

Tax Morale: Utilising behavioural insights to improve tax compliance in South Africa

Aneeqah Meyer

1087222

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University of Witwatersrand

Supervisor: Prof. Tracy Gutuza, Associate Professor, Academic Director in the School of Law

Co-supervisor: Dr. Aylit Romm, Senior Lecturer in the School of Economics and Finance

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‘No one who achieves success does so without the help of others. The wise and confident acknowledge this help with gratitude.’ – Alfred North Whitehead

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DEDICATION

This thesis is dedicated to my father.

I owe you everything.

I hope that I made you proud.

ABSTRACT

In South Africa, there is a significant tax gap due in large part to the non-compliance of personal income taxpayers. This study seeks to deliver proposals that would reduce that tax gap by increasing tax compliance through the improvement of tax morale. Noting that the use of behavioural techniques to achieve policy outcomes has seen considerable success in recent years, there has been an increase in uptake of behavioural techniques being used by policy makers to increase tax compliance (and tax morale). While studies have indicated the types of behavioural insights that may be relevant to increase tax compliance, what has been missing from these discussions is a detailed analysis of how current domestic legislation and policy should be amended. This dissertation analyses how behavioural tools could be implemented to increase tax morale within the South African taxation framework. To do so, it considers empirical evidence to determine drivers of tax morale within South Africa. With reference to these drivers, this dissertation presents legislative and policy changes that could be made to influence taxpayers' intrinsic motivation to pay taxes and, through this mechanism, improve national voluntary tax compliance.

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1. CHAPTER ONE: INTRODUCTION AND BACKGROUND

'Taxes are what we pay for a civilised society.' - Justice Oliver Wendell Holmes Jr.¹

South Africa's national budget is predominantly financed by taxes.² Taxes pay for essential services – this is especially true in South Africa, where a substantial portion of South Africa's tax revenue is spent on social welfare programmes, healthcare and education.³ Sustained development requires additional domestic tax revenues to provide and maintain public services.⁴ With reference to the fact that any national expenditure not funded by tax revenue is funded by domestic and foreign loans (which can be a costly expense),⁵ the importance of protecting the state's tax base cannot be understated. Regrettably, South Africa faces several challenges in the collection of tax revenue.

Studies conducted in South Africa have found that there is a substantial tax gap (being the gap between the tax hypothetically collectable and the tax actually collected).⁶ This gap could be a result of understating incomes, overstating deductions, making calculation errors, or failing to file returns entirely.⁷ Studies put the value of the tax gap at over R200 billion (which equates to 4 % of GDP).⁸ About R50 billion of that gap is derived from discrepancies in personal income tax.⁹ The same study

¹ *Compania General de Tabacos de Filipinas v Collector of Internal* [275 U.S. 87, 88].

² In the 2021/22 financial year, South African expenditure amounted to R 1 788 996.2 million (or about R 1.79 trillion). The total tax revenue in the same year amounted to R 1 186 316 million (or approximately R1.17 trillion). This puts the percentage of expenditure funded by tax revenue at 66% for the 2021/2022 financial year. In the 2021/22 financial year, this is expected to increase to 74%, which is driven primarily by higher tax revenue estimates. The remainder of the expenditure is funded by domestic and foreign loans. See the National Treasury 'Budget Review 2022' (2022) at page 209.

³ Enoch Godongwana '2022 Budget Speech' 23 February 2022.

⁴ Odd-Helge Fjeldstad and Lise Rakner 'Taxation and tax reforms in developing countries: Illustrations from sub-Saharan Africa' (2003) Chr. Michelsen Institute R 2003: 6 at page 1.

⁵ Debt-service costs in the 2022/23 financial year are expected to total R 301.8 billion. See the National Treasury op cit note 2.

⁶ A distinction can be made between the gross tax gap and the net tax gap. While some of the tax gap can be recovered through enforcement measures and penalties, there will be some portion of this tax gap that is unlikely to ever be collected. This amount reflects the net tax gap (while the gross tax gap is reflected by the sum of the amount expected to be recouped and the amount that cannot and/or will not be collected). Also see Ruanda Oberholzer and EM Stack 'Perceptions of taxation: a comparative study of different individual taxpayers in South Africa' (2009) 44(3.1) *Journal of Public Administration* 737 – 755 at 737.

⁷ Rebone Gcabo and Zurika Robinson 'Tax compliance and behavioural response in South Africa: an alternative investigation' (2007) 10(3) *South African Journal of Economic and Management Sciences* 357-370 at 358.

⁸ Sasha Planting 'SA Revenue Service: Closing the tax gap is easier said than done, say the experts' *Daily Maverick* 26 September 2021.

⁹ Ibid.

found that a major cause of this is taxpayer non-compliance.¹⁰ The tax gap can be broadly broken down into the compliance gap (in other words, the amount lost due to compliance-related issues)¹¹ and the policy gap (in other words, the amount lost due to the impact of the policy).¹² An example of this distinction can be seen in the difference between tax evasion and tax avoidance. Tax evasion would contribute to the compliance gap (as it relates to intentional non-compliance with tax laws) while tax avoidance would contribute to the policy gap (as it exploits loopholes in the tax laws and policies). This dissertation focuses on the tax compliance gap. Put differently, this dissertation considers how the tax gap can be closed by improving tax compliance.

In his book on the Economics of Evasion, Cowell wrote that ‘*the issue of evasion is, unlike other illegal activities, inseparably bound up with the instruments of fiscal control that the government attempts to use in carrying out its economic policy.*’¹³ For as long as taxes are not duly paid in their entirety (whether intentionally or not), taxation will remain an imperfect tool to pursue government objectives. With this in mind, reducing the tax compliance gap is of the utmost importance.

While poor tax compliance is a global issue, lower-income countries tend to face a more complex problem given issues with accountability, institutional capacity, and governance.¹⁴ Further, lower income countries tend to find that enforcement and voluntary compliance are severely constrained.¹⁵ This is, in part, due to administrative costs which may affect institutional efficacy, and in part due to poor quality of public services, imperfect democratic processes, and limited access to information.¹⁶ While South Africa is not strictly a low-income country, it suffers from many of the same issues as low-income countries.¹⁷

¹⁰ Ibid.

¹¹ Robina Ahmed and Mark Rider ‘Using microdata to estimate Pakistan’s tax gap by type of tax’ (2013) 41(3) *Public Finance Review* 334–359 at 335.

¹² Juan Toro *et al* International Monetary Fund Country Report No. 13/314 ‘United Kingdom: Technical Assistance Report - Assessment of HMRC’s Tax Gap Analysis’ (2013) at page 11.

¹³ Frank Cowell *Cheating the Government: The Economics of Evasion* (1990) MIT Press.

¹⁴ Giulia Mascagni, Christopher Nell, and Nara Monkam ‘One Size Does Not Fit All: A Field Experiment on the Drivers of Tax Compliance and Delivery Methods in Rwanda’ (2017) ICDT Working Paper 58 at page 7.

¹⁵ Ibid at page 7.

¹⁶ Ibid at page 7.

¹⁷ South Africa currently meets the World Bank’s definition of a middle-income nation (although it appears to be on track to be “downgraded” to a lower-middle-income nation).

While various definitions of tax compliance exist, for the purpose of this study, SARS' definition of tax compliance will have reference. SARS describes compliance as the scenario when taxpayers have satisfied all of their tax obligations under the law.¹⁸ This includes registering as a taxpayer, filing returns on time with full and accurate disclosure, paying taxes on time, and deregistrations (if required).¹⁹ To be clear, a taxpayer is either considered to be compliant or non-compliant. Even if only one actions of these is not done correctly and timeously, a taxpayer becomes non-compliant.

Tax compliance is a complex subject and increasing tax compliance is not as simple as merely increasing the frequency of audits and applying higher penalties. As noted by Allingham and Sandmo, *'this is a very simple theory, and it may perhaps be criticised for giving too little attention to nonpecuniary factors in the taxpayer's decision on whether or not to evade taxes.'*²⁰ With this in mind, this dissertation posits that tax morale is one avenue through which compliance can be improved. To design effective policies to improve tax morale, the behavioural aspects thereof need to be properly understood. Changes to tax policy, and the legislative framework within which it exists, should be supported by empirical evidence. Having regard to these requirements, this dissertation considers the factors that influence tax morale in South Africa and how these can be changed through behavioural insights. While some studies have considered perceptions of taxation in South Africa²¹ and tax morale more generally, the data was collected over a decade ago, and a significant amount has happened that may have influenced these perceptions, and thus, the ultimate tax morale and compliance decisions of South African taxpayers.

