arrangement is often referred to as a tax credit generator.

In this study, example 10 above, indicates that mismatches due to classification or realization of an asset gives rise to cross-border tax benefits where the indirect foreign tax credit method (cross-border dividend relief) is recognized. In this context, there are two payments including payment of interest on the profit-sharing debentures held by Ndilo Phiri and payment of dividends on the shares held by Blessed Phiri Pty Ltd in Preserved Phiri Pty Ltd. The same corporate income tax paid by Preserved Phiri Pty Ltd in Country A is credited to both Ndilo Phiri and Preserved Phiri Pty Ltd and the duplication results in a mismatch benefit. In this context, this type of mismatch can produce effective benefits, if it is likely that the corporate tax rate of Blessed Phiri Pty Ltd in Country B is comparatively high and/or Country B has a broad method of calculating the limitation on credit under its foreign tax credit system, where it calculates the limitation on credit on a worldwide basis business scenario.

Example 11

Mismatch in Identifying Person - Deduction but No Income



Source: Created by the researcher

Blessed Phiri, a resident of Country B, established Preserved Phiri Pty Ltd in Country A. Blessed Phiri loans money to Preserved Phiri Pty Ltd and Preserved Phiri Pty Ltd pays interest in return. Country A considers that Preserved Phiri Pty Ltd is a taxable person and grants a deduction for the interest paid. Country B considers Preserved Phiri Pty Ltd as transparent, not a taxable person, and does not recognize any loan transaction or payment of interest between Blessed Phiri and Preserved Pty Ltd. Nevertheless, Country B considers the activities of Preserved Phiri Pty Ltd as a PE of Blessed Phiri in Country A as a result grants Blessed Phiri foreign tax relief in the form of an exemption of Blessed Phiri's activities in Country A. In this context, a mismatch arises due to the different treatment of activities between Country A and Country B. The mismatch gives rise to a cross-border tax benefit, a

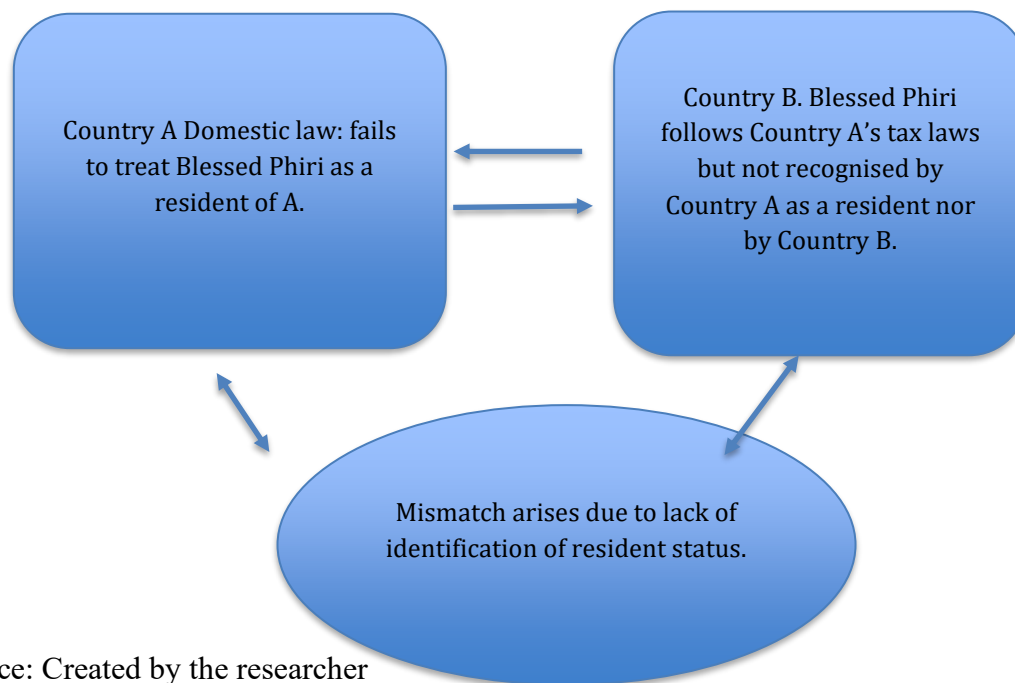
deduction of interest in Country A with no trace in Country B, no income pertaining to interest paid to Blessed Phiri for cost of capital on money lent to Preserved Pty Ltd in Country A. In this context, the example is like example 1 in the study. In real world business scenario, the cross-border benefit may be minimized if Country A imposes a substantial source-based tax. Concomitantly, the benefit may be minimized if Country B adopts the foreign tax credit method of foreign tax relief. Tax planning of this variety presumes that the residence state, Country B, calculates the exemption for the Country A PE without a deduction for the interest. In that case, the exemption will be larger than what Country A taxes to Preserved Phiri Pty Ltd. This study then indicates that a foreign tax credit would be credited to Blessed Phiri only in taxation actually paid in Country A although mismatches in calculating Country A income can cause difficulties in calculating the limitation on credit.

Harris (2014) advocates that countries may disagree as to whether an entity constitutes a person for tax purposes (hybrid entity) and this may give rise to mismatches over a payment of interest.

In this context, Country B considers Preserved Phiri Pty Ltd as part of the entity that is Blessed Phiri whereas Country A considers Preserved Phiri Pty Ltd and Blessed Phiri as separate tax entities. This then makes Preserved Phiri Pty Ltd a hybrid entity. The interest payment by Preserved Phiri Pty Ltd is recognized by Country A, paid between two people, but not by Country B, paid by Blessed Phiri to herself. That said, example 11 is like example 1 and demonstrates how the classification of persons for tax purposes impacts on recognition of payment. In this study example 11 is also like example 7 in that Country A considers Blessed Phiri's activities as an investment, a loan, whereas Country B considers Blessed Phiri's activities in Country A as business activities in the form of a PE.

Example 12

Mismatch as to Residence — Deduction but No Residence Taxation



Source: Created by the researcher

Preserved Phiri, a resident of Country A, pays for goods bought from Blessed Phiri. Blessed Phiri is established under the laws of Country A and managed from Country B, but neither Country A nor Country B considers Blessed Phiri as resident in their jurisdiction, despite different tests of residence. As a result, neither Country A nor Country B taxes Blessed Phiri with respect to the proceeds of sale. There is a mismatch between Country A and Country B due to the residence of Blessed Phiri. This gives rise to a cross-border tax benefit because the sales proceeds are likely to be deductible to Preserved Phiri in Country A with no trace in the taxation of Blessed Phiri because she is not resident anywhere assuming the sale is not attributable to a PE in Country A or Country B, such as goods shipped from a third country.

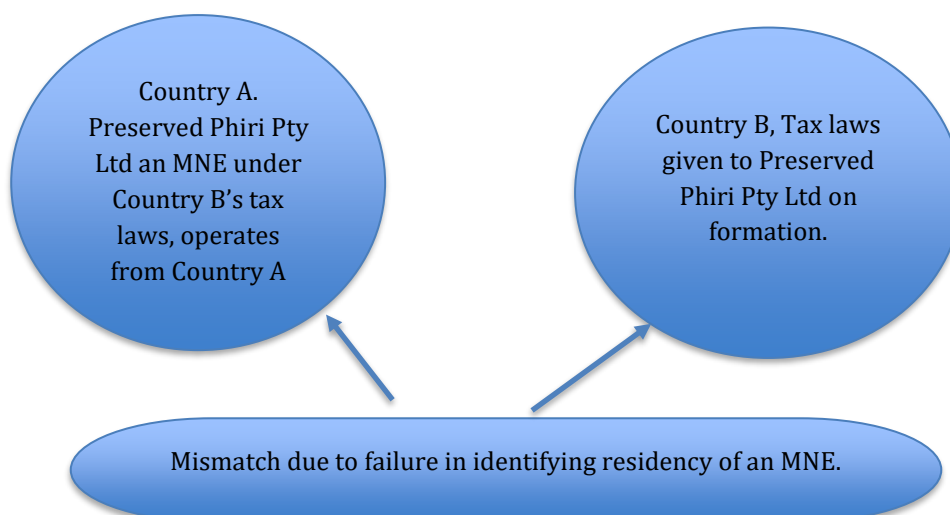
This study indicates that mismatches like those in examples 2 and 3 can also be triggered by disagreement between two countries on whether an entity is a taxable person or not, a hybrid

entity. So, in example 2, it may be that Blessed Phiri is a hybrid entity established by Blessed Phiri. Country A does not recognize Ndilo Phiri and so considers the payment is made to Blessed Phiri. Country B does recognize Ndilo Phiri and considers it to be the recipient of the payment. The tax effects are then the same as discussed in example 2 above. Similarly, in example 3, Ndilo Phiri may be a hybrid entity because Country A considers it to be a taxable person and Country B does not. Again, this may give rise to a double dip deduction as discussed in example 3 in this study. Mismatches like those in Examples 2 and 3 are triggered by disagreement between two countries as to whether an entity is a resident person or not. Further discussion is in examples 12 and 13 in this study. In this context, examples 12 and 13 help to indicate that a lot of mismatches or tax planning schemes revolve around inconsistencies in the way countries exercise their jurisdiction to tax.

As Harris (2014) advocates, what is a person, and the fundamental features of the person are important where taxation based on residence is an issue as in examples 1, 2 and 11. In example 12 there is a deduction but no effective trace in taxable income. Similarly, in examples 3 and 9; and example 13 a deduction is granted more than once for the same expenditure, as a result the expenditure produces the loss.

Example 13

Mismatch as to Residence - Double Dip Deduction



Source: Created by the researcher

Preserved Phiri Pty Ltd is a member of a multinational group of companies. It has been making losses. It is managed from Country A but formed under the laws of Country B. Both Country A and Country B consider Preserved Phiri Pty Ltd resident in their jurisdiction. As a result, both Country A and Country B provide tax loss relief, including by way of setting Preserved Phiri Pty Ltd.'s losses against income derived by other group members resident in their jurisdiction. The mismatch then rises between Country A and Country B over the residence of Preserved Phiri Pty Ltd. This gives rise to a cross-border tax benefit because the losses of Preserved Phiri Pty Ltd are concomitantly used to reduce the income of more than one member of the corporate group.

Harris (2014) submits that categorization of hybrid mismatch arrangements in the OECD's Action 2 Draft; to paraphrase it, the OECD Draft is very different from the 13-hybrid mismatch categorization as per examples 1 to 13 mentioned in the study because Action Plan 2 is targeted at only some types of cross-border mismatch arrangements that give rise to cross-border tax benefits. According to Harris (2014), Action 2 only targets hybrid instruments and entities, to paraphrase it, it does not include mismatches that result from

personal or individual transactions and therefore limited in scope to only address the following tax planning categories:

- (1) hybrid financial instruments and transfers,
- (2) hybrid entity payments,
- (3) reverse hybrids,
- (4) imported mismatches.

Harris (2014) advocates that it is an overstatement for the OECD to suggest that these categories describe, in general terms, the numerous ways in which a hybrid technique can be used to engineer a mismatch in tax outcomes. This study then indicates that hybrid mismatch arrangements need not be limited to only a few categories but rather address all including individual or personal and enterprises or entities.

With reference to Harris (2014), this study indicates that the OECD BEPS Action 2 with its Table 1.1 is not competent enough to neutralize hybrid mismatches. The OECD should do more to efficiently neutralize hybrid mismatch arrangements. This study then seeks to examine what it is that the OECD needs to do, to make sure hybrid mismatch arrangements are fully neutralized.

According to Harris (2014), the problem that is associated with hybrid mismatch arrangements is that they involve countries that are not classified as tax havens.

In philosophizing Harris (2014) theory of hybrid mismatch this study contends that not only do hybrid mismatches arrangements involve countries that are not classified as tax havens, but they are also involved in tax treaties, considering that the fundamental purpose of tax treaties has historically been to relieve international double taxation and not prevent international double non-taxation which is a very unfair practice by some of the multinational enterprises such as Google and Apple as it is mentioned in the study that they each only paid 3% and 1 % respectively of tax revenue to the source states, to paraphrase it, to foreign states where the revenue was generated.

This study then indicates that hybrid mismatch arrangements that are beneficial for taxpayers tend to erode both taxation in the source state and in the residence state. As a result, many developing countries have introduced withholding taxes like those that are agreed under a tax treaty to slow down the erosion of tax base and tax arbitrage. One such country is South Africa that incorporates the General Anti Avoidance Rule (GAAR), which is another way of getting rid of both tax arbitration and tax base erosion.

According to Rust (2015),⁵⁸ the fight against tax abuse constitutes a legitimate purpose which justifies a restriction of the fundamental freedoms. Disallowing a deduction of interest payments in all cases of hybrid mismatches to fight abuse is, however, not proportionate. The Court of Justice of European Union (CJEU) held in its Cadbury Schweppes judgment that domestic anti-avoidance rules must be restricted to fight wholly artificial arrangements.

In general, as Rust (2015) contends, hybrid mismatch arrangements do not lack substance. Denying a deduction in all cases of hybrid mismatch arrangements even if these arrangements are not wholly artificial, to paraphrase it, not permanent, they would go beyond what is necessary to fight abuse. In its decision RBS Deutschland, which concerned a VAT case the European Court of Justice stated that tax arbitrage arising from using different VAT rules in two Member States does not constitute tax abuse.

Rust (2015) submits that a company resident in Germany provided leasing services in the UK. In the UK, these leasing arrangements were regarded as supply of services. From the perspective of the UK the place of supply of the services was the place where the supplier had established his business, to paraphrase it, a source state. Rust (2015) advocates that as the supplier was a resident of Germany the supply of services was not taxable in the UK. From the perspective of Germany, however, the leasing arrangement was regarded as a supply of goods. The place of the supply of goods was in the UK as the goods were in the UK. Therefore, the leasing arrangement was not taxable in Germany either. Despite the

⁵⁸ See: Rust, A. (2015). Lectures. <https://www.wu.ac.at/en/taxlaw/institute/staff/professors/rust/lectures>.

double non-taxation, the German company asked for a refund of the input VAT. According to Rust (2015), the company relied on Article 17(3)⁵⁹ of the Sixth Council Directive. According to this provision, as Rust (2015) contends, the taxpayer is entitled to a deduction or a refund of his input VAT if the leasing arrangement would be eligible for deduction of tax had the place of supply of services been in the UK. Since this, according to Rust (2015), was the case; the German company would have been entitled to a deduction, or a refund had the services been supplied in the UK. Rust (2015) advocates that the Court of Justice of European Union stated that in so far as differences in the laws and regulations of the Member States continue to exist in this area, despite the establishment of the common system of VAT by the provisions of the directive, the fact that a Member State has not collected output VAT because of the way in which it has categorised a commercial transaction cannot deny a taxable person the right to deduct input VAT paid in another Member State.

According to Rust (2015), the UK Government argued that making use of the differences in tax law of two different countries should be characterised as abusive but the Court refuted that argument by stating that in those circumstances, the fact that services were supplied to a company established in one Member State by a company established in another Member State, and that the terms of the transactions carried out were chosen on the basis of factors specific to the economic operators concerned, cannot be regarded as constituting an abuse of rights.

Rust (2015) contends that the RBS Deutschland provided the services during a genuine economic activity and that the Court went on by saying: “It is important to add that taxable persons are generally free to choose the organisational structures and the form of transactions which they consider to be most appropriate for their economic activities and for the purposes of limiting their tax burdens.”

⁵⁹ See: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1977L0388:20060101:EN:PDF>

In consideration of Rust (2015), particularly the statements or facts by the court (CJEU) mentioned above the study conceptualises that tax planning schemes within trading blocs are allowed and therefore tax arbitrages arise from transactions within trading blocks in the same way as they do in hybrid mismatches and therefore eroding of tax base comes into play like it has been the case herein.

Rust (2015) submits that transferring this decision from the field of VAT to direct taxation means that tax arbitrage transactions may not be regarded as abusive if the transactions do not lack substance. According to Rust (2015), limiting the deductibility of interest payments made to foreign companies cannot be justified by the argument to fight abuse. Rust (2015) indicates that the denial of a deduction for interest payments which are excessive and not in line with the arm's length standard can be justified as an anti-abuse measure.

According to Rust (2015), it seems to be possible that the non-deductibility of interest payments may be justified to achieve the coherence of the tax system if the payments are tax exempt at the payee. The different treatment at the payer can be justified by the fact that the treatment to the payee is different as well; to paraphrase it, the payments are not deductible on the payer if they are exempt on the payee, and they are deductible on the payer if they are taxable on the payee. The jurisprudence, to paraphrase it, domestic law, of the CJEU is ambiguous as to whether a Member State may adopt a linking rule and make the deductibility of payments dependent on the tax treatment in another Member State, that is within the same domestic law. There are good arguments that a principle of correspondence is in line with the fundamental freedoms (Rust, 2015).

In consideration of discussions by Rust (2015) above, this study conceptualises that where jurisdictions are within the same trading blocs, they share the same domestic law or common law. But then there is unclarity as to how to handle the OECD BEPS Action 2 linking rules in the same way as they are in single trading jurisdiction or domestic law. No wonder it is mentioned in the study that handling of imported hybrid mismatches is very difficult and time consuming. The study then considers the case in question between the court (CJEU) and the RBS Deutschland to be one of the imported hybrid mismatches that requires some

expertise with more competent knowledge of imported hybrid mismatches than that of the court.

As Rust (2015) indicates, the jurisprudence of the Court of Justice of European Union is ambiguous as to whether a Member State may adopt a linking rule and make the deductibility of payments dependent on the tax treatment in another Member State.

This study then contends that the clarity that MNEs should consider before they enter a foreign country is the jurisprudence of that country. That then said, there is much weight on domestic law as compared to the OECD BEPS Recommendations. This study then argues that the linking rules applied by the OECD BEPS Action 2, to neutralise the effects of hybrid mismatch arrangements can do nothing without the approval of the local jurisdiction, to paraphrase it, it requires Specific recommendations on improvements to domestic law, the independent variable, that causes changes in the OECD Recommended Hybrid Mismatch Rules that are necessary to neutralise the effects of hybrid mismatch arrangements.

According to the South African Institute of Taxation (SAIT) (2015),⁶⁰ the Davis Committee⁶¹ believes that the issue of hybrid instruments should best be addressed conceptually rather than via specific rules such as the hybrid debt provision of sections 8F and 8FA⁶². Under this approach, as SAIT (2015) contends, deductions would be denied if the cross-border payment fails to qualify as income under the payee country's system of taxation.

⁶⁰ See: SAIT (2015). Davis commission report on first deliverables BEPS release. <https://www.thesait.org.za/news/208909/Davis-commission-report-on-first-deliverables-BEPS-release.htm>.

⁶¹ See: Davis Tax Committee (2014). Addressing base erosion and profit shifting in South Africa. https://www.taxcom.org.za/docs/New_Folder/3%20DTC%20BEPS%20Interim%20Report%20on%20Action%20Plan%202%20-%20Hybrid%20Mismatches,%202014%20deliverable.pdf.

⁶²Section 8F and 8FA are the draft amendment bills of the National Treasury in South Africa. See: National Treasury Department (2024). Annexure B draft. Insertion of section 8FA in act 58 of 1962. <https://www.treasury.gov.za/public%20comments/TLAB%202013/2013042901%20=%20Annexure%20B%208FA.pdf>.

SAIT (2015) advocates that the anti-avoidance ceiling of section 23M⁶³ was additionally questioned as complex and its workings unclear despite its anti-avoidance intent. Pre-existing foreign tax credit hybrid schemes, such as those associated with the Brazilian tax treaty, were said to be on the decline. However, the Committee suggested that foreign credits should not be legislatively available where global tax was effectively neutralized in terms of the underlying net income through deductions or other offsets (SAIT, 2015).

In consideration of SAIT (2015) above, the study conceptualizes that anti-avoidance systems are similar in that they are mostly unclear though the possibility of avoiding non-tax payment is present in the system. It is mentioned in the study that tax planning systems are not wrong, or it is not wrong to incorporate tax planning systems like hybrid mismatch arrangements. What is wrong is the way some multinational enterprises such as Google and Apple at some time violated the tax plan. It is the objective of this study to get clarity as to how clear is the OECD BEPS Action 2 and its Table 1.1 in terms of neutralizing the effects of hybrid mismatch arrangements, to paraphrase it, the tax plan that is associated with unclarity despite its intent to neutralize the effect of hybrid mismatch arrangements.

According to Mechtler and Wong (2016),⁶⁴ tax policy may be considered one of the core aspect of countries' sovereignty. Given the different aspects that must be considered in this context, countries face different challenges when designing their domestic tax system. Therefore, bearing in mind that each country has the right design of its tax system in the way it regards most appropriate, the tax systems around the globe differ significantly. Mechtler and Wong (2016) postulate that because of numerous disparities of the domestic tax systems

⁶³ Rudnicki, M. (2023). The modified section 23M: interest deduction limitations. <https://www.jutajournals.co.za/the-modified-section-23m-interest-deduction-limitations/>.

⁶⁴ See: Mechtler, Lukas and Wong Siu Ching, Cindy (2016). Mismatches in tax outcomes in the light of BEPS actions 2 and 5. Singapore Management University School of accountancy research paper No. 2016-S-48. <http://dx.doi.org/10.2139/ssrn.2858498>.

throughout the world, mismatches between national income tax legislation are more of the rule than the exception.

Due to the lack of harmonisation regarding the various tax systems as Mechtler and Siu Ching (2016) indicate, taxpayers face the opportunity to reduce their overall tax burden by diligently structuring their foreign business relations. Consequently, cross-border payments may give rise to a deduction in the source state while not being included in the taxable income of the parent state, or the recipient.

In practice as Mechtler and Wong (2016) assert, such results are very often achieved using hybrid mismatch arrangements. Even though the manifestation of hybrid mismatch arrangements differs significantly, the major point all these structures have in common is that they exploit differences in tax treatment of an entity or instrument under the laws of two or more tax jurisdictions to achieve double non-taxation, including long term deferral. In this context, double non-taxation structures causing great concern are arrangements that make use of hybrid financial instruments.

Mechtler and Wong (2016) advocate that while financial instruments are traditionally divided into equity and debt they are referred to as hybrid financial instruments. Assuming that these hybrid instruments are treated differently for tax purposes in the perspective states of residence of the payer and the payee, most notably as debt, in the state of residence of the payer and as equity in the state of residence of the payee, such arrangements lead to double non-taxation. This is due to the mutually incompatible positions regarding the qualification of the financial instruments, the payments based thereon are deductible as interest expenses at the level of the payer while there is no corresponding inclusion in taxable income at the level of the payee (Deduction/Non-Inclusion, D/NI). At the same time, similar results may be achieved by use of hybrid entities. Due to the deviating qualification of the hybrid entity in the states concerned, a payment may give rise to a deduction while it is not taken into consideration when determining the tax base of the recipient (Mechtler and Wong, 2016).

Since hybrid mismatch arrangement as, Mechtler and Wong (2016) indicate, may significantly reduce the overall tax burden for taxpayers, they play an important role in the context of tax planning, thereby opening a variety of legal possibilities to minimise the tax

base. For example, a deductible payment can give rise to a D/NI outcome where the payment is made by a hybrid entity or financial instrument that is disregarded under the laws of the payee jurisdiction. Furthermore, deductible payments to a hybrid entity may give rise to a mismatch in the tax outcomes, to paraphrase it, when that payment is not included as ordinary income in the jurisdiction where the payee is established, the source, or the establishment jurisdiction, or in the jurisdiction of any investor in that hybrid entity, or the investor jurisdiction (Mechtler and Wong, 2016).

Against this background, both the OECD and the European Commission have included initiative to counter BEPS resulting from aggressive tax planning, thereby focusing, *inter alia* on the use of hybrid mismatch arrangements.

It is mentioned in the study by various authors that hybrid mismatch arrangements are incorporated with the objective of benefiting from tax plans that result in unfair practices such as non-double deduction meaning that multinational enterprises that practice this kind of tax plan end up not paying any tax on both the source state, where tax revenue is earned and on the parent state where tax revenue is unfairly shifted.

Sigurdardottir (2016)⁶⁵ indicates that from a European Union (EU) perspective, taxation power of Member States is characterized by its sovereignty, to paraphrase it, domestic law, and protected as such. Taxation has a determining effect in the means of financing national budgets including deciding economic policy. An important feature of taxation policy, as Sigurdardottir (2016) contends, can also be seen as a competition instrument which has been increasing within the EU Member States for the last few decades. The increase in cross-border investments has given multinational enterprises (MNEs) opportunities to use hybrid financial instruments, taking advantage of mismatches of different national tax treatments and from international standard rules to relieve double taxation. This as Sigurdardottir (2016) asserts, has been considered to lead to distortion of competition between cross-border and national groups, contrary to the scope of Parent-Subsidiary Directive (PSD). For this reason,

⁶⁵ Sigurdardottir, M. A. (2016). Hybrid mismatch arrangements within EU: under what conditions could single taxation be secured? <https://lup.lub.lu.se/student-papers/search/publication/8879690>.

in 2014, the European Parliament and Council proposed a directive amending the PSD to counteract hybrid financial instruments where all Member States should have adopted the amendments by the end of year 2015 (Sigurdardottir, 2016).

It is mentioned in the study that tax planning schemes are dependent on jurisdictions. Some jurisdictions are tough such that their economic policy is not favourable to other multinational enterprises. In consideration of Sigurdardottir (2016) above, taxation policies are seen as a tool to attract foreign direct investment that results in competition within multinational enterprises that enter such jurisdictions. But then these policies are dependent on domestic law. While taxation policies attract multinational enterprises to enter other countries, they also give opportunities to use hybrid financial instruments which are a category of hybrid mismatches that result in double deduction and thus result in erosion of tax base and tax arbitrage by those multinational enterprises that unfairly practice it. This study has objectives or questions to answer regarding tax policies that are used by multinational enterprises in South Africa in relation to tax planning schemes that are applied in South Africa, to paraphrase it, South African domestic law in relation to the OECD BEPS Action 2 and its Table 1.1.

Moreover, as Sigurdardottir indicates, the OECD recommends in the project of BEPS Action 2, for countries to enact linking rules, or anti-hybrid rules, to counteract hybrid mismatch arrangements. The recommendations have relevance within the EU since most EU Member States are members of the OECD. The recommended rules authorize the source state to deny deduction because of lack of taxation in the income of the recipient's State, primary rule, and if this right is not exercised, the rules allow the resident State of the income beneficiary to deny exemption/non-inclusion in the domestic tax base, defensive rule. The amended Article 4 of the Parent Subsidiary Directive relies upon the defensive rule where the Member State of the parent refuses to exempt the payment from dividend taxation. The Anti-Tax Avoidance directive proposal (ATA Directive), on the contrary, capitalizes on rules where the Member States of the parent shall follow up with the classification of the hybrid instruments in accordance with the legislation of the subsidiary State (Sigurdardottir, 2016).

According to Sigurdardottir (2016), the anti-hybrid rules are known as linking rules or co-ordination rules as they rely on the correspondence principle, where Member states are obliged to take into consideration deviating tax consequences of another Member state. Tons of questions remain unanswered as well as if the sovereign of Member States might be threatened by harmonized tax measure combatting hybrid arrangements including whether the Parent Subsidiary Directive anti-hybrid rule is in line with EU law.

Considering the facts mentioned by Sigurdardottir (2016) above, the study conceptualizes that linking rules are dependent on the legislation of subsidiary State, paraphrased as domestic law. While linking rules are dependent on the legislation, in this study linking rules are conceptualized as the dependent variable that depends on domestic law which in turn is the independent variable. The study then looks at the cause and effects between dependent and independent variables, to paraphrase it, a change in one variable directly causes a change in another variable, to answer the objectives or questions in relation to the OECD Recommended Hybrid Mismatch Rules that are also known as linking rules.

Danso (2017)⁶⁶ advocates that in recent years there have been reports in the global media on how multinational enterprises (MNEs) structure their tax affairs to pay minimum or avoid paying taxes. According to Danso (2017), there is still work to be done on hybrid mismatch entities in a South African context. The available legislation is not sufficient to address all the issues under hybrid mismatch entities.

Danso (2017) recommended that the South African authorities examine the recommendations by the OECD under hybrid mismatch entities and see how the recommendations could be included in domestic tax legislation with international standards.

Considering recommendations mentioned above, the study is exactly doing what Danso (2017) expected South Africa to do, examining Shortcomings of the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements. The study

⁶⁶ Danso, F.O. (2017). Tax Coherence: the alignment of South African legislation with the OECD BEPS action plan. <https://ujcontent.uj.ac.za/esploro/outputs/graduate/tax-coherence--the-alignment-of/9913614107691>.

tends to unlock weaknesses within the OECD BEPS Action 2 and indicate how South Africa is affected by the BEPS Action 2. Changes within domestic law (tax policies) that are in place are disclosed, discussed, and compared with what were there in 2017 and any improvements or trends of improvements are mentioned in Chapters 4, 5 and 6 of the study.

Kuzniacki et al. (2017)⁶⁷ assert that the notion of tax arbitrage follows from the economic concept of arbitrage which refers to obtaining benefits by exploiting price differences across different markets. By analogy, the term tax arbitrage is the phenomenon emerging from transactions designed by taxpayers to take advantage of inconsistencies or disparities between tax systems such as those relating to tax rates, income qualification or timing, aimed at either double non-taxation or tax deferral (Kuzniacki et al., 2017). Due to its characteristics, tax arbitrage includes an extremely broad variety of behaviour and tools used by taxpayers all over the world.

Kuzniacki et al. (2017) contend that without any doubt hybrid mismatch arrangements play a significant role in neutralizing tax arbitrage. The OECD confirms this position in its report on BEPS Action 2. The OECD provides that international mismatches in entity and instrument characterization including hybrid mismatch arrangements and tax arbitrage are considered key pressure areas in the fight against the loss of tax revenues, in the protection of tax sovereignty and in ensuring tax fairness for both OECD and non-OECD Countries.

In consideration of facts mentioned by Kuzniacki et al. (2017) above, this study contends that there is a substance or some benefits or advantages in the OECD BEPS Action Plan 2, thus neutralizing the effects of hybrid mismatch arrangements but at the same time the study argues that while the disadvantages of the plan outweighs the advantages in that tax arbitrages are still the headlines when it comes to tax planning structures objectives such as hybrid mismatch arrangements it makes sense to understand the extent at which the OECD BEPS

⁶⁷ Blazej Kuzniacki, Alessandro Turina, Thomas Dubut and Addy Mazz (2017). Preventing tax arbitrage via hybrid mismatches: BEPS action 2 and developing countries. [\(PDF\) Preventing Tax Arbitrage via Hybrid Mismatches: BEPS Action 2 and Developing Countries.](#)

Action 2 plays an important part in neutralizing hybrid mismatch arrangements in terms of its competency hence the objectives and questions to be answered in this study.

Kuzniacki et al. (2017) argue that the OECD under BEPS Action 2 indicates that arbitrage via hybrid mismatch arrangements results in a substantial erosion of the taxable bases of the countries concerned and has an overall negative impact on competition, efficiency, transparency, and fairness. The relevant action allowed for neutralizing the effects of hybrid mismatch arrangements is therefore needed and justified. To achieve that purpose, the OECD developed different anti-hybrid rules under BEPS Action 2. In that regard, as Kuzniacki et al. (2017) postulate, one may ask whether addressing tax arbitrage via mismatches as proposed by the OECD is of interest and relevance for developing countries.

