Communication and Marketing Department
Isebe loThungelwano neNtengiso
Kommunikasie en Bemarkingsdepartement

Private Bag X3, Rondebosch 7701, South Africa
Welgelegen House, Chapel Road Extension, Rosebank, Cape Town
Tel: +27 (0) 21 650 5427/5428/5674 Fax: +27 (0) 21 650 5628

www.uct.ac.za

31 March 2026

UCT professor calls for clearer legal principles to guide global tax reform

Prof Johann Hattingh. Photo: Je'nine May

In the face of uncertainty and rapid societal transformation driven by new technologies, University of Cape Town (UCT) Professor Johann Hattingh, in his recent inaugural lecture, called for clarity on guiding principles for law reform and for the development of legal theory to invigorate discussions on reforming the international tax regime.

Professor Hattingh is a scholar of international tax law and the history of taxation. He is a professor of Commercial Law at UCT's Faculty of Law and an advocate of the High Court of South Africa.

His lecture examined the international and comparative tax law dimensions of the integrated framework for statutory and treaty interpretation shaped by the landmark judgment Natal Joint Municipal Pension Fund v Endumeni Municipality (2012).

The case, which was heard at the Supreme Court of Appeal (SCA), is a decision that played a significant role in advancing a unitary approach to legal reasoning in South African law, particularly in disputes over the interpretation of tax legislation and treaties.

Hattingh said: "I want to focus on something that is not often done and that's a comparative and international dimension of the legal method of interpretation that this case invigorated.

"What is envisaged is a unitary process of reasoning. That's important as it is not a hierarchy of rules. In this unit, you integrate the text, the context, the purpose of the legal rule and the background of the circumstances. The first observation about the judgment is that it gives an injunction to lawyers to follow that reasoning."

Hattingh examined three features of the unitary method of legal reasoning. Firstly, the requirement to retrieve legislative meaning through historically grounded reasoning. How seriously are we to take this injunction? He illustrated this with reference to comparative legal work he conducted on a foundational case for income tax jurisdiction, namely De Beers v Howe (1906). Secondly, he considered the requirement to engage with the purpose of legislation and treaties through reflection on divergent judicial approaches in South Africa and elsewhere.

Thirdly, Hattingh examined some of the limits of the unitary method in the Endumeni decision, such as the rather narrow scope to adapt existing tax law to rapidly evolving new societal conditions, including the digitisation of economic activity and mobility of people.

He said that South Africa's history with its Income Tax Act shows that at various points in time, large doses of foreign law served as inspiration, and often provisions were copied verbatim. "To really understand the meaning of borrowed law, its own creation moment needs to be understood. So invariably, the interpreter is called to engage with the comparative legal positions in the originating legal system."

He continued: "The place of comparative law development within the Endumeni approach has not received much attention. I came to this realisation in 2018 after conducting archival and comparative work for a book about *Landmark Cases in Revenue Law*. I had the pleasure of working with a retired United Kingdom judge Dr John Avery Jones on the 1906 decision of the House of Lords in the case of De Beers Consolidated Mines Ltd v Howe [1906] AC 455."

The decision in the De Beers case has become the foundation of the statutory test for corporate tax jurisdiction in many countries, including South Africa. South Africa, like many other countries, imported the statutory test for corporate tax residency from English tax law, for which De Beers v Howe, laid the foundation.

Hattingh was part of a group that conducted research into the case background. "Some of the findings were that the decision was based on crucially incomplete facts; the circumstances of the company and its corporate governance was so unique that it could not be easily replicated and therefore should have been distinguished in future disputes; subsequent case law repeated the decision without recognising the historical anomalies," he said.

"This whole episode about De Beers illustrates both benefits and challenges for the Endumeni method of reasoning. Retrieving meaning from historical circumstances reinvigorates our understanding of historical elements of existing tax law," Hattingh observed.

"Endumeni requires the interpreter to consider the language used in the light of the 'apparent purpose' to which it is directed. This is a very deliberate qualification of purpose; it is not the subjectively held purpose of the person who drafted a legal provision. It is to the purpose as it objectively appears to the reader of the text.

"Using purpose to read into tax laws, unstated requirements and qualifications carries the risk of impeding on constitutional values, and especially non-compliance with law-making processes. I think in South African case law we have only begun to grapple with the intricacies of purposive readings of tax law instruments."

Examining the limitations, Hattingh said: "The basic problem is that no legal draftsperson can foresee the future, and so it is impossible to think about all the possible questions about the meaning of written law that will arise when new and unique factual circumstances present themselves. The question as to whether tax law needs to be interpreted in a static or dynamic manner in South Africa is to a large degree managed through a robust system of annual law changes to our domestic legislation (which results in the layering effect). The remedy is for the government to reform the law; it is not for the courts and practitioners to do so through interpretation that is not anchored in the written law, as we find it."

Story by Kamva Somdyala, UCT News

ENDS

Issued by: UCT Communication and Marketing Department

Ridovhona Mbulaheni
Media Liaison and Monitoring Officer
Communication and Marketing Department
University of Cape Town
Rondebosch
Tel: (021) 650 2333
Cell: (064) 905 3807
Email: ridovhona.mbulaheni@uct.ac.za
Website: www.uct.ac.za