Finally, tax policy and the corresponding legislative framework cannot be directly transplanted from one country to another – it needs to be adequately tailored to each country and the particular nuances therein.²² While many studies have been concluded on this topic internationally, this is not necessarily directly transposable into the South African context. While this dissertation considers tax policy and

¹⁸ SARS 'Strategic Plan 2020/21 – 2024/25' at page 8.

¹⁹ This is in line with the Organisation for Economic Cooperation and Development's categories of obligations to be met for a taxpayer to be considered compliant. See Organisation for Economic Cooperation and Development 'Guidance Note – Compliance Risk Management: Managing and Improving Tax Compliance' (2004).

²⁰ Michael Allingham and Agnar Sandmo 'Income tax evasion: a theoretical analysis' (1972) 1(3-4) *Journal of Public Economics* 323 – 338 at page 326.

²¹ For example, see Ruanda Oberholzer *Perceptions of taxation: a comparative study of different population groups in South Africa* (unpublished DCom thesis, University of Pretoria, 2008) 302.

²² Richard Bird and Eric Zolt 'Redistribution via Taxation: The Limited Role of the Personal Income Tax in Developing Countries' (2005) 52 *UCLA Law Review* 1627-1695 at 1660.

legislation internationally, it aims to consider the applicability of the relevant policies within the South African landscape.

1.1 *Importance of the Study*

This cross-disciplinary study utilises both legal and economic theory – in particular, it considers how economic theory can be utilised to influence legal frameworks. The research interrogates the state of tax morale within South Africa as well as the features of the South African socio-economic and political landscape that influence tax morale. The research concludes with proposals for amendments to the existing legislative framework, which is underscored by behavioural insights, with the intention of increasing tax morale, and ultimately voluntary tax compliance.

By developing a better understanding of tax morale, we can develop a better understanding of the channels through which policies can leverage tax morale to improve voluntary compliance. It is important to evaluate the policies that other countries have implemented as this will provide insight into the impact of the context on the respective policies and whether or not it could be expected to find any application in South Africa. While this study focuses primarily on non-compliance as it relates to personal income tax, many of the insights could be applicable to other types of taxes.

This dissertation intends to add to the existing literature in the following ways. First, it incorporates an up-to-date review of perceptions of South Africans on a range of topics, including institutional trust and perceptions of corruption. Second, it considers existing South African legislation and policy through a behavioural lens. Finally, it considers the most promising types of behavioural interventions. While the majority of international literature considers the utilisation of behavioural principles in tax compliance and administration generally, not much consideration is given to the impact on tax morale specifically. There are no interventions of this kind that have been carried out in South Africa to the best of the author's knowledge. Similarly, much of the literature has a focus on deterrents and other pecuniary interventions. There does not appear to be any significant focus in the literature on non-pecuniary interventions (other than those that consider social norms and the use of messaging).

This dissertation focuses on behavioural tools that do not utilise pecuniary incentives or disincentives. Accordingly, there is no consideration of traditional deterrent policy tools such as audits.

Consequently, the study focuses on improving voluntary compliance rather than enforced compliance. It aims to provide primarily low-cost solutions to compliance concerns, as well as potentially highlighting areas where legislation and policy is damaging voluntary compliance efforts.

1.2 Research Objectives

The aim of this dissertation is to analyse South African legislation and taxation policy in order to determine how (if at all) behavioural economic principles could be utilised to increase tax morale feasibly and sustainably, and ultimately increase tax compliance and reduce the tax gap. In doing so, it also considers the key determinants of tax morale in South Africa.

To achieve this objective, the following related research questions are considered:

- What is tax morale and how does it affect tax compliance?
- Why do other theories of tax evasion and compliance fail to adequately explain why non-compliance persists?
- How does tax morale address the limitations of other theories of tax evasion and compliance?
- Which features of the South African tax system influence tax morale?
- Which behavioural insights might be able to improve tax morale?
- Which policies intended to increase tax morale, underpinned by behavioural economics, are likely to be successful in South Africa (if any)?

1.3 Methodology of the Study

This study uses a mixed method research design in that it combines both qualitative and quantitative research approaches. In the quantitative stage, survey data is analysed to determine the relative importance of determinants of tax compliance. In the qualitative stage, research is based on a literature review of various sources, including domestic and foreign legislation and case law, policy, guidelines, and scholarly writing and publications.

1.4 Demarcation of the Study

The scope of this dissertation is narrowed in the following ways. First, it focuses only on personal income tax. While it may be the case that there is more scope for evasion and avoidance of other

forms of taxes,²³ such as corporate income tax, this does not negate the issue of non-compliance among personal income taxpayers. This is particularly the case with due regard to the fact that taxpayers that traditionally may have had simple tax profiles are increasingly earning additional streams of income²⁴ or requiring additional deductions,²⁵ and advancements in technology have led to the increase in the number of taxpayers operating as provisional taxpayers.²⁶

Second, it focuses on using tax morale to improve voluntary compliance. In other words, it does not consider any strategies that involve standard economic deterrents such as increasing the audit probability or the severity of sanctions.

Third, since the study considers only strict non-compliance, tax avoidance (or “creative compliance”) is not considered. However, it includes both intentional and non-intentional (or inadvertent) non-compliance.

Finally, it considers only the formal economy. Studies estimate that the size of the shadow economy, or illicit economy, in South Africa is between 22-26% of the formal economy.²⁷ With due regard to the size and significance of the shadow economy, it is believed that a separate study should be undertaken which focuses specifically on the shadow economy.

Having due regard to the fact that this study does not conduct any field or laboratory experiments, and the fact that there is limited behavioural research in South Africa on this topic, the recommendations are somewhat hamstrung by the lack of empirical evidence. Pilot projects or other experiments would strengthen the legitimacy of the recommendations.

²³ The increase in third-party reporting has limited the scope of non-compliance of taxpayers as regards personal income tax.

²⁴ For example, Airbnb’s November 2022 data indicated that the typical South African AirBnB host earns just over R25 400 a year by renting a space on AirBnB. See Georgina Crouth ‘Airbnb says many of its hosts report opening their homes to short-term rental has kept the wolves at bay’ *Daily Maverick* 22 November 2022.

²⁵ For example, home office deductions became exponentially more popular during Covid-19 as a result of the lockdowns. This trend is anticipated to continue as remote and hybrid forms of working become more popular. For example, see Linda Ensor ‘SARS disallows R1.8bn of R2.9bn in home office expense claims’ *Business Day* 06 March 2022.

²⁶ For example, taxpayers operating in the “gig” economy as Uber (or any other driveshare app) drivers are not considered employees and thus constitute provisional taxpayers.

²⁷ Mangalani Makananisa, Catherine Koloane, and Friedrich Schneider ‘Modelling the shadow economy of South Africa: Using the currency demand and MIMIC approach’ (2020) 7(1) *Journal of Economics and Political Economy* 27-46.

1.5 Structure of the Dissertation

Chapter one provides the background and the motivation for the study as well as the study objective. It also provides a brief overview of the importance and the benefits of the study.

Chapter two begins with an exploration of the traditional model of tax compliance and an explanation of why it has failed to adequately predict tax non-compliance. It then discusses the relevance of tax morale in filling the gap that traditional models had created, before outlining the theoretical evolution of tax morale. It concludes with a review of the key determinants of tax morale.

Chapter three provides a theoretical overview of behavioural insights that may find application within the South African tax system.

Chapter four provides an overview of the South African tax system. It does this through two distinct parts. First, it provides insight into the introduction and development of income tax in South Africa alongside a review of significant moments and events in South African history that have shaped tax administration and SARS' capabilities as a revenue-collector. Second, it provides a brief outline of the legislative framework.

Chapter five provides a detailed description of the research design, a description of the data that is utilised, an overview of the methodology that the study employs, and finally, the limitations of the study based on the methodology and the data used.

Chapter six critically analyses the data through a discussion of the empirical findings, highlighting common themes and isolating which of the determinants of tax morale identified in chapter two appear to be driving non-compliance in the sample. It also considers current tax policy and legislative strategies, beyond deterrence strategies, in South Africa. It does so side-by-side with a consideration of similar legislation and policies in other jurisdictions.

Chapter seven distills the analysis completed in earlier chapters into legislative and policy proposals.

Chapter eight concludes by summarising the overall findings and providing recommendations of areas for further study.

2. CHAPTER TWO: TAX COMPLIANCE AND TAX MORALE

'The difficulty in life is the choice.' - George Moore, *The Bending of the Bough*,
1900

2.1 Tax Compliance

As outlined in chapter one above, tax compliance is defined as the scenario when taxpayers have satisfied all of their tax obligations under the law. Traditional models of tax compliance have concentrated on the likelihood of detection and punishment, the severity of the punishment, and the level of the tax rates in the ordinary course. However, these traditional models did not always accurately predict the compliance choices of taxpayers. The most prominent traditional model, on which numerous extensions have been built, is outlined below.