Kuzniacki et al. (2017) mapped the unexplored research area by means of a comparative analysis in four developing countries – Uruguay, Colombia, Brazil, and South Africa. According to Kuzniacki et al. (2017), reaction to tax arbitrage via hybrid mismatches appeared to be advanced in the South Africa tax administration. While tax administration in Colombia, Brazil and Uruguay appeared to have not shown very much interest. In part, the reaction and lack of reaction seemed to lie with willingness and readiness to deal with hybrid mismatches. According to Kuzniacki et al. (2017), South Africa's awareness of tax arbitrage via hybrid mismatch arrangements does not translate to co-operation between tax practitioners and tax administration in South Africa.

In consideration of the facts above the study conceptualizes that the response from research on multinational enterprises' international tax professionals, and international tax consultants assist in understanding how South Africa is addressing the issue of domestic law transformation regarding the administration of international tax planning systems in relation to domestic law (tax policies) as compared to when it was mapped by Kuzniacki back then in 2017. International tax consultants and multinational enterprises are the participants that assist in answering the objectives and questions of the study.

According to Kuzniacki (2017), tax authorities in Colombia, Brazil, and Uruguay saw few or no arrangements involving tax arbitrage via hybrid mismatches, even though they existed among tax practitioners in those countries. Kuzniacki et al. (2017) recommended, just to

mention a few, that the surveyed countries should introduce and/or further develop legal and administrative mechanisms that would enable them to identify tax arbitrage by means of hybrid mismatches. A necessary ingredient would be effective legal arrangements allowing for the exchange of tax information. Without such mechanisms in place, anti-hybrid rules would be invalidated since tax authorities would be unable to obtain and verify the information necessary for applying such rules (Kuzniacki et al., 2017).

According to Kuzniacki et al. (2017), the OECD's linking rule, based on the mutual recognition principle, requires an effective exchange of information. The principle could only apply if the tax provisions of the payee's country were known and understood by the payer's country response rule, and vice versa, which then becomes the defensive rule.

Nam (2017)⁶⁸ postulates that in recent years, the Organisation for Economic Co-operation and Development (OECD)'s Base Erosion and Profit Shifting (BEPS) project has been one of the biggest issues in international taxation. The OECD refers to BEPS as tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. Nam (2017) states that in 2015, the OECD released BEPS Action 2 as response on Hybrid Mismatch Arrangements (HMA) which are arrangements of exploiting differences in the tax treatment of different tax planning schemes including:

- Hybrid instruments,
- Hybrid entities,
- Hybrid transfers between two or more countries.

According to Nam (2017), two major factors of HMAs are:

- (a) hybrid entities
- (b) hybrid instruments.

Nam (2017) states that in BEPS Action 2, OECD recommends that countries introduce a linking rule that denies the deduction of costs which give rise to Hybrid Mismatch

⁶⁸ See: Nam, A. (2017). Reactions to hybrid mismatch arrangements and strategy suggestions for Korea. <https://www.repository.law.indiana.edu/etd/40/>.

Arrangements outcomes in the payer jurisdiction, such as double deduction, deduction with no inclusion, indirect deduction with no inclusion, as the main measures for addressing Hybrid Mismatch Arrangements. Among the 15 Actions of the BEPS Project, Action on Hybrid Mismatch Arrangements is strongly recommended by OECD and G20 to the 100 countries that plan to implement BEPS (Nam, 2017). However, considering the historical and economic background of each country, it is difficult to solve Hybrid Mismatch Arrangements solely with the uniform introduction of a linking rule (Nam, 2017).

Some countries have developed their own countermeasures to Hybrid Mismatch Arrangements. To successfully counter Hybrid Mismatch Arrangements, one needs to study the Hybrid Mismatch Arrangements phenomenon and research the current rules (Nam, 2017).

In consideration to Nam (2017), the researcher develops the perception that South Africa must research Hybrid Mismatch Arrangements and Shortcomings of the OECD BEPS Action 2 Final report 2015 and its Table 1.1 - Neutralizing the Effects of Hybrid Mismatch Arrangements to unlock the disadvantages that are associated with hybrid mismatch arrangements or tax planning schemes. Such disadvantages include:

1. distortion of tax revenue
2. transparency,
3. economic efficiency
4. competition
5. and fairness.

This study then adds the knowledge of how to successfully counter hybrid mismatch arrangements phenomenon by unlocking shortcomings of the OECD BEPS Action 2.

While Nam (2017) states that in Action 2, the OECD recommends that countries introduce a linking rule that denies the deduction of costs which give rise to Hybrid Mismatch Arrangement outcomes in the payer jurisdiction, such as double deduction, deduction with no inclusion, indirect deduction with no inclusion as the main measures for addressing Hybrid Mismatch Arrangements, this study refers to Harris (2014) who expresses the scope of the OECD BEPS Action 2 in that it only focuses on three tax planning categories, whereas

there are more schemes as per examples given⁶⁹. Harris (2014) had a different aim of study though. This study aims at unlocking the shortcomings of the OECD BEPS Action 2 Final Report 2015.

Parada (2018)⁷⁰ clarifies that while the OECD's proposed target is the hybrid entity itself, the existence of a hybrid or reverse hybrid entity is not sufficient to initiate the linking rules set out. It requires payment to generate a D/Ni or DD outcome to initiate the linking rules. The core of the problem for example, a disparity in the tax characterization of entities is not addressed and the focus of the OECD lies on the outcome of the transaction and not on the hybrid element, which then means a consequentialist⁷¹ approach is adopted.

In consideration of Parada (2018) theory above, this study philosophizes that mismatches that arise as a result of third party payments such as a scenario where the hybrid mismatch arrangement is imported to a third party, to paraphrase it, from a country that is not part of the original instrument but is used for the sake of settling a liability on behalf of another enterprises that is in another country and has an instrument with another enterprise within its group in that other country as indicated in section 2.4 of this study – imported hybrid mismatch (Imported D/Ni outcome), pose extraordinary challenges to trace and hence difficult to neutralize hybrid mismatch arrangements. This study then indicates that OECD Recommendations of incorporating linking rules including primary and secondary rules as well as the scope are dependent variables that depend on domestic law or local jurisdiction. This dependency results in the OECD incorporating the consequentialist approach.

⁶⁹ See: Harris, P. (2014). Neutralizing effects of hybrid mismatch arrangements. https://www.un.org/esa/ffd/wp-content/uploads/2014/09/20140923_Paper_-_HybridMismatchArrangements.pdf.

⁷⁰ Parada, L. (2018). Hybrid entity mismatches and the international trend of matching tax outcomes: a critical approach. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3384555.

⁷¹ An ethical theory that judges whether something is right or not by what its consequences are. For example, lying is not good but if it saves life then it's not wrong.

Carlo (2019)⁷² affirms that in 1998, the Organization for Economic Co-operation and Development (OECD) released a report on harmful tax competition that signalled an important change of focus in international cooperation efforts. The report directly or indirectly raised three distinct problems related to double non-taxation namely,

- (a) tax evasion,
- (b) tax avoidance,
- (c) tax subsidies and substantive tax competition.

According to Carlo (2019), it appeared on the second strand of the 1998 report that the time has come for greater international cooperation in tax avoidance in the form of the OECD's Base Erosion and Profit Shifting (BEPS) project. Carlo (2019) submits that there are three distinct inter-dependable core principles established by the BEPS project that are considered fundamental for international tax reform including:

- (1) the necessity of establishing international tax regime on a collaborative-based paradigm rather than on a competition-based paradigm,
- (2) the importance of taking a systematic or holistic approach to substantive international tax reform rather than an ad-hoc approach and acknowledging the interdependence of the norms of the international tax regime, and
- (3) the inevitability of accepting completely new solutions to problems that could not be resolved by the applicable norms, contrary to the traditional conservatism of the international tax regime.

This study conceptualises Carlo (2019)' facts above regarding the three distinct inter-dependable core principles as follows:

- (a) The coming of BEPS fits in to replace unfair competitions that are taking place within multinational enterprises that are practicing tax planning systems that erode tax bases and profit from the arbitrage of hybrid mismatches.
- (b) BEPS comes with an international tax system that applies to all countries as opposed to systems that favoured a certain group or trading blocs such as the EU, the Brazil,

⁷²See: Carlo, V.G. (2019). Hybrid mismatches: the Anti-tax avoidance directive. https://thesis.unipd.it/retrieve/80cd540d-3885-4035-a446-77e8fd534e55/Valiante_Giacomo_Carlo.pdf.

Russia, India, China, and South Africa (BRICS), African Continental Free Trade Area (AfCFTA), Asia-Pacific Economic Cooperation (APEC), Association of Southeast Asian Nations (ASEAN), North American Free Trade Agreement (NAFTA)/United States-Mexico-Canada Agreement (USMCA), Mercosur: a South American trading bloc with an agreement on tariffs between member nations, Common Market for Eastern and Southern Africa, (COMESA), Southern African Development Cooperation (SADC) to mention a few.

- (c) The coming of BEPS results in globalisation of tax planning systems thus removing delays in trading across borders that were toughened by different regimes. Trading blocs are no longer an issue under the new BEPS system. Jurisdictions are encouraged to adopt recommendations of the OECD BEPS Action Plan 2.

According to Carlo (2019), the international tax landscape has changed dramatically in recent years. With political support of G20 Leaders, the international community has taken joint action to increase transparency and exchange of information in tax matters, and to address weaknesses of the international tax system that create opportunities for BEPS project (Carlo, 2019). Carlo (2019) contends that the OECD, while holding the role of BEPS' project manager, has engaged in the creation of the Actions not only the representatives of different Member States, but also public opinion and economic operators that have actively intervened in the discussion of the drafts gradually presented by the OECD.

On numerous occasions, as Carlo (2019) advocates, the input of the stakeholders has been of considerable importance especially considering the pressing pace of the BEPS Project. Carlo (2019) postulates that the internationally agreed standards of transparency and exchange of information in the tax arena have put an end to the era of bank secrecy. With over 130 countries and jurisdictions currently participating, the Global Forum on Transparency and Exchange of Information for Tax purposes has ensured consistent and effective implementation of international transparency standards since its establishment in 2009 (Carlo, 2019).

This study mentions that hybrid mismatch arrangements or tax planning schemes obscure transparency hence the object or question that needs be answered through this research and

then establish the facet of reality at which shortcomings of the OECD Action 2 – neutralizing the effects of hybrid mismatch arrangements affect South Africa in relation to transparency by MNEs as they practice different tax planning schemes in South Africa.

Carlo (2019) advocates that the financial crisis and aggressive tax planning by multinational enterprises (MNEs) have put BEPS high on the political agenda and that the definitive thrust towards the creation of a comprehensive and holistic program, like the BEPS project, derives from the outbreak of the 2007 economic crisis.

In conceptualizing the points mentioned by Carlo (2019), the study indicates that multinational enterprises enter tax planning schemes that result in economic crisis that are likened to the outbreak of 2007 when there was a global financial crisis and that this has become a political discussion that is tabled in many countries' political agenda on how to resolve such tax planning schemes by the involvement of the BEPS Action 2.

According to Carlo (2019), the introduction of BEPS project has the foreseeable consequence of shaking the minds of public opinion by providing a perception of urgency to the BEPS project and a notable political visibility on the failures of the rules on the taxation of multinational companies that have not been able to adapt to the reality of modern economic-financial contexts.

In conceptualizing Carlo (2019) statement above, this study then indicates that the BEPS project has the responsibility to expose the failures on the rules of taxation of multinational enterprises by incorporating the involvement of all jurisdictions that join the project across the globe as opposed to trading blocs only.

As Carlo (2019) indicates that the financial crisis and aggressive tax planning by multinational enterprises (MNEs) have put BEPS on the political agenda, this study suggests that political regime or domestic law has a role to play for the OECD BEPS Action 2 to succeed.

Domingo (2019)⁷³ advocates that in recent years, governments have become increasingly alarmed by MNEs' use of aggressive tax planning in their cross-border transactions. The practical reality is that a multinational corporate group functions more akin to a single undivided organization rather than separate individual organisations; to paraphrase it, the parent corporation may strategically coordinate its direct or indirect control of subsidiaries and/or affiliates to reduce overall taxes of the group and thereby increase profitability.

Revenue authorities and tax policy makers, as Doming (2019) indicates, have expressed concerns about the difficulty of taxing MNEs engaged in cross-border activities due to lack of transparency, increased level of complexity and sophistication in structuring cross-border transactions and rise in BEPS. According to Domingo (2019), the different tax regimes of multiple jurisdictions have resulted in asymmetrical tax effects between countries that are part of the same transaction. This asymmetry, in turn, enables taxpayers to engage in base erosion and profit shifting. Therefore, it is imperative in a globalised world for governments to consider how different tax regimes interact with each other in cross-border activities and the overall tax effect of these transactions (Domingo, 2019).

Doming (2019) advocates that to neutralise aggressive tax planning, the OECD and G20 countries have adopted a 15 Action Item Plan to address BEPS. Domingo (2019) contends that in 2015, the OECD issued final reports on the 15 Action items, which aim to ensure that profits are taxed in the jurisdiction where the MNEs performed the economic activities that produced such profits and where value was created. According to Domingo (2019), the OECD recommendations indicate that for a country to determine its own tax treatment, it must take into consideration the taxpayer's position and tax treatment in another country. This view is generally alien to legislators in most jurisdictions whose primary concern is to protect their own country's tax base. Domingo (2019) submits that Action 2 provides recommendations for domestic law and tax treaty provisions to neutralize the effects of

⁷³ See: Domingo, M.S. (2019). Hybrid mismatch.com: Neutralizing the tax effects of hybrid mismatch arrangements. <https://digitalcommons.fairfield.edu/cgi/viewcontent.cgi?article=1219&context=nealsb>.

hybrid mismatch arrangements. According to Domingo (2019), the US has more recently enacted legislation that adopts quite a few of the OECD's recommendations. But are these recommendations enough to curtail these arrangements?

As Domingo (2019) wonders, this study is of the perception that the OECD recommendations require domestic law alignment with its recommendation to successfully neutralize hybrid mismatch arrangements.

Lindeque (2019)⁷⁴ asserts that BEPS has become an increasingly important matter for both multinational enterprises (MNEs) and the countries in which they operate. The tax avoidance strategies used to exploit gaps and mismatches in tax rules have become progressively complex and advanced over the past decade. Lindeque (2019) explored the importance and relevance of addressing BEPS via branch mismatch arrangements as proposed by the OECD, to an emerging economy such as South Africa. The report discusses and analyses the concept of branch mismatch arrangements, the concerns and challenges arising from the use of those arrangements, the recommendations from the OECD in addressing those mismatches and the approaches taken by selected countries.

According to Lindeque (2019), South Africa does not have specific legislation that can be applied in neutralizing branch mismatch arrangements. The general anti-avoidance rule (GAAR) is used to address branch mismatch arrangements but fails in counteracting most branch mismatch arrangements as the crucial element of whether its sole or main purpose is to obtain a tax benefit is not met with most arrangements.

Lindeque (2019) indicates that since South Africa does not have sufficient safeguards in place to protect its tax base against BEPS arising from branch mismatch arrangements and that the implementation of some of the recommendation of the OECD rules relating to branch mismatch arrangements enables South Africa to reduce its exposure to lost tax revenue

⁷⁴ Lindeque, A. (2019). Neutralizing the effects of branch mismatch arrangements: a South African perspective. <https://wiredspace.wits.ac.za/server/api/core/bitstreams/a31318e7-4e7e-44da-a7a6-a6b83d7169a3/content>.

arising from branch mismatches. The study thus, conceptualizes that the lack of understanding of hybrid mismatch arrangements compels South Africa to accept whatever the OECD recommendations bring on the plate, whether effective or not, to assist with reducing the erosion of tax base and tax arbitrage as it is in the case of OECD BEPS Action 2 which has received a lot of appraisal as a mechanism recommended by the OECD to neutralize the effects of hybrid mismatch arrangements but it is not known how reliable it is until the findings of the study.

Nyatsambo (2019)⁷⁵ as well as other authors mentioned in the study including, Harris (2014) was cited briefly on the preliminary literature review objectives of this study and is critically reviewed herein. According to Nyatsambo (2019), South Africa has not been safe from the overarching impact of globalisation and advocates that the biggest companies in the South African economy are foreign owned subsidiaries of major multinational enterprises (MNEs).

Nyatsambo (2019) contends that a big part of the South Africa's capital is foreign-sourced, a position that results in foreign enterprises holding deep interests in the operations of South Africa's fiscal system. According to Nyatsambo (2019), taxation benefits are the factors that trigger foreign vested interest that results in most of the companies to adopt some aggressive tax planning and avoidance strategies to exploit gaps in South Africa's transfer pricing and thin capitalisation⁷⁶ regimes whose success effectively results in the deprivation of tax revenue to the national fiscus.

Although current trends in the international tax domain show that most countries are seized with the base erosion and profit shifting (BEPS) phenomenon, South Africa, as the second biggest economy in Africa and an affiliate of the Organisation for Economic Cooperation and Development (OECD), is still riddled with challenges in its BEPS regulatory framework.

⁷⁵ See: Nyatsambo, N.G. (2019). Seizing the BEPS: An Assessment of the Efficacy of South Africa's Thin Capitalization Regime in Combating Base Erosion and Profit Shifting (BEPS) through Excessive Interest Deduction. <https://open.uct.ac.za/server/api/core/bitstreams/8dab9960-c266-4b2b-bb1e-507375a4b9b8/content>.

⁷⁶ A company is said to be thinly capitalised when its capital is made up of a much greater proportion of debt than of equity.

As Nyatsambo (2019) explains, this study suggests that multinational enterprises in South Africa are taking advantage of the BEPS Action 2 loopholes or inefficiencies and proceed to benefit from hybrid mismatch arrangements. The researcher, therefore, has objectives and questions to unlock unknown weaknesses within the OECD BEPS Action 2 Final Report 2015, by examining shortcomings of the OECD BEPS Action 2 in neutralizing the effects of hybrid mismatch arrangements.

De Koker (2021)⁷⁷ examined whether the OECD had effectively neutralized trust-based hybrid mismatch arrangements with the recommendations incorporated in Action 2 of the BEPS Action Plan. According to De Koker (2021), the OECD employed a consequentialist approach to hybrid mismatch arrangements, focusing on mending the outcomes of mismatch transactions as opposed to the source of the mismatches. De Koker (2021) advocates that since trusts comprise several distinctive attributes, the OECD encountered difficulties in addressing trust-based mismatched systematically through the consequentialist approach. Slow convergence from the international community represents a further threat to the success of the OECD initiative.

According to Stumm and Lehmann (2021),⁷⁸ Switzerland has not introduced any controlled foreign company (CFC) legislation and has no plans to do so. Swiss resident subsidiaries of foreign parent companies may indirectly be influenced by the CFC legislation of the jurisdictions of the parent companies, due to the attractive tax rates and corporate tax legislation of Switzerland. CFC legislation as Stumm and Lehmann (2021) assert, has already existed in several countries for many years including:

1. Germany,
2. France, and

⁷⁷De Koker, L.A. (2021). Trusts in hybrid mismatch arrangements: does the OECD BEPS action plan adequately address the unique attributes of trusts? <https://wiredspace.wits.ac.za/server/api/core/bitstreams/7da66ea9-9b08-43f5-ac48-a77a515a2834/content>.

⁷⁸ Stumm, A, and Lehmann D.U. (2021). How international tax reforms have transformed the Swiss tax landscape. <https://www.internationaltaxreview.com/article/2a6a800txc7nnn2kj0idc/how-international-tax-reforms-have-transformed-the-swiss-tax-landscape>.

3. the United States to mention a few.

According to Stumm and Lehmann (2021), the 2015 BEPS Action 2 report worked out recommended approaches to the development of CFC rules, to ensure the taxation of certain categories of income of multinational enterprises (MNEs) in the jurisdiction of the parent company, and to disincentivise offshore or similar privileged structures with no taxation or allowing for a long-term deferral of taxation. Hence, CFC rules have the purpose of reducing the incentive to shift profits to low or no-tax jurisdictions. Jurisdictions as Stumm and Lehmann (2021) postulate, apply a variety of different criteria to determine the term as a controlled foreign company, which would trigger the applicability of CFC taxation rules including:

- Voting rights or shareholder value owned by resident taxpayers.
- Operations in a no or low-tax jurisdiction.
- Quality of income earned by CFC for example, only passive income like interest, rental property income, dividends, royalties, or capital gains.
- The application of substantial activity tests such as active income test that requires that less than 5% of the gross turnover of the Controlled Foreign Company is tainted⁷⁹ income which is worked out by dividing the gross tainted turnover of a CFC by gross turnover of the CFC.

According to Stumm and Lehmann (2021), Switzerland has regularly been considered by various countries as a low-tax jurisdiction, to which profitable businesses have been shifted. As a result, special favourable tax regimes have been abolished as of January 1, 2020.

⁷⁹ Tainted income includes passive income, tainted sales income, and tainted service income. See: Australian Government/Australian Taxation Office (2021). Part 2 Does the CFC Satisfy the Active Income Test. <https://www.ato.gov.au/forms-and-instructions/foreign-income-return-form-guide/chapter-1-attribution-of-the-current-year-profits-of-a-controlled-foreign-company-cfc/part-2-does-the-cfc-satisfy-the-active-income-test>.

In consideration of Stumm and Lahmann (2021) statements above, the study conceptualizes the theory of tax haven jurisdictions (domestic law) to be attractors of major multinational enterprises which indicates that hybrid mismatch arrangements might have eroded tax revenue in Switzerland which then needs the finding of this research to be applied in Switzerland as it is mentioned in the study that future studies can be conducted on a topic of hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 in multinational enterprise listed on any stock exchange of the world such as in Switzerland.

Stumm and Lehmann (2021) contend that most Swiss cantons decided to reduce corporate income taxes for all corporate taxpayers to set an incentive for existing and new enterprises to conduct business in Switzerland.

According to Stumm and Lehmann (2021), jurisdictions (domestic law) apply a variety of different criteria to determine the term as a controlled foreign company, which would trigger the applicability of CFC taxation rules. This study indicates that domestic law consideration in accepting tax planning categories plays a major role and that the OECD BEPS Action 2 Recommendations to neutralize the effects of hybrid mismatch arrangements are dependent on domestic law.

Sansuttavijit (2022)⁸⁰ states that due to an increase in aggressive tax planning by using hybrid mismatch arrangements, which erode the fairness and transparency of the international tax system, the OECD Action 2 regarding neutralizing the effects of hybrid mismatch arrangements has been published in 2015 to tackle the tax abusive practices of MNEs. Sansuttavijit (2022) assessed the effectiveness of the OECD BEPS Action 2 in combating deductions without inclusion (D/Ni) and double deduction (DD) resulting from hybrid financial instruments and hybrid entities and submitted that there was an increase in aggressive tax planning by exploiting differences in tax laws between two or more jurisdictions in cross-border situations to achieve double-nontaxation. Additionally, the form

⁸⁰ Sansuttavijit, P. (2022). Hybrid mismatch arrangements, BEPS action 2, and developing countries. <https://arno.uvt.nl/show.cgi?fid=159491>.

of aggressive tax planning concerns jurisdictions because it can erode the taxable base (Sansuttavijit, 2022). Moreover, it leads to many negative impacts on countries, such as loss of tax revenue, distortion of competition, efficiency, transparency, and fairness. Therefore, the BEPS issue of using hybrid mismatch arrangements needs to be resolved (Sansuttavijit, 2022).

Arfwidsson (2024)⁸¹ submits that hybrid mismatches, where differences in income characterization across jurisdictions lead to double non-taxation, are exploited by multinational enterprises to reduce their overall tax burden. According to Arfwidsson (2024), common hybrid mismatch arrangements rules addressing this issue have recently been introduced within the EU and the OECD. As Arfwidsson (2024) asserts, the adoption of these rules is unprecedented and poses a novelty for many states' national tax systems.

Due to the complexity of hybrid mismatches, the operation of hybrid mismatch arrangements rules necessitates interactions with other anti-avoidance rules namely:

- (1) tax treaty provisions,
- (2) EU law,
- (3) OECD guidelines, and
- (4) national rules in foreign jurisdictions.

With reference to Arfwidsson (2024), this study conceptualizes that the rules that are incorporated by the OECD BEPS Action 2 as per Table 1.1 – General Overview of the Recommendations are dependent on jurisdictions; to paraphrase it, the rules are dependent on domestic law, in terms of how such jurisdictions value them. They can be accepted or declined and hence the failure to neutralize the mismatches.

⁸¹ See: Arfwidsson, A. (2024). Hybrid mismatches in international transactions: a study of linking rules in Eu and tax treaty law. <https://www.uu.se/en/events/defences/2024-03-15-autilia-arfwidsson-hybrid-mismatches-in-international-transactions-a-study-of-linking-rules-in-eu-and-tax-treaty-law>.

The researcher then advocates that the OECD BEPS Action 2 Table 1.1 includes Specific recommendations on improvements to domestic law meaning that local jurisdiction has to align with foreign jurisdiction in terms of interaction with other anti-avoidance rules such as tax treaty, EU law, OECD guidelines – the OECD Table 1.1, and national rules or domestic law in foreign jurisdictions.

According to Alinovi (2024),⁸² Italy has introduced legislation concerning the set of documentation to be prepared for hybrid mismatch cases. The new rules include a penalty protection regime, under which taxpayers that prepare a specific set of documentation can avoid the application of administrative penalties in the event of tax assessments involving hybrid mismatches. Alinovi (2024) advocates that hybrid mismatch arrangements exploit differences in the tax treatment of an entity, or instrument under the laws of two or more tax jurisdictions to achieve double non-taxation, including long-term deferral. These types of arrangements result in a substantial erosion of the taxable bases of the countries concerned.

Alinovi (2024) submits that in line with the recommendations by the OECD's initiative against base erosion and profit shifting, Italy introduced anti-hybrid legislation through Legislative Decree 142/2018, which implements ATAD I and ATAD II. The Italian tax authority also issued clarification on the application of the legislation in Circular 2/2022. Concisely, as Alinovi (2024) postulates, Italian anti-hybrid legislation applies to cross-border operations that involve entities resident in Italy for tax purposes, to paraphrase it, individuals, and non-resident entities with a permanent establishment in Italy. The legislation is based on a complex system of definitions and rules to address potential hybrid mismatches that could lead to the following:

- (a) double deduction, to paraphrase it, more than one deduction for the same payment, expense or loss.

⁸² See: Benedetta Alinovi (2024). The Italian penalty protection regime for hybrid mismatches. <https://www.europeantax.blog/post/102j0ri/the-italian-penalty-protection-regime-for-hybrid-mismatches>.

- (b) deduction without inclusion, to paraphrase it, deduction of payment without a corresponding inclusion for tax purposes in the payee's jurisdiction.

Van der Linden and Poelert (2024)⁸³ advocate that on December 19, 2023, a legislative proposal was adopted in the Netherlands with the goal of significantly reducing the use of hybrid mismatch arrangements by companies operating internationally. The new law will take effect on January 1, 2025, although transitional rules apply in 2024. The hybrid mismatch rules address entity classification disparities between countries that can lead to certain income being taxed twice or escaping taxation entirely. Van der Linden and Poelert (2024) submit that the proposal reflects parliamentary discussions on hybrid mismatch measures transposed into Dutch tax law following the enactment of the E. U's second Anti-Tax Avoidance Directive (ATAD 2). Those discussions culminated in recommendations to revise its existing Dutch classification policy for legal entities that deviate from international norms. The core issue as Van der Linden and Poelert (2024) advocate, involves classification differences between tax systems involving two countries where one country classifies an entity as transparent for tax purposes, so that tax is imposed at the level of its owners, while another country classifies the same entity as taxable. Hybrid mismatches also apply to the classification of instruments, permanent establishments, and headquarters across various tax systems. These mismatches can result in economic double taxation where the same income is taxed simultaneously in different jurisdictions. They can also result in scenarios where expenses are deducted in one country by the payer but not recognized as income in another country by the recipient. Van der Linden and Poelert (2024) state that the legislative adjustments will impact various types of taxes where the classification of legal forms is relevant, including income tax, corporate tax, dividend tax, source tax, inheritance tax, gift tax, and transfer tax.

⁸³ See: Gerard van der Linden and Thijs Poelert (2024). Netherlands: new legislation to combat hybrid mismatches. <https://www.ruchelaw.com/publications/netherlands-new-legislation-to-combat-hybrid-mismatches>.

Schul and Klein (2024)⁸⁴ submit that before the introduction of the OECD's global anti base erosion (GLOBE) rules hybrid mismatch arrangements existed only because of mismatches in the tax systems of the countries involved and that this generally involved differences in the classification of an instrument or an entity in each country, to paraphrase it, one country treating an instrument as debt under its tax laws and the other treating it as equity under its tax laws (domestic law) such that differences in the classification of an entity also arise if one country classifies an entity as tax transparent and another treats it as opaque for tax purposes. An example of such transactions is the structures of the U.S. MNEs when a check-the-box election is made to treat an EU subsidiary as a disregarded entity (DRE) for the United States Federal income tax purposes, whereas the EU subsidiary is treated as opaque under tax laws of its country of residence (Schul and Klein, 2024). The ATAD 2 rules aim to prevent situations resulting from a hybrid mismatch between the tax systems of the countries involved and target the following situations:

- (1) double deductions
- (2) deductions without a corresponding inclusion of the income at the level of the recipient
- (3) mismatches resulting from a conflict in the characterization of financial instruments, payments, and entities or from the allocation of payments such that a deduction no inclusion (D/Ni outcome mismatch arises.

Schul and Klein (2024) advocate that the primary rule in a D/Ni outcome situation under ATAD 2 is that the deduction is denied at the level of the payer such that when a loan is granted by the U.S. entity to its Dutch DRE subsidiary, the interest deduction at the Dutch subsidiary level is denied under the primary rule of ATAD and that when a loan is granted and results in a deduction in a country outside the EU and there are no corresponding income inclusion under the tax laws (domestic law) of the EU recipient country, then the secondary rules stipulate that the interest income should generally be included at the EU recipient level.

⁸⁴ See: Michiel Schul and Steffie Klein (2024). Hybrid financing arrangements under the GLOBE rules. <https://www.taxnotes.com/special-reports/oecd-pillar-2-global-minimum-tax/hybrid-fanancing-arrangements-under-globe-rules/2024/07/19/7kgzlz>.

In consideration of the critical review of prior literature thus conducted above, this study indicates that because of possible shortcomings within the OECD BEPS Action 2 Final Report 2015, international tax systems relating to hybrid mismatch arrangements, are not effectively neutralizing the effects of hybrid mismatch arrangements and as a result its reliability and dependability to reduce tax arbitrage and minimize erosion of tax base in South Africa in relation to tax planning scheme such as deduction no/inclusion (D/Ni outcome); double deduction (DD outcome); and imported mismatch (Imported DN/I outcome) are in question. An investigation to justify the facet of reality regarding the possible shortcomings of the OECD BEPS Action 2 and its Table 1.1 in South Africa is of paramount importance.

2.7 Literature gaps

The study reviews several sources mostly authored by the academic in relation to hybrid mismatches. Most, if not all of them, discuss about the weaknesses of the OECD BEPS Action 2, either in the context of tax planning schemes or in the limiting or consequentialist use of the international tax laws due to the pressure by the OECD such that it is not all hybrid mismatches that are involved in the global market that the OECD addresses in its BEPS Action 2 Final Report 2015. The literature thus reviewed believe the OECD is not addressing the objective of the BEPS Action 2 – to neutralize the effects of hybrid mismatch arrangements clearly. Harris (2014) presented thirteen examples of hybrid mismatches that play on the global market within cross border jurisdictions. Only a few, to paraphrase it, less than 13 compared to what Harris (2014) gave as examples of tax plans or hybrid mismatch structures that result in a mismatch and tax arbitrage or erosion, are included on Table 1.1 of the OECD BEPS Action 2 Final Report 2015, hence the development of objectives and questions to establish the reality about the actual tax planning schemes that are used within MNEs in South Africa.