The Traditional Model

Allingham and Sandmo²⁸ proposed one of the most important models of tax non-compliance at the time of writing and for some time after that (often referred to as the **A-S Model**). They provide a neo-classical approach to modelling the decision by an individual taxpayer on whether they will evade taxes, and if so, to what extent. They model tax evasion as a decision under uncertainty where a taxpayer could choose to accurately declare their income or to declare less than their income.²⁹ The payoff of under-declaring tax would depend on the likelihood of detection. Either, the taxpayer could end up better off (if there is a low likelihood of detection) or worse off than when accurately declaring income (if there is a high likelihood of detection).

Allingham and Sandmo consider the evasion decision both as a static model (where interrelationships with other economic choices are ignored) and the dynamic model (where there are interaction effects as a result of a series of taxation decisions). The model is premised on the assumptions that (i) taxpayers are rational actors, and (ii) taxpayers seek to maximise their utility by performing a cost-benefit analysis of the compliance decision. They concluded that if the likelihood of detection is high

²⁸ Michael Allingham and Agnar Sandmo op cit note 20.

²⁹ Ibid at page 324.

and the probability of detection is high, the cost of non-compliance will be too high for taxpayers (and that taxpayers' utility would, in fact, be maximised if they accurately declared their income). Of course, this model suffers from a number of issues due in large part to flaws in its underlying assumptions.

First, it assumes that there is perfect information and that the probability of facing an audit is known by taxpayers. However, the choice is not a decision under risk (where there are known probabilities and a calculated gamble can be made), but rather a decision under ambiguity (where there are unknown probabilities). This distinction is important because ambiguity-averse taxpayers and risk-averse taxpayers do not necessarily behave in the same way and should not be treated as such. A similar criticism is that it is assumed that all taxpayers face the same utility function and that compliance behaviour is homogenous among all taxpayers, which is not likely the case. In any event, taxpayers tend to overestimate the probability of an audit in when faced with imperfect information.³⁰ Second, it assumes that taxpayers are rational agents, which is not necessarily the case. Third, it fails to take into account any moral or psychological considerations.³¹ Finally, the utility function used assumes that utility is only gained from private income and fails to consider the utility gained from public goods.³²

It should be unsurprising that the consequence of flawed assumptions is that the model does not hold in practice. There is a wealth of literature that provides empirical evidence that, even when the probability of detection is zero, there are still individuals who choose not to evade³³ (which should not occur in terms of the A-S Model). The A-S Model spawned the start of a massive number of tax evasion theoretical models.³⁴ These models considered the failures of the A-S Model and built on it

³⁰ Arthur Snow and Ronald Warren 'Ambiguity about audit probability, tax compliance, and taxpayer welfare' (2005) 43(4) *Economic Inquiry* 865-871 at 866.

³¹ Luigi Bosco and Luigi Mittone 'Tax Evasion and Moral Constraints: some Experimental Evidence' (1997) 50(3) *Kyklos* 297-324 at 297.

³² Till Weber, Jonas Fookien, and Benedikt Herrmann 'Behavioural Economics and Taxation' (2014) European Commission Taxation Papers Working Paper No. 41-2014 at page 13.

³³ See, for example, James Alm, Gary McClelland and William Schulze 'Why do people pay taxes' (1992) 48(1) *Journal of Public Economics* 21-38; JC Baldry 'Tax evasion is not a gamble: A report on two experiments' (1986) 22(4) *Economics Letters* 333-335; Paul Webbly *et al* *Tax evasion: an experimental approach* (1991) Cambridge.

³⁴ See, for example, Frank Cowell *op cit* note 13; James Andreoni, Brian Erard, and Jonathan Feinstein 'Tax compliance' (1998) 36(2) *Journal of Economic Literature* 818-860; Joel Slemrod and Shlomo Yitzhaki 'Tax avoidance, evasion and administration' in Alan Auerbach and Martin (eds.) *Handbook of Public Economics* vol. 3 (2002) Elsevier 1423-1470.

by providing for additional variables such as imperfect enforcement³⁵ and taxpayer confidence.³⁶ Importantly, it promoted the development of models that considered factors other than the traditional pecuniary factors.

A Fine is a Price

In their seminal paper, Gneezy and Rustichini consider the impact of the introduction of a penalty for specific behaviour.³⁷ While their study was in the context of the introduction of a monetary fine for collecting children late from a day-care centre in Israel, the implications can be applied in a taxation context (and particularly to the application of economic deterrents).

One of the distinctions between the day-care case and the case of taxation is that, in the daycare, the punishment was certain and risk of detection was 100% (unlike in the case of taxation where both the penalty and the risk of detection may involve some uncertainty).³⁸ Prior to the introduction of the fine, the consequences of picking a child up late from the day-care centre may be uncertain.³⁹ It is also likely to take a non-pecuniary form (for example, guilt or social shame). It is noted by Gneezy and Rustichini that this creates an incomplete contract. However, the addition of the information about the fine completes the contract to the extent that the consequences are now certain. In this case, the introduction of a fine increased the number of parents who collected their children late from the day-care centre.⁴⁰ Further, even after the fine was removed, there was no decrease in the number of parents who collected their children late (in other words, it did not return to the original level before the imposition of the fine).⁴¹ As such, while neither the rules nor the social norms have changed, the introduction of the fine has significantly (and permanently) changed the behaviour of parents.

One of the explanations that Gneezy and Rustichini put forward is based in, what they term, “cognitive psychology”. In essence, they posit that the action of collecting their child late from the day-care centre now has a price and they are only faced with the decision of whether or not they are

³⁵ Norman Gemmell ‘An Allingham-Sandmo Tax Compliance Model with Imperfect Enforcement’ (2016) Working Papers in Public Finance Working Paper 09/2016.

³⁶ Gaetano Sparta ‘Tax Evasion and Confidence in Institutions: A Theoretical Model’ (2015).

³⁷ Uri Gneezy and Aldo Rustichini ‘A Fine is a Price’ (1970) 29(1) *The Journal of Legal Studies* 1-17.

³⁸ Ibid at page 18.

³⁹ Ibid at page 4.

⁴⁰ Ibid at page 14.

⁴¹ Ibid at page 18.

willing to pay the price for that action. Even after the fine has been removed, the rationale has not changed, but the price is simply lower than before. Ultimately, the fine is merely a price that parents are willing to pay. Gneezy and Rustichini conclude that *‘there is no reason to believe that this effect is limited minor faults, like a delay in the time of picking up one’s child. For instance, the statement of a government that tax evasion is going to be more severely pursued may be interpreted in different ways.’*⁴²

2.2 Tax Morale

If only the levels of audit and penalties were considered in the decision whether to evade taxes, then taxpayers would choose to evade taxes if the levels of audit and penalties were so low that they would not likely be caught. However, this is not the case.⁴³ It follows that either there must be other considerations that factor into the compliance decision or the taxpayers are not acting rationally in their decision (or more likely, both). The glaring omission is the influence of informal institutions. Alm, Sanchez and de Juan⁴⁴ aptly describe that

‘a government compliance strategy based only on detection and punishment may well be reasonable starting point but not a good ending point. Instead, what is needed is a multifaceted approach ... recognizing the myriad factors that motivate individual behavior, factors that go much beyond the standard economics-of-crime approach to include theories of behavior suggested by psychologists, sociologists, and other social scientists. Until this effort is made, it seems unlikely that we will come much closer to unraveling the puzzle of tax compliance.’

Off the back of pecuniary models (like the A-S Model) that left so much to be desired, an increasing number of studies indicated the need to integrate moral or social sentiments into tax compliance models so as to properly model tax compliance behaviour.⁴⁵ Although the initial studies on this topic had appeared even before the A-S model as far back as the 1960s, it received little attention for

⁴² Ibid at page 27.

⁴³ James Andreoni, Brian Erard, and Jonathan Feinstein op cit note 34 at page 821.

⁴⁴ James Alm, Isabel Sanchez, and Ana De Juan ‘Economic and Noneconomic Factors in Tax Compliance’ (1995) 48(1) *Kyklos* 3-18 at page 15.

⁴⁵ For example, see Brian Erard and Jonathan Feinstein ‘The Role of Moral Sentiments and Audit Perceptions in Tax Compliance’ (1994) 49 *Public Finance* 70-89.

decades. Taxpayers are not a homogenous group and the “full house” of behaviours should be considered. More recently, Torgler, Schaffner and Macintyre⁴⁶ confirmed through various methodologies (including survey data, experimental laboratory data, and field data) that tax morale has a strong positive effect on tax compliance. As such, the determinants of morale are considered as a pathway to influencing compliance.