Surprisingly, the literature thus reviewed has not considered taking research to examine the shortcomings of BEPS Action 2 Final Report 2015 by incorporating domestic law (tax policy), represented by Specific recommendations on improvements to domestic law (Top column 3 of Table 1.1) of the OECD as the independent variable and the OECD

Recommended Hybrid Mismatch Rules as the dependent variable in South Africa as of February 2025.

Neither are there any studies in the field that have incorporated causal research to explain the cause and effect of the study nor the correlation of dependent and independent variables of the study. However, this does not indicate that there is no research in the field somehow somewhere but the addition to the knowledge of this study does add value. Nevertheless, there are some critics from various authors about the inconsistency of the OECD in terms of combating international tax base erosion, there is extraordinarily little that is done in research to examine hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015.

This study, therefore, stands up to partly close, if not all, the gap. Further studies could be conducted by examining hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 within MNEs listed on the Johannesburg Stock Exchange (JSE) or on any of the global stock exchanges.

2.8 Summary

In this chapter international tax theories, including hybrid mismatch arrangements, categories of hybrid mismatch tax panning schemes such as deduction/no inclusion (D/Ni outcome); double deduction (DD outcome); indirect mismatch (Imported D/Ni outcome) and many other tax planning schemes are discussed. The scope of this study is on the three mentioned above hybrid mismatch arrangement categories as indicated on the OECD Table 1.1. The researcher incorporates causal research thus incorporating variables, to paraphrase it, independent and dependent variables, to examine hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 Final report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements in South Africa. Literature dating back to 1997 to 2024 is reviewed. The study acknowledges the importance of domestic law, to paraphrase it, local jurisdiction (tax policy) - represented by Specific recommendations on improvements to domestic law (Top column 3 of Table 1.1) as the independent variable such that the OECD Recommended Hybrid Mismatch Rules, is conceptualized as the dependent variable since it

depends on the political regime, to paraphrase it, domestic law, (tax policy) that plays in the global market to fully neutralize the effects of hybrid mismatch arrangements.

The study refers to Morgan (2013) causal research theories of sufficient causes and necessary causes as the catalysts to make the causal research happen meaning that it requires sufficient Specific recommendations on improvements to domestic law to cause changes (sufficient causes) in the OECD Recommended hybrid mismatch rules to be necessary (necessary causes) to neutralize the effects of hybrid mismatch arrangements.

While this study examines hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015 in South Africa, there is a future room to examine hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015, within MNEs that are listed on any global stock exchange. In the next chapter, Chapter 3, the study focuses on Research Methodology and incorporates the positivism research philosophy.

CHAPTER 3

RESEARCH METHODOLOGY

3.1 Introduction

In the prior chapter – Chapter 2, the study critically reviewed the literature and discussed literature gaps that inspires the researcher to conduct the study. The researcher thoroughly conceptualized theories of Hybrid Mismatch Arrangements from various sources across the academic community both globally and locally thus making sure there is a balance of literature review for the study. In this chapter the method and techniques of conducting the study are discussed.

3.2 Rationale of the study

The rationale of conducting this research is to establish the facet of reality at which shortcomings of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 - General Overview of the Recommendations on Neutralizing the Effects of Hybrid Mismatch Arrangements (HMA) distort tax revenue, transparency, economic efficiency, competition, and fairness in South Africa.

3.3 Research philosophy

The study adopts the positivism research philosophy. Saunders et al. (2003) indicates that philosophy depends on the way that the researcher thinks about the development of knowledge. This seems profound and not something to which the researcher would normally give much thought. Yet the way the researcher thinks about the development of knowledge affects, albeit unwittingly, the way the researcher goes about conducting the study. According to Saunders et al. (2019),⁸⁵ there are five philosophical research positions in the

⁸⁵ See: Saunders, M., Philip, L., & Thornhill, A. (2019). Research methods for business students. 8th Edition. London: Pearson Education Limited.

research namely: positivism⁸⁶, interpretivism, critical realism, postmodernism, and pragmatism. According to Saunders et al. (2003:83), three views about the research process dominate the literature namely, positivism, interpretivism, and realism but they are different, if not mutually exclusive, views about the way in which knowledge is developed and judged as being acceptable but all three have an important part to play in business and management research. Saunders et al. (2003:83) advocates that if the research philosophy reflects the principles of positivism, then the study will adopt the philosophical stance of the natural scientist. The researcher prefers working with an observable social reality and that the end product of such research can be law-like generalization similar to those produced by the physical and natural scientists (Remenyi et al., 1998:32).⁸⁷ This study collects, analyses, interprets data and generalizes findings. According to Gill and Johnson (1997),⁸⁸ when incorporating the positivism research philosophy, the researcher assumes the role of an objective analyst coolly making detached interpretations about those data that have been collected in a value-free manner. Gill and Johnson (1997) advocate that there is an emphasis on a highly structured methodology to facilitate replication and on quantifiable observations that lend themselves to statistical analysis. According to Remenyi et al. (1998:33), the positivism philosophy assumes that the researcher is independent of and neither affects nor is affected by the subject of research. This study is therefore based on assumptions that the researcher is independent of the subjects and that neither the researcher nor the subjects are affected by the study. The study assumes the role of an objective analyst. Figure 2 below is the diagram of the positivism research philosophy. Within the research philosophy, to paraphrase it, the positivism, there are layers that the study passes through before it comes to data collection and analysis namely, research approach, research method and research strategy, and time horizon.

⁸⁶ See: Research onion. Figure 1: Research Onion. Saunders et al. (2019:130)

⁸⁷ See: Remenyi, D., Williams, B., Money, A. and Swartz, E. (1998). *Doing research in business and management: an introduction to process and method*. London: Sage.

⁸⁸ See: Gill, J. and Johnson, P. (1997). *Research methods for managers*. 2nd Edition. Paul Chapman.

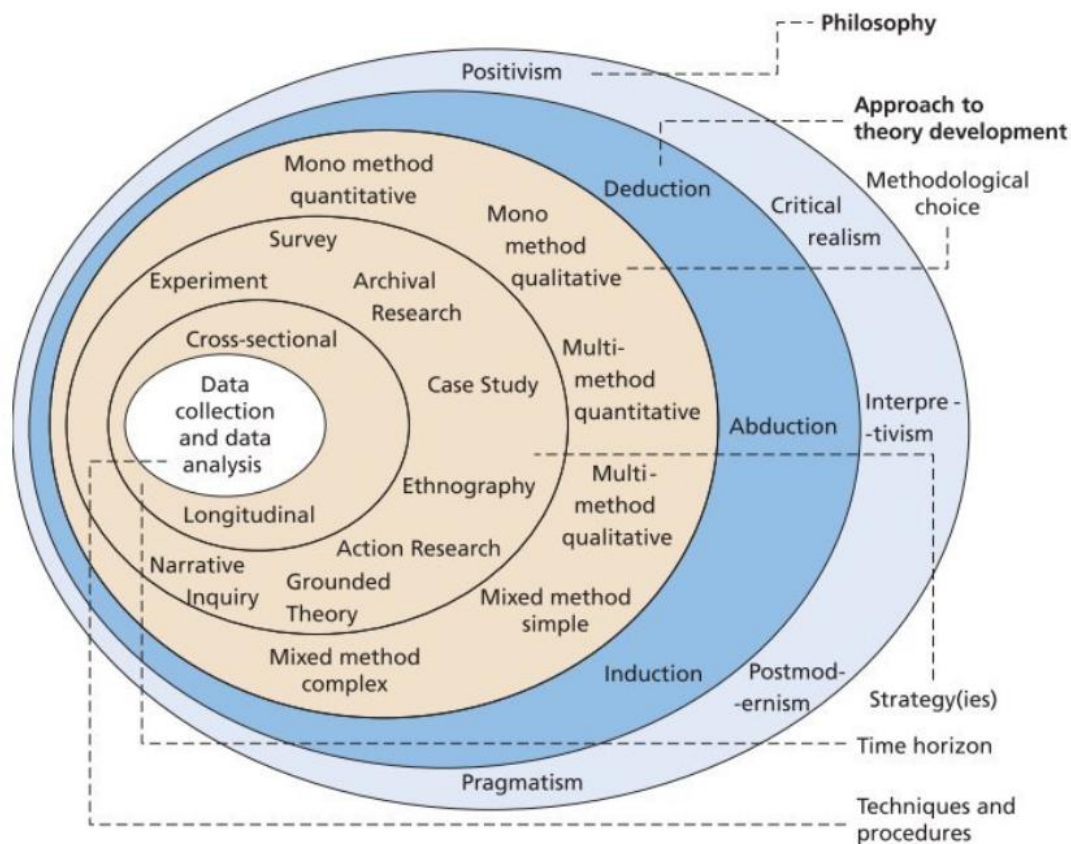


Figure 2: The Research Onion. Saunders et al. (2019:130)

3.4 Research approach

3.4.1 Deductive approach

The study incorporates the deductive approach, to paraphrase it, the second outer layer of the positivism philosophy. The researcher uses existing theories from the literature review and relate to the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations to generalize the findings. Saunders et al. (2003) indicate that research project involves the use of theory, and that theory may or may not be made explicit in the design of research, although it will usually be made explicit in presentation of the findings and conclusion. According to Saunders et al. (2003), the extent to which clarity about the theory at the beginning of research raises an important question concerning the design of research projects. This is whether the researcher should use the deductive approach,

in which the study develops a theory and hypothesis or hypotheses and design a research strategy to test the hypothesis, or the researcher should use the inductive approach, whereby the researcher collects data and develops theory as a result of data analysis. Saunders et al. (2003) advocate that insofar as it is useful to attach these approaches to different research philosophies, the deductive approach owes more to positivism and the inductive approach to interpretivism, although there is the belief that such labeling is potentially misleading and of no practical value. The researcher therefore incorporates a single method, to paraphrase it, the deductive approach whereby the quantitative method of data analysis is involved. Nevertheless, this study is based on applied research which focuses on finding solutions for existing problems, to paraphrase it, shortcoming of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations. The study develops theories that are subject to rigorous tests thus incorporating hypothesis testing to assess reliability and validity of data. Hussey and Hussey (1997:52) submit that deductive approach of research involves the development of a theory that is subjected to a rigorous test such that it is the dominant research approach in natural sciences where laws provide the basis of explanation, permit the anticipation of phenomena, predict its occurrence, and control it. Robson (1993:19)⁸⁹ lists five sequential stages through which deductive research progresses namely:

- (1) deducing a hypothesis, to paraphrase it, a testable proposition about the relationship between two or more events or concepts from the theory,
- (2) expressing the hypothesis in operational terms thus indicating exactly how the variables are measured which then proposes a relationship between two specific variables,
- (3) testing hypothesis thus involving an experiment or some other form of empirical⁹⁰ inquiry,

⁸⁹ See: Robson, C. (1993). Real world research: a resource for social scientists and practitioner -researchers. Oxford: Blackwell.

⁹⁰ Experiential or editorial

- (4) examining the specific outcome of the inquiry such that it either tends to confirm the theory or indicate the need for its modification,
- (5) if necessary, modifying the theory in the light of findings.

3.5 Discussion about deductive approach

In deductive approach the study incorporates the causal research such that independent and dependent variables are applied to establish the correlation between domestic law represented by Specific recommendations on improvements to domestic law – Top column 3 of the OECD Table 1.1 and Recommended Hybrid Mismatch Rules represented by top column 4 of the OECD Table 1.1 – General Overview of Recommendations. The researcher conceptualizes Specific recommendations on improvements to domestic law as the independent variable and Recommended Hybrid Mismatch Rules as the dependent variable, while the OECD BEPS Action 2 – Neutralizing the Effects of Hybrid Mismatch Arrangements is the confounding variable outside the OECD Table 1.1. Saunders et al. (2003:86) assert that an additional important characteristic of deductive approach is that concepts need to be operationalized in a way that enables facts to be measured quantitatively. The researcher generalizes phenomena to establish the basis of measurement such that samples of sufficient numerical size, to paraphrase it, 300 in total split equally as follows: 100 within manufacturing industry MNEs, 100 within service industry MNEs, and 100 within mining industry MNEs in South Africa are selected randomly. According to Saunders et al. (2003:87) the final characteristic of the deductive approach is generalization and that to be able to generalize about regularities in human social behaviour it is necessary to select samples of sufficient numerical size.

3.6 Research strategy or research design

The researcher incorporates the survey research design method of collecting data to answer the four research questions and objectives. The questionnaire includes five closed-ended questions with four questions assigned to the four research questions and objectives. One question is included in the questionnaire as a control to establish validity and reliability of data collected from each participant such that if the data is not dependable the researcher

goes back to get reliable data from other participants and replace the unreliable data. Saunders et al. (2003) postulate that the survey strategy is usually associated with the deductive approach and that it is a popular and common strategy in business and management research. According to Saunders et al. (2019), the research design determines the methodological choice between quantitative, qualitative, or multi-method design. According to Fusch and Ness (2015), there are three most important aspects for researchers seeking an appropriate research design namely:

- (1) the design should allow the researcher to best answer the research question,
- (2) it should help the researcher achieve data saturation,
- (3) it should allow the researcher to conduct the study in a reasonable time frame at minimal cost.

This study incorporates the survey research design because it is less expensive and saves time.

3.6.1 Advantages of survey strategy

According to Saunders et al. (2003:92), below are the advantages of the survey strategy:

- (1) Surveys allow the collection of a large amount of data from a sizeable population in a highly economical way.
- (2) Often obtained by using a questionnaire, these data are standardized, thus allowing easy comparison.
- (3) In addition, the survey strategy is perceived as authoritative by people in general, because it is easy to understand.
- (4) Using a survey gives more control over the research process.
- (5) A survey contains structured observations that are most frequently associated with organization and methods of research.
- (6) Surveys are used for structured interviews, where standardized questions are asked of all interviewees.

3.7 Time horizon

3.7.1 Definition of time horizons

According to Saunders et al. (2009),⁹¹ the time horizon of research is the time frame used for conducting a study. There are two classifications of time horizons namely cross-sectional and longitudinal.

The researcher incorporates the cross-sectional time horizon to conduct the study within multinational enterprises in South Africa thus pilot testing the research instrument (questionnaire) to 10 participants selected randomly within MNEs in South Africa in one week - from 20 February 2025 to 28 February 2025; collecting the first 67 responses, to paraphrase it, data collection, in one calendar month from 1 March 2025 to 2 April 2025; and one week from 3 April to 18 April 2025 analyzing the first data; Another two weeks from 10 May 2025 till 25 May 2025 thus collecting additional 233 responses of data that was left uncollected during the first data collection of 67 responses thus adding to a total of 300 responses; and another three days from 26 May to 28 May 2025 thus analyzing final data; and four months writing the final thesis from 3 March to 31 July 2025, to paraphrase it, the time horizon for conducting this study is between 30 November 2024 and 31 July 2025 (a total time frame of 8 months including time spent on the Concept Paper, Literature Review and Research Proposal thus from November 2024 to July 2025).

3.7.2 Importance of time horizon

The importance of time horizon is that it is used to determine how much money is needed to spend or save to achieve a specific objective.

3.8 Research techniques and procedures

3.8.1 Experiment

⁹¹ See: Saunders, M., Lewis, P. and Thornhill, A. (2009). Research methods for business students. New York: Pearson

According to Saunders et al. (2003:91), experiment is a classical form of research that owes much to natural sciences and involves the following steps:

- (1) definition of a theoretical hypothesis,
- (2) selection of samples of individuals from known populations,
- (3) allocation of samples to different experiment conditions,
- (4) introduction of planned change on one or more variables,
- (5) measurement on a small number of variables, and
- (6) control of the other variables.

In this study the researcher uses the hypothesis and t-test to experiment and establish validity and reliability of data thus collected. The researcher tests the data in order to examines hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations that is used as a guide to international tax users including international tax consultants, international tax preparers, and international tax authorities of different jurisdictions as they set policies for their jurisdictions in relation to the following test items:

▪ **Test items (all closed-ended questions)**

1. Domestic law,
2. Hybrid mismatch categories or tax planning structures,
3. Table 1.1 as a guide,
4. Recommended Hybrid Mismatch Rules, and a
5. Control question.

3.9 Origin of the positivism research philosophy

According to Maretha (2023),⁹² the positivism philosophical movement is a movement initiated by Auguste Comte and it cannot be denied that Auguste Comte's thoughts had a

⁹² See: Maretha, C. (2023). Journal of innovation in teaching and instructional media.
<https://pdfs.semanticscholar.org/9e89/639ea6052cf6fe7714717090868f0f2542c9.pdf>.

profound influence on the development of science. Therefore, there was a significant influence between the presence of positivism and the development of science at that time.

3.9. 1 Characteristics of positivism research philosophy⁹³

Below are the characteristics of the positivism research philosophy:

- (1) Positivism is a philosophical school that views the acquisition of knowledge as based on practical questions rather than metaphysical questions.
- (2) Positivism combines sensory experience and reason.
- (3) For positivism, experiments are needed as a tool to search for as much data as possible so that the mind can arrive at a universal law.
- (4) Positivism only believes in facts that can be recorded by the senses and used as objects of science. These facts can be tried and tested and only then can they be used as a basis for knowledge.
- (5) The role of positivism philosophy in the aspect of learning methods can be seen from two things, namely positivism philosophy which plays a role in developing learning methods and positivism philosophical thinking which plays a role as a learning method and of course, various learning development activities are based on data and something empirical in nature.

3.9.2 Type of research technique

In this study causal research which is also called explanatory research is incorporated. Saunders et al. (2009), submits that studies that establish relationships between variables may be termed explanatory research. According to Cook and Campbell (1979),⁹⁴ causal research knowledge is one of the most useful types of knowledge. Added to that, as conceptualized by the researcher, causality research has the following features or characteristics:

⁹³ See: Maretha, C. (2023). Journal of innovation in teaching and instructional media. <https://pdfs.semanticscholar.org/9e89/639ea6052cf6fe7714717090868f0f2542c9.pdf>.

⁹⁴ See: Cook, Th.D. and Campbell, D.T. (1979). Quasi experimentation: design and analysis issues for field settings. Boston: Houghton Mifflin.

- (1) Causality research aims to investigate causal relationships and therefore always involves one or more independent variables (or hypothesized causes) and their relationships with one or multiple dependent variables.
- (2) Causality relationships can be tested using statistical and econometric methods.
- (3) In many cases conclusions about causality are stronger if they can be based on designed experiments.
- (4) Experiments typically include one or more experimental conditions and a control condition.
- (5) Random assignment of units to these conditions allows the application of statistical theory to infer the probability of effects being caused by other factors than the designed, manipulated factor.
- (6) Designing an experiment involves making a series of decisions namely;
 - (a) the unit of observation,
 - (b) the setting in which the experiment is to be conducted,
 - (c) the creation of experimental stimuli and observation instruments,
 - (d) the number of conditions to create and how many test units to include,
 - (e) and how to assign units to the conditions, just to mention a few.

In causal research, design types vary depending on the following attributes:

- (i) whether they are quasi-experimental or true experiments,
- (ii) the number of independent factors,
- (iii) whether they include all conditions or only a subset of conditions,
- (iv) and whether they expose units to single or multiple treatments.

This study philosophizes the number of unsatisfied participants as the independent variable thus causing changes in the number of satisfied participants – the dependent variable.

3.9.3 Explanation and examples of causal research theories

In this study the OECD BEPS Action 2 Final Report 2015 - Neutralizing the Effects of Hybrid Mismatch Arrangements (the confounding variable) affects the relationship between Specific recommendations on improvements to domestic law (the independent variable) and the OECD Recommended Hybrid Mismatch Rules or linking rules (the dependent variable). Morgan (2013)⁹⁵ submits that divide in causal analysis in social science separates the case-oriented and population-oriented or variable-oriented endeavours. Case-oriented projects seek to explain outcomes in specific cases (Mahoney, 2008:414)⁹⁶. Morgan (2013) advocates that one way that counterfactual frameworks are cognitively useful for population-oriented research is that they heighten attention to the fact that the effects estimated by regression-type models, when causal, are summaries of case-level causal effects. According to Morgan (2013), populations comprise individual cases even if the researcher is only interested in aggregate statements. As such, population-oriented approaches need to be compatible with the explanation of individual cases. According to Morgan (2013), there are two fundamental logical distinctions that are common in case-oriented research but practically absent in large-N⁹⁷ variable-oriented research as below:

- (a) necessary causes.
- (b) and sufficient causes.

Saying that, X is a necessary cause of Y implies that some state of X is needed for some value of Y to occur. To say, for instance, that contracting HIV is a necessary cause of developing AIDS is to imply that nobody has AIDS without first having HIV. Saying that X is a sufficient cause of Y implies that some state of Y will occur if some state of X occurs.

⁹⁵ See: Stephen L. Morgan (2013). Handbook of causal analysis for social research. http://socweb.soc.jhu.edu/faculty/morgan/papers/Morgan_Handbook_2013.pdf.

⁹⁶ See: James Mahoney (2008). Toward a unified theory of causality. <https://journals.sagepub.com/doi/10.1177/0010414007313115>.

⁹⁷ In this context a large-N refers to a research design that uses a very large sample size (or a few cases) to investigate a phenomenon or test a hypothesis with the advantage of strong generalization about the population thus investigated.

In consideration of the theory of causal research scenarios discussed by three authors including Morgan (2013); Regin (2000); and Mahoney (2008) above, this study philosophizes that causal research requires necessary causes and sufficient causes to happen. In this context the necessary causes are the OECD Recommended Hybrid Mismatch Rules which are also the dependent variable. The sufficient causes are the Specific recommendations on improvements to domestic law which is also the independent variables which causes a change in the dependent variable. In this study Specific recommendations on improvements to domestic law (Top column 3 of the OECD Table 1.1) is sufficient to cause a change in the Recommended Hybrid Mismatch Rule (Top column 4 of the OECD Table 1.1), the dependent variable.

With reference to the sufficient cause's theory above, and in relation to the literature review, regarding differences in jurisdictions (domestic law), below are the examples that the researcher philosophizes and how they affect variables:

1. If country A's (head office) domestic law has hybrid arrangement structures that are compatible (sufficient to cause a change in the dependent variable) with those in country B (the subsidiary) with regard to a hybrid financial instrument which is under category D/NII (Column 1 of the OECD Table 1.1), Specific recommendations on improvements to domestic law (tax policy) which is in this context the independent variable applies the primary rule (OECD Recommended Hybrid Mismatch Rule) and denies the dividend exemption for deductible payment in the subsidiary which implies higher taxable income in country B, such that the linking rules (The OECD Recommended Hybrid Mismatch Rules) which are in this context the dependent variable denies the payer deduction and the defensive rule characterizes and treats the dividend as other income in the payee jurisdiction/country A's (head office) and the reason which is in this context, the scope, also the dependent variable, indicates that because they are related party transactions and structured arrangements are in place, that squares up the hybrid mismatch arrangement theory and thus neutralizes the effects of hybrid mismatch arrangements.

2. If the domestic law (tax policy) of country A (the head office) is not compatible, for example using Anti-Tax Avoidance Directive (ATAD) whereas country B (the subsidiary) is incorporating General Anti-Avoidance Rules (GAAR) which are not compatible (insufficient causes) with country A (the head office) which is also the payee, even if it responds by denying the payer's deduction and include it as ordinary income in their financial statements there will still be a hybrid mismatch and the head office will still benefit from the tax arbitrage arising from the differences in hybrid arrangement structures between the two countries until the domestic law in both countries has laws (tax policies) that are compatible (sufficient causes) with each other.

3.9.4 Rule of causal research regarding domestic law compatibility

In conclusion the researcher philosophizes and explains the rule of causal research and paraphrases it, as the more the compatibility (sufficient causes) of tax policies between jurisdictions (represented by Specific recommendations on improvements to domestic law) – the independent variable, the more the Recommended Hybrid Mismatch Rule (necessary cause) to neutralize the effects of hybrid mismatch arrangements and vice versa.

This study conducts a survey to establish shortcomings of the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements by incorporating domestic law or South African tax policy – (represented by Specific recommendations on improvements to domestic law) including hybrid mismatch structures or tax plans and compares the compatibility with the jurisdiction (tax policy) of MNEs in South Africa by incorporating the OECD Table 1.1 and finds out if there are any shortcomings within the OECD BEPS Action 2 Final Report 2015.

3.9.5 Methodology conclusion

It is mentioned in the study that the researcher incorporates the positivism research philosophy and that the study incorporates the quantitative method of analyzing data to

explain the shortcomings of the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements and its Table 1.1 - General Overview of Recommendations that is used as a compliance guide to naturalize the effects of hybrid mismatch arrangements. Regarding quantitative methods, the researcher incorporates both inferential and descriptive statistics with bar graphs and gives interpretations to each graph hence the incorporation of a hypothesis to test the counts.

3.9.6 Selecting samples

According to Baustel (2022),⁹⁸ sample selection is about selecting cases that are relevant to the research questions. Flick (2019) advocates that it is essential to define and justify the selection of the sample to adequately answer research questions.

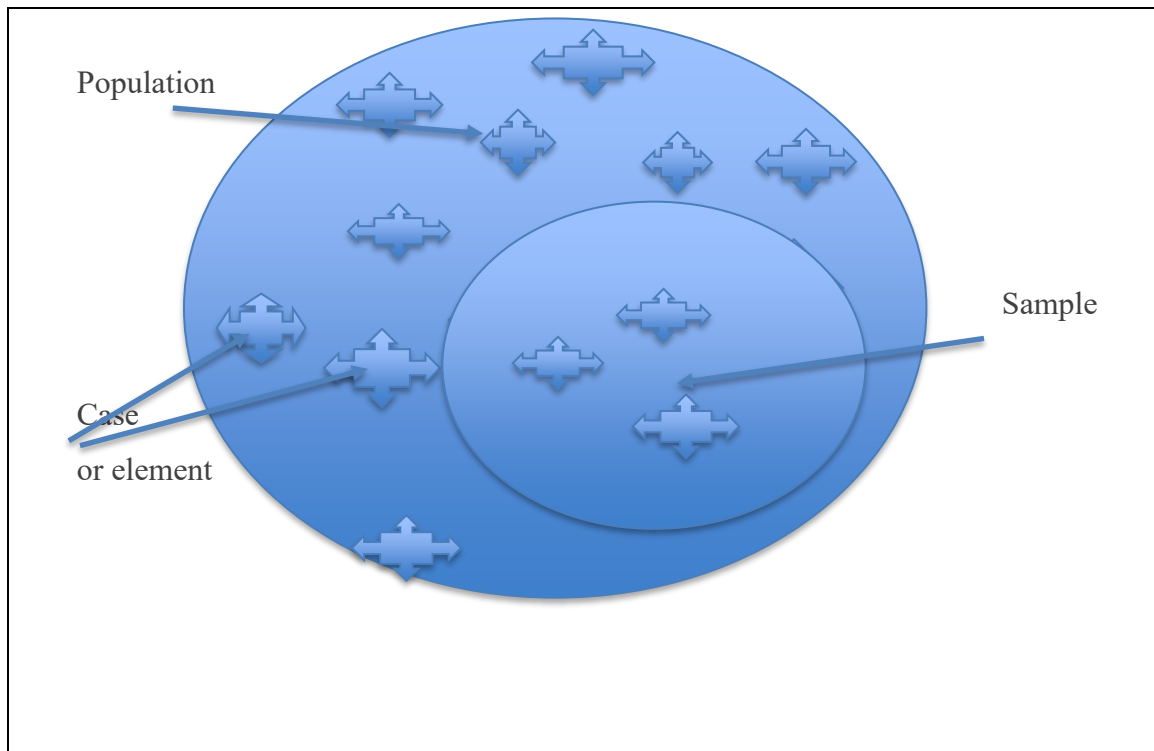
Saunders et al. (2003:150) postulate that sampling techniques provide a range of methods that are used to reduce the amount of data that is needed to collect by considering only data from a subgroup rather than all cases or elements. Some research questions require sample data to generalize about all the cases from which the sample is selected. See figure 3 below – population, sample, and individual cases.

Figure 3

Population, sample, and individual cases

⁹⁸ See: Baustel, R. (2022). An investigation of the entrepreneurial behaviour of a German MedTech start-up with a focus on disruptive innovation.

https://pure.southwales.ac.uk/ws/portalfiles/portal/16807997/DBA_Thesis_Robert_Baustel_110623.pdf.



Source: Created by the researcher

In this study the researcher selects quite a few samples (300 samples) within the population of multinational enterprises (MNEs) in South Africa namely, the mining, manufacturing, and service industries to generalize findings.

3.9.7 Sampling techniques

According to Saunders et al. (2019), there are two contrasting sampling techniques namely, probability sampling and non-probability sampling.

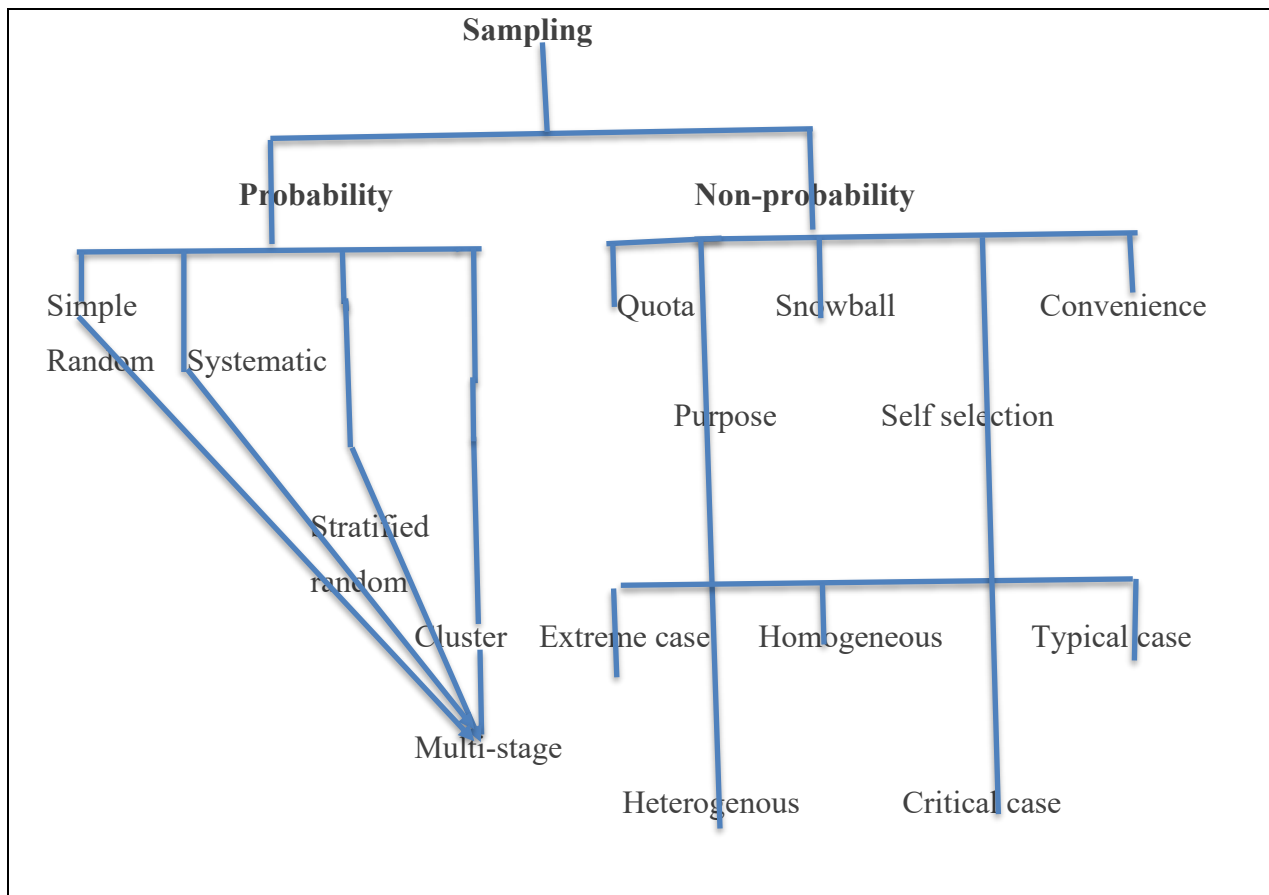
Probability sampling is random selection, to paraphrase it, selection by chance. In probability sampling each member of the population has an unknown chance of being selected to participate in the study. In non-probability sampling there is no random selection of the population; to paraphrase it, only certain members of the population have the chance to participate in the study. See figure 4 below for probability sampling techniques.