Fiscal Psychology

Schmölders⁴⁷ was one of the first authors to consider fiscal psychology. While no exact definition is provided, it generally refers to the impact that psychological considerations have on fiscal concepts. Schmölders builds on the work of Puviani⁴⁸ (who writes about fiscal illusions of both rulers and their subjects) and Pigou⁴⁹ (who illustrated that the reactions of taxpayers to various taxes occur prematurely due to factors such as fear and expectations). He posits that fiscal psychology is tasked with ‘*analyz[ing] the direct resistance to direct taxation of individuals and nations according to their general “tax mentality.”*’⁵⁰ Even at this early stage, it was already recognised that

*‘[t]here are certain relations between a person’s community-mindedness, generosity in family, club, or social matters, understanding of and cooperation in public affairs, and personal readiness to comply with the painful common obligations of a similar nature, such as tax-paying.’*⁵¹

Schmölders goes further, providing that

‘[p]atterns of general tax mentality are discernible on the basis of neighbourhood, social class, and profession to which the taxpayer belongs. In other words, the individual citizen or

⁴⁶ Benno Torgler, Markus Schaffner, and Alison Macintyre ‘Tax Compliance, Tax Compliance, Tax Morale, and Governance Quality’ (2007) International Studies Program Working Paper 07-27.

⁴⁷ Günter Schmölders ‘Fiscal Psychology: A New Branch of Public Finance’ (1959) 12(4) *National Tax Journal* 340-345.

⁴⁸ Amilcare Puviani *Teoria della illusione finanziaria* (1903) Sandron.

⁴⁹ Arthur Pigou *A Study in Public Finance* (1928) Macmillan and Company Limited.

⁵⁰ Günter Schmölders op cit note 47 at page 341.

⁵¹ Ibid at page 342.

*household can be enmeshed in a net of admissions that will add up to a true picture of his personality as a taxpayer.*⁵²

Over time, the term tax mentality was replaced by tax morale. Tax morale is defined as the “*totality of non-pecuniary motivations and factors for tax compliance which fall outside the expected utility maximization.*”⁵³ Tax morale aims to fill in the gaps left by the previous models. Much of the research on tax non-compliance focuses primarily on why taxpayers choose not to comply with their tax obligations. In contrast, tax morale provides insight as to why taxpayers would willingly choose to comply with these obligations. Although tax morale is used as a single concept, it would be more appropriate to consider it as an umbrella term for ‘*a set of underlying motivations for tax compliance.*’⁵⁴

Demographic Factors

Demographic factors have been found to influence tax morale (although, in some countries, it appears that these factors are less important than non-demographic factors⁵⁵). Multiple studies have found evidence that women tend to have a higher level of tax morale than their male counterparts.⁵⁶ However, some studies have also found that there is no significant impact of gender on tax morale.⁵⁷

⁵² Ibid at page 342.

⁵³ Quoted from Ioana Horodnic ‘Tax morale and institutional theory: a systematic review’ (2018) 38(9-10) *International Journal of Sociology and Social Policy* 868-886 at page 869 based on the definition in Erzo Luttmer and Monica Singhal ‘Tax Morale’ (2014) 28(4) *Journal of Economic Perspectives* 149-168 at page 150.

⁵⁴ Erzo Luttmer and Monica Singhal op cit note 53 at page 155.

⁵⁵ Maja Ristovskaa, Nikica Mojsoska-Blazevski, and Miso Nikolov ‘An alternative View to the Tax Evasion: The Effect of Tax Morale on Paying Taxes in Macedonia and EU Countries’ (2013) 8(2) *Serian Journal of Management* 169-183 at page 177.

⁵⁶ Interestingly Doerrenberg and Peichl find that this result remains even when having controlled for risk aversion. See Philipp Doerrenberg and Andreas Peichl ‘Tax Morale and the Role of Social Norms and Reciprocity. Evidence from a Randomized Survey Experiment’ (2018) CESifo Working Paper No. 7149 at page 18. Also see Christian Daude, Hamlet Gutiérrez, and Angel Melguizo ‘What Drives Tax Morale? A Focus on Emerging Economies’ (2013) 207(4) *Review of Public Economics* 9-40; Gabriel Leonardo and Jorge Martinez-Vazquez ‘Politicians, bureaucrats, and tax morale: What shapes tax compliance attitudes?’ (2016) International Studies Program Working Paper 16-08; Adriana Ross and Robert McGee ‘A Demographic Study of South African Attitudes on Tax Evasion’ (2012) 13(3) *Journal of Economics and Economic Education Research* 13-58; Benno Torgler ‘Tax Morale and Institutions’ (2003) CREMA Working Paper No. 2003-09; Benno Torgler ‘Tax morale in Asian countries’ (2004) 15(2) *Journal of Asian Economics* 237-266; Benno Torgler ‘The importance of faith: Tax morale and religiosity’ (2006) 61(1) *Journal of Economic Behavior & Organization* 81-109.

⁵⁷ For example, Alm, Matinez-Vazquez and Torgler found that gender does not significantly affect tax morale in Russia. See James Alm, Jorge Martinez-Vazquez, and Benno Torgler ‘Russian Attitudes Toward Paying Taxes – Before, During, and After the Transition’ (2005) 33(12) *International Journal of Social Economics* 832-857 at page 847.

An individual's type of employment has also been found to be a significant predictor of tax morale although the evidence has been inconclusive.⁵⁸ Doerrenberg and Peichl find that income is a significant positive driver of tax morale, but that it is only statistically significant at the medium-high income levels.⁵⁹ They argue that this may be because (i) there are higher returns to evasion for higher-income earners, and (ii) the consequences of evasion detection are more severe for higher-income earners.⁶⁰ As a measure distinct from income, financial satisfaction has been found to increase tax morale.⁶¹ Empirical evidence thus far has provided conflicting findings on the impact of age on tax morale.⁶² So too, the evidence on the impact of education is mixed.⁶³ One hypothesis is that there should be a negative impact on tax morale as higher levels of education may increase the taxpayer's awareness of mispending and misappropriation. In the alternative, it is hypothesised that higher levels of education may be associated with increased awareness of the benefits of state-provided goods. It is possible that the reason that the findings are mixed is because both hypotheses are true and that it is dependent on the jurisdiction's spending patterns.

Corruption

Feld and Frey found that corruption has a depressive effect on tax morale, in part, due to its link to perceptions of fairness and fiscal exchange.⁶⁴ This negative correlation between tax morale and

⁵⁸ In Italy, found a positive relationship between tax morale and the self-employed. In Europe and the United States of America, compared to full-time employees, the share of self-employers reporting the highest tax morale is 6.5 percentage points lower. See Francesco Russo 'Tax morale and tax evasion reports' (2013) 121(1) *Economics Letters* 110-113 at page 113. Lago-Peñas and Lago-Peñas found contrasting results which show that self-employment has a negative relationship with tax morale. See Ignacio Lago-Peñas and Santiago Lago-Peñas 'The Determinants of Tax Morale in Comparative Perspective: Evidence from a European Countries' (2010) 26(4) *European Journal of Political Economy* 441-453 at page 451. As a third alternative, Torgler and Schaltegger find that type of employment is not significant. Benno Torgler and Christoph Schaltegger 'Tax Morale: A Survey with a Special Focus on Switzerland' (2006) 142(3) *Swiss Journal of Economics and Statistics* 395-425 at page 409.

⁵⁹ Philipp Doerrenberg and Andreas Peichl op cit note 56 at page 13.

⁶⁰ Ibid at page 13.

⁶¹ Orkhan Nadirov *et al* 'Life Satisfaction and Tax Morale in Azerbaijan: Mediating Role of Institutional Trust and Financial Satisfaction' (2021) 13(21) *Sustainability* 1-10 at page 9.

⁶² For evidence indicative of tax morale increasing with age, see Benno Torgler *Tax Compliance and Tax Morale: A Theoretical and Empirical Analysis* (2007) Edward Elgar Publishing Limited at page 12; Cevat Bilgin 'Determinants of tax morale in Spain and Turkey: An Empirical Analysis' (2014) MPRA Paper No. 57204 at page 12. For evidence indicating that younger taxpayers have a higher tax morale, see Eileen McAuliffe *Tax Morale and Behaviour* (PhD thesis, Coventry University, 2017).

⁶³ Benno Torgler and Christoph Schaltegger 'Tax Morale and Fiscal Policy' (2005) CREMA Working Paper No. 2005-30 at page 13.