The study incorporates probability sampling technique because there are 300 samples and is a survey-based study which requires more than 50 samples to have a larger-N which gives the confidence of generalization about the population. According to Saunders et al. (2003), probability sampling is most associated with survey-based research where the researcher makes inferences from the sample about the population to answer research questions or meet research objectives. The process of probability sampling is divided into four stages namely:

- (1) identify a suitable sampling frame based on research questions or objectives,
- (2) decide on a suitable sample size,
- (3) select the most appropriate sampling technique and select the sample,
- (4) check that the sample is representative of the population.

Figure 4

Sampling technique



Source: Created by the researcher

3.9.8 Disadvantage of probability sampling

According to Henry (1990),⁹⁹probability sampling is not recommended for less than 50 cases or elements. Henry (1990) argues that where the population is less than 50, all 50 should be selected because the influence of a single extreme case on subsequent statistical analyses is more pronounced than for larger samples. The researcher conducts the study in South Africa whose target population are the MNEs. There are more than 50 MNEs in South Africa which implies the probability sampling is free from the influence of a single extreme case on subsequent statistical analyses which happen in populations that are less than 50 cases or elements.

3.9.9 Deciding on a suitable sample size

Saunders et al. (2009) advocate that generalization about populations from data collected using any probability sampling is based on statistical probability. The larger the sample's size the lower the error in generalizing to the population. According to Saunder et al. (2009), probability sampling is therefore a compromise between the accuracy of findings and the amount of time and money invested in collecting, checking, and analyzing the data. The choice of sample size within the compromise is governed by four aspects namely:

- (1) The confidence in data, to paraphrase it, the level of certainty that the characteristics of the data collected will represent the characteristics of the total population,
- (2) The margin of error that can be tolerated or the accuracy required for any estimates made from the sample,
- (3) The type of analyses undertaken, the number of categories into which to subdivide the data, as many statistical techniques have a minimum threshold of data cases for each cell, for example the chi square,
- (4) The size of the total population from which the sample is drawn.

⁹⁹ See: Henry, G.T. (1990). Practical Sampling. Vol 21. Sage Publications Ltd., Newbury Park. <http://dx.doi.org/10.4135/9781412985451>.

Saunders et al. (2009) assert that for many research questions and objectives the researcher's needs to undertake statistical analyses determine the threshold sample size for individual categories which affect the overall sample size. The economist's (1997)¹⁰⁰ advice of minimum number of 30 samples for statistical analyses provides a useful rule of thumb for the smallest number in each category within the researcher's sample. Where the population in the category is less than 30, the researcher should normally collect data from all cases in that category. According to Saunders et al. (2009), researchers work to a 95 per cent level of certainty which means that if the researcher's sample is selected 100 times at least 95 of the samples are certain to represent the characteristics of the population. The margin of error describes the precision of the researcher's estimates of the population. See: Table 1¹⁰¹, which gives a guide to the different minimum sample sizes required from varied sizes of the population at 95 per cent level of certainty or confidence level. The table assumes that data are collected from all cases in the sample. Most business and management research are content to estimate the population's characteristics to within plus or minus 3-5 per cent of its true values which implies that if 45 per cent of the researcher's sample are in a certain category then the estimate for the total population within the same category is 45 per cent plus or minus the margin of error, to paraphrase it, somewhere between 42 and 48 per cent for a 3 per cent margin of error.

The researcher, after conceptualizing the theory above, advocates that larger samples are good for the betterment of sufficient response. This study sends the questionnaire to 330 participants including the first 67 and the final 233 participants, with the adjusted minimum of 30 resulting in the calculated sample size of 300 participants within multinational enterprises in South Africa using probability sampling thus targeting the manufacturing MNEs, the Mining MNEs and the service MNEs in South Africa with a margin of error of 5 percent which falls between the generally accepted margin of error - 4 and 8 at confidence

¹⁰⁰ See: The Economist (1997). The Economist Numbers Guide: The Essentials of Business Numeracy. (3rd edn), London, Profile Books.

¹⁰¹ See: Table 1 – Sample sizes for different sizes of population at 95% level of confidence certainty.

level of 95%. The margin of error is small where the population or sample is large and big where the population or sample is small, to paraphrase it, the larger the population variability, the smaller the margin of error and vice versa. Note that a margin of error of 1% results in a small variation than a margin of error of 5% in any population. Which means a margin of error of 1% is better than a margin of error of 5%. And the results are more reliable at the 1% margin of error with a confidence level of 95%. But 5% margin of error is accepted in research survey. See examples:

- At 5% margin of error: Let us say the sample size is 300 at 5% margin of error with a confidence level of 95% which means $300+15 = 315$; $300-15 = 285$, meaning that participants between 315 and 285 responded to the survey – a wider dispersion or variability of 30.
- At 1% margin of error: Let us say the sample is 300 at 1% margin of error with a confidence level of 95% means $300+3 = 303$; $300 -3 = 297$ meaning participants between 303 and 297 responded to the survey – a lesser dispersion or variability of 6. So, the 5% margin of error has a higher response but with a wider dispersion or variability which results in unreliability than the 1% margin of error. Nevertheless the 5% margin of error is generally acceptable in research which implies the dispersion or variability of 30 is acceptable (less than the 168 margin of error for a population of 300 on Table 1 in the study with the confidence level of 95%) and therefore this study justifies that there is no need for additional population or samples. Refer to Table 1 below for margin of error; and refer to calculation of sample size below in section 3.11 – Simple Random Sampling.

Table 1

Sample sizes for different sizes of population at 95 per cent level of confidence certainty (assuming data are collected from all cases in the sample)

		Margin of error	Margin of error	Margin of error	Margin of error
Population		5%	3%	2%	1%
50		44	48	49	50

100		79	91	96	99
150		108	132	141	148
200		132	168	185	196
250		151	203	226	244
300		168	234	267	291
400		196	291	434	384
500		217	340	414	475
750		254	440	571	696
1 000		278	516	706	906
2 000		322	696	1091	1655
5 000		357	879	1622	3288
10 000		370	964	1936	4899
100 000		383	1056	2345	8762
1 000 000		384	1066	2395	9513
10 000 000		384	1067	2400	9595

Source: Created by the researcher

3. 10 The importance of a high response rate

According to Saunders et al. (2019), the most important aspect of a probability sample is that it represents the population. A perfect sample is one that exactly represents the population from which it is taken. It is likely to have non-responses. Non-respondents are different from the rest of the population because they have refused to be involved in research for whatever reason. Consequently, the respondents are not representative of the total population and data collected may be biased. Any non-responses require extra respondents to reach the required sample size thereby increasing the cost of the survey.

Following the above circumstances the researcher takes record of non-respondents and increases the number of questionnaires that are sent to replace the non-respondents in the same population to minimize bias and maintain the planned number of sample size within the population sample. Saunders et al. (2003:157) assert that the researcher should analyze the refusal to respond to both individual questions and entire surveys to check for bias.

According to Saunders et al. (2009), non-response is due to four interrelated problems namely:

- (a) refusal to respond.
- (b) inability to respond.
- (c) inability to locate respondent; and
- (d) respondent located but unable to make contact.

The most common reason for non-response is that the respondent refuses to answer the questions or to participate in the survey but does not give a reason. Such non-response can be minimised by paying careful attention to the methods used to collect data. Alternatively, some of the selected respondents may not meet the research requirements and are ineligible to respond. Non-location and non-contact create further problems especially the fact that respondents are unreachable imply non-representativeness in the data thus collected. As part of the research report the researcher includes the response rate. Neumann (2000)¹⁰² submits that when calculating the response rate, the researcher includes all eligible respondents:

Total response rate = total number of responses divided by total number in sample minus ineligible. Or response rate = Total number of responses

Total number in sample — ineligible

This study is conducted with a sample size of 300 responses [refer to Saunders et al. (2003) formula for calculating probability sampling in this study in section 3.11- Simple random sampling].

¹⁰² Neuman, W.L. (2000). Social research methods: qualitative and quantitative approaches. 4th Edition. Needham: Allyn & Bacon, Heights.
https://scholar.google.co.za/scholar?q=neuman+2000+social+research+methods&hl=en&as_sdt=0&as_vis=1&oi=scholar
[t](#)

In this study the total number of the population sample is 330 and the ineligible participants number is 30 thus resulting in the sample size of 300.

Therefore, response rate according to the above formula = $300/330-30 = 1 * 100 = 100\%$.

According to Neumann (2000), the result of the above formula is termed as the response rate.

In terms of sampling, the study incorporates the simple random sampling method. The researcher sends 330 questionnaires randomly across the country online using google forms survey and attaches a pdf version of the questionnaire to maximize chances of response where participants are not familiar with google forms survey so that they can respond via the portable document format (PDF) version and email back responses after making an appointment with participants asking them to participate in the survey.

The purpose of sending 330 is to meet the minimum percentage of 10 per cent on a population of over 1000 and assuming that there are more than 1000 MNEs in South Africa that are listed on the Johannesburg Stock Exchange (JSE) as of February 2025, to have a better chance of response and the minimum sample size of 100. Akman (2023)¹⁰³ states that there are resources and statistical considerations when determining sample sizes. When the population is large, 100 participants are typically considered the minimum sample size. Akman (2023) asserts that most statisticians agree that a sample size of 100 is necessary to obtain any kind of significant results and that if the population is less than 100, the study should survey every single person.

3.11 Simple random sampling

According to Saunders et al. (2009), simple random sampling requires the researcher selecting the sample at random from the sampling frame using either random number tables or a computer and it is done as follows:

¹⁰³See: Akman, S. (2023). Research type and sample size: is there a correlation? <https://forms.app/en/blog/correlation-between-research-type-and-sample-size>.

- (1) Number each of the cases or elements in the sampling frame with a unique number such that the first case is numbered as 0, the second as 1 and so on.
- (2) Select cases using random numbers until the actual sample size is reached.

This study incorporates probability sampling to answer research questions and objectives. According to Saunders et al. (2003), the calculation for probability sampling is as per the following formula:

$$n^a = \frac{n \times 1000}{re\%}$$

where n^a is the actual sample size required, n is the minimum (or adjusted minimum) sample size and $re\%$ is the estimated response rate expressed as a percent.

In the study the population size is 1000 and the minimum or adjusted minimum is 30. The estimated response rate $re\%$ is therefore 100%. The sample size is therefore:

$$\begin{aligned} n^a &= \frac{30 \times 1000}{100} \\ &= \frac{30000}{100} \\ &= 300 \end{aligned}$$

According to Saunders et al. (2019), the researcher can even close eyes to select the first number to avoid selecting numbers that are random but identical. As indicated in the sampling method above, to paraphrase it, in the process of probability sampling techniques stages mentioned in the study, the researcher selects the most appropriate sampling techniques and selects simple random sampling.

The researcher uses the simple random technique to collect data. Saunders et al. (2003) postulate that once the researcher has chosen the suitable sampling frame and established the actual sample size required the researcher needs to select the most appropriate sampling technique to obtain a representative sample. This study is based on the deductive approach; to paraphrase it, it is the applied research which applies existing theory to resolve problems. The researcher therefore first identifies existing theory and then decides the appropriate technique to incorporate throughout the study. According to Saunders et al. (2019), there are five main techniques that are used to select a probability sample namely:

- (a) Simple random,
- (b) Systematic,
- (c) Cluster,
- (d) Multi-stage.

Refer to figure 2 in the study above for probability sampling technique.

3.12 Secondary data

According to Kervin (1999),¹⁰⁴ secondary data include both quantitative and qualitative data and then can be use in both descriptive and explanatory research. The data that the researcher uses may be raw data, where there is little if any processing, or compiled data that have received some form of selection or summary. Within business and management research such data are used mostly in case study and survey-type research. Saunders et al. (2009) advocate

¹⁰⁴ See: Kervin J.B. (1999). Methods for business research. 2nd Edition. New York: Harper Collins. https://pubhtml5.com/eief/gndt/ResearchMethodsForBusinessStudents_Saunders/278.

that different researchers namely, Bryman (1989)¹⁰⁵; Dale et al. (1988)¹⁰⁶; Hakim (1982)¹⁰⁷, Hakim (2000)¹⁰⁸; and Robson (2002)¹⁰⁹ to mention a few have generated a variety of classifications for secondary data and that the classifications do not capture the full variety of data and as such, ideas to create three main subgroups of secondary data namely, documentary, survey-based data, and those compiled from multiple sources have resulted from the above mentioned different researchers.

3.13 Types of secondary data

3.13.1 Survey-based secondary data

As mentioned in section 3.12 in this study secondary data is varied. This study incorporates the survey to collect data. Therefore, the focus is on survey-based secondary data. According to Hakim (1982), survey-based secondary data refers to data collected by questionnaires that are analysed for the main purpose. Such data can refer to organizations, people or households and are available as compiled data tables or as a computer-readable matrix of raw data for secondary analysis. Hakim (1982) advocates that survey-based secondary data is collected through one of the three distinct types of survey namely, census, continuous or regular surveys or ad hoc surveys. According to Hakim (2000), censuses are usually carried out by governments and are unique because unlike surveys, participation is obligatory. In the study

¹⁰⁵ See: Bryman, A. (1989). Research methods and organization studies. London: Unwin Hyman. [https://scholar.google.co.za/scholar?q=bryman+a.+\(1989\)+research+methods&hl=en&as_sdt=0&as_vis=1&oi=scholart](https://scholar.google.co.za/scholar?q=bryman+a.+(1989)+research+methods&hl=en&as_sdt=0&as_vis=1&oi=scholart).

¹⁰⁶ See: Dale, A., Arber, S., and Procter, M. (1988). Doing secondary research. London: Unwin Hyman. [https://scholar.google.co.za/scholar?q=Dale+et+al.+\(1988\)+doing+secondary+research&hl=en&as_sdt=0&as_vis=1&oi=scholart](https://scholar.google.co.za/scholar?q=Dale+et+al.+(1988)+doing+secondary+research&hl=en&as_sdt=0&as_vis=1&oi=scholart).

¹⁰⁷ See: Hakim, C. (1982). Secondary analysis in social research. London: Allen & Unwin. [https://scholar.google.co.za/scholar?lookup=0&q=Hakim,+C.+\(1982\)+Secondary+Analysis+in+Social+Research&hl=en&as_sdt=0,5&as_vis=1](https://scholar.google.co.za/scholar?lookup=0&q=Hakim,+C.+(1982)+Secondary+Analysis+in+Social+Research&hl=en&as_sdt=0,5&as_vis=1).

¹⁰⁸ See: Hakim, C. (2000). Research design: successful designs for social and economic research. London: Routledge. <https://www.taylorfrancis.com/books/mono/10.4324/9780203354971/research-design-catherine-hakim>.

¹⁰⁹ See: Robson, C. (2002). Real world research. 2nd Edition. Oxford: Blackwell. https://scholar.google.co.za/scholar?q=robson+c+2002+real+world+research&hl=en&as_sdt=0&as_vis=1&oi=scholart.

survey-based questionnaires are used to collect data within MNEs in South Africa to examine hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations.

3.13.2 Advantages and disadvantages of secondary data

▪ Advantages

According to Ghauri and Gronhaugh (2002),¹¹⁰ below are the advantages of secondary data:

- (1) Saving resources namely, time and money.
- (2) Easy to analyse larger data sets such as those collected by government surveys.

▪ Disadvantages

According to Denscombe (1998),¹¹¹ below are the disadvantages of secondary data:

- (1) Data may be collected for a purpose that does not match the researcher's needs and be inappropriate to answer research questions.
- (2) Access may be difficult or costly.
- (3) Aggregation and definition may be unsuitable.
- (4) Difficult to control and might end up collected incorrect data.
- (5) Initial purpose may affect how data are presented.

3.14 Primary data

3.14.1 Collecting Primary data using observations

¹¹⁰ See: Ghauri, P. & Gronhaugh, K. (2002). Research methods in business studies: a practical guide. 2nd Edition. Harlow: Financial Times Prentice Hall.
https://scholar.google.co.za/scholar?hl=en&as_sdt=0,5&as_vis=1&q=Ghauri+and+Gronhaugh+2002+Research+Methods+in+Business+Studies.

¹¹¹ See: Denscombe, M. (1998). The good research guide. Buckingham: Open University Press.
https://scholar.google.co.za/scholar?hl=en&as_sdt=0%2C5&as_vis=1&q=Denscombe+1998+the+good+research+guide&btnG=.

The study incorporates the survey whereby a research questionnaire is sent to participants. Therefore, primary data using observations is not the focus for this research and as such the researcher does not discuss much about primary data which is mostly part of observing about what people do. This study is based on the deductive approach whereby existing theory is incorporated to examine shortcomings of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations hence there is no need for observations of what people are doing. Advantages of secondary data are given in the study and weigh more than advantages of primary data. Saunders et al. (2009) submit that if the research questions and objectives are concerned with what people do, an obvious way in which to discover this is to watch them do it. According to Saunders et al. (2003:221), below are what observations involve:

- (a) systematic observation of what people are doing,
- (b) recording what people are doing,
- (c) describing what and how people behave,
- (d) analysing what people do and how they do it, and
- (e) interpretation of people's behaviour.

As mentioned in the above section, none of the above observations are required in the study or survey-based research to collect data for international tax: Hybrid Mismatch Arrangements and Shortcomings of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations.

3.14.2 Collecting primary data using the questionnaire

Saunders et al. (2019) advocate that the questionnaire is one of the most widely used survey data collection techniques and that because each respondent is asked to respond to the same set of questions, it provides an efficient way of collecting response from a larger sample prior to quantitative analysis.

The design of the questionnaire as Saunders et al. (2003) assert, affects the response rate, the reliability, and validity of the data collected. Response rate, validity and reliability can be maximised by five circumstances namely:

- careful design of individual questions.
- clear layout of the questionnaire.
- lucid explanation of the purpose of the questionnaire.
- pilot testing, and
- careful plan and executed administration.

The researcher complies with all requirements of designing the questionnaire. The study pilot tests the questionnaire before it is sent to participants with 50 pilot test participants randomly selected. Saunders et al. (2019) contend that for most student questionnaire the minimum number for a pilot study is 10. According to Saunders et al. (2009:308), pilot study is the process of using a questionnaire prior to collecting data with the purpose of refining the questionnaire so that respondents do not have problems in answering research questions and objectives; and that there are no problems in recording the data. Objectives of conducting the study are clearly defined such that the questionnaire doesn't require further explanations to participants. This study evaluates other methods before deciding to incorporate the questionnaire as a best fit for answering research objectives. The questionnaire thus designed includes five (5) closed ended questions. According to Saunders et al. (2019), questionnaires are used for descriptive or explanatory research. The study incorporates the survey or explanatory research techniques. The attribute of the survey is based on international tax thus focussing on hybrid mismatch arrangements and international tax professionals that represent MNEs in South Africa by using an online communication via emails as a mode of distributing the questionnaire. Dillman (2000)¹¹², distinguishes between three types of data variables that can be collected through questionnaires namely:

- (a) opinion,
- (b) behaviour, and
- (c) attribute.

¹¹² See: Dillman, D.A. (2000). Mail and internet surveys: the tailored design method. 2nd Edition. New York: Wiley. https://books.google.co.za/books?hl=en&lr=&id=d_VpiiWp51gC&oi=fnd&pg=PT7&dq=Dillman+2000+Mail+and+internet+Surveys&ots=OIHUOr6x5o&sig=ApZXpPgEndjVeld4yVzp7HFVukuk#v=onepage&q=Dillman%202000%20Mail%20and%20internet%20Surveys&f=false.

The distinctions are important, as they influence the way the questions are worded and below are the requirements of each in the study:

- (1) Opinion variables record how respondents feel about hybrid mismatch arrangements and the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations on whether it’s true or false that the OECD BEPS Action 2 neutralizes the effect of hybrid mismatch.
- (2) Behaviour variables contain data on what people, or the organisation does.
- (3) Attributes contain data about the respondents’ characteristics and are best thought of as things a respondent possesses, rather than things a respondent does, and that attributes are used to explore how opinions and behaviour differ between respondents, as well as to check that the data collected are representative of the total population (Dillman, 2000).

In this study attributes indicate the willingness of participants to respond with anonymity or without anonymity on one hand, and not to respond at all due to the fear of exposing the activities of the employer’s or MNE’s confidence and tax planning structures as well as anti-tax avoidance strategies used within the MNE, generally referred to as sensitive information.

3.15 Designing the questionnaire

According to Saunders et al. (2019), the validity and reliability of the data the researcher collects and the response rate that is achieved, mostly depend on the design of research questions, the structure of research questions and the rigour of pilot testing. Foddy (1994)¹¹³ advocates that the research question must be understood by the respondent in the way intended by the researcher and the answer given by the respondent must be understood by

¹¹³ See: Foddy, W. (1994). Constructing questions for interviews and questionnaires. Cambridge: Cambridge University Press.

https://www.google.com/search?q=Foddy+1994+constructing+questions+for+interviews+and+questionnaires&rlz=1C1CHBF_enZA1032ZA1032&oq=Foddy+1994+constructing+questions+for+interviews+and+questionnaires&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCzMwMzI0NGowajE1qAIAAsAIA&sourceid=chrome&ie=UTF-8.

the researcher in the way intended by the respondent. This means that there are four stages that must occur if the question is to be valid and reliable and below are the stages:

- (1) Researcher is clear about the information required and designs a question.
- (2) Respondent decodes the question in the way the researcher intended.
- (3) Respondent answers the question.
- (4) Researcher decodes the answer in the way the respondent intended.

In this study the researcher is well versed with hybrid mismatch arrangements and conceptualizes shortcomings in the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 hence the aims and objectives to conduct the survey so that data that is used to answer research questions and objectives is collected.

3.16 Designing individual questions

According to Saunders et al. (2009), the design of each question should be determined by the data that the researcher needs to collect and requires the following:

- (a) adopt questions used in other questionnaires,
- (b) adapt questions used in other questionnaires, and
- (c) develop own research questions.

In this study the researcher adopted 5 closed-ended questions that are in most business surveys, case studies, and are used in real world scenarios; and adapted a technique to design own research questions thereby incorporating the quantitative method of analysing data to answer research questions and objectives. Question 5 (closed-ended question) is developed as a control to establish reliability and validity of participants' responses and data. The simple random sampling related questions 1 to 5 are incorporated and developed in the study to answer closed-ended questions and research objectives.

3.17 Layout of the questionnaire

Dillman (2000) advocates that layout is important for both self-administered and interviewer-administered questionnaires. The layout of self-administered questionnaires should be attractive to encourage the responded to fill it in and return it. The questionnaire should be

short to avoid low response rate. According to Saunders et al. (2019), paper-based surveys in colour increases printing costs.

The researcher uses short questionnaires with 5 questions as indicated in section 3.16 above in black and white paper-based format to reduce printing costs at the respondent's terminal in case the respondent doesn't use the modern online form filling portable document format (PDF) software. Saunders et al. (2003) submit that a very short questionnaire may suggest that the research is insufficient and hence not worth bothering with. Conversely a questionnaire that takes over two hours to complete might just be thrown away by the respondent and that a length of between four and eight A4 pages is acceptable for within-organization self-administered questionnaires. This study incorporates the six-page A4 paper size questionnaire which is within the norm or acceptable requirements.

3.18 Questionnaire administration

In this section the researcher focuses on the administration of the questionnaire. The questionnaire is self-administered - by the researcher, thus emailing, making telephone calls for both making an appointment to send the questionnaire to the participant thus getting the email address and for following up on response from participants. Saunders et al. (2019) submit that online questionnaires are administered in two ways namely:

- (1) via email
- (2) via a website.

The first of the above use emails to send and receive questionnaires and is dependent on having a list of email addresses. Witmer et al. (1999)¹¹⁴ advocate that questionnaires can be successfully administered by email within organizations if all the sample have access to and use it.

3.19 Problems encountered during administration of questionnaire

¹¹⁴ See: Witner, D. F., Colman, R.W., and Katzman, S.L. (1994). From paper and pen to screen and keyboard: toward a methodology for survey research on the internet. Thousand Oaks: Sage.

In this study implications are encountered while collecting data. These include the following:

Non-response due to sensitivity of the topic under study

Many, about 4 percent, of international tax professionals were resistant to complete the questionnaire as they feared their answers would reflect negatively on their MNEs. Thus, they declined to respond.

Shortage of time arising from commitments amongst participants

About 5 percent of international tax specialists were too busy to respond to the questionnaire. A questionnaire requires reading and thinking. A busy international tax professional cannot avoid losing valuable customers by using valuable time attending to the questionnaire. As a result, the study has not received the response.

Anonymity

Almost all respondents preferred to be anonymous in fear of being known as the ones disclosing confidential information concerning tax plans incorporated within multinational enterprises in South Africa and surprisingly even tax authorities and the big 4 auditing firms preferred to be anonymous.

3.20 Logical reasons for non-response

According to Yu et al. (2007:3),¹¹⁵ employment status is found to affect peoples' likelihood of providing answers to work related questions. As a result, many respondents provided private email addresses for correspondence. That seems to agree with Yu et al. (2007). This study has kept a record of all email corresponding addresses and phone numbers from various participants that were simply, randomly, selected to participate in the survey as per the simple random sampling.

3.21 Data analysis

¹¹⁵See: Yu, M., Chang, M.Y., He, P., Smathers, L. and McCutcheon, A. (2007). Mode effects on item non-response: Gallup European social survey mixed mode experience. All Academic Inc.

The study incorporates the quantitative techniques to analyse data. Data are tallied to indicate the frequency scores from 300 participants in relation to the four test items. A frequency distribution table is constructed. Graphical analyses are constructed in relation to the frequency distribution table to indicate the eye view of the frequency scores thus obtained from 300 participants. Proportions of frequency scores from the 300 participants are indicated from close-ended questions. The study then constructs a frequency mean and standard deviation and linear regression analysis. The frequency-mean and standard deviations are used in the computation of the t-test. The t-test is used to ensure validity and reliability of data used in the study.

3.22 Hypothesis

According to Hussey and Hussey (1997:55), a hypothesis is an idea or proposition which is tested by using analyses. The study applies hypothesis to propose the mean frequency distribution of the 300 participants in the examination of hybrid mismatch arrangements and shortcomings of the OECD BEPS Action 2 Final Report 2015 and its Table 1.1 – General Overview of the Recommendations.

3.23 Hypothesis testing procedure

The researcher incorporates five step hypothesis testing. According to Lind et al. (2005),¹¹⁶ the hypothesis testing procedure for testing involves five steps namely,

- a. stating the null and alternate hypothesis
- b. selecting the level of significance
- c. selecting the test statistic
- d. formulating the decision rule and
- e. deciding and interpreting results.

3.24 Method of testing data

¹¹⁶ See: Lind, D.A., Marchal, W.G., & Wathen, S.A. (2005). Statistical techniques in business & economics. 12th Edition. New York: McGraw-Hill/Irwin.

This study follows the “One-sample test of hypothesis” and incorporates the two tailed hypotheses testing. The frequency mean and standard deviation are computed. These two are used to compute the t-test that is used for testing the hypothesis.

3.25 Validity and reliability

According to Baustel (2022), validity refers to the validity of a research method, to paraphrase it, whether it measures what it is supposed to measure. This study constructs the skew diagram with rejection rejoin on both sides to test the validity and reliability. A decision rule is stated to accept or not to accept the computed result of the t-test. According to Lind et al. (2005:321), a decision rule is a statement of the specific conditions under which the null hypothesis is rejected and the conditions under which it is not rejected. This study then tests the results of the computation of the hypothesis on the skew diagram. Results are either accepted or not rejected if they do not fall within the rejection region of the skew diagram and it is not accepted if it falls within the rejection region of the skew diagram. The test is then used to ensure validity and reliability of data.

3.26 Limitations of the study

This study is limited to multinational enterprises (MNEs) in South Africa and include the following industries:

- (1) manufacturing
- (2) mining
- (3) service

Participants decide to be anonymous and as such the study doesn't give or name specific MNEs as examples.

3.27 Ethical issues during data collection and elimination of bias

This study eliminates bias by incorporating a full involvement in the research process. According to Bowling (2005),¹¹⁷ the biasing effects of mode of questionnaire administration has important implications for research methodology, and the validity of the results of research. This study then uses self-managed closed-ended questionnaire to eliminate bias. The study abides by legal ethical issues to eliminate bias associated with ethicality arising from fabrication of data; involvement of illegal ethical agencies in collecting data; and inconsistency in analysing data. This then means that the incorporation of full involvement in research process ensures that the study avoids the halo and devil effects that result in bias.

3.28 Halo and devil effects

In the context of this study halo effect means the act of evaluating an individual on many traits because of a belief that the individual is high on one trait. Like this, is the devil effect whereby a person evaluates another as low on many traits because of a belief that the individual is low on one trait which is assumed to be critical. In this study there are no beliefs pertaining to halo and devil effects; all participants are treated equally. This then means that the use of self-reporting helps to eliminate halo and devil effects.

3.29 Type I and II errors

Bias leads to type I and II errors. According to Lind et al. (2005:320), type I error is the rejection of the null hypothesis (H_0) when it is true; and type II error is accepting of null hypothesis when it is false. This study avoids type I and II errors by double checking the computation of the hypothesis and the t-test.

¹¹⁷ See: Wheeler, B. (2005). Music therapy research: quantitative and qualitative perspectives. <https://books.google.co.za/books?hl=en&lr=&id=NMpWDwAAQBAJ&oi=fnd&pg=PP2&dq=Wheeler+B+2005+Music+therapy+research&ots=U65rl-J-xn&sig=OEwuEis2b6RMgQ1SGl5Q9mzydoU#v=onepage&q=Wheeler%20B%202005%20Music%20therapy%20research&f=false>.

CHAPTER 4

STATEMENT OF FINDING AND DATA ANALYSIS

4.1 Introduction

In the preceding chapter, Chapter 3, the researcher discussed and focused on the methodology of conducting this research. The study follows the scientific methodology thus incorporating the positivism paradigm. This study is based on causal research or explanatory research disclosing the cause and effect of variables including the independent variable, dependent variable, and the confounding variables. In this context the variables are categorized as below:

- (a) Specific recommendations on improvement to domestic law (Top column 3 of the OECD Table 1.1) – the independent variable, being the sufficient cause on the other continuum of the sufficient and the necessary cause cases of the causal research whereby a sufficient cause is a complete reason that is sufficient on its own to cause the effect and a necessary cause is just a part of a larger cause, and not a complete reason.
- (b) Recommended hybrid mismatch rule (Top column 4 of the OECD Table 1.1) – the dependent variable.
- (c) OECD BEPS Action 2: Neutralizing the Effects of Hybrid Mismatch Arrangements (outside the OECD Table 1.1) – the confounding variable.