⁶⁴ Lars Feld and Bruno Frey 'Tax Compliance as the Result of a Psychological Tax Contract: The Role of Incentives and Responsive Regulation' (2007) 29(1) *Law and Policy* 102-120 at page 112.

corruption has been confirmed in multiple studies.⁶⁵ Graycar⁶⁶ noted that traditional analysis of corruption focuses primarily on petty corruption, grand corruption, and state capture, but these are not the only forms of corruption to exist nor are they the only forms of corruption that impact tax morale. Other forms of corruption include administrative corruption, political corruption, and patronage. Corruption can have various negative consequences. For example, it may erode perceptions of governmental legitimacy⁶⁷ and may reduce the trust in public institutions.⁶⁸

The extent to which taxpayers react to corruption is determined by various factors. For example, Lavallée *et al*⁶⁹ found that the higher the level of satisfaction with public services, the larger the negative effect of corruption, and Jahnke and Weisser⁷⁰ find that taxpayers who consume news more regularly and are better informed have a stronger (negative) reaction to petty corruption.

Shame

One intervention that is premised on individuals' behaviour being influenced by social pressure is the use of public shame. The evidence on the effectiveness of this policy is inconclusive. While some studies argue that public shaming can be a positive tool because individuals are influenced by their public image,⁷¹ it has also been argued that public shaming may have a crowding-out effect on intrinsic motivation.⁷² Further, it is expected that shaming will not be effective on taxpayers who do not feel ashamed about their behaviour, are not concerned about any reputational issues, or do not care if other people know that they have committed an offence (particularly if compliance is in fact

⁶⁵ See, for example, Abebe Chariye 'The Impact of Corruption on Tax morale: A Study of Select Business Organisations in Addis Ababa, Ethiopia' (2016) 8(1) *International Journal of Economics and Finance Studies* 48-60 and Merima Ali, Odd-Helge Fjeldstad, and Ingrid Sjørusen 'To pay or not to pay? Citizens' attitudes toward taxation in Kenya, Tanzania, Uganda, and South Africa' Afrobarometer Working Paper No. 143.

⁶⁶ Adam Graycar 'Corruption: Classification and Analysis' (2015) 34(2) *Policy and Society* 87- 96 at page 88.

⁶⁷ Susan Rose-Ackerman and Bonnie Palifka *Corruption and Government: Causes, Consequences, and Reform* 2 ed (2016) Cambridge University Press at page 34.

⁶⁸ Wonbin Cho and Matthew Kirwin 'A Vicious Cycle of Corruption and Mistrust in Institutions in Sub-Saharan Africa: A Micro-level Analysis' (2007) Afrobarometer Working Paper No. 71 at page 16.

⁶⁹ Emannelle Lavallée, Miereille Razafindrakoto, and François Roubaud 'Corruption and Trust in Political Institutions in Sub-Saharan Africa' (2008) Afrobarometer Working Paper No. 102 at page 13.

⁷⁰ Björn Jahnke and Reinhard Weisser 'How does petty corruption affect tax morale in Sub-Saharan Africa?' (2019) 60 *European Journal of Political Economy* 1-17 at page 13.

⁷¹ Leonardo Bursztyn and Robert Jensen 'Social Image and Economic Behavior in the Field: Identifying, Understanding, and Shaping Social Pressure' (2016) NBER Working Paper 23013.

⁷² Roland Benabou and Jean Tirole 'Intrinsic and Extrinsic Motivation' (2003) 70 *The Review of Economic Studies* 489-520; Pierre Boyer, Nadia Dwenger, and Johannes Rincke 'Do Taxes Crowd Out Intrinsic Motivation? Field-Experimental Evidence from Germany' (2016) 144 *Journal of Public Economics* 140-153.

not a social norm).⁷³ Interestingly, while many jurisdictions are legislatively empowered to use public disclosure of tax offences,⁷⁴ very few do (and where they do, it is infrequent).

In Slovenia, Dwenger and Treber⁷⁵ conducted a field experiment on the impact of the introduction of a naming and shaming policy in 2012. They found that while tax debt is reduced for self-employed taxpayers, there is significant social welfare harm associated with this type of intervention. First, it fails to consider that some taxpayers fail to pay due to financial constraints rather than due to unwillingness.⁷⁶ Second, the policy may entail non-pecuniary costs by violating the confidentiality of taxpayers. Third, it may weaken the social norm of being a compliant taxpayer if compliant taxpayers find that the number of non-compliant taxpayers is larger than they expected.⁷⁷

In a field experiment, Perez-Truglia and Troiano⁷⁸ found that the threat of being named and shamed had a positive impact on the payment of outstanding tax debts in the United States (US). They make three further key findings.⁷⁹ First, the probability of repayment of taxes can be increased through the salience of shaming penalties. Second, individuals respond to financial reminders. Third, the publication of the amount owed by other tax delinquents does not significantly affect the payment decision.

Blaufus *et al*⁸⁰ find that the impact of shaming is short-term and has diminishing returns. Blank and Levin⁸¹ considered the impact of the timing of the publication of the names of taxpayers. In particular, they found that the US disproportionately published the names of tax offenders in the weeks before

⁷³ National Taxpayer Advocate ‘2007 Annual Report to Congress: Volume Two’ (2007) at page 146.

⁷⁴ For example, almost 90% of OECD countries have empowering legislation.

⁷⁵ Nadja Dwenger and Lukas Treber ‘Shaming for Tax Enforcement: Evidence from a New Policy’ (2019) CEPR Discussion Paper DP13194.

⁷⁶ This was true for the Slovenian case but, as will be discussed in chapter six, some jurisdictions allow for taxpayers’ details not to be shamed if they enter into a payment arrangement with the tax authorities, which may mitigate this concern.

⁷⁷ As will be discussed in chapter six, some jurisdictions publish a set number of delinquent taxpayers, which may mitigate this concern by not publishing the full list of delinquent taxpayers. Similarly, in the case where jurisdictions are empowered but not obligated, tax authorities can pick how many delinquent taxpayers to disclose, which may also mitigate this concern.

⁷⁸ Ricardo Perez-Truglia and Ugo Troiano ‘Shaming tax delinquents’ (2015) NBER Working Paper 21264 at page 22.

⁷⁹ *Ibid* at page 22.

⁸⁰ Kay Blaufus *et al* ‘The effect of tax privacy on tax compliance—An experimental investigation’ (2017) 26(3) *The European Accounting Review* 561–580 at page 573.

⁸¹ Joshua Blank and Daniel Levin ‘When is tax enforcement publicized?’ (2010) 30(1) *Virginia Tax Review* 1–37 at page 15.

the individual tax return filing deadline. Little (if at all) research has been conducted on the effect of the content of the publications.

Okafor and Farrar,⁸² after considering Canadian taxpayer conviction publication notices, argue that tax authorities can increase or maintain legitimacy and authority through publicising tax offenders' details as it is an indication that the authority is able to detect and convict tax offences. However, they find that it is not conducive to provide many examples in a piece-meal fashion as it degrades the taxpayers' ability to evaluate the ability of the tax authorities to detect and convict tax offenders. Okafor and Farrar caution that if naming and shaming is to be effective, it must be generally perceived to be fair and equitable.⁸³ If not, this strategy may backfire and end up undermining the legitimacy of the tax authority.

Reciprocity or Fiscal Exchange

In this context, reciprocity refers to the motivation to comply based on the quality (or perceived quality) of services provided in return for taxes.⁸⁴ Reciprocity can be categorised into either positive or negative reciprocity. Simply, positive reciprocity is the impulse of an individual to act positively towards another who has acted positively towards them and, conversely, negative reciprocity is the impulse of an individual to act negatively towards another who has acted negatively towards them.⁸⁵ The implication of this is that taxpayers could reciprocate a negative behaviour if they are dissatisfied with the actions of the government.

Reciprocity is based on a social contract between taxpayers and the government or tax authorities that dictates the extent of services that is expected to be provided in exchange for taxes. This has also been termed fiscal exchange. If one were to break down the components that make up the social contract, it would constitute both the provision of services (or access to the provided services) and the quality (or effectiveness) of the provided services. In South Africa, both local and national government are characterised by, *inter alia*, '[p]oor service delivery, corruption, lack of consequence management,

⁸² Oliver Okafor and Jonathan Farrar 'Punishing in the public interest: Exploratory Canadian evidence pertaining to convictions and incarcerations for tax offences' (2021) 40(5) *Journal of Accounting and Public Policy* 1-24 at page 3.

⁸³ Ibid at page 18.

⁸⁴ Philipp Doerrenberg and Andreas Peichl op cit note 56.

⁸⁵ Common revenge phraseology such as "an eye for an eye, a tooth for a tooth" is a prime example.

*lack of skills, and lack of accountability.*⁸⁶ Accordingly, it would be expected that both the provision of and access to services, and as well as the quality of services would be of particular importance in South Africa.