In the study domestic law represented by Specific recommendations on improvement to domestic law (Top column 3 of the OECD Table 1.1) is the independent variable, sufficient to cause a change in the OECD Recommended Hybrid Mismatch Rules (Top column 4 of the OECD Table 1.1), the dependent variable and the necessary cause required to neutralize the effect of hybrid mismatch arrangements.

In this chapter, Chapter 4, the study proceeds to analyze data thus collected from participants. The study then gives finding and relates to literature thus critically reviewed. The study

incorporates Microsoft Excel and Word and uses quantitative methods of academic statistics and theories to practically analyze data and interpret the findings.

4.2 Explanation of the questionnaire test items 1 to 5

The OECD BEPS Action 2 Table 1.1 is incorporated in the study. In practice the OECD BEPS Action 2 Table 1.1 is used as a guide to international tax consultants, international tax preparers, international tax authorities, international tax practitioners, MNEs and academic students that are specializing in hybrid mismatches or international tax planning schemes or structures. Below is the OCED BEPS Action 2 Table 1.1 – General Overview of the Recommendations:

Table 1.1 General Overview of the Recommendations

Mismatch	Arrangement	Specific recommendations on improvements to domestic law	Recommended hybrid mismatch rule		
			Response	Defensive rule	Scope
D/NI	Hybrid financial instrument	No dividend exemption for deductible payments Proportionate limitation of withholding tax credits	Deny payer deduction	Include as ordinary income	Related parties and structured arrangements
	Disregarded payment made by a hybrid		Deny payer deduction	Include as ordinary income	Control group and structured arrangements
	Payment made to a reverse hybrid	Improvements to offshore investment regime Restricting tax transparency of intermediate entities where non-resident investors treat the entity as opaque	Deny payer deduction	-	Control group and structured arrangements
DD	Deductible payment made by a hybrid		Deny parent deduction	Deny payer deduction	No limitation on response, defensive rule applies to control group and structured arrangements
	Deductible payment made by dual resident		Deny resident deduction	-	No limitation on response
Indirect D/NI	Imported mismatch arrangements		Deny payer deduction	-	Members of control group and structured arrangements

This study is conducted by examining four test items from closed ended questions. The following are the test items used in the study:

1. The first test item (question 1) is incorporated in the study as the third objective: to investigate and determine whether the OECD BEPS Action 2 Table 1.1 is a competent and not a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs, and international tax consultants.

In your opinion on the Likert Scale below how satisfied are you with the OECD Table 1.1, as a guide to users in terms of neutralizing the effects of hybrid mismatch arrangements especially since not all recommendations are given? See blank spaces on Table 1.1.

Very unsatisfied	Unsatisfied	Not Sure	Satisfied	Very Satisfied
------------------	-------------	----------	-----------	----------------

This first test item investigates the competency of the OECD BEPS Action 2 recommendations and not as a misleading guide to international tax consultants and other international tax users such as international tax authorities, MNEs' tax preparers and advisers within MNEs' jurisdictions and cross-border tax transactions in terms of neutralizing hybrid mismatch arrangements by incorporating Table 1.1.

Frequency scores are analysed in the frequency distribution table. The study then refers to the literature and draws inferences in relation to the findings and phenomenon, to paraphrase it, Hybrid Mismatch Arrangements and Shortcomings of the OECD BEPS Action 2 Final Report 2015. Based on the number of frequency scores the study investigates and confirms the third objective.

2. The second test item (question 2) is incorporated in the study as the fourth objective: to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules really neutralise the effects of hybrid mismatch arrangements and determine whether the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment with regard to competent tax policy (domestic law) and fairness of complying with the OECD

BEPS Action 2 by MNEs in South Africa are justified depending on the categories of hybrid mismatch arrangements incorporated, for example:

- (a) Hybrid financial instruments – (D/Ni outcome)
- (b) Disregarded payments made by a hybrid – (D/Ni outcome)
- (c) Payment made to a reverse hybrid - (D/Ni outcome)
- (d) Deductible payment made by a hybrid – (DD outcome)
- (e) Deductible payment made by dual resident – (DD outcome)
- (f) Imported mismatch arrangement – (Indirect D/Ni outcome)

Based on the above theory how do you rate the OECD Table 1.1 in terms of neutralizing the effects of hybrid mismatch arrangements?

Very unsatisfied	Unsatisfied	Not Sure	Satisfied	Very Satisfied
------------------	-------------	----------	-----------	----------------

Frequency scores are analysed in the frequency distribution table. The study compares frequency scores of the second test item with frequency scores of other test items. The study then refers to the literature and draws inferences in relation to the findings and objectives. Based on the number of frequency scores the study investigates and confirms the fourth objective.

3. The third test item (question 3) is incorporated in the study as the first objective: to investigate and determine whether South African jurisdiction (domestic law) and its international tax policies or systems are compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules as per Table 1.1.

On a scale of 1 to 13 where 1 to 3 means very unsatisfied, 4 to 6 means unsatisfied, 7 means not sure, 8 to 10 means satisfied and 11 to 13 means very satisfied, rate the above explanation.

1 2 3 4 5 6 7 8 9 10 11 12 13

Frequency scores are analysed in the frequency distribution table. The study refers to the literature and draws inferences in relation to the findings and the objectives. Based on the number of frequency scores the study then investigates and confirms the first objective.

4. The fourth test item (question 4) is incorporated in the study as the second objective: to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are addressing all hybrid mismatch categories (tax planning structures) that are in the South African international tax policy (domestic law) as opposed to only three categories namely D/Ni outcome; DD outcome; and Indirect D/Ni outcome as indicated on the OECD Table 1.1.

In terms of hybrid mismatch arrangements categories that are also referred to as tax planning schemes, the OECD has included three categories on Table 1.1, meaning that these are the only ones used in cross-border tax transactions or market. According to your MNE, are there any other categories that are used apart from the deduction/no inclusion (D/Ni outcome); Double Deduction (DD outcome); and indirect deduction/no inclusion (Imported D/Ni outcome)? (Yes = Unsatisfied) (No = Satisfied)

Yes

No

Frequency scores of test item number four are compared with other test items. The study then refers to the literature and draws inferences in relation to findings and objectives. Based on the number of frequency scores the study investigates and confirms the second objective.

5. The OECD BEPS Action 2 Final Report 2015 deals with “Neutralizing the Effects of Hybrid Mismatch Arrangements” The OECD prepared Table 1.1 - General Overview of the Recommendations as a guide to international tax users including MNEs, international tax consultants, international tax advisers and international tax authorities or even jurisdictions that incorporate international tax policies. The OECD did put recommendations on some of the spaces, but they left some blank.

On a scale of rating from very unsatisfied (1 to 3); to satisfied (4 to 6); to not sure (7); to satisfied (8 to 10); and to very satisfied (11 to 13), where do you rate the OECD Table 1.1 as your guide to international tax planning including hybrid mismatch arrangements (HMA) that are used in your MNE?

1	2	3	4	5	6	7	8	9	10	11	12	13
---	---	---	---	---	---	---	---	---	----	----	----	----

The fifth test item (question 5) is included in the study as a control¹¹⁸ to determine the knowledge level of participants in the field of study. The study incorporates the OECD BEPS Action 2 Final Report 2015 that deals with neutralizing the effects of hybrid mismatch arrangements which is the first and most important project of the OECD in terms of minimizing the erosion of tax base and tax arbitrage resulting from abusive tax plans by major multinational enterprises that are mentioned in the study such as Google and Apple. The study then criticizes the quality of participants’ responses and determines its validity and reliability. Where necessary, the study collects more data from the population to replace invalid or poor-quality data.

Below is data analysis of frequency distribution tables of test items 1 to 4 indicating the findings of the study per each frequency distribution table:

¹¹⁸ In this context a control question is a question designed to help to identify and potentially filter out unreliable or inconsistent responses thus ensuring data quality and validity.

Table 4.1

Frequency scores of overall responses

Test item	Ranking	Frequency: Very unsatisfied	Frequency: Unsatisfied	Frequency: Not sure	Frequency: Satisfied	Frequency: Very Satisfied	Total response
1	2 nd	48	92	55	58	47	300
2	4 th	49	90	56	59	46	300
3	3 rd	48	91	51	63	47	300
4	1 st	48	93	65	48	46	300
	Total	193	366	227	228	186	1200

Source: Created by the researcher

4.3 Findings and analysis of data

Table 4.1 indicates frequency scores of overall responses per research objectives. According to Lind et al. (2005:25) a frequency distribution table is used to group data into mutually exclusive classes showing the number of observations in each group or test item, to paraphrase it, research objective. Lind et al. (2005:25) advocate that a frequency distribution table is developed by tallying the data into a table that shows the classes and number of observations in each class. This study uses a frequency distribution table to analyze frequency scores obtained from 300 participants in the examination of four test items thus representing four research objectives. In this study research objectives are represented by numerical test items 1 to 4 starting with the highest frequency score ranking as below:

1. Test item 4 represents the second research objective (First ranking with 31% ($93/300 \times 100$) or 93 responses out of 300 respondents). The second research objective is to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are addressing all hybrid mismatch categories, to paraphrase it, tax planning structures,

that are in the South African international tax policy (domestic law) as opposed to only three categories namely D/NI outcome; DD outcome; and Indirect D/NI outcome as indicated on the OECD Table 1.1. Findings of the study are that test item 4 ranks first with unsatisfied respondents' frequency score rate of 31% or frequency score of 93 responses out of 300 respondents as indicated on the frequency scores of overall responses table 4.1 above thus indicating the frequency scores of overall responses for the five frequency categories including very unsatisfied, unsatisfied, not sure, satisfied and very satisfied. The study finds out that the frequency score of 31% or 93 responses out of 300 respondents indicates that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules do not address all hybrid mismatch categories. This is due to domestic law, that is more focused on other anti-tax avoidance schemes such as GAAR, than on the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules or linking rules that recommend that countries should incorporate the OECD Table 1.1 as a guide and apply linking rules such as denying payer deductions resulting from the tax arbitrage of hybrid mismatch arrangements by the MNEs that are involved in the hybrid mismatch arrangements transactions.

2. Test item 1 represents the third research objective (Second ranking with 30.67% $[92/300 \times 100]$ or 92 responses out of 300 respondents). The third research objective is to investigate and determine whether the OECD BEPS Action 2 Table 1.1 is a competent and not a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs, and international tax consultants. The study finds out that Test item 1 ranks second with unsatisfied respondents' frequency score of 30.67% or frequency score of 92 responses out of 300 respondents as indicated on the frequency scores of overall responses table 4.1 above. This indicates that the OECD BEPS Action 2 Table 1.1 is not competent and is a misleading guide to local jurisdictions, to paraphrase it, it misleads domestic law, international tax authorities, MNEs, and international tax consultants.

3. Test item 3 represents the first research objective (Third ranking with 30.33% $[91/300 \times 100]$ or 91 responses out of 300 respondents). The first research objective is to investigate and determine whether South African jurisdiction (domestic law) and its

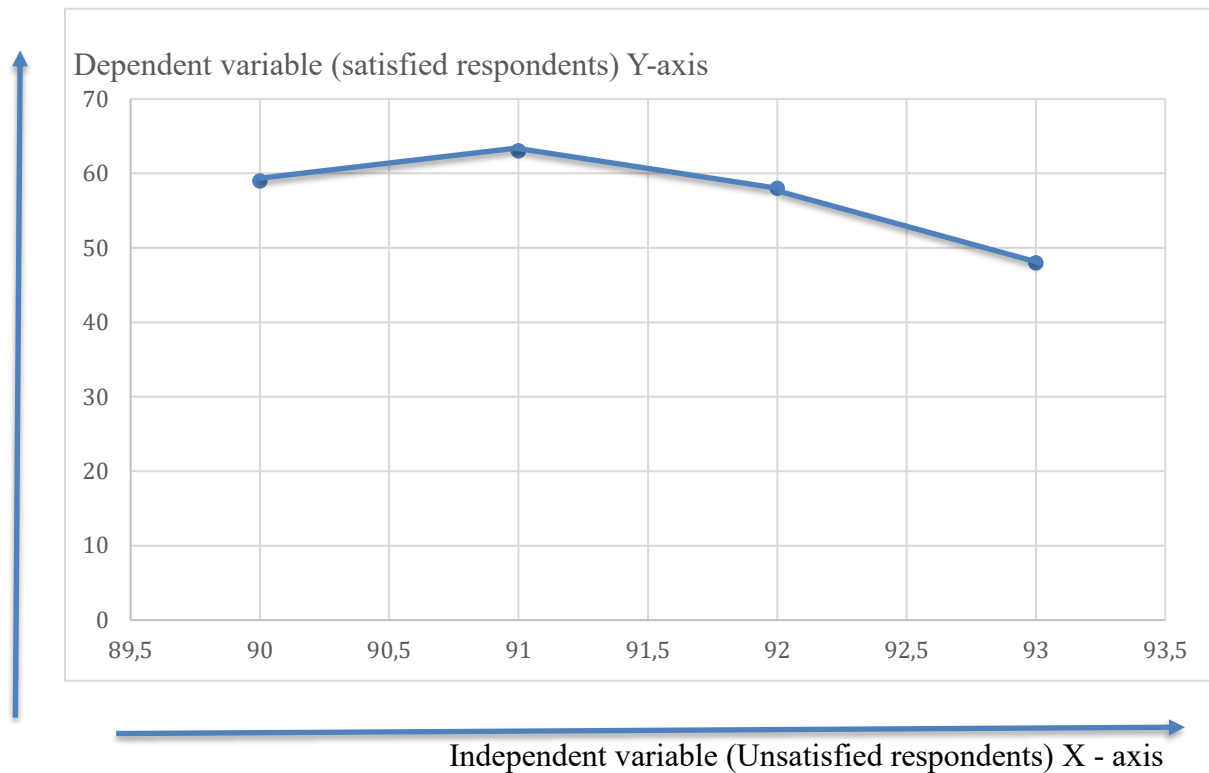
international tax policies or systems are compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules as per Table 1.1. Findings of the study are that Test item 3 ranks third with unsatisfied respondents' frequency score of 30.33% or frequency score of 91 responses out of 300 respondents as indicated on the frequency scores of overall responses table 4.1 above. This indicates that South African jurisdiction (domestic law) and its international tax policies or systems are not compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules. The OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are that countries should apply linking rules including, response, primary and secondary rule such as deny payer deductions of the tax arbitrage arising from the hybrid mismatch of MNEs that are involved in hybrid mismatch arrangement transactions to neutralise the effects of hybrid mismatch arrangements. The study finds out that South Africa and MNEs are not effectively applying the OECD BEPS Action 2 Recommended Mismatch Rules hence the unsatisfied response score of 30.33% or 91 responses out of 300 respondents.

4. Test item 2 represents the fourth research objective (Fourth ranking with 30% [$30/300 \times 100$] or 90 responses out of 300 respondents. The fourth research objective is to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules really neutralise the effects of hybrid mismatch arrangements and determine whether the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment with regard to competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are justified depending on the categories of hybrid mismatch arrangements incorporated. The study finds out that test item 2 ranks fourth with unsatisfied respondents' frequency score of 30% or frequency score of 90 responses out of 300 respondents as indicated on the frequency scores of overall responses table 4.1 above thus indicating that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules do not really neutralize the effects of hybrid mismatch arrangements in South Africa and that the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting

foreign direct investment with regard to competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are not justified.

Table 4.2

Simple linear regression analysis



Source: Created by the researcher

Table 4.2 indicates the simple linear regression analysis model. According to Bevens (2023), ¹¹⁹ simple linear regression is used to estimate the relationship between two quantitative variables. Bevens (2023) contends that a simple linear regression can be used to know how strong the relationship is between two variables, to paraphrase it, the relationship between the independent variable and the dependent variable for example,

¹¹⁹ See: Rebecca Bevens (2023). [Types of Variables in Research & Statistics | Examples](#). Journal article. Published on September 19, 2022, by [Rebecca Bevens](#). Revised on June 21, 2023. [Articles by Rebecca Bevens](#).

rainfall and soil erosion, and to know the value of the dependent variable at a certain value of the independent variable, for example, the amount of soil erosion at a certain level of rainfall.

In this study the researcher philosophizes the highest frequency score, to paraphrase it, the unsatisfied response frequency score of 366 out of the overall 1200 frequencies scores as the independent variable causing a change in the OECD Recommended Hybrid Mismatch Rules, the dependent variable, with the second highest frequency score of 228 out of the overall 1200 frequencies scores from the four test items as indicated in the frequency scores of overall responses Table 4.1 above. In Table 4.2 above, the study presents the simple linear regression analysis thus indicating frequency scores of domestic law, represented by Specific recommendations on improvements to domestic law on Table 1.1, the independent variable (X-axis), that is represented by unsatisfied responses with the highest frequency score of 366 out of the overall 1200 frequency scores followed by Recommended Hybrid Mismatch Rules (Y-axis) or linking rules represented by satisfied responses with a frequency score of 228 out of the overall 1200 frequency scores thus resulting in a negative slope of the simple linear regression analysis slightly pointing down towards the X – axis. A negative slope indicates that the line is going downwards from left to right which means that an increase in unsatisfied response scores of the independent variable X results in a decrease in the satisfied response scores of the dependent variable Y. This is explained in detail under section 4.5 (Discussion of data analysis) in the study.

Table 4.3

Cross-sectional regression analysis

Observations/Test items	Satisfied	Unsatisfied
1	58	92
2	59	90
3	63	91
4	48	93

SUMMARY
OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.76
R Square	0.59
Adjusted R Square	0.38
Standard Error	4.98
Observations	4

ANOVA

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	1	72.2	72.2	2.89	0.23
Residual	2	49.8	24.9		
Total	3	122			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	404.7	204.20	1.98	0.18	-473.92	1,283.32
X Variable 1	-3.8	2.23	-1.70	0.23	-13.40	5.80

Calculation of predicted values and the squared residuals by using the coefficient from the regression output

Observations/Test items	Satisfied (y)	Unsatisfied (x)	Predicted value $y(x) = ax+b$	Squared residuals
1	58	92	55,1	8,41
2	59	90	62,7	13,69
3	63	91	58,9	16,81
4	48	93	51,3	10,89

SUMMARY
OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.59
R Square	0.35
Adjusted R Square	0.03
Standard Error	3.54

Observations	4					
ANOVA						
	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>	
Regression	1	14.11	14.11	1.12	0.40	
Residual	2	25.19	12.59			
Total	3	39.30				
	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	166.17	145.23	1.14	0.37	-458.72	791.06
X Variable 1	-1.68	1.58	-1.05	0.40	-8.50	5.14
Perform the Breusch - Pagan Test						
Chi-Square test statistic using the formula: X Squared = n*R Squared new						
Where n = number of observations R Squared new = R Square of "new" regression in which the squared residuals were used as the as response variable. Number of observations x R Square = 4x 0.35 = 1.40						
CHISQ.DIST. RT (1.40,1) = 0.23						
Because this p-value is not less than 0.05, the researcher fails to reject the null hypothesis. The researcher, doesn't have sufficient evidence to say that heteroscedasticity is present in simple linear regression.						

Source: Created by the researcher

Table 4.3 indicates the Breusch Pagan Test. According to Breusch and Pagan (1979),¹²⁰ a simple test for heteroscedastic disturbances in a linear regression model is developed by using the framework of the Lagrangian multiplier, to paraphrase it, the LM test. Breusch and Pagan (1979)

¹²⁰ See: T. S. Breusch & A. R. Pagan (1979). A simple test for heteroscedasticity and random coefficient variation. *Econometrical*, 47(5), pp. 1287-1294. [A Simple Test for Heteroscedasticity and Random Coefficient Variation on JSTOR](#).

contend that, for a wide range of heteroscedastic and random coefficient specifications, the criterion is given as a readily computed function of the ordinary least squares (OLS) residuals and that some finite sample evidence is presented to supplement the general asymptotic properties of Lagrangian multiplier tests. In this study the researcher incorporated the Breusch Pagan test to assess for the presence of heteroscedastic disturbances in the simple linear regression analysis Table 4.2. The researcher philosophizes the Y-axis represented by the satisfied respondents as the dependent variable, to paraphrase it, the OECD Recommended Hybrid Mismatch Rule and the X-axis represented by the not satisfied respondents as the independent variable, represented by Specific recommendations on improvement to domestic law on the OECD Table 1.1 and uses these two variables to test the presence of heteroscedastic disturbances in a simple linear regression analysis, Table 4.2 above, by incorporating the cross sectional regression analysis Table 4.3 above. In order to calculate the Breusch Pagan Test predicted values for the independent variables using the formula $y = ax + b$ which is the slope -intercept form of a linear equation whereby 'a' represents the slope of the line, and 'b' represents the y-intercept, to paraphrase it, the point where the line crosses the y-axis. Therefore, the b(y-intercept) means the point where the line crosses the y-axis, to paraphrase it, it is the value of 'y' when 'x' is zero. In this context the equation $y=ax + b$ provides a way to describe a straight line by using its slope and where it intersects the y-axis hence the requirement of the Breusch Pagan Test to determine whether the points of intersects are reliable or not. In this study 'y' represents frequency scores of the dependent variable whereas 'x' represents the frequency scores of the independent variable that are required to calculate the ordinary least squares which are then used to calculate the chi-square distribution (CHSQ.DIST. RT). The study finds out that the results of the CHISQ.DIST. RT (1.40,1) = is the p-value of 0.23. Because this p-value is not less than 0.05, the researcher fails to reject the null hypothesis. The researcher therefore doesn't have sufficient evidence to say that heteroscedasticity¹²¹ is present in the simple linear regression analysis Table 4.2 above.

¹²¹ In this context heteroscedasticity refers to the condition where the variance of the error terms or residuals in a regression model is not constant across all levels of the independent variables, to paraphrase it, the spread or dispersion of the data points around the regression line is not uniform; it varies depending on the value of the predictor variable.

Table 4.4

Autocorrelation Test

Test item/observation	Satisfied/dependent variable (y)	Unsatisfied/independent variable (x)
1	58	92
2	59	90
3	63	91
4	48	93

**SUMMARY
OUTPUT**

Regression Statistics

Multiple R	0.76
R Square	0.59
Adjusted R Square	0.38
Standard Error	4.98
Observations	4

ANOVA

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	1	72.2	72.2	2.9	0.23
Residual	2	49.8	24.9		
Total	3	122			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	404.70	204.20	1.98	0.18	-474	1,283.33
X Variable 1	-3.8	2.23	-1.70	0.23	-13	5.80

Calculation of

residuals and

squared residuals:

Test item/observation

Satisfied/depend

ent variable (y)

Unsatisfied/indepen

dent variable (x)

Predicted

value y(x)

resi

dual

s

Squared

residuals

1	58	92	55.1	-2.9	8.4
2	59	90	62.7	3.7	14
3	63	91	58.9	-4.1	17
4	48	93	51.3	3.3	11
					50

Calculation of the Durbin -Watson Statistic Test

Formula: Using Microsoft

Excel:

Divide the sum of squared differences by the sum of squared residuals.

Interpretation: A value closer to 2 suggests no auto correlation. A value less than 2 suggests positive autocorrelation. A value greater than 2 suggests negative autocorrelation.

In this study the researcher's results cannot be determined because there is no previous study hence no comparative data. In this context the model requires previous data to finish the calculations.

The researcher therefore has no evidence to indicate that there is autocorrelation in the original regression analysis because the study is not time series research that requires previous data (residuals and squared residuals of prior studies) to calculate the Durbin-Watson statistic test.

Source: Created by the researcher

Table 4.4 indicates the autocorrelation test. Uyanto (2020)¹²² advocates that in regression analysis, autocorrelation of the error terms violates the ordinary least squares assumption that

¹²² See: Stanslaus S Uyanto (March 2020). Pakistan Journal of Statistics and Operation Research, 16(1), pp. 119 – 130
(PDF) [Power Comparisons of Five Most Commonly Used Autocorrelation Tests](#).

the error terms are uncorrelated, and that the consequence is that the estimates of coefficients and their standard errors will be wrong if the autocorrelation is ignored.

In the study the researcher incorporates autocorrection test to check if there is any violation of the ordinary least squares thus resulting in incorrect estimates of coefficients and standard errors that are used to calculate the Durbin-Watson Statistics test. The study indicates that the test requires calculation of residuals and squared residuals for the current and previous studies where the study follows time series research which is not the case in this study. The study is the first thus examining Hybrid Mismatch Arrangements and Shortcomings of the OECD BEPS Action 2 – Neutralizing the Effects of Hybrid Mismatch Arrangements by incorporating Table 1.1 and not time series research, which leaves a gap for future studies. The researcher advocates that since the Durbin-Watson Statistic test requires prior studies to incorporate the test by using current and prior study's residuals and squared residuals to calculate, the Durbin-Watson Statistic test is not a good fit for this study. The researcher therefore professorates that future studies should use this study to calculate the Durbin-Watson Statistic test. The researcher therefore fails to indicate that autocorrelation of the error terms violates the ordinary least squares (OLS) assumption that the error terms are uncorrelated and that the consequence that the estimates of coefficients and their standard errors are wrong if the autocorrelation is ignored in the study. Other tests are included in the study that cater for the validity and reliability of the simple linear regression analysis thus incorporated in the study as per Table 4.2 above, including the Bresch Pagan test, Table 4.3 above, and the F-test, Table 4.5 below.

Table 4.5

F-Test			
Test item/observations	Satisfied/dependent variable (y)	Unsatisfied/independent variable (x)	
1	58	92	
2	59	90	
3	63	91	

F-Test Two-Sample for Variances

	<i>Variable 1</i>	<i>Variable 2</i>
Mean	57	91.5
Variance	40.66	1.66
Observations	4	4
Df	3	3
F	24.4	
P(F<=f) one-tail	0.01	
F Critical one-tail	9.27	

Calculation of F-value equals ratio of Variance 1 to Variance 2 = $40.66/1.66 = 24.40$.

Conclusion: If $F > F_{\text{Critical one-tail}}$, the researcher rejects the null hypothesis. This is the case, $24.40 > 9.27$. Therefore, the researcher rejects the null hypothesis. The study then concludes that the results are statistically significant. The F statistic (24.4) is greater than the critical value (9.27). The model is therefore deemed significant and is used in the study to test the relationship between the two variables, the independent and dependent.

Source: Created by the researcher

Table 4.5 indicates the F-test. Sureiman and Mangera (2020)¹²³ articulate that regression analysis is using the relationship between a known value and an unknown variable to estimate, to paraphrase it, to predict the unknown one and that an estimate of the dependent variable is made corresponding to given values of independent variables by placing the relationship between the variables in the form of a regression line. Sureiman and Mangera (2020) submit that to determine how well the regression line obtained fits the given data points, F-test of overall significance is conducted and that the issues involved in the F-test of overall significance are many and mathematics involved is rigorous, especially when more than two variables are involved. In this study there are only two variables, to paraphrase it, the dependent variable (Y- axis) and the independent variable (X-axis) as seen in the simple

¹²³ See: Onchiri Sureiman and CallenMoraa Mangera (2020). F-test of overall significance in regression analysis simplified. [\(PDF\) F-test of overall significance in regression analysis simplified.](#)

linear regression analysis Table 4.2 above, which implies that the calculation of the F-test is simple.

Sureiman and Mangera (2020) indicate that the main assumptions of the F-test include linearity and normality; to paraphrase it, linear regression needs the relationship between the independent and dependent variables to be linear and that it is also important to check for outliers¹²⁴ since linear regression is sensitive to outlier effects. This study performs the F-test to check if there are any outliers in the linear regression which might distort the relationship between the independent variable X (domestic law), represented by Specific recommendations on improvements to domestic law and the dependent variable Y represented by the OECD Recommended Hybrid Mismatch Rules on Table 1.1 due to experimental error. Upon calculation of the F-test the study finds out that the F value ratio of Variance 1 to Variance 2 = $40.66/1.66 = (F=40.66/1.66 = 24.40)$ is greater than the F Critical one tail value of 9.276 thus implying that the results are significant. This indicates that there are no outliers in the model. The model is therefore deemed significant and a crucial overall check on the validity and usefulness of a simple linear regression analysis as presented on Table 4.2 above.

Table 4.6

Percentages of data indicating frequency scores of unsatisfied responses per test items 1 to 4

Test item	Research objective ranking	Frequency of unsatisfied responses	Percentage
1	2 nd	92	25.14
2	4 th	90	24.59
3	3 rd	91	24.86

¹²⁴ In this context outliers are data point that differ significantly from other observations and maybe due to a variability in the measurement, an indication of novel data, to paraphrase it, it may be the result of experimental error.

4	1st	93	25.41
Total		366	100.00

Source: Created by the researcher

Table 4.6 above indicates percentages of data indicating frequency scores of unsatisfied responses per test items 1 to 4. In the study it is indicated that the researcher philosophizes the highest frequency score, to paraphrase it, the unsatisfied response frequency score of 366 out of the overall 1200 total frequency scores as indicated on table 4.1 as the independent variable causing a change in the OECD Recommended Hybrid Mismatch Rules, the dependent variable. It is mentioned in the study that research objectives are represented by test items 1 to 4. Test item 4 (second research objective) ranks first with 25.41%, seconded by test item 1 (third research objective) with 25.14%, test item 3 (first research objective) ranks third with 24.86% and test item 2 (fourth research objective) ranks fourth with 24.59%. The following Tables ranging from Table 4.7 to Table 4.10 indicate the frequency categories of responses including very unsatisfied (Table 4.7) below, unsatisfied (Table 4.6 above), Satisfied (Table 4.8) below, very satisfied (Table 4.9) below, and not sure (Table 4.10) below. The study finds out that unsatisfied response ranks the highest with 366 responses out of 1200, an indication that domestic law is still far from fully activating the OECD Recommended Hybrid Mismatch Rules or linking rules in South Africa. This is also indicated by the negative slope on table 4.2 of the simple linear regression analysis graph above.

Table 4.7

Percentages of data indicating frequency scores of very unsatisfied respondents per test items 1 to 4

Test item	Research objective ranking	Frequency of very unsatisfied responses	Percentage
1	2 nd	48	24.87
2	1 st	49	25.39

3	2 nd	48	24.87
4	2 nd	48	24.87
Total		193	100.00

Source: Created by the researcher

Table 4.7 indicates the percentages of the very unsatisfied response category. The rankings are that test item 2 ranks first with 25.39% seconded by test items 1, 3 and 4 with the same percentage of 24.87, an indication that domestic law is far from fully activating the OECD Recommended Hybrid Mismatch Rules in South Africa. The study finds out that the very unsatisfied category ranks fourth with 193 frequencies in the frequency score of overall responses Table 4.1 above. It is mentioned in the study that the researcher chooses the highest frequency score, to paraphrase it, the unsatisfied category with 366 frequency scores out of the 1200 frequencies and the second highest, to paraphrase it, the satisfied category with 228 frequency scores out of 1200 frequencies and uses it as the independent and dependent variables respectively, with the former representing domestic law, that is represented by Specific recommendations on improvements to domestic law and the later representing the OECD Recommended Hybrid Mismatch Rules or linking rules on the OECD Table 1.1. The researcher incorporates the simple linear regression analysis hence an inclusion of two variables including the independent and dependent variables as indicated on the cross-sectional regression analysis Table 4.3 above, Breusch Pagan Test, table 4.3 above, The Durbin-Watson Test, Table 4.4, Autocorrelation test, Table 4.4 above, and the F-test, Table 4.5 above.