Considering the provision of the services, Bodea and LeBas⁸⁷ found that, in Nigeria, citizens that both (i) received more public goods, and (ii) were satisfied with how the state had spent tax revenue,⁸⁸ had, on average, a higher level of tax compliance. Importantly, Ali *et al*⁸⁹ find that when citizens must pay for their own services (for example, private education, private healthcare, or private security), they are less likely to be tax compliant. Similarly, Bodea and LeBas find that the provision of goods and services by communities (termed club goods) can also result in taxpayers moving away from the adoption of tax compliance norms.⁹⁰ The implication of these studies is that greater access to a substitute for state services (whether paid privately or partly subsidised by the taxpayer's community) will have a depressive impact on tax morale.

One way through which reciprocity can be exploited is through the use of public messaging. Bott *et al*⁹¹ outline a field experiment in Norway where it was found that sending taxpayers letters highlighting that taxes are used for public services increases the reporting of foreign income by individuals. An increase in compliance was also found in the United Kingdom (UK) regardless of whether the messaging was framed in the positive or the negative⁹² and in Rwanda, where SMSs were used to emphasise the importance of taxes for providing public services.⁹³ When utilising public messaging, due consideration should be given to salience. While salience in taxation could also refer

⁸⁶ Xolani Thusi and Martinus Selepe 'The Impact of Poor Governance on Public Service Delivery: A Case Study of the South African Local Government' (2023) 6(4) *International Journal of Social Science Research and Review* 688-697 at page 695. Also see Prinesha Naidoo 'Sars boss urges activism by South African sick of poor services' *TimesLive* 8 February 2023.

⁸⁷ Christina Bodea and Adrienne LeBas 'The Origins of Voluntary Compliance: Attitudes toward Taxation in Urban Nigeria' (2016) 46(1) *British Journal of Political Science* 215-238 at page 216.

⁸⁸ The way that states allocate tax revenue and then ultimately spend the allocation are distinct. Taxpayers may be satisfied with the allocation but find that the actual spending is not in alignment with the allocation (thus mitigating any satisfaction that may otherwise have been felt).

⁸⁹ Merima Ali, Odd-Helge Fjeldstad, and Ingrid Sjørusen op cit note 65 at page 26.

⁹⁰ Christina Bodea and Adrienne LeBas op cit note 87 at page 216.

⁹¹ Kristina Bott *et al* 'You've Got Mail: A Randomized Field Experiment on Tax Evasion' (2020) 66(7) *Management Science* 2801-2819.

⁹² Michael Hallsworth 'The use of field experiments to increase tax compliance' (2014) 30(4) *Oxford Review of Economic Policy* 658-679.

⁹³ Giulia Mascagni, Christopher Nell, and Nara Monkam op cit note 14.

to the visibility of the mechanism of taxation (in other words, direct versus indirect taxation), in these circumstances, salience refers to the relative importance of the goods and services that the taxes are funding. For example, in Mexico, Flores-Macías finds that reminders that taxes were spent on the most salient public good (in that case, security) were more effective than other messages.⁹⁴ However, not all instances of messaging have been successful. For example, letters were found to have had no effect on compliance in Argentina,⁹⁵ Uruguay,⁹⁶ or Switzerland.⁹⁷

As noted above, it has been argued that the relationship between the State and taxpayers could be considered to take the form of a psychological contract⁹⁸ and that, when the State breaches its contractual obligations (for example, to provide public services), taxpayers may elect to “cancel” the contract. When this happens, taxpayers will no longer feel obligated to carry out their responsibilities in terms of this psychological contract.⁹⁹ As with corruption, there are questions about the direction of causality. Put differently, while failure to provide public services may cause an increase in non-compliance, it has also been argued that the process of paying taxes can result in more effective governance.¹⁰⁰ Accordingly, it is not clear whether it is the governance or the process of paying taxes (or both) which has an impact.

It is not only the disruption (or non-provision) of services that may impact the stability of the social contract. For example, Frey and Hollander¹⁰¹ argue that the (already fragile) contractual relationship between the State and compliant taxpayers can be fractured by the increase in deterrents. This is particularly in the case of taxpayers who consider themselves to be compliant that, after audit, become

⁹⁴ Gustavo Flores-Macías ‘Building Support for Taxation in Developing Countries: Experimental Evidence from Mexico’ (2016) International Centre for Taxation and Development Working Paper 51 at page 18.

⁹⁵ Lucio Castro and Carlos Scartascini ‘Tax compliance and enforcement in the pampas evidence from a field experiment’ (2015) 116 *Journal of Economic Behavior & Organization* 65-82.

⁹⁶ Marcelo Bérigolo *et al* ‘Tax audits as scarecrows: Evidence from a large field experiment’ (2017) NBER Working Paper No. 23631.

⁹⁷ Benno Torgler ‘Moral suasion: An alternative tax policy strategy? Evidence from a controlled field experiment in Switzerland’ (2004) 5(3) *Economics of Governance* 235-253.

⁹⁸ Lars Feld and Bruno Frey ‘Trust breeds trust: How taxpayers are treated’ (2002) 3(2) *Economics of governance* 87-99 at 89.

⁹⁹ *Ibid* at page 91.

¹⁰⁰ Mick Moore ‘Between Coercion and Contract’ in Deborah Brautigam, Odd-Helge Fjeldstad, and Mick Moore (eds.) *Taxation and State-building in Developing Countries* (2008) Cambridge University Press 34- 63.

¹⁰¹ Bruno Frey and Manfred Holler ‘Tax Compliance Policy Reconsidered’ (1998) 15(1) *Homo Oeconomicus* 27-44 at page 38.

liable for fines and penalties.¹⁰² It should not be surprising that what may have originated as a mere fracture could completely be completely shattered by the perception that non-compliant taxpayers are not subject to these same fines and penalties.¹⁰³ Here, there is a substantial overlap with fairness and the perceptions thereof.

However, this breakdown is not irreversible. According to Smith,¹⁰⁴ the cycle of opposition between tax authorities and the taxpayer could be dismantled by a positive concession on the part of the tax authority. Thus, the current state of poor morale need not be taken as given and is subject to change under the right circumstances.¹⁰⁵ Alternatively, Delalande and Huret¹⁰⁶ argue that the terms of exchange that govern the disintegrated relationship between taxpayers and the government which has disintegrated could also be renegotiated through strategies of mobilisation such as tax revolt. For clarity, the revolt is not necessarily as a rejection of taxes in its entirety but rather as a mechanism to compel restorative action.¹⁰⁷

Perceptions of fiscal exchange can be influenced by the media. Specifically, it has been argued that negative media reports do not accurately reflect the distribution of negative events thus creating a distortion effect.¹⁰⁸ This may be driven, in part, by sensationalism and the attempt to gain as much attention as possible. This negativity bias is particularly strong regarding economic and political issues.¹⁰⁹ Fišar *et al*¹¹⁰ find in a laboratory experiment that any exposure to news about how governments spend tax revenue, regardless of how minimal the exposure may be, has a significant

¹⁰² Ibid at page 38.

¹⁰³ Ibid at page 38.

¹⁰⁴ Kent Smith 'Reciprocity and Fairness: Positive Incentives for Tax Compliance' in Joel Slemrod (ed.) *Why People Pay Taxes: Tax Compliance and Enforcement* (1992) University of Michigan Press 223-258.

¹⁰⁵ Although not within the scope of this paper, it would be of interest to quantify the value of the concession that would be required to "un-do" the bad faith that has built up between the tax authorities and taxpayers.

¹⁰⁶ Nicholas Delalande and Romain Huret 'Tax Resistance: A Global History?' (2013) 25(3) *Journal of Policy History* 301-307.

¹⁰⁷ Max Neiman and Gerry Riposa 'Tax Rebels and Tax Rebellion' (1986) 39(3) *The Western Political Quarterly* 435-445.

¹⁰⁸ David Altheide 'The news media, the problem frame, and the production of fear' (1997) 38(4) *Sociological Quarterly* 647-668 at page 655.

¹⁰⁹ Erick Elejalde, Leo Ferres, and Eelco Herder 'On the nature of real and perceived bias in the mainstream media' (2018) 13(3) *PLoS ONE* 1-28 at page 25.

¹¹⁰ Miloš Fišar *et al* 'Media negativity bias and tax compliance: experimental evidence' (2022) 29(5) *International Tax and Public Finance* 1160-1212 at 1184.

effect on tax compliance. Fišar *et al*¹¹¹ argue that this may be the result of reinforcing the psychological social contract.