Table 4.8

Percentage of data indicating frequency scores of satisfied responses per test items 1 to 4

Test item	Research objective ranking	Frequency of satisfied responses	Percentage
1	3 rd	58	25.44

2	2 nd	59	25.88
3	1 st	63	27.63
4	4 th	48	21.05
Total		228	100.00

Source: Created by the researcher

Table 4.8 indicates the satisfied response category from the 5 categories including the very unsatisfied, unsatisfied, not sure, satisfied and very satisfied. The researcher philosophizes the satisfied response category as the dependent variable representing the OECD Recommended Hybrid Mismatch Rule on the OECD Table 1.1 in the study. As indicated in the study test items 1 to 4 represent research objectives. Test item 3 (first research objective) ranks first with 27.63% seconded by test item 2 (fourth research objective) with 25.88%, test item 1 (third research objective) ranks third with 25.44% and test item 4 (second research objective) ranks the fourth with 21.05%. The overall ranking of test items 1 to 4 is indicated on Table 4.1 above. The study finds out that the satisfied response category ranks second with 228 responses from the unsatisfied response category 366 out of 1200 responses, an indication that domestic law is not sufficient to cause changes in the OECD Recommended Hybrid Mismatch Rule or linking rule in South Africa.

Table 4.9

Percentage of data indicating frequency scores of very satisfied responses per test items 1 to 4

Test item	Research objective ranking	Frequency of very satisfied responses	Percentage
1	1 st	47	25.27
2	2 nd	46	24.73
3	1 st	47	25.27
4	2 nd	46	24.73
Total		186	100.00

Source: Created by the researcher

Table 4.9 indicates percentages of the very satisfied category of frequency scores per test item with test items 1 and 3 in the first rank with 25.27% each seconded by test items 2 and 4 with 24.73% each. The study finds out that the very satisfied response category ranks fifth with 186 frequency scores out of 1200 frequencies as indicated on the frequency scores of overall responses Table 4.1 above. It is mentioned in the study that the researcher incorporates the simple linear regression analysis model with two variables, to paraphrase it, the independent and dependent variables. The researcher therefore chooses the highest and the second highest response categories to perform the simple linear regression analysis graph Table 4.2 and the cross-sectional regression analysis test table 4.3 the Breusch Pagan Test, the Autocorrelation test, Table 4.4 and the F-test, Table 4.5 above. It is mentioned in the study that the researcher selected the satisfied category with 288 frequency scores out of the 1200 frequencies to represent the OECD Recommended Hybrid Mismatch Rule (dependent variable), thus incorporating the simple linear regression analysis with two variables including the independent variable (X-axis) and dependent variable (Y-axis) as indicated on Table 4.2 above. The study finds out that not many respondents are very satisfied with the OECD Recommended Hybrid Mismatch Rules, to paraphrase it the OECD Table 1.1 in all research objectives that are represented by test items 1 to 4 hence the lowest frequency score total of 186 out of 1200.

Table 4.10

Percentage of data indicating frequency scores of not sure per test items 1 to 4

Test item	Research objective ranking	Frequency of not sure responses	Percentage
1	3 rd	55	24.23
2	2 nd	56	24.67
3	4 th	51	22.47
4	1 st	65	28.63

Total		227	100.00
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Source: Created by the researcher

Table 4.10 indicates the percentages of not sure response category of the 300 respondents. This category is philosophized in the study as a neutral category, hence cannot be treated as either independent or dependent variable. As indicated in the study, test items represent research objectives. In this category, test item 4 (second research objective) ranks first with a frequency score of 28.63%, seconded by test item 2 (fourth research objective) with a frequency score of 24.67%, while test item 1 (third research objective), ranks third with a frequency score of 22.23% and test item 3 (first research objective) ranks 4th. The study then finds out that there are still many MNEs, international tax consultants and other stakeholders in South Africa that are not sure of whether the OECD BEPS Action 2 – Neutralizing the Effects of Hybrid Mismatch Arrangements really neutralize the effects of hybrid mismatch arrangements in South Africa considering that South Africa like any other country in the world is more focused on other anti- tax avoidance schemes such as GAAR than on the OECD Recommended Hybrid Mismatch Rules.

Table 4.11

Percentage of data indicating frequency scores of test item 1– third research objective

Frequency category	Frequency score	Frequency percentage
Very unsatisfied	48	16.00
Unsatisfied	92	30.67
Not sure	55	18.33
Satisfied	58	19.33
Very satisfied	47	15.67
Total	300	100.00

Source: Created by the researcher

Table 4.11 indicates percentages of frequency score per test item 1 (third research objective). The third research objective is to investigate and determine whether the OECD BEPS Action 2 Table 1.1 is a competent and not a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs, and international tax consultants. It is mentioned in the study that frequency scores are categorized into five categories including very unsatisfied, unsatisfied, not sure, satisfied and very satisfied from which the independent variable (unsatisfied) and dependent variable (satisfied), are selected by the researcher such that the study incorporates the simple linear regression analysis. The five categories rank as follows: Unsatisfied in the first rank with the frequency score of 30.66% out of the 300 participants, seconded by the satisfied respondents with the frequency score of 58%. Not sure, the neutral category ranks 18.33%, while the very unsatisfied category ranks fourth with 16% and the very satisfied category ranks fifth with 15.67% of the 300 respondents. The study finds out that test item 1 (third research objective) ranks second with 30.67% of the overall frequencies from all five categories as per Table 4.1 above. This indicates that the OECD BEPS Action 2 Table 1.1 is not competent and is a misleading guide to local jurisdictions, to paraphrase it, it misleads domestic law, international tax authorities, MNEs, and international tax consultants.

Table 4.12

Percentage of data indicating frequency scores of test item 2– fourth research objective

Frequency category	Frequency score	Frequency percentage
Very unsatisfied	49	16.33
Unsatisfied	90	30.00
Not sure	56	18.67
Satisfied	59	19.67
Very satisfied	46	15.33
Total	300	100.00

Source: Created by the researcher

Table 4.12 indicates percentages of test item 2 per the five frequency categories including very unsatisfied, unsatisfied, not sure, satisfied and very satisfied. The ranking of test item 2 within the five categories is as follows: Unsatisfied ranks first with 30% of the 300 respondents seconded by the satisfied category with 19.67% while the not sure category ranks third with 19.67%. The very unsatisfied ranks fourth with 16.33% and the very satisfied category ranks fifth with 15.33%. It is mentioned in the study that test item 2 represents the fourth research objective which is to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules really neutralise the effects of hybrid mismatch arrangements and determine whether the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment with regard to competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are justified depending on the categories of hybrid mismatch arrangements thus incorporated. It is mentioned in the study that test item 2 ranks fourth with unsatisfied respondents' frequency score of 30% or frequency score of 90 responses out of 300 respondents as indicated on the overall responses of the frequency scores table 4.1 above. The study finds out that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules do not really neutralize the effects of hybrid mismatch arrangements in South Africa and that the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment with regard to competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are not justified.

Table 4.13

Percentage of data indicating frequency scores of test item 3– first research objective

Frequency category	Frequency score	Frequency percentage
Very unsatisfied	48	16.00
Unsatisfied	91	30.33
Not sure	51	17.00

Satisfied	63	21.00
Very satisfied	47	15.67
Total	300	100.00

Source: Created by the researcher

Table 4.13 indicates percentages of test item 3 per the five frequency categories. It is mentioned in the study that test item 3 represents the first research objective which is to investigate and determine whether the South African jurisdiction (domestic law) and its international tax policies or systems are compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules as per Table 1.1. The ranking of test item 3 within the five frequency score categories is as follows: Unsatisfied category ranks first with 30.33% of the 300 responses seconded by the satisfied category with 21%, while the not sure category ranks third with 17%, the very unsatisfied ranks fourth with 16% and the very satisfied ranks fifth with 15.67%. It is mentioned in the study that test item 3 (first research objective) ranks third with unsatisfied respondents' frequency score of 30.33% or frequency score of 91 responses out of 300 respondents as indicated on the overall frequency score table 4.1 above. It is mentioned in the study that South African jurisdiction (domestic law) and its international tax policies or systems are not compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules. It is further mentioned in the study that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are that countries should apply defensive rules including, response, primary and secondary rule such as deny payer deductions of the tax arbitrage arising from the hybrid mismatch of MNEs that are involved in hybrid mismatch arrangement to neutralise the effects of hybrid mismatch arrangements. The study finds out that the South African jurisdiction (domestic law) and its international tax policies or systems are not compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules as per Table 1.1. South Africa and MNEs are not effectively applying the OECD BEPS Action 2

Recommended Mismatch Rules hence the unsatisfied response score of 30.33% or 91 responses out of 300 respondents.

Table 4.14

Percentage of data indicating frequency scores of test item 4–second research objective

Frequency category	Frequency score	Frequency percentage
Very unsatisfied	48	16.00
Unsatisfied	93	31.00
Not sure	48	16.00
Satisfied	65	21.67
Very satisfied	46	15.33
Total	300	100,00

Source: Created by the researcher

Table 4.14 indicates percentages of test item 4 (second research objective) per the five frequency score categories. It is mentioned in the study that the second research objective is to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are addressing all hybrid mismatch categories, to paraphrase it, tax planning structures, that are in the South African international tax policy (domestic law) as opposed to only three categories namely D/Ni outcome; DD outcome; and Indirect D/Ni outcome as indicated on the OECD Table 1.1. The ranking of test item 4 within the five frequency score categories is as follows: the unsatisfied category ranks first with 31% seconded by the satisfied category with 21.67%, while not sure and very unsatisfied categories both rank third with 16%, the very satisfied category ranks fifth with 15.33%. It is mentioned in the study that test item 4 ranks first with unsatisfied respondents' frequency score of 31% or frequency score of 93 responses out of 300 respondents as indicated on the overall frequency score table 4.1 indicating the frequency scores of overall responses for the five frequency categories including very unsatisfied, unsatisfied, not sure, satisfied and very satisfied. It is mentioned in the study that domestic law is more focused on other anti-tax avoidance schemes such as

GAAR than on the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules. It is further mentioned in the study that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are that countries should apply defensive rules such as denying payer deductions resulting from the tax arbitrage of hybrid mismatch arrangements by MNEs that are involved in hybrid mismatch arrangements transactions. It is mentioned in the study that the OECD BEPS Action 2, Neutralizing the Effects of Hybrid Mismatch Arrangements by incorporating table 1.1 as a guide to combat anti-tax avoidance is not effective in South Africa. The study finds out that 31% or 93 responses out of 300 respondents indicate that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are not addressing all hybrid mismatch categories.

Lindeque (2019) explored the importance and relevance of addressing BEPS via branch mismatch arrangements as proposed by the OECD, to an emerging economy such as South Africa and found that South Africa does not have specific legislation that can be applied to neutralize branch mismatch arrangements and that the general anti-avoidance rule (GAAR) is used in an attempt to address branch mismatch arrangements but is not successful in counteracting the majority of branch mismatch arrangements as the crucial element of whether its sole or main purpose was to obtain a tax benefit will not be met with the majority of arrangements.

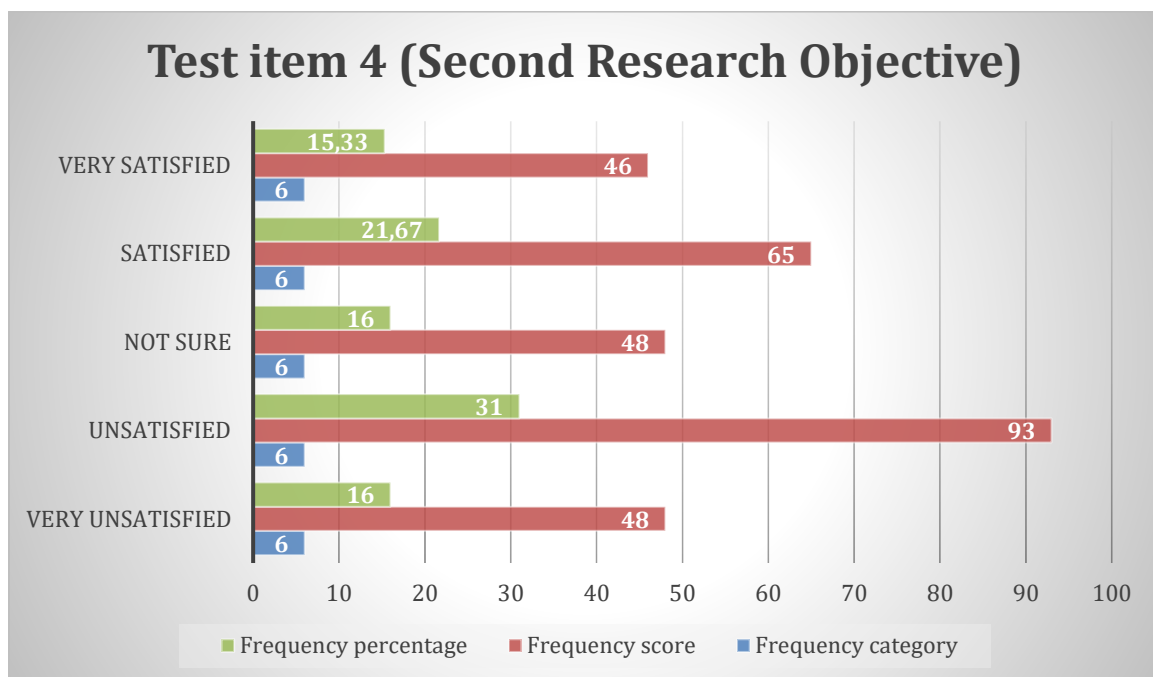
4.4 Graphical analysis of frequency scores of test items (research objectives) 1 to 4.

According to Eaton and McColl (2007:1), a bar chart is a way of summarizing a set of categorical data. It is often used in explanatory data analysis to illustrate the major features of the distribution of the data in a convenient form. It displays the data using several rectangles, of the same width, each of which represents a particular category. The length of each rectangle is proportional to the number of cases in the category it represents, for example, age of group, religious affiliation, and number of frequencies Eaton and McColl (2007:1). This study uses bar charts to indicate graphical analyses of frequency scores from 300 participants allocated to the four test items and research objectives.

Table 4.15 below is the bar chart indicating frequency scores of test item 4 which represents the second research objective of the study as follows: the frequency score of unsatisfied responses is the highest at 31% or 93 responses out of the 300 respondents seconded by satisfied responses at 21.67% or 65 responses out of the 300 respondents. The objective of test item 4 is to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are addressing all hybrid mismatch categories (tax planning structures) that are in the South African international tax policy (domestic law) as opposed to only three categories namely D/NI outcome; DD outcome; and Indirect D/NI outcome as indicated on the OECD Table 1.1. The unsatisfied response rate of 31% or 93 responses out of 300 respondents indicates that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are not addressing all hybrid mismatch categories.

Table 4.15

Bar chart indicating frequency scores of test item 4– second research objective

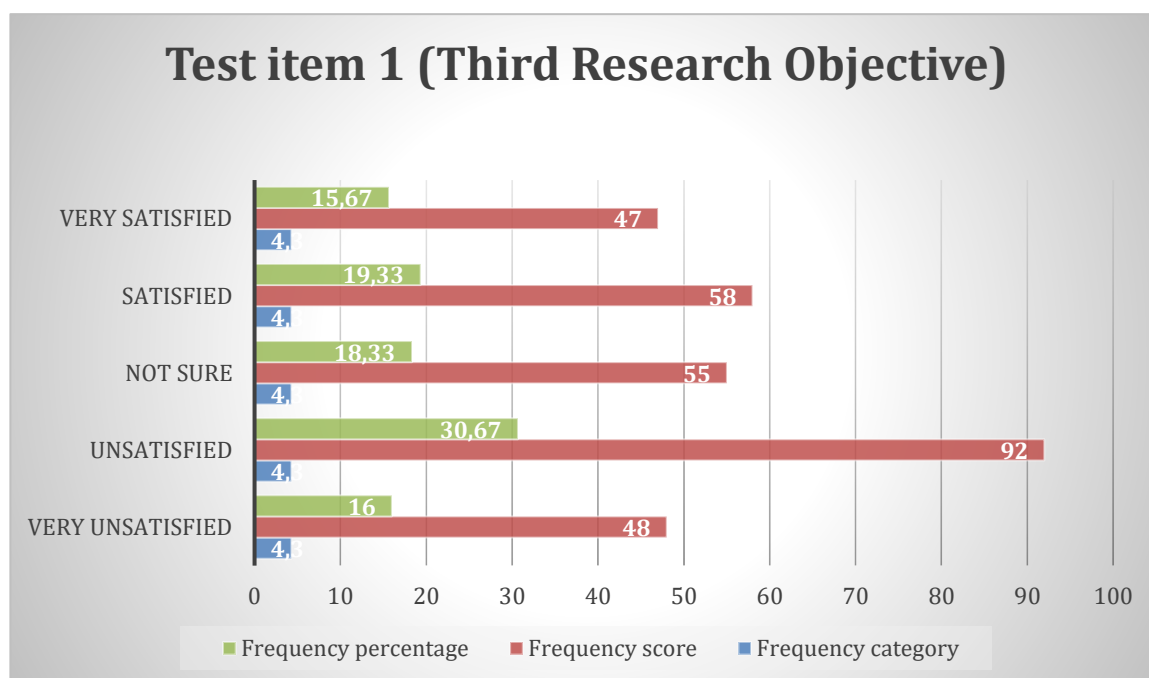


Source: Created by the researcher

Table 4.16 below, is the bar chart indicating percentages of frequency scores of test item 1 which represents the third research objective of the study as follows: the frequency score of unsatisfied responses is the highest at 30.67% or 92 responses out of the 300 respondents seconded by satisfied responses at 19.33% or 58 responses out of 300 respondents. The objective of test item 1 is to investigate and determine whether the OECD BEPS Action 2 Table 1.1 is a competent and not a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs, and international tax consultants. The unsatisfied response rate of 30.67% or 92 responses out of 300 respondents indicates that the OECD BEPS Action 2 Table 1.1 is an incompetent and a misleading guide.

Table 4. 16

Bar chart indicating frequency scores of test item 1 – third research objective



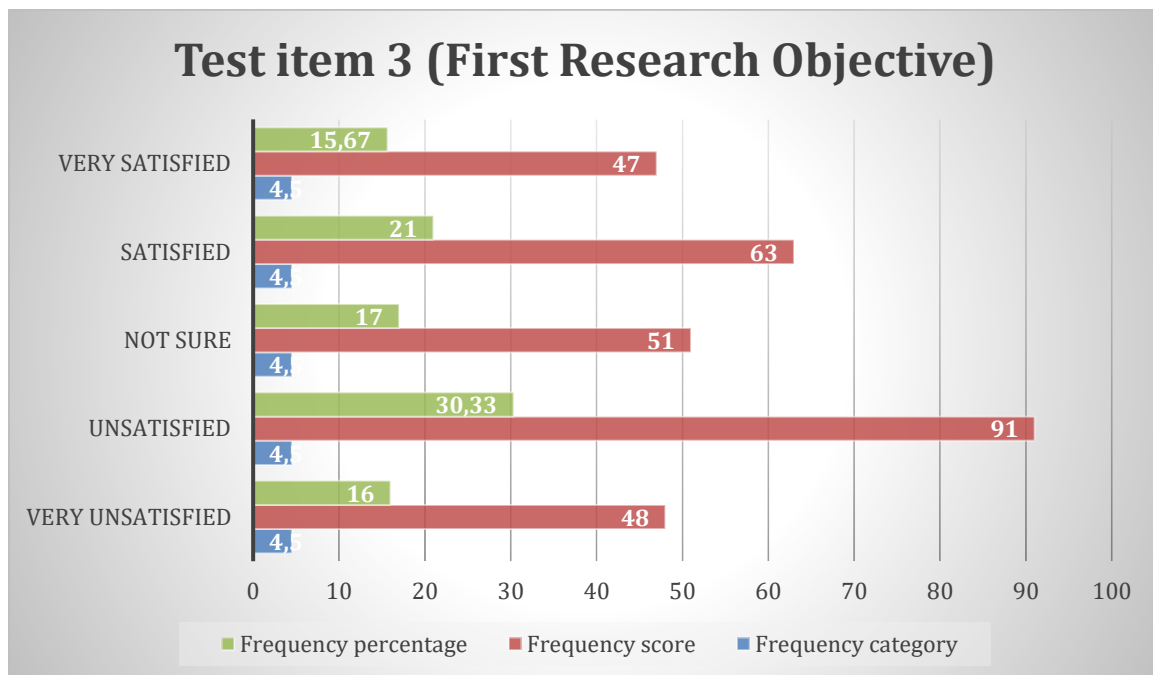
Source: Created by the researcher

Table 4.17 below is the bar chart indicating frequency scores of test item 3 which represents the first research objective of the study as follows: the frequency score of unsatisfied respondents is the highest at 30.33% or 91 responses out of the 300 respondents seconded by

satisfied responses at 21% or 63 responses out of 300 respondents. The objective of test item 3 is to investigate and determine whether South African jurisdiction (domestic law) and its international tax policies or systems are compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules as per Table 1.1. The unsatisfied response rate of 30.33% or 91 responses out of 300 respondents indicates that South African jurisdiction (domestic law) and its international tax policies or systems are not compatible.

Table 4.17

Bar chart indicating frequency scores of test item 3– first research objective



Source: Created by the researcher

Table 4.18 below is the bar chart indicating frequency scores of test item 2 which represents the fourth research objective of the study as follows: the frequency score of unsatisfied respondents is the highest at 30 % or 90 responses out of the 300 respondents seconded by satisfied responses at 19.67% or 59 responses from 300 respondents. The objective of test item 2 is to investigate and determine whether the OECD BEPS Action 2 Recommended

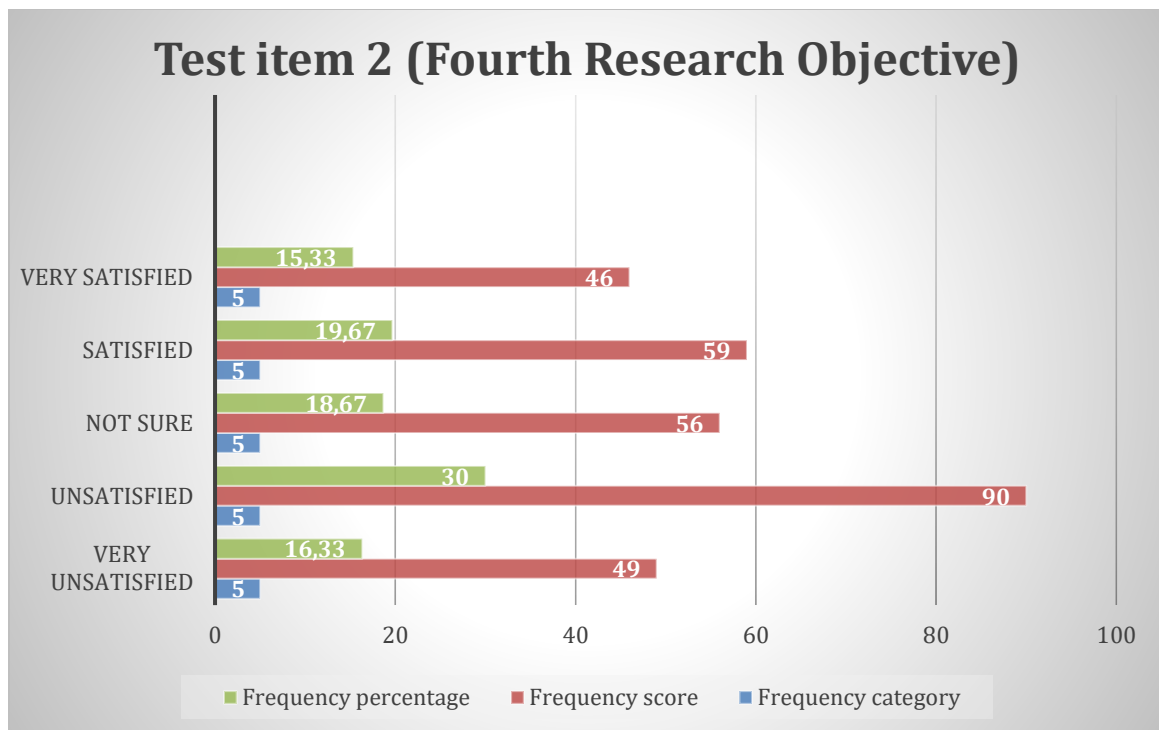
Hybrid Mismatch Rules really neutralise the effects of hybrid mismatch arrangements and determine whether the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment with regard to competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are justified depending on the categories of hybrid mismatch arrangements incorporated, for example:

- (a) Hybrid financial instruments – (D/Ni outcome)
- (b) Disregarded payments made by a hybrid – (D/Ni outcome)
- (c) Payment made to a reverse hybrid - (D/Ni outcome)
- (d) Deductible payment made by a hybrid – (DD outcome)
- (e) Deductible payment made by dual resident – (DD outcome)
- (f) Imported mismatch arrangement – (Indirect D/Ni outcome)

The unsatisfied response rate of 30% or 90 responses out of 300 respondents indicates that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules hardly neutralise the effects of hybrid mismatch arrangements and the study determines that the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment with regard to competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are not justified.

Table 4.18

Bar chart indicating frequency scores of test item 2–fourth research objective



Source: Created by the researcher

4.5 Discussion of data analysis

The study incorporates the causal research technique which in this context indicates that a change in one variable directly causes a change in another variable. In this study, domestic law which is represented by Specific recommendations on improvement to domestic law (Top column 3 of the OECD Table 1.1) is the independent variable while the Recommended Hybrid Mismatch Rules (Top column 4 of the OECD Table 1.1) is the dependent variable, and the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements, is the confounding variable that is outside the OECD BEPS Action 2 Table 1.1.

The study then observes and philosophizes that the highest number of unsatisfied respondents in all four test items is due to lack of Specific recommendations on improvements to domestic law, in the South African jurisdiction, which is the independent variable that affects the Recommended Hybrid Mismatch Rules also known

as linking rules which is the dependent variable. The study then refers to causal research theories and scenario mentioned in the study, (refer to section 3.9.3 – Explanation and examples of causal research). Causal research requires necessary and sufficient causes to happen (Morgan 2013).

In this study the researcher philosophizes that sufficient cause is the Specific recommendations on improvements to domestic law, which is the independent variable ranking first with 366 frequencies out of 1200 frequencies. The study found that the highest frequency scores (366) of unsatisfied responses in all four test items are not sufficient to cause a change in the OECD Recommended Hybrid Mismatch Rules or linking rules, represented by the satisfied respondents with the second highest response rate with 288 frequencies out of the overall 1200 frequencies. This is an indication that the OECD Recommended Hybrid Mismatch Rules are not necessary to neutralize the effects of hybrid mismatch arrangements in South Africa. The simple linear regression analysis shape slightly curves upward and points down towards the X – axis resulting in a negative slope due to the highest number of overall unsatisfied frequency scores of 366 out of the overall 1200 frequencies (a numerical slope that happens due to a change in Y - axis thus causing a change in X – axis) which is an indication that while the OECD Recommended Hybrid Mismatch Rules are not necessary to neutralize the effects of hybrid mismatch arrangements in South Africa, Specific Recommendations on improvements to domestic law are insufficient to make the OECD Recommended Hybrid Mismatch Rules or linking rules to happen. The study then refers to causal research theories of sufficient and necessary causes which are as follows: Saying that X is a sufficient cause of Y implies that some state of Y will occur if some state of X occurs, which is akin to saying that the OECD Recommended Hybrid Mismatch Rules or linking rules – the Y-axis (Table 4.2) will neutralize the effects of hybrid mismatch arrangements in South Africa only if Specific recommendations on improvements to domestic law – the X-axis (Table 4.2) scores the highest response of satisfied respondents or the lowest response of unsatisfied respondents, which is not the case in this study. That then said, out of the four objectives of the study, none of them is closer to indicate changes in

Specific recommendations on improvements to domestic law too soon. The ranking results for each of the four objectives are as follows:

- (1) The second research objective (represented by test item 4) has the highest frequency scores of unsatisfied responses, to paraphrase it, participants with a frequency score rate of 31% or frequency score of 93 responses out of 300 respondents, seconded by satisfied responses with a frequency score rate of 21.67% or frequency score of 65 responses out of 300 respondents (Refer to Table 4.1 and Table 4.14 above).
- (2) The third research objective (represented by test item 1) has the second highest frequency scores of unsatisfied responses with a frequency score rate of 30.67% or frequency score of 92 responses out of 300 respondents, followed by satisfied responses with a frequency score rate of 19.33% or frequency score of 58 responses out of 300 respondents (Refer to Table 4.1 and Table 4.11 above).
- (3) The first research objective (represented by test item 3) has the third highest frequency score of unsatisfied responses with a frequency score of 30.33% or frequency score of 91 responses out of 300 respondents, seconded by satisfied respondents with a frequency score rate of 21% or frequency score of 63 responses out of 300 respondents (Refer to Table 4.1 and Table 4.13 above)
- (4) The fourth research objective (represented by test item 2) has the fourth highest frequency score of unsatisfied responses with a frequency score of 30% or frequency score of 90 responses out of 300 respondents, followed by satisfied participants with a frequency score of 19.67% or frequency score of 59 responses out of 300 respondents (Refer to Table 4.1 and Table 4.12 above).

Considering the lowest frequency score rate (30% or frequency score of 90 responses out of 300 respondents) of the unsatisfied respondents and the highest frequency score rate (21% or frequency score of 63 out of 300 respondents) of the satisfied respondents, the study conceptualizes that there is still a big gap that needs to be covered by the South African jurisdiction (domestic law) in terms of Specific recommendations on improvements to domestic law (the independent variable) that affects the OECD BEPS Action 2 Recommended Mismatch Rules or linking rules which are the dependent variables. The

OECD BEPS Action 2 Final Report 2015 will not neutralize the effects of hybrid mismatch arrangements in South Africa until such time when Specific recommendations on improvements to domestic law (the independent variable), is a sufficient cause and the OECD Recommended mismatch rule or linking rules (the dependent variable), is a necessary cause. It requires sufficient and necessary causes for causal research to happen.

This study therefore indicates that the theory of causal research as mentioned above, a change in improvements to domestic law in the South African jurisdiction influences the OECD linking rules. This then means that the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements does extraordinarily little in South Africa.

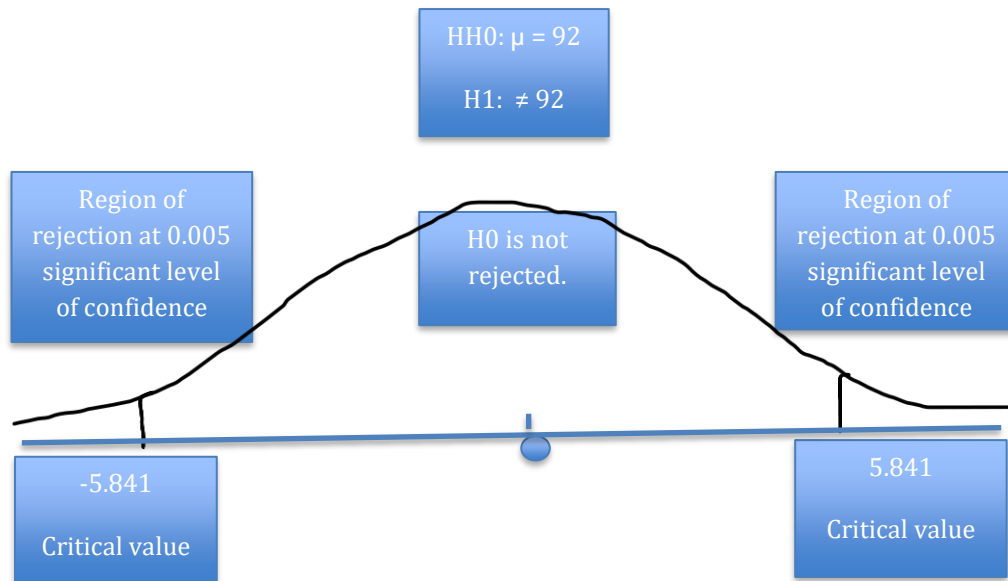
It is mentioned in the study (Chapter 2), Literature Review, that Lindeque (2019) advocates that South Africa does not have sufficient safeguards in place to protect its tax base against BEPS arising using branch mismatch arrangements. It is also mentioned in the study (Chapter 2), Literature Review, that Nyatsambo (2019) advocates that South Africa has not been safe from the overarching impact of globalisation; and that the South African National Treasury observes that the biggest companies in the South African economy are foreign owned subsidiaries of major international multinational enterprises as such a big part of the nation's capital is foreign-sourced, a position that results in foreign enterprises holding deep interests in the operations of South Africa's fiscal system; and that from a taxation perspective it is the foreign vested interest that results in most of the multinational enterprises adopt some aggressive tax planning and avoidance strategies such as ATAD to exploit gaps in South Africa's transfer pricing and thin capitalisation regimes whose success effectively results in the deprivation of the much needed revenue to South Africa's national fiscus. Nyatsambo (2019) indicates in Chapter 2, Literature Review that trends in the international tax domain show that most countries are seized with the base erosion and profit shifting (BEPS) phenomenon; and that South Africa, as the second biggest economy in Africa in 2019, and an affiliate of the Organisation for Economic Cooperation and Development (OECD), is still overwhelmed with challenges in its BEPS regulatory framework.

The study finds that due to high response number of unsatisfied respondents, with unsatisfied respondents' frequency score rate of 31% or frequency scores of 93 out of 300 respondents (refer to Table 4.15: Bar chart indicating frequency scores of test item 4 – second research objective), Specific recommendations on improvements to domestic law, the independent variable, (Top column 3 of the OECD Table 1.1), represented by the highest number of unsatisfied respondents' frequency score, causes a change in the OECD Recommended Hybrid Mismatch Rules or linking rules, the dependent variable, (Top column 4 of the OECD Table 1.1).

It is mentioned in the study Chapter 3, Research Methodology, that the study incorporates causal research whereby the independent variable causes a change in the dependent variable (refer to linear regression analysis in Chapter 4, Table 4.2). The study then philosophizes that until South Africa's domestic law represented by Specific recommendations on improvements to domestic law improves, the OECD Recommended Hybrid Mismatch Rules or linking rules will hardly neutralize the effects hybrid mismatch arrangements in South Africa. The frequency score of satisfied respondents which represents the OECD Recommended Hybrid Mismatch Rules or linking rules, to paraphrase it, the dependent variable Y, will only increase to the highest when Specific recommendations on improvements to domestic law, to paraphrase it, the independent variable X, has decreased from the highest frequency score of unsatisfied respondents to the lowest score of unsatisfied respondents thus making a shift in improvements to Specific recommendations on improvements to domestic law thus resulting in the OECD Recommended Hybrid Mismatch Rules or linking rules become necessary enough to neutralize the effects of hybrid mismatch arrangements in South Africa. The OECD recommends countries to apply primary and defensive rules as linking rules thus leaving countries to decide on whether to help themselves to neutralize the effects of hybrid mismatch arrangements or to be victims of international tax base erosion and hybrid mismatch arrangements arbitrages.

Table 4.19

Region of Rejection, Two tailed test, alpha = .01



Source: Created by the researcher

4.6 Hypothesis testing and statement of findings

Hamasaki et al. (2021)¹²⁵ submits that the role of hypothesis testing, especially of p-values, in evaluating the results of scientific experiments has been under debate for a long time. At least since the influential article by Ioannidis (2005)¹²⁶ awareness is growing in the scientific community that the results of many research experiments are difficult or impossible to replicate and that the misuse of hypothesis testing is blamed for the lack of replicability. In 2016, the American Statistical Association (ASA) published a “Statement on Statistical

¹²⁵ See: Toshimitsu Hamasakia, Frank Bretzb, C, Lisa M. LaVanged, Peter Müller E, Gene Pennello F, and José C. Pinheiro (2021). Editorial: roles of hypothesis testing, p-values and decision making in biopharmaceutical research. [Editorial: Roles of Hypothesis Testing, p-Values and Decision Making in Biopharmaceutical Research.](#)

¹²⁶ See: Ioannidis, J. P. A. (2005). Why most published research findings are false: [Editorial: Roles of Hypothesis Testing, p-Values and Decision Making in Biopharmaceutical Research.](#)

Significance and p-Values” (Wasserstein and Lazar 2016)¹²⁷, which led to continued scientific engagement and discussions.

In this study the researcher performed a hypothesis test to establish the accepted mean frequency of participants in the examination of Hybrid Mismatch Arrangements and Shortcomings of the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements to ensure validity and reliability of data used such that the study replicates.

In all analyses ranging from overall frequency scores of test items 1 to 4 to frequency scores of the four objectives ranging from 1 to 4 to graphical analyses of all frequency scores including the following:

1. Very unsatisfied
2. Unsatisfied
3. Not sure
4. Satisfied, and
5. Very satisfied, this study indicates that the frequency score of unsatisfied respondents has the highest score seconded by the frequency scores of satisfied respondents.

It is mentioned in the study that test items 1 to 4 examine the four objectives, to paraphrase it, the four research questions. It is also mentioned that the study incorporates causal research, where the dependent variable depends on the independent variable. It is mentioned in the study that causal research identifies the extent and nature of cause-and-effect relationship between two or more variables. It is mentioned in the study that domestic law, represented by Specific recommendations on improvement to domestic law (Top column 3 of the OECD Table 1.1) is the independent variable thus causing a change in the Recommended Hybrid

¹²⁷ See: Wasserstein, R. L., and Lazar, N. A. (2016). The ASA statement on p-values: context, process, and purpose. [Editorial: Roles of Hypothesis Testing, p-Values and Decision Making in Biopharmaceutical Research.](#)

Mismatch Rules or linking rules. It is further mentioned in the study that causal research theories of sufficient causes and necessary causes are required for causal research to happen. In this study the Recommended Hybrid Mismatch Rules, is the dependent variable. The highest frequency score of unsatisfied respondents indicates that domestic law in South Africa is far from improvement to effect a change in the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules or linking rules. The OECD linking rules are not necessary to neutralize the effects of hybrid mismatch arrangements in South Africa until such time when the frequency score of satisfied respondents is higher than the frequency score of unsatisfied respondents thus fulfilling the theory of sufficient causes and necessary causes. The OECD emphasizes that countries should apply primary and secondary rules thus giving freedom to countries like South Africa to choose their own pace of improvement on Specific recommendations on improvements to domestic law. It is mentioned in the study that Lindeque (2019) explored the importance and relevance of addressing BEPS via branch mismatch arrangements as proposed by the OECD, to an emerging economy such as South Africa and found that South Africa does not have specific legislation that can be applied to neutralize branch mismatch arrangements and that the general anti-avoidance rule (GAAR) is used in an attempt to address branch mismatch arrangements but is not successful in counteracting the majority of branch mismatch arrangements as the crucial element of whether its sole or main purpose was to obtain a tax benefit will not be met with the majority of arrangements.

The Davis Tax Committee (2014)¹²⁸ submitted that to combat base erosion and profit shifting as envisaged in BEPS Action 2, South Africa may resort to the GAAR and that the focus should be honed on mismatches that erode the South African tax base within the DTA scheme.

¹²⁸ See: Davis Tax Committee Interim Report (2014). Addressing base erosion and profit shifting in South Africa. https://www.taxcom.org.za/docs/New_Folder/3%20DTC%20BEPS%20Interim%20Report%20on%20Action%20Plan%202%20-%20Hybrid%20Mismatches,%202014%20deliverable.pdf.

The researcher therefore contends that unless there is an improvement on the South African jurisdiction regarding Specific recommendations on improvements to domestic law (independent variable), the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules (dependent variable) will remain unnecessary in the South Africa tax system.

This study then asserts that:

(1) The OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are not addressing all hybrid mismatch categories (tax planning structures) that are in the South African international tax policy (domestic law) other than the only three categories namely D/Ni outcome; DD outcome; and Indirect D/Ni outcome as indicated on the OECD Table 1.1. This is confirmed by unsatisfied respondents' frequency score rate of 31% or frequency score of 93 responses out of 300 respondents (refer to test item 4, second research objective) on Table 4.1 above.

(2) The OECD BEPS Action 2 Table 1.1 is not a competent but rather a misleading guide to local jurisdictions (domestic law) such as South Africa, international tax authorities, MNEs, and international tax consultants as indicated by unsatisfied respondents' frequency score rate of 30.67% or frequency score of 92 responses out of 300 respondents (refer to test item 1, third research objective).

(3) The South African jurisdiction (domestic law) which is represented by Specific recommendations on improvements to domestic law (Top column 3 of the OECD Table 1.1) and its international tax policies or systems is not compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 – Recommended Hybrid Mismatch Rules (refer to OECD Table 1.1). This is confirmed by unsatisfied respondents' frequency score rate of 30.33% or frequency score of 91 responses out of 300 respondents (refer to test item 3, first research objective).

(4) The OECD BEPS Action 2 Recommended Hybrid Mismatch Rules or linking rules do not satisfactorily neutralize the effects of hybrid mismatch arrangements, as a result the distortion of tax revenue, transparency within MNEs in South Africa in terms of information

sharing, economic efficiency evaluation, competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are not justified, as indicated by unsatisfied respondents' frequency score rate of 30% or frequency score of 90 out of 300 respondents (refer to test item 2, fourth research objective on Table 4.1).

4.7 Frequency mean and standard deviation

4.7.1 Mean (Table 4.19)

Panta and Dahal (2024¹²⁹) submit that according to Prabhakar et al. (2019)¹³⁰, mean is the mathematical average value of a set of data, and that Mean can be calculated using summation of the observations divided by number of observations; the standard deviation is a measure of how spread-out value is from its mean value. In this study the mean is used to construct the hypothesis. A hypothesis is used to establish validity and reliability of data.

4.7.2 Standard deviation (Table 4.19)

According to Willoughby (1995:1) the standard deviation is the square root of the average squared deviations from the mean. In this study the standard deviation is used to compute the t-test. The t-test is used to evaluate validity and reliability of data.

4.7.3 Two tailed t-test (Table 4.19)

According to Lind et al. (2005:337), a two tailed t-test is used to test the hypothesis for observations less than 30 in a skew diagram with rejection regions on both sides. This is used when the direction of the alternate hypothesis is not known. In this study the two tailed test

¹²⁹ See: Panta and Dahal (2024). Statistical interpretation on standard deviation, sample standard and mean in case of individual data. [IJCRT2402213.pdf](#).

¹³⁰ See: Mishra, Prabhakar., Pandey, Chandra M., Singh, Uttam., Gupta, Anshul., Sahu, Chinmoy., and Keshri, Amit. (2019). Descriptive statistics and normality tests for statistical data. [Annals of Cardiac Anaesthesia](#).

is used to assess reliability and validity of the t-test accepted mean frequency of 92 from 366 frequencies collected from 300 participants.

4.8 Conclusion

In this chapter, (Chapter 4), the study focused on analyzing data and discussion of findings of the study. Graphical presentations in relation to frequency scores and proportions of finding were critically analyzed. The study discussed the theory of the causal research in relation to domestic law, represented by Specific Recommendations on improvement to domestic law (Top column 3 of the OECD Table 1.1) as the independent variable and how the South African jurisdiction responds to the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements. The OECD Recommended Hybrid Mismatch Rules or linking rules, the dependent variable is affected by the slow response of South African jurisdiction (domestic law) to the OECD in terms of Specific recommendations on improvement to domestic law represented by the highest number of unsatisfied respondents.

The study refers to Morgan (2013) theories of causal research thus indicating that Specific recommendations on improvement to domestic law, the independent variable, is insufficient (refer to sufficient causes theory mentioned in the study) to cause changes in the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements, meaning that the OECD Recommended Hybrid Mismatch Rules or linking rules are not necessary (refer to necessary causes theory mentioned in the study) to neutralize the effects of hybrid mismatch arrangements in South Africa. The study then philosophizes that there should be sufficient and necessary causes to make changes in the OECD Recommended Hybrid Mismatch Rules or linking rules (the dependent variable) to happen. Until such time when the frequency scores of unsatisfied respondents decrease such that the frequency scores of satisfied respondents increase and surpass the unsatisfied frequency scores, the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements will hardly happen in South Africa.

The study found that the highest frequency score of unsatisfied responses with frequency scores of 366 out of 1200 frequencies from test items 1 to 4 is seconded by the highest frequency score of satisfied responses with frequency scores of 228 out of 1200 frequencies. The linear regression analysis (refer to Table 4.15 above) is then constructed such that the shape of the slope is slightly an upward curve thus pointing down from Y- axis (the dependent variable) towards X – axis (the independent variable) due to the highest number of negative frequency scores of 366 out of 1200 frequencies followed by the positive frequency scores of 228 out of 1200 frequencies from all four test items.

The study then observes that the research questions and objectives are answered by the highest response score of unsatisfied respondents with a frequency mean of 92 from the 366 frequency scores from 4 test items within 5 frequency distribution categories including very unsatisfied, unsatisfied, not sure, satisfied, very satisfied and 300 respondents. Hypothesis testing to establish validity and reality is performed, and the null hypothesis is not rejected. In the next chapter, (Chapter 5), the study continues with discussion of findings and linking to the literature review.

CHAPTER 5

DISCUSSION OF FINDINGS AND LINKING TO LITERATURE REVIEW

5.1 Introduction

In this chapter, (Chapter 5), the study continues to discuss findings and link them to the Literature Review. Theories philosophized from the analyses and findings from Chapter 4 are further discussed and linked to theories that were conceptualized in Chapter 3, (Research Methodology). The study then critically focuses on secondary findings and conceptualizes theories in relation to discussions that are already mentioned in other chapters of the study. Such chapters include, Chapter 1, (Introduction), Chapter 2, (Literature Review), and Chapter 3, (Research Methodology). The study then looks at objectives and answers of the research and links them to the findings before it goes on to conclude that the study has met its aims and objectives (Chapter 6).

5.2 Discussion of Research Questions and Objectives

It is indicted in Chapter 1, (Introduction) of this study, that research objectives are also research questions that the researcher asks himself before he starts the research journey and they are those research objectives and questions that are answered in Chapter 4, (Statement of Finding and Data Analysis). The study then refers to McCombes (2022) who advocates that research questions are linked to research objectives. This then means that the study needs to focus on important research questions in the field; the study needs to identify areas that need further exploration; the study needs to evaluate whether the study could fill the gap; and to assess whether the study has been done before and establish if there is a room for improvement on the study.

It is mentioned in the study, Chapter 1, (Introduction) that the aim of the study is to examine Hybrid Mismatch Arrangements and report any shortcomings of the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements and its Table 1.1 – General Overview of the Recommendations.

The study then delivers the examination with four research objectives or questions as indicated below in order to establish the facet of reality at which hybrid mismatch arrangements impact the Republic of South Africa and how the OECD BEPS Action 2 Final Report 2015 effectively or ineffectively Neutralize the Effects of Hybrid Mismatch Arrangements within MNEs in South Africa. The study then refers to the following research questions as mentioned in Chapter 1, (Introduction).

- a. Why is the study conducted within MNEs in South Africa in relation to the OECD BEPS Action 2 - Neutralizing the Effects of Hybrid Mismatch Arrangements?

The objective of this question is to investigate and determine whether South African jurisdiction (domestic law) and its international tax policies or systems are compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules as per Table 1.1.

5.2.1 Findings of the study and linking to literature review in relation to research objective 1.

The study finds that the South African jurisdiction (or domestic law) and its international tax policies are not compatible with international tax policies or systems of MNEs in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules or linking rules as per Table 1.1. It is mentioned in the study (Chapter 2), Literature Review, that Lindeque (2019) advocates that South Africa does not have sufficient safeguards in place to protect its tax base against BEPS arising using branch mismatch arrangements. It is also mentioned in the study (Chapter 2), Literature Review, that Nyatsambo (2019) advocates that South Africa has not been safe from the overarching impact of globalisation; and that the South African National Treasury observes that the biggest companies in the South African economy are foreign owned subsidiaries of major international multinational enterprises as such a big part of the nation's capital is foreign-sourced, a position that results in foreign enterprises holding deep interests in the operations of South Africa's fiscal system; and that from a taxation perspective it is this foreign vested interest that results in most of the multinational enterprises adopt some aggressive tax planning and avoidance strategies to

exploit gaps in South Africa's transfer pricing and thin capitalisation regimes whose success effectively results in the deprivation of the much needed revenue to South Africa's national fiscus. Nyatsambo (2019) indicates in Chapter 2, Literature Review, that trends in the international tax domain show that most countries are seized with the base erosion and profit shifting (BEPS) phenomenon; and that South Africa, as the second biggest economy in Africa, in 2019, and an affiliate of the Organisation for Economic Cooperation and Development (OECD), is still riddled with challenges in its BEPS regulatory framework.

The study finds that due to high response number of unsatisfied respondents, with unsatisfied respondents' frequency score rate of 31% or frequency scores of 93 out of 300 respondents (refer to Table 4.15: Bar chart indicating frequency scores of test item 4 – second research objective), Specific recommendations on improvements to domestic law, the independent variable, (Top column 3 of the OECD Table 1.1), represented by the highest number of unsatisfied respondents' frequency score, causes a change in the OECD Recommended Hybrid Mismatch Rules or linking rules, the dependent variable, (Top column 4 of the OECD Table 1.1). It is mentioned in the study Chapter 3, Research Methodology, that the study incorporates causal research whereby the independent variable causes a change in the dependent variable (refer to simple linear regression analysis in Chapter 4, Table 4.2). Until South Africa's domestic law represented by Specific recommendations on improvement to domestic law improves, the OECD Recommended Hybrid Mismatch Rules or linking rules will hardly neutralize the effects hybrid mismatch arrangements in South Africa. The frequency score of satisfied respondents which represents the OECD Recommended Hybrid Mismatch Rules or linking rules will only increase to the highest when Specific recommendation on improvement to domestic law have improved, to paraphrase it, have decreased from the highest frequency score of unsatisfied respondents to the lowest score of unsatisfied respondents thus making a shift in improvement to Specific recommendations on improvement to domestic law resulting in the OECD Recommended Hybrid Mismatch Rules or linking rules become the necessary causes to neutralize the effects of hybrid mismatch arrangements in South Africa. The OECD recommends countries to apply primary and defensive rules as linking rules thus leaving countries to decide on whether to help

themselves to neutralize the effects of hybrid mismatch arrangements or to be victims of international tax base erosion and hybrid mismatch arbitrages.

The study then concludes that the South African jurisdiction (domestic law) and its international tax policies or systems are not compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules as per Table 1.1.

b. Is the OECD BEPS Action 2 not a misleading action plan when it includes in its action only three tax planning schemes or hybrid mismatch categories including: deduction without inclusion (D/Ni outcome); double deduction (DD outcome); and imported mismatch (Indirect D/Ni outcome) out of many other mismatches or tax planning schemes that also result in hybrid mismatch such as:

- (1) Mismatch in maker of payment (double dip deduction outcome)
- (2) Mismatch in timing payment (early deduction but late income outcome)
- (3) Mismatch in characterizing payment (deduction but no specific tax relief outcome)
- (4) Mismatch of earning activities (no source state tax but tax relief outcome)
- (5) Mismatch of who contracts (no income but foreign tax relief outcome)
- (6) Mismatch of who owns the asset (double dip depreciation outcome)
- (7) Mismatch in characterizing the asset (double dip dividend relief outcome)
- (8) Mismatch as to residence (deduction but no residence taxation outcome) and
- (9) Mismatch as to residence (double dip deduction outcome) to mention a few.

The objective of this question is to establish if the OECD BEPS Action 2 is a misleading action plan when it includes in its action only three tax planning schemes or hybrid mismatch categories including: deduction without inclusion (D/Ni outcome); double deduction (DD outcome); and imported mismatch (Indirect D/Ni outcome) out of many other mismatches or tax planning schemes that also result in hybrid mismatch such as mentioned above (1 to 9 above).

5.2.2 Findings of the study and linking to literature review in relation to research objective 2.

The study finds that the OECD BEPS Action 2 does not address all tax planning schemes, rather it only focuses on three categories or structures as opposed to the various mismatches that are happening in the South African international market today. It is mentioned in the study (Chapter 2), Literature Review, that Harris (2014) submits that categorization of hybrid mismatch arrangements in the OECD's Action 2 Draft, is very different from the thirteen hybrid mismatch categorization as per examples 1 to 13 thus mentioned in Chapter 2 (Literature Review) because Action Plan 2 is targeted at only some types of cross-border mismatch arrangements that give rise to cross-border tax benefits.

According to Harris (2014), Action 2 only targets hybrid instruments and hybrid entities, to paraphrase it, it does not include mismatches that result from personal or individual transactions. The study then philosophizes that there are many multinational enterprises that handle individual and personal transactions that have mismatches that the OECD neglects. This study conceptualizes that such individuals and personal transactions are dealt with in various banks and other multinational money agents such as Trans Union Africa, Mukuru, Paiza to mention just three. The study then finds that the OECD is limited in scope, and it only addresses very few tax planning categories such as the following:

1. hybrid financial instruments and transfers,
2. hybrid entity payments,
3. reverse hybrids,
4. imported mismatches.

According to Harris (2014) below are tax planning structures that individuals use and involve personal hybrid mismatches as opposed to only entities or instruments that the OECD focuses on:

1. Mismatch in Maker of Payment (Double Dip Deduction) - refer to Example 3 in the study in Chapter 2 - Literature Review.

2. Mismatch in Qualifying Payment (Large Deduction but Small Income) - refer to Example 4 in the study in Chapter 2 - Literature Review.
3. Mismatch in Timing (Early Deduction but Late Income) - refer to Example 5 in the study in Chapter 2 - Literature Review.
4. Mismatch in Characterizing Payment (Deduction but No Specific Tax Relief) - refer to Example 6 in the study in Chapter 2 - Literature Review.
5. Mismatch of Earning Activities (No Source State Tax but Foreign Tax Relief) - refer to Example 7 in the study in Chapter 2 – Literature Review.
6. Mismatch of Who Contracts (No Income but Foreign Tax Relief) - refer to Example 8 in the study in Chapter 2 – Literature Review.
7. Mismatch of Who Owns the Asset (Double Dip Depreciation) - refer to Example 9 in the study in Chapter 2 – Literature Review.
8. Mismatch in Characterizing the Asset (Double Dip Dividend Relief) - refer to Example 10 in the study in Chapter 2 – Literature Review.
9. Mismatch as to Residence (Deduction but no Residence Taxation) - refer to Example 12 in the study in Chapter 2 – Literature Review.
10. Mismatch as to Residence (Double Dip Deduction) - refer to Example 13 in the study in Chapter 2 –Literature Review.

The study then finds and concludes that the OECD BEPS Action 2 is a misleading action plan and confuses many international tax consultants, MNEs, and Tax authorities to believe that there are only three hybrid mismatch structures in the global market including South Africa and many others that involve MNEs in their countries.

- c. How competent is the OECD BEPS Action 2 Table 1.1 General Overview of the Recommendations as a guide for “Neutralizing the Effects of Hybrid Mismatch Arrangements”?

The objective of this question is to find out if the OECD BEPS Action 2 Table 1.1 is a competent and not a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs and international tax consultants?

5.2.3 Findings of the study and linking to literature review in relation to research objective 3

The study finds that the OECD BEPS Action 2 Table 1.1 – General Overview of the Recommendations is not competent and is a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs and international tax consultants. It is mentioned in the study (Chapter 2), Literature Review, that Parada (2018) clarifies that while the OECD's proposed target is the hybrid entity itself, the existence of a hybrid or reverse hybrid entity is not sufficient (refer to Morgan (2013) sufficient causes theory mentioned in the study) to initiate the linking rules set out. It is further mentioned in the study that Parada (2018) advocates that the core of the problem, to paraphrase it, a disparity in the tax characterization of entities, is not addressed and the focus of the OECD lies on the outcome of the transaction and not on the hybrid element which leads to a consequentialist approach adoption by the OECD.

It is mentioned in the study that Lindeque (2019) asserts that BEPS has become an increasingly important matter for both multinational enterprises (MNEs) and the countries in which they operate (local jurisdiction) and that the tax avoidance strategies used to exploit gaps and mismatches in tax rules have become progressively complex and advanced over the past decade. It is also mentioned in the study that based on Lindeque (2019), the study philosophizes that due to complexity of tax avoidance strategies, the OECD Table 1.1, as a guide to international tax consultants, MNEs and international tax authorities, does very little to paraphrase it, it is not necessary (refer to Morgan (2013) necessary causes theory mentioned in the study) to neutralize the effects of hybrid mismatch arrangements due to its Recommended Hybrid Mismatch rules that focus on primary and defensive rules on the payer and payee perspectives respectively, of the hybrid entities and hybrid instruments. It is mentioned in Chapter 2, that Lindeque (2019) explored the importance and relevance of addressing BEPS via branch mismatch arrangements as proposed by the OECD, to an emerging economy such as South Africa, and that South Africa does not have specific legislation that can be applied to neutralize branch mismatch arrangements.

Lindeque (2019) indicates that the general anti-avoidance rule (GAAR) is used in an attempt to address branch mismatch arrangements but is not successful or sufficient (sufficient causes of causal research theory) in counteracting the majority of branch mismatch arrangements as the crucial element of whether its sole or main purpose was to obtain a tax benefit will not be met with the majority of arrangements. Lindeque (2019) recommends, that since South Africa does not have sufficient safeguards in place to protect its tax base against BEPS arising through the use of branch mismatch arrangements the implementation of some of the recommendations of the branch report through the use of tailored approach will allow South Africa to reduce its exposure to lost tax revenue arising from branch mismatch arrangements.

The study then finds and concludes that the OECD BEPS Action 2 Table 1.1 – General Overview of the Recommendations is not a competent and is a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs and international tax consultants.

- d. Do the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules really neutralize the effects of hybrid mismatch arrangements and can they be relied upon to determine whether the distortion of tax revenue, transparency, within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment with regard to competent tax policy (domestic law) and fairness in complying with the OECD BEPS Action 2 by MNEs in South Africa justified?

The objective of this question is to investigate if the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules or linking rules really neutralize the effects of hybrid mismatch arrangements and thus justify the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competent tax policy (domestic law) and fairness of complying with the OECD Action 2 by MNEs in South Africa.

5.2.4 Finding of the study and linking to literature review in relation research objective

4

In this chapter, Chapter 4, the study finds that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules or linking rules do not satisfactorily neutralize the effects of hybrid mismatch arrangements, as a result the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa is not justified, as indicated by the high response rate of unsatisfied respondents' frequency score rate of 31% or frequency scores of 93 out of 300 respondents. This is further indicated by the simple linear regression analysis (refer to Table 4.2) in Chapter 4. The Y – axis (the dependent variable represents the satisfied respondents with a second highest frequency score of 228 responses out of 1200 frequency scores and the X – axis (the independent variable) represents the unsatisfied respondents with the highest frequency score of 366 responses out of 1200 frequency scores thus resulting in a negative slope of the linear regression analysis with a slight upward curve pointing down from the Y-axis towards the X – axis.

It is mentioned in the study, (Chapter 2) that Arfwidsson (2024) submits that hybrid mismatches, where differences in income characterization across jurisdictions lead to double non-taxation, are exploited by multinational enterprises to reduce their overall tax burden. According to Arfwidson (2024), common hybrid mismatch rules addressing this issue have recently been introduced within the EU and the OECD. As Arfwidson (2024) asserts, the adoption of these rules is unprecedented and poses a novelty for many states' national tax systems.

It is mentioned in Chapter 2, Literature Review, of the study that Arfwidson (2024), asserts that due to the extent of complexity of hybrid mismatches, the operation of hybrid mismatch rules necessitates interactions with other anti-avoidance rules namely:

1. Tax treaty provisions,
2. EU law,
3. OECD guidelines, and national rules in foreign jurisdictions.

It is mentioned in the study, Chapter 2, that De Koker (2021) examined whether the OECD had effectively neutralized trust-based hybrid mismatch arrangements with the recommendations incorporated in Action 2 of the BEPS Action Plan. According to De Koker (2021), the OECD employed a consequentialist approach to hybrid mismatch arrangements thus focusing on mending the outcomes of mismatch transactions as opposed to the source of the mismatches. De Koker (2021) advocates that since trusts comprise several distinctive attributes, the OECD encountered difficulties in addressing trust-based mismatched systematically through the consequentialist approach. Slow convergence from the international community as De Koker (2021) asserts, represents a further threat to the success of the OECD initiative.

The study then finds and concludes that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules or linking rules do not satisfactorily, to paraphrase it, are not necessary (refer to Morgan (2013) necessary causes theory of the causal research) to neutralize the effects of hybrid mismatch arrangements, as a result the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa is not justified.

5.3 Conclusion

This Chapter, Chapter 5, focused on discussion of findings and critically linked them to Literature Review. Theories and concepts thus philosophized from all chapters including Chapters 1 to 4 of this study were cross referenced. The study mentioned the aim and research objectives including objective one to objective four and discussed finding for each objective. The study presented the simple linear regression analysis and referred to the sufficient causes and the necessary causes theories of the causal research [refer to Morgan (2013)] to indicate shortcomings of the OECD BEPS Action 2 Final Report 2015 - Neutralizing the Effects of Hybrid Mismatch Arrangements in South Africa in 2025. The study then concludes that the research questions and objectives are met and satisfactorily delivered. In the next chapter, Chapter 6, the study focuses on Conclusion and Recommendations.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

In the preceding chapter, Chapter 5, the researcher discussed the findings of the study and linked them to literature review. The research aims and objectives are mentioned and discussed as the study elaborates every research question and objective and concludes that the aims and objectives are successfully delivered. In this chapter, Chapter 6, the study summarizes and concludes the research journey. The chapter opens with a step-by-step explanation thus giving findings of the research, methodology applied, conclusions on the literature cited, and analysis of data. The chapter closes with some recommendations in relation to research aims, questions and objectives.

6.2 Summary of Findings

This study incorporated positivism paradigm and applied hypothesis testing. The study incorporated the causal research technique whereby independent and dependent variables are philosophized and applied.

The Morgan (2013) causal research theories of sufficient causes and necessary causes are applied thus indicating that sufficient causes are required in the independent variable represented by Specific recommendations on improvement to domestic law (Top column 3 of the OECD Table 1.1) to cause changes in the dependent variable represented by OECD Recommended Hybrid Mismatch Rules or linking rules (Top column 4 of the OECD Table 1.1) which implies that in order for the OECD to neutralize the effect of hybrid mismatch arrangements, the necessary causes are required. The study philosophized the highest number of unsatisfied respondents (366 frequency scores out of 1200 frequency scores) to be insufficient to cause changes in the OECD Recommended Hybrid Mismatch Rules or linking rules that are necessary (necessary causes) to neutralize the effects of hybrid mismatch arrangements thus resulting in a negative slope of the linear regression analysis. Until such

time when the number of unsatisfied respondents decreases, and the number of satisfied respondents (228 frequency scores out of 1200 frequency scores) increases and surpasses the number of unsatisfied respondents, the OECD Recommended Hybrid Mismatch Rules are not necessary to neutralize the effects of hybrid mismatch arrangements in South Africa. The simple linear regression analysis (refer to Table 4.2 in chapter 4) indicates a slightly upward curve that slopes down, to paraphrase it, a negative slope, from Y-axis (the dependent variable) towards X-axis (the independent variable) thus indicating that it depends on Specific recommendations on improvements to domestic law (the independent variable) to cause changes in the OECD Recommended Hybrid Mismatch Rules (the dependent variable) that is necessary (necessary causes) to neutralize the effects of hybrid mismatch arrangements in South Africa.