Contribution Dilemma

The concept of fiscal exchange feeds into the theory put forward in terms of the game theoretical model titled the contribution dilemma. The theory behind taxes (in other words, that taxes are paid to finance public goods) is clearly understood by taxpayers.¹¹² In this way, taxes represent a social dilemma: paying taxes are costly to the individual but communally beneficial. However, it is not always clear to taxpayers that these funds are used efficiently and for their intended purpose. For example, it was found that many Russian citizens, although they appreciate the financing of public goods, do not want to pay taxes when considering the high rates of corruption and lack of social norms to cooperate.¹¹³ The levels of South African corruption and inequality may raise the social contribution dilemma.

The social contribution dilemma is one wherein an individual's interests are contrary to those of the community. In this scenario, if individuals act in their self-interest, their utility is maximised but there is harm to the community and the public goods provided.¹¹⁴ In other words, individual rationality leads to collective irrationality.¹¹⁵ In particular, the social contribution dilemma provides that individuals are better off using a public resource and not making any contribution. However, if every person were to act based on this logic, no one would contribute and the public resource would not be provided (due to a lack of funding).¹¹⁶ Of course, public cooperation exists on a spectrum. There are degrees both to which the public may cooperate and to which public goods are received.

¹¹¹ Ibid at 1184.

¹¹² James Alm *et al* 'Rethinking the Research Paradigms for Analysing Tax Compliance Behaviour' (2012) Tulane economics Working Paper 1210 at page 2.

¹¹³ Bo Rothstein 'Trust, Social Dilemmas, and Collective Memories' (2000) 12(4) *Journal of Theoretical Politics* 477–501 at page 478.

¹¹⁴ Robyn Dawes 'Social Dilemmas' (1980) 31(1) *Annual Review of Psychology* 169–193.

¹¹⁵ Peter Kollock 'Social Dilemmas: The Anatomy of Cooperation' (1998) 24(1) *Annual Review of Sociology* 183–214 at page 183.

¹¹⁶ Ibid at page 184.

Many experiments have been conducted with the intention of determining how to increase cooperation and limit defection.¹¹⁷ Studies have found that to increase compliance, (i) taxpayers must believe that other taxpayers are paying their share (in other words, there must be interpersonal trust), and (ii) tax authorities must ensure that the taxes are invested in the public welfare (in other words, there must be institutional trust).¹¹⁸ Solutions to social dilemmas are often categorised as one of motivational solutions (where actors may give weight to the outcomes of other parties), strategic solutions (where actors give no weight to the outcomes of other parties and act completely egotistically), or structural solutions (where changes to the ‘rules of the game’ are considered).¹¹⁹ All of these could be applied in the context of tax policy and legislation to change the compliance decision.

Fairness

Fairness is a broad concept that can be interpreted in at least three ways.¹²⁰ First, fairness to the extent that governments spend tax revenues fairly (also called distributive fairness). Second, fairness to the extent that tax administration treats taxpayers fairly (also called procedural fairness). Third, fairness to the extent that punishments are fairly imposed (also called retributive fairness). Of these, only the second two would be within the purview of tax authorities.

Procedural fairness is particularly important because it can build a foundation strong enough to survive negative interactions.¹²¹ In this case, structural aspects would be expected to have a positive impact on compliance.¹²²

¹¹⁷ For example, see Ingrid Wahl, Stephan Muehlbacher and Erich Kirchler ‘The Impact of Voting on Tax Payments’ (2010) 63(1) *Kyklos* 144 - 158.

¹¹⁸ James Alm *et al* op cit note 112 at page 3.

¹¹⁹ Robyn Dawes op cit note 114 at page 192.

¹²⁰ Keith Walsh ‘Understanding Taxpayer Behaviour – New Opportunities for Tax Administration’ (2012) 43(2) *The Economic and Social Review* 451-475 at 455.

¹²¹ National Taxpayer Advocate op cit note 73 at page 149.

¹²² *Ibid* at page 150.

In their paper on tax dispute resolution and social justice, Tran-Nam and Walpole¹²³ argue that lack of access (or ineffective access)¹²⁴ to independent tax dispute resolution has a negative impact on taxpayer morale. This is, in part, due to the integration of perceptions of fairness into the dispute resolution process. In particular, Tran-Nam and Walpole argue that where taxpayers are not able to effectively appeal decisions, or have decisions independently reviewed, this will affect taxpayer integrity.¹²⁵ They posit that providing more accessible dispute resolution mechanisms will promote a ‘*healthier working relationship*’ between taxpayers and the tax authorities.¹²⁶ They also recommend two “radical” approaches.

The first approach is that, given the asymmetry in resources between the tax authority and the taxpayer, costs of the dispute are awarded to successful taxpayers but not to the tax authority if the taxpayer’s dispute is unsuccessful (in other words, taxpayers are not penalised for unsuccessful disputes).¹²⁷ Alternatively, a reverse onus for small disputes.¹²⁸ Second, a model similar to the National Taxpayer Advocate as used by the Internal Revenue Service (**IRS**) in the US. This would facilitate a dispute process that is not only independent from the tax authority,¹²⁹ but also a process that is more accessible to taxpayers through services such as Low-Income Taxpayer Clinics.¹³⁰

With respect to retributive fairness, this includes both ensuring that all offenders are punished and that all offenders are punished appropriately. Andreoni, Erard, and Feinstein¹³¹ argue that tax compliance will decrease if it is believed that certain taxpayers are not paying their fair share. Put differently, tax compliance will decrease if it believed that some taxpayers are non-compliant and not

¹²³ Binh Tran-Nam and Michael Walpole ‘Independent Tax Dispute Resolution and Social Justice in Australia’ (2012) 35(2) *University of New South Wales Law Journal* 470-500 at 495.

¹²⁴ Tran-Nam and Walpole argue that the high costs of tax disputes mean that it is not always feasible for taxpayers to dispute issues with the tax authorities.

¹²⁵ Binh Tran-Nam and Michael Walpole op cit note 123 at page 496.

¹²⁶ Ibid at page 497.

¹²⁷ Ibid at page 500.

¹²⁸ Ibid at page 500.

¹²⁹ Although it forms part of the budget of the IRS, it reports to Congress rather than being accountable to the IRS. This ensures it can maintain independence.

¹³⁰ Binh Tran-Nam and Michael Walpole op cit note 123 at page 500.

¹³¹ James Andreoni, Brian Erard, and Jonathan Feinstein op cit note 43 at page 818.

facing the appropriate penalties for their non-compliant conduct. Frey also found that tax morale is preserved, at least in part, by regulations which prevent free riding.¹³²

Inequality

Spicer and Becker's seminal experimental study on inequity and tax evasion provide that social comparisons are an important factor.¹³³ In a country such as South Africa where there is significant inequality, and where groups of taxpayers are aware (at least to some extent) that their tax burden is higher than other taxpayers, the considerations of fairness cannot be divorced from the level of inequality. Where incomes are known to be heterogeneous, there is a deterioration in tax morale.¹³⁴ Regrettably, Engel, Mittone, and Morreale argue that there is nothing that can be done by government to alleviate the depressive effect of fairness concerns on tax compliance.¹³⁵

Cowell¹³⁶ argues that inequity should be considered in any analysis of compliance behaviour. Although the empirical evidence was, at the time of writing his paper, inconclusive,¹³⁷ Cowell put forward several theories as to why this may be the case. This includes how inequality has historically been interpreted. For example, while it may pertain to income inequality (or perceived income inequality), it may also pertain to disparities in the treatment of different taxpayers or classes of taxpayers.¹³⁸

¹³² Lars Feld, Bruno Frey, and Benno Torgler 'Rewarding Honest Taxpayers? Evidence on the Impact of Rewards from Field Experiments' (2006) CREMA Working Paper No. 2006 16 at page 6.

¹³³ Michael Spicer and Lee Becker 'Fiscal Inequity and Tax Evasion: An Experimental Approach' (1980) 33(2) *National Tax Journal* 171-175.

¹³⁴ Christoph Engel, Luigi Mittone, and Azzurra Morreale 'Tax Morale and Fairness in Conflict – An Experiment' (2019) MPI Collective Goods Discussion Paper No. 2019/2 at page 17.

¹³⁵ *Ibid* at page 18.

¹³⁶ Frank Cowell 'Tax evasion and inequity' (1992) 13(4) *Journal of Economic Psychology* 521-543.

¹³⁷ For example, Spicer and Becker (1980) found that evasion was high for those who perceived substantial inequities in the tax system; Kaplan and Reckers found that beliefs about fairness of the tax system were less important than beliefs about the morality of tax cheating (see also Steven Kaplan, Philip Reckers and Kim Reynolds (1986)). See Spicer and Becker *op cit* note 133; Steven Kaplan and Philip Reckers 'A Study of Tax Evasion' (1985) 38(1) *National Tax Journal* 97-102; Steven Kaplan, Philip Reckers, and Kim Reynolds 'An application of attribution and equity theories to tax evasion behaviour' (1986) 7(4) *National Tax Journal* 461-476.