The study philosophizes domestic law, represented by Specific recommendations on improvement to domestic law (Top column 3 of the OECD Table 1.1) as the independent variable thus causing a change in the dependent variable, represented by the OECD Recommended Hybrid Mismatch Rules, or linking rules (Top column 4 of the OECD Table 1.1) to examine shortcomings of the OECD BEPS Action 2 Final Report 2015– Neutralizing the Effects of Hybrid Mismatch Arrangements by incorporating Table 1.1 as a guide to international tax consultants, international tax authorities, MNEs and states to mention a few. The study was conducted by incorporating four test items with each representing one of the four research questions and objectives. Closed ended questions were set to answer research questions and objectives.

The ranking of findings from the research were then assigned to each test item starting with the highest frequency score as follows:

1. Test item 4 represents the second research objective (First rank with unsatisfied respondents' frequency score rating of 31% or 93 responses out of 300 respondents).
2. Test item 1 represents the third research objective (Second rank with unsatisfied respondents' frequency score rating of 30.67% or 92 responses out of 300 respondents).

3. Test item 3 represents the first research objective (Third rank with unsatisfied respondents' frequency score rating of 30.33% or 91 responses out of 300 participants).
4. Test item 2 represents the fourth research objective (Fourth rank with unsatisfied respondents' frequency score rating of 30% or 90 out of 300 participants).

This study therefore indicates that the theory of causal research as mentioned above, a change in Specific recommendations on improvements to domestic law in the South African jurisdiction causes a change in the OECD linking rules. This then means that the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements does extraordinarily little in South Africa in terms of the following objectives as per the ranking, starting with the highest below:

1. Test item 4, second objective, to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are addressing all hybrid mismatch categories (tax planning structures) that are in the South African international tax policy (domestic law) as opposed to only three categories namely D/Ni outcome; DD outcome; and Indirect D/Ni outcome as indicated on the OECD Table 1.1, with unsatisfied respondents' frequency score rate of 31% or 93 responses out of 300 respondents.
2. Test item 1, third objective, to investigate and determine whether the OECD BEPS Action 2 Table 1.1 is a competent and not a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs, and international tax consultants, with unsatisfied respondents' frequency score rate of 30.67% or 92 responses out of 300 respondents.
3. Test item 3, first objective, to investigate and determine whether South African jurisdiction (domestic law) which is represented by Specific recommendations on improvement to domestic law (Top column 3 of the OECD Table 1.1) and its international tax policies or systems are compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 –

Recommended Hybrid Mismatch Rules as per Table 1.1, with unsatisfied respondents' frequency score rate of 30.33% or 91 responses out of 300 respondents.

4. Test item 2, fourth research objective, to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules really neutralize the effects of hybrid mismatch arrangements and to determine whether the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are justified, with unsatisfied respondents' frequency score rate of 30% or 90 responses out of 300 respondents.

6.2.1 Primary findings

The following are the primary findings of the study:

- A. The study found that the examination of the first objective represented by test item 3, to investigate and determine whether South African jurisdiction (domestic law) which is represented by Specific recommendations on improvement to domestic law (Top column 3 of the OECD Table 1.1) and its international tax policies or systems are compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 – Recommended Hybrid Mismatch Rules as per Table 1.1 has the third highest response rate with unsatisfied respondents' frequency score rate of 30.337% or 91 responses out of 300 respondents.

The study found that South African jurisdiction (domestic law) which is represented by Specific recommendations on improvements to domestic law (Top column 3 of the OECD Table 1.1) and its international tax policies or systems are not compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 – Recommended Hybrid Mismatch Rules as per Table 1.1.

The study then concludes that there are shortcomings within the OECD BEPS Action 2 Table 1.1 Recommended Hybrid Mismatch Rules. The OECD Recommended Hybrid

Mismatch Rules or linking rules are proven to be ineffective since the South African jurisdiction applies the GAAR and any other treaty of choice which concludes the necessary causes research theory that the OECD Recommended Hybrid Mismatch Rules are not necessary to neutralize the effects of hybrid mismatch arrangements in South Africa.

- B. The study found that the examination of the second objective, represented by test item 4, to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are addressing all hybrid mismatch categories (tax planning structures) that are in the South African international tax policy (domestic law) as opposed to only three categories namely D/NI outcome; DD outcome; and Indirect D/NI outcome as indicated on the OECD Table 1.1 has the highest response rate with unsatisfied respondents' frequency score rate of 31% or 93 responses out of 300 respondents.

The study found that the OECD are not addressing all hybrid mismatch structures or tax planning schemes but rather focus on a few selected out of over thirteen tax planning structures or categories. The study gave, in Chapter 2, thirteen examples of hybrid mismatch structures that are in the global market. The study then concludes that the OECD BEPS Action 2 has shortcomings in addressing hybrid mismatch categories.

- C. The study found that the examination of the third objective, represented by test item 1, to investigate and determine whether the OECD BEPS Action 2 Table 1.1 is a competent and not a misleading guide to local jurisdiction (domestic law), international tax authorities, MNEs, and international tax consultants has the second highest response rate with unsatisfied respondents' frequency score rate of 30.67% or 92 responses out of 300 respondents.

The study found that OECD Table.1.1 is not a competent table and it is a misleading table to local jurisdiction, international tax authorities, MNEs, and international tax consultants. OECD Table 1.1 does not address the issue of the OECD Recommended Hybrid Mismatch Rules; The OECD left it blank in most of the spaces and recommends countries to apply own primary and defensive rules which is misleading and encourages

tax base erosion and arbitration in favour of nations that have competent skills and expertise in the field of hybrid mismatch arrangements.

The study then concludes that the OECD BEPS Action 2 has shortcomings in its recommended hybrid mismatch rules and that the OECD Recommended Hybrid Mismatch Rules are not necessary (necessary causes) to neutralize the effects of hybrid mismatch arrangements.

D. The study found that the examination of the fourth objective, represented by test item 2, to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules really neutralize the effects of hybrid mismatch arrangements and determine whether the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment with regard to competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are justified, has the fourth highest response rate with unsatisfied respondents' frequency score rate of 30% or 90 responses out of 300 respondents.

The study found that the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment with regard to competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are not justified.

The unclarity of the application of linking rules within MNEs in South Africa, orchestrated by the OECD Hybrid Mismatch Recommended Rules per Table 1.1 - to apply linking rules whereby different MNEs adopt home based anti-tax avoidance schemes (domestic law) such as ATAD and GAAR, hybrid mismatch policies come with complex challenges within MNEs.

The study concludes that the OECD BEPS Action 2 has shortcomings in justifying the distortion of tax revenue, sharing of information, economic efficiency evaluation, and competition in terms of attracting foreign direct investment.

6.2.2 Secondary findings

The following are secondary findings from the literature review in relation to research questions and objectives:

- (1) Why is the study conducted within MNEs in South Africa in relation to the OECD BEPS Action 2 - Neutralizing the Effects of Hybrid Mismatch Arrangements?

The objective of this question is to investigate and determine whether South African jurisdiction (domestic law) and its international tax policies or systems are compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules as per Table 1.1.

The study found that the South African jurisdiction (or domestic law) and its international tax policies are not compatible with international tax policies or systems of MNEs in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules or linking rules as per Table 1.1. The study found that Lindeque (2019) advocates that South Africa does not have sufficient safeguards in place to protect its tax base against BEPS arising from branch mismatch arrangements. The study also found that Nyatsambo (2019) advocates that South Africa has not been safe from the overarching impact of globalisation and that the South African National Treasury observes that the biggest companies in the South African economy are foreign owned subsidiaries of major international multinational enterprises (MNE) as such a big part of the nation's capital is foreign-sourced, a position that results in foreign enterprises holding deep interests in the operations of South Africa's fiscal system and that from a taxation perspective it is this foreign vested interest that results in most of the multinational enterprises adopt some aggressive tax planning and avoidance strategies to exploit gaps in South Africa's transfer pricing and thin capitalisation regimes whose success effectively results in the deprivation of the much needed revenue to South Africa's national fiscus.

The study further found that Nyatsambo (2019) indicates that trends in the international tax domain show that most countries are seized with the base erosion and profit shifting (BEPS) phenomenon and that South Africa, as the second biggest economy in Africa, in 2019, and an affiliate of the Organisation for Economic Co-operation and Development (OECD), is still overwhelmed with challenges in its BEPS regulatory framework.

The study then asserts that due to non-response to Specific recommendations on improvements to domestic law, the independent variable, (Top column 3 of the OECD Table 1.1), represented by the highest number of unsatisfied respondents' frequency score, causes a change in the OECD Recommended Hybrid Mismatch Rules or linking rules, the dependent variable, (Top column 4 of the OECD Table 1.1). It is mentioned in the study, Chapter 3 – Research Methodology, that the study incorporates the causal research whereby the independent variable causes a change in the dependent variable. Until South Africa's domestic law represented by Specific recommendations on improvement to domestic law, improves by activating linking rules, the OECD Recommended Hybrid Mismatch Rules or linking rules will hardly neutralize hybrid mismatch arrangements in South Africa. The frequency score of satisfied respondents which represents the OECD Recommended Hybrid Mismatch Rules or linking rules will only increase to the highest when Specific recommendation on improvement to domestic law have improved, to paraphrase it, have decreased from the highest frequency score of unsatisfied to the lowest frequency score of unsatisfied such making a shift in improvement to Specific recommendations on improvement to domestic law resulting in the OECD Recommended Hybrid Mismatch Rules or linking rules become necessary (necessary causes) to neutralize the effects of hybrid mismatch arrangements in South Africa. The OECD recommends countries to apply primary and secondary rules (defensive rules) as linking rules thus leaving countries to decide on whether to help themselves to neutralize hybrid mismatch arrangements or to be victims of international tax base erosion and hybrid mismatch arbitrages, an initiative which brings a lot of unclarity over the compatibility of the South African domestic law and its international tax policies within MNEs in South Africa.

The study then concludes that the South African jurisdiction (domestic law) and its international tax policies or systems are not compatible with international tax policies or

systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules as per Table 1.1.

(2) Is the OECD BEPS Action 2 not a misleading action plan when it includes in its action only three tax planning schemes or hybrid mismatch categories including: deduction without inclusion (D/Ni outcome); double deduction (DD outcome); and imported mismatch (Indirect D/Ni outcome) out of many other mismatches or tax planning schemes that also result in hybrid mismatch such as:

- (a) Mismatch in maker of payment (double dip deduction outcome)
- (b) Mismatch in timing payment (early deduction but late income outcome)
- (c) Mismatch in characterizing payment (deduction but no specific tax relief outcome)
- (d) Mismatch of earning activities (no source state tax but tax relief outcome)
- (e) Mismatch of who contracts (no income but foreign tax relief outcome)
- (f) Mismatch of who owns the asset (double dip depreciation outcome)
- (g) Mismatch in characterizing the asset (double dip dividend relief outcome)
- (h) Mismatch as to residence (deduction but no residence taxation outcome) and
- (i) Mismatch as to residence (double dip deduction outcome) to mention a few?

The objective of this question is to establish if the OECD BEPS Action 2 is a misleading action plan when it includes in its action only three tax planning schemes or hybrid mismatch categories including: deduction without inclusion (D/Ni outcome); double deduction (DD outcome); and imported mismatch (Indirect D/Ni outcome) out of many other hybrid mismatches or tax planning schemes that also result in hybrid mismatch such as mentioned above.

The study found that the OECD BEPS Action 2 does not address all tax planning schemes, rather it only focuses on three categories or structures as opposed to the various hybrid mismatches that are happening in the South African international market today.

The study found that Harris (2014) submits that categorization of hybrid mismatch arrangements in the OECD's Action 2 Draft, is very different from the thirteen-hybrid

mismatch categorization as per examples 1 to 13 thus mentioned in in the study, because OECD BEPS Action Plan 2 is targeted at only some types of cross-border mismatch arrangements that give rise to cross-border tax benefits.

The study found that Harris (2014), advocates that Action 2 only targets hybrid instruments and hybrid entities; to paraphrase it, it does not include hybrid mismatches that result from personal or individual transactions and that the OECD is limited in scope, and it only addresses very few tax planning categories such as the following:

1. hybrid financial instruments and transfers (treated as hybrid financial instrument – D/Ni outcome on the OECD Table 1.1)
2. hybrid entity payments (treated as hybrid financial instrument – D/Ni outcome, payment made by a hybrid - D/Ni outcome, deductible payment made by a hybrid - DD outcome, deductible payment made by a dual resident – DD Outcome) on the OECD Table 1.1)
3. reverse hybrids (treated as payment made to a reverse hybrid – D/Ni outcome on the OECD Table 1.1)
4. imported mismatches (treated as imported mismatch arrangement - Indirect D/Ni outcome, on the OECD Table 1.1)

- (3) How competent is the OECD BEPS Action 2 Table 1.1 General Overview of the Recommendations as a guide for “Neutralizing the Effects of Hybrid Mismatch Arrangements”?

The objective of this question is to find out if the OECD BEPS Action 2 Table 1.1 is a competent and not a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs and international tax consultants?

The study found that the OECD BEPS Action 2 Table 1.1 – General Overview of the Recommendations is not competent and a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs and international tax consultants.

The study found that Parada (2018) clarifies that while the OECD's proposed target is the hybrid entity itself, the existence of a hybrid or reverse hybrid entity is not sufficient to initiate the linking rules set out and that the core of the problem, to paraphrase it, a disparity in the tax characterization of entities, is not addressed and the focus of the OECD lies on the outcome of the transaction and not on the hybrid element which leads to a consequentialist approach adoption by the OECD.

The study found that Lindeque (2019) asserts that BEPS has become an increasingly important matter for both multinational enterprises (MNE) and the countries in which they operate (local jurisdiction) and that the tax avoidance strategies used to exploit gaps and mismatches in tax rules have become progressively complex and advanced over the past decade. The study then philosophizes that due to complexity of tax avoidance strategies the OECD Table 1.1, as a guide to international tax consultants, MNEs and international tax authorities do extraordinarily little to neutralize hybrid mismatch arrangements.

The study found that Lindeque (2019) explored the importance and relevance of addressing BEPS via branch mismatch arrangements as proposed by the OECD, to an emerging economy such as South Africa and that South Africa does not have specific legislation that can be applied to neutralize branch mismatch arrangements and that the general anti-avoidance rule (GAAR) is used in an attempt to address branch mismatch arrangements but is not successful in counteracting the majority of branch mismatch arrangements as the crucial element of whether its sole or main purpose was to obtain a tax benefit will not be met with the majority of arrangements.

The study further found that Lindeque (2019) recommends that since South Africa does not have sufficient safeguards in place to protect its tax base against BEPS arising through the use of branch mismatch arrangements, the implementation of some of the recommendations of the branch report through the use of tailored approach, will allow South Africa to reduce its exposure to lost tax revenue arising from branch mismatch arrangements.

- (4) Do the OECD BEPS Action 2 Recommended hybrid mismatch rules really neutralize the effects of hybrid mismatch arrangements and can they be relied upon to determine

whether the distortion of tax revenue, transparency, within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competition in terms of attracting foreign direct investment with regard to competent tax policy (domestic law) and fairness in complying with the OECD BEPS Action 2 by MNEs in South Africa justified?

The objective of this question is to investigate if the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules or linking rules really neutralize the effects of hybrid mismatch arrangements and thus justify the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competent tax policy (domestic law) and fairness of complying with the OECD Action 2 by MNEs in South Africa.

The study found that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules or linking rules do not satisfactorily neutralize the effects of hybrid mismatch arrangements, as a result the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are not justified.

The study found that Arfwidsson (2024) submits that hybrid mismatches, where differences in income characterization across jurisdictions lead to double non-taxation, are exploited by multinational enterprises to reduce their overall tax burden and that common hybrid mismatch rules addressing this issue have recently been introduced within the EU and the OECD. The study also found that Arfwidson (2024) asserts that the adoption of hybrid mismatch avoidance rules is unprecedented and poses a novelty for many states' national tax systems and that due to the extent of complexity of hybrid mismatches, the operation of hybrid mismatch rules necessitates interactions with other anti-avoidance rules such as tax treaty provisions, EU law, OECD guidelines, and national rules in foreign jurisdictions.

The study found that De Koker (2021) examined whether the OECD had effectively neutralized trust-based hybrid mismatch arrangements with the recommendations

incorporated in Action 2 of the BEPS Action Plan and that the OECD employed a consequentialist approach to hybrid mismatch arrangements thus focusing on mending the outcomes of mismatch transactions as opposed to the source of the mismatches. The study found that De Koker (2021) advocates that since trusts comprise several distinctive attributes, the OECD encountered difficulties in addressing trust-based mismatches systematically through the consequentialist approach and that slow convergence from the international community represents a further threat to the success of the OECD initiative.

6.3 Conclusion based on objectives

The study then concludes that the aims and objectives are achieved. The aims of the study were to examine shortcomings of the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effect of Hybrid Mismatch Arrangements by incorporating the OECD Table 1.1 – General Overview of the Recommendations and report findings. The study has four objectives as below:

Objective 1

The study found that the examination of the first objective represented by test item 3, to investigate and determine whether South African jurisdiction (domestic law) which is represented by Specific recommendations on improvement to domestic law (Top column 3 of the OECD Table 1.1) and its international tax policies or systems are compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 – Recommended Hybrid Mismatch Rules as per Table 1.1 has the third highest response rate with unsatisfied respondents' frequency score rate of 30.337% or 91 responses out of 300 respondents.

The study then concludes that even though it is mentioned in the study that the OECD BEPS Action 2 Final Report 2015 neutralizes the effects of hybrid mismatch arrangements by allowing countries to apply the OECD Recommended Hybrid Mismatch Rules, also called linking rules, the study found that there are still shortcomings in that domestic law, as the independent variable, plays an important part to cause the OECD Recommended Hybrid

Mismatch Rules, which are the dependent variable, to become necessary (necessary causes) to neutralize the effects of hybrid mismatch arrangements is not necessary enough to neutralize the effects of hybrid mismatch arrangements in South Africa.

Danso (2017) advocates that in recent years there have been reports in the global media on how multinational enterprises (MNEs) structure their tax affairs to pay minimum or avoid paying taxes. According to Danso (2017), there is still work to be done on hybrid mismatch entities in a South African context. The available legislation is not sufficient to address all the issues under hybrid mismatch entities. This is confirmed by frequency scores of the unsatisfied respondents, which is the third highest at 30.33% or 91 responses out of 300 respondents.

Objective 2

The study found that the examination of the second objective, represented by test item 4, to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are addressing all hybrid mismatch categories (tax planning structures) that are in the South African international tax policy (domestic law) as opposed to only three categories namely D/Ni outcome; DD outcome; and Indirect D/Ni outcome as indicated on the OECD Table 1.1 has the highest response rate with unsatisfied respondents' frequency score rate of 31% or 93 out of 300 respondents.

The study then concludes that the OECD only focuses on a few selected hybrid mismatch arrangement categories as opposed to 13 categories indicated by Harris (2014). The study concludes that the OECD has shortcomings in terms of Neutralizing the Effect of Hybrid Mismatch Arrangements as it does not cover all hybrid mismatch categories that are in the world market today. This is confirmed by the highest response rate with unsatisfied respondents' frequency score of 31% or 93 out of 300 respondents.

Objective 3

The study found that the examination of the third objective, represented by test item 1, to investigate and determine whether the OECD BEPS Action 2 Table 1.1 is a competent and

not a misleading guide to local jurisdiction (domestic law), international tax authorities, MNEs, and international tax consultants has the second highest response rate with unsatisfied respondents' frequency score rate of 30.67% or 92 responses out of 300 respondents.

The study then found that the OECD BEPS Action 2 Table 1.1 – General Overview of the Recommendations is not competent and is a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs and international tax consultants. The study further found that Lindeque (2019) recommends, that since South Africa does not have sufficient safeguards in place to protect its tax base against BEPS arising through the use of branch mismatch arrangements and that the implementation of some of the recommendations of the branch report through the use of tailored approach will allow South Africa to reduce its exposure to lost tax revenue arising from branch mismatch arrangements. The study then concludes that there are shortcomings within the OECD Table 1.1 in that it is not competent to protect the tax base such that South Africa uses tailored approach to reduce its exposure to lost tax revenue arising from branch hybrid mismatch arrangement. This is confirmed by the second highest response rate with unsatisfied respondents' frequency score of 30.67% or 92 responses out of 300 respondents.

Objective 4

The study found that the examination of the fourth objective, represented by test item 2, to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules really neutralize the effects of hybrid mismatch arrangements and to determine whether the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are justified, has the fourth highest response rate with unsatisfied respondents' frequency score rate of 30% or 90 responses out of 300 respondents.

The study found that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules hardly neutralize the effects of hybrid mismatch arrangements and determines that the distortion of tax revenue, transparency within MNEs in South Africa in terms of information

sharing, economic efficiency evaluation, competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are not justified.

The study refers to De Koker (2021) who examined whether the OECD had effectively neutralized trust-based hybrid mismatch arrangements with the recommendations incorporated in Action 2 of the BEPS Action Plan and that the OECD employed a consequentialist approach to hybrid mismatch arrangements thus focusing on mending the outcomes of mismatch transactions as opposed to the source of the hybrid mismatches.

The study concludes that there are shortcomings in the OECD BEPS Action 2 in terms of addressing complex hybrid mismatch arrangements due to the OECD consequentialist approach to hybrid mismatch arrangements thus focusing on mending the outcome of the mismatch transactions. This is confirmed by the fourth highest response rate with unsatisfied respondents' frequency score rate of 30% or 90 responses out of 300 respondents.

6.4 Recommendations

6.4.1 Recommendations based on research findings and objectives 1 to 4.

Objective 1

The study found that the examination of the first objective represented by test item 3, to investigate and determine whether South African jurisdiction (domestic law) which is represented by Specific recommendations on improvements to domestic law (Top column 3 of the OECD Table 1.1) and its international tax policies or systems are compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD BEPS Action 2 – Recommended Hybrid Mismatch Rules as per Table 1.1 has the third highest response rate with unsatisfied respondents' frequency score rate of 30% or 91 responses out of 300 respondents.

The study then concludes that the South African jurisdiction (domestic law) together with its international tax policies or systems has shortcomings and is not compatible with international tax policies or systems of MNEs that are in South Africa in relation to the OECD

BEPS Action 2 Final Report 2015 - Neutralizing the Effects of Hybrid Mismatch Arrangements by allowing countries to apply the OECD Recommended Hybrid Mismatch Rules also called linking rules.

The study, therefore, recommends that the OECD develop a global tax policy that all multinational enterprises should apply uniformly. This can be done by imposing tariffs on countries that do not implement it within the proposed time frame. The International Federation of Accountants (IFAC) could be a good facilitator of the project as opposed to the OECD itself. The IFAC is a global body of professional accountants who are bound to professional ethics and would be a good fit for the project in the same manner that they are trusted with the professional international accounting standards (IAS) and international financial reporting standards (IFRS) across the globe.

Objective 2

The study found that the examination of the second objective, represented by test item 4, to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules are addressing all hybrid mismatch categories (tax planning structures) that are in the South African international tax policy (domestic law) as opposed to only three categories namely D/Ni outcome; DD outcome; and Indirect D/Ni outcome as indicated on the OECD Table 1.1 has the highest response rate with unsatisfied respondents' frequency score rate of 31% or 93 responses out of 300 respondents.

The study concludes that the OECD only focuses on a few selected hybrid mismatch arrangement categories as opposed to the thirteen categories mentioned by Harris (2014). The study then concludes that the OECD has shortcomings in terms of neutralizing the effect of hybrid mismatch arrangements as it does not cover all hybrid mismatch categories that are in the world market today.

The study then recommends that the OECD appoints independent international researchers that should be attending to the continuous improvement on hybrid mismatch arrangements to match trends that go with artificial intelligence systems. The OECD should be awakened

to realize that the world is changing at the speed of electricity and hence the need of independent international researchers in international tax, specifically, in neutralizing the effects of hybrid mismatch arrangements.

Objective 3

The study found that the examination of the third objective, represented by test item 1, to investigate and determine whether the OECD BEPS Action 2 Table 1.1 is a competent and not a misleading guide to local jurisdiction (domestic law), international tax authorities, MNEs, and international tax consultants has the second highest response rate with unsatisfied respondents' frequency score rate of 30.67% or 92 out of 300 respondents.

The study then found that the OECD BEPS Action 2 Table 1.1 – General Overview of the Recommendations has shortcoming in that it doesn't have the necessary causes to neutralize the effects of hybrid mismatch arrangements and thus it is not competent and is a misleading guide to local jurisdictions (domestic law), international tax authorities, MNEs and international tax consultants. Parada (2018) clarifies that while the OECD's proposed target is the hybrid entity itself, the existence of a hybrid or reverse hybrid entity is not sufficient to initiate the linking rules thus recommended by the OECD BEPS Action 2 – Neutralizing the Effects of Hybrid Mismatch Arrangements.

The study then recommends that the OECD involve the services of independent professionals to revise the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements and its Table 1.1 – General Overview of the Recommendations.

Objective 4

The study found that the examination of the fourth objective, represented by test item 2, to investigate whether the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules really neutralize the effects of hybrid mismatch arrangements and to determine whether the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competent tax policy (domestic law) and fairness

of complying with the OECD BEPS Action 2 by MNEs in South Africa are justified, has the fourth highest response rate with unsatisfied respondents' frequency score rate of 30% or 90 responses out of 300 respondents.

The study found that the OECD BEPS Action 2 Recommended Hybrid Mismatch Rules have shortcomings in that they hardly neutralize the effects of hybrid mismatch arrangements and the study determines that the distortion of tax revenue, transparency within MNEs in South Africa in terms of information sharing, economic efficiency evaluation, competent tax policy (domestic law) and fairness of complying with the OECD BEPS Action 2 by MNEs in South Africa are not justified.

Danso (2017) advocates that in recent years there have been reports in the global media on how multinational enterprises (MNEs) structure their tax affairs to pay minimum or avoid paying taxes. According to Danso (2017), there is still work to be done on hybrid mismatch entities in a South African context. The available legislation (domestic law) is not sufficient to address all the issues under hybrid mismatch entities.

Danso (2017) recommended that the South African authorities examine the recommendations by the OECD under hybrid mismatch entities and see how the recommendations could be included in domestic tax legislation with international standards.

The study then recommends that the OECD involve highly skilled independent international tax consultants with specialization in hybrid mismatch arrangements that would be dealing with the OECD BEPS Action 2 compliance across the globe. Global international tax development schemes would be applied to independent international tax professionals with specialization in hybrid mismatch arrangements at the doctorate or professorate level to ensure continuing professional development (CPD).

6.5 Research limitations

Drew (2023¹³¹) advocates that research limitations refer to the potential weaknesses inherent in a study and that all studies have limitations of some sort meaning that declaring limitations doesn't necessarily need to be a bad thing, so long as the research declaration of limitations is well thought-out and explained. According to Drew (2023), acknowledging the limitations of your study should be seen as a strength and that it demonstrates the researcher's willingness for transparency, humility, submission to the scientific method, bolster the integrity of the study and inform future research direction. This study is therefore limited to 300 samples sent to multinational enterprises (MNEs) and MNEs' international tax preparers, international tax authorities, international tax consultants and MNEs' international tax advisors in South Africa within three industry sectors namely: mining, manufacturing, and service. The main objective for the limitation is the financial and time constraints that are required to collect data. The researcher postulates that it is costly, and it takes a long time to collect larger samples hence limiting samples to 300; and to two months of data collection.

6.6 Future research suggestions

This study was conducted within MNEs in south Africa, particularly, the mining sector such as, Anglo American, BHP Billiton, Glencore, Anglo Platinum, Samancor; manufacturing sector such as Johnson & Johnson, Unilever, Coca-Cola; and service sector such as, Ernst & Young, KPMG, Deloitte, PWC, to mention a few. Future studies can be conducted within multinational enterprises (MNEs) that are listed on the stock exchange such as Old Mutual, Nedcor Limited, ABSA Group Limited, BHP Billiton, AngloGold Ashanti, and Portland Cement, to mention a few. While this study incorporated scientific positivism method, to paraphrase it, a method that relies on the scientific method including, observation, hypothesis formation, experimentation, and analysis to establish objective facts, future studies can be conducted with mixed methods thus triangulating theories. Vivek et al. (2023)¹³² advocate

¹³¹ See: Chris Drew (2023). Research limitations. <https://helpfulprofessor.com/research-limitations-examples>

¹³² See: Ramakrishnan Vivek, Yogarajah Nanthagopan, and Sarmatha Piriyaarshan (2023). Beyond methods: theoretical underpinnings of triangulation in qualitative and multi-method studies. https://www.researchgate.net/publication/376958524_BEYOND_METHODS_THEORETICAL_UNDERPINNINGS_OF_TRIANGULATION_IN_QUALITATIVE_AND_MULTI-METHOD_STUDIES.

that triangulation is an emerging method specifically in qualitative and multi-method studies and that researchers in the social sciences have increased their use of the triangulation approach recently due to the merits of triangulation, especially to conduct in-depth studies through multiple inquiries.

This study incorporated the survey research thus using closed-ended questionnaires and the simple linear regression analysis model thus focusing on the independent variable, represented by Specific Recommendations on improvements to domestic law and the dependent variable represented by the OECD Recommended Hybrid Mismatch Rules on the OECD Table 1.1. with test items 1 to 4 thus representing the four research objectives. Future studies can triangulate theories and incorporate the survey with both closed-ended and open-ended questionnaires to include the probability and non-probability methods of sampling and incorporate the quota sampling technique such that data is structured according to provinces, to paraphrase it, geographical location of participants, MNE industry sectors of participants, such as mining, manufacturing, and service sectors and then incorporate the multivariable linear regression model of the regression analysis thus having multiple variables, to paraphrase it, multiple independent variables that are used in the ordinary least squares (OLS) regression analysis which is used to detect heteroscedasticity within quantitative research experiment. Majka (2024)¹³³ submits that ordinary least squares (OLS) are a foundational method in statistical modeling used to estimate linear relationships between variables and that they elucidate the mathematical principles underlying OLS, including the derivation of estimators and key assumptions necessary for their validity. According to Majka (2024), practical applications of OLS are demonstrated through a detailed example such as, highlighting the process of fitting a model, interpreting results, and validating assumptions using real-world data. Majka (2024) addresses the limitations of OLS, such as sensitivity to

¹³³ See: Marcin Majka (2024). Ordinary least squares.
https://www.researchgate.net/publication/384403324_Ordinary_Least_Squares.

outliers, multicollinearity, non-linearity, and heteroscedasticity. This study incorporated the OLS to calculate the Breusch Pagan test and the F-test to detect heteroscedasticity.

While this research was conducted with 300 samples, future study can be conducted with more than 300 samples to further increase confidence of generalization depending on the population size.

The researcher, therefore, contends that based on suggestions and recommendations thus given in the study, future studies should be conducted by experienced international research professionals that will help resolve the OECD BEPS Action 2 Final Report 2015 – Neutralizing the Effects of Hybrid Mismatch Arrangements once and for all without leaving any stone unturned and resolve the myth behind the OECD BEPS Action 2 Final Report 2015 which is currently posing challenges across jurisdictions, to paraphrase it, domestic law, as per findings mentioned in the study.

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