¹³⁸ Frank Cowell *op cit* note 136 at page 525.

Governance and Institutions

The type of governance and the adequacy of governance has been shown to have an impact of tax morale. For example, Frey and Torgler¹³⁹ argue that there is a positive relationship between a taxpayer's satisfaction with democracy in their country and tax morale. This is because, they argue, a taxpayer's willingness to pay taxes and cooperate with tax authorities is linked to whether taxpayers believe they are in a position to control politicians through voting. Alm, Jackson and McKee note that tax morale tends to be higher when taxpayers have the ability to participate in political decision making (in other words, when taxpayers are able to control political decisions through the voting process).¹⁴⁰ This has been found in multiple studies, including Feld and Frey's¹⁴¹ study and Torgler's study.¹⁴² States and institutions that respect the preference of taxpayers (in respect of how taxpayers would prefer tax revenues to be spent) will garner more support from taxpayers than those who do not.¹⁴³

The level of trust in authorities and institutions¹⁴⁴ is also of importance. Trust in institutions is highly correlated with other factors discussed in this chapter, such as corruption¹⁴⁵ and fairness. Torgler found that higher levels of confidence in authorities were associated with higher levels of tax morale.¹⁴⁶ Similarly, Kirchler, Hoelzl, and Wahl¹⁴⁷ found that even if tax rates are high, where trust in institutions is high, taxpayers willingly pay the (significant) tax obligations. Further, Murphy found that trust in authorities is a strong predictor of resistance to tax authorities.¹⁴⁸ However, in that study,

¹³⁹ Bruno Frey and Benno Torgler 'Tax morale and conditional cooperation' (2007) 35(1) *Journal of Comparative Economics* 136-159 at page 143.

¹⁴⁰ James Alm, Betty Jackson, and Michael McKee 'Fiscal exchange, collective decision institutions, and tax compliance' (1993) 22(3) *Journal of Economic Behaviour and Organisation* 285-303 at page 301.

¹⁴¹ Lars Feld and Bruno Frey op cit note 98.

¹⁴² Benno Torgler op cit note 56.

¹⁴³ Benno Torgler 'Tax morale: theory and empirical analysis of tax compliance' (unpublished PhD thesis, University of Basel, 2003) at page 232.

¹⁴⁴ Torgler finds that, in addition to trust in tax authorities, trust in the legal and court systems are also of importance. See Benno Torgler op cit note 143 at page 203.

¹⁴⁵ Peggy Jimenez *Tax compliance in a social setting: The influence of norms, perceptions of fairness, and trust in government on taxpayer compliance* (unpublished PhD thesis, 2013) at page 23.

¹⁴⁶ Benno Torgler op cit note 142 at page 26, and Benno Torgler 'Tax Morale, Rule-Governed Behaviour and Trust' (2003) 14(2) *Constitutional Political Economy* 119-140 at page 137.

¹⁴⁷ Erich Kirchler, Erik Hoelzl, and Ingrid Wahl 'Enforced versus Voluntary Tax Compliance: The "Slippery Slope" Framework' (2008) 29(2) *Journal of Economic Psychology* 210-225 at page 216.

¹⁴⁸ Kristina Murphy 'The Role of Trust in Nurturing Compliance: A Study of Accused Tax Avoiders' (2004) 28(2) *Law and Human Behavior* 187-209 at page 203.

the results may have been influenced by the fact that the survey participants had already been accused of tax evasion and, as such, may have had lower levels of trust and confidence in authorities as a result of a perception that the accusation of having committed evasion was unfair. It is not clear if these perceptions existed prior to the accusation of evasion.

The way that taxpayers are treated by government and tax authorities also influences tax morale.¹⁴⁹ While governance as a determinant of tax morale can be linked to fairness and perceptions of fairness, it also related to the treatment of individual taxpayers. For example, Frey¹⁵⁰ argues that when taxpayers are treated as if they are honest taxpayers (until proved otherwise), taxpayers are more likely to behave honestly. Feld and Frey find that the impact on tax morale of taxpayers bring treated with respect by the relevant authorities is even larger than the impact on tax morale as a result of high political participation rights by taxpayers.¹⁵¹ On the contrary, when taxpayers are accused of “cheating” when they have in fact been honest, tax morale decreases.¹⁵² This is not completely surprising, noting that psychological theory predicts that it is not only personality or context that dictates behaviour, but also the relationship between two parties.¹⁵³

Social and Personal Norms

Social norms can be defined as ‘(i) a behaviour regularity that is (ii) based on a socially shared belief how one ought to behave which triggers (iii) the enforcement of the prescribed behaviour by informal social sanctions.’¹⁵⁴ It is argued that as long as tax compliance is a social norm, taxpayers will comply and pay their taxes as and when they become due.¹⁵⁵ The converse also appears to hold true: where non-compliance is prevalent, the social norm of compliance will fall away. Further, Wenzel¹⁵⁶ found

¹⁴⁹ Benno Torgler op cit note 62 at page 50.

¹⁵⁰ Bruno Frey ‘Deterrence and tax morale in taxation in the European Union’ (2003) 11(3) *European Review* 385-406 at page 392.

¹⁵¹ Bruno Frey and Lars Feld ‘Deterrence and Morale in Taxation: An Empirical Analysis’ (2002) presented at the Annual Meeting of the European Public Choice Society (Italy) at page 30.

¹⁵² Lars Feld, Bruno Frey, and Benno Torgler op cit note 132 at page 6.

¹⁵³ See, for example, Sandra Simpkins and Ross Parke ‘Do Friends and Nonfriends Behave Differently? A Social relations Analysis of Children’s Behaviour’ (2002) 48(3) *Merrill-Palmer Quarterly* 263-283.

¹⁵⁴ Ernst Fehr and Simon Gächter ‘Reciprocity and Economics. The Economic Implications of Homo Reciprocans’ (1998) 42(3-5) *European Economic Review* 845-859 at page 854.

¹⁵⁵ James Alm, Gary McClelland, and William Schulze ‘Changing the Social Norm of Tax Compliance by Voting’ (1999) 52(2) *Kyklos* 141-171 at page 142.

¹⁵⁶ Michael Wenzel ‘Misperceptions of Social Norms about Tax Compliance: From Theory to Intervention’ (2005) 26(6) *Journal of Economic Psychology* 862- 863 at page 878.

that even the perception of social norms is an important determinant of tax morale (even if this perception was incorrect).

Social norms can be a powerful tool given that violating these norms can have both internal sanctions (such as guilt or remorse) and social sanctions (such as gossip or ostracism).¹⁵⁷ While the violation of social norms may have external legal sanctions, formal laws may not be needed in circumstances where social norms act as a substitute for these laws. In fact, some studies¹⁵⁸ find that, in relation to tax evasion, the anticipated guilt could act as a better deterrent mechanism than the perceived threat of legal sanction.

However, social norms will only work for as long as the psychological costs of violating the norms are too high to warrant the cost. These costs are not static and can be changed. For example, if the norm of compliance is premised on receiving public goods in return for taxes, and the level of taxes appear to the taxpayer to be more than the value of the public goods, this may reduce the psychological cost (thus reducing the effectiveness of social norms).

Notwithstanding all the research on social norms and how they operate, there is a lacuna in our understanding of how these social norms emerge. Thus, while policymakers may be able to manipulate existing social norms, more research is needed in the event where policymakers are required to create a compliance norm where one does not yet exist. One option is the use of external cues. For example, Martin and Randal¹⁵⁹ find that people place more donations in a box if the box already has money in it. Another option is the use of public campaigns. For example, Italy used a television and print campaign describing tax evaders as parasites to attempt to change the mentality of taxpayers who are non-compliant or considering non-compliance.¹⁶⁰

Hallsworth *et al*¹⁶¹ studied tax compliance using natural field experiments. While their study focused on the timeliness of tax payments, many of the insights can be extrapolated and applied to the

¹⁵⁷ Benno Torgler op cit note 143 at page 83.

¹⁵⁸ For example, see Harold Grasmick and Robert Bursick 'Conscience, Significant Others, and Rational Choice: Extending the Deterrence Model' (1990) 24(3) *Law and Society Review* 837-862.

¹⁵⁹ Richard Martin and John Randal 'Voluntary contributions to a public good: a natural field experiment' (2005) IDEAS Working Paper 01/2005.

¹⁶⁰ Elisabetta Povoledo 'Italy Tries to Get Tax Cheats to Pay Up' *The New York Times* 8 August 2011.

¹⁶¹ Michael Hallsworth *et al* op cit note 92.

declaration and reporting of taxes. In their experiment, they sent one of five types of messages to taxpayers. These messages indicated (i) the basic norm (being how many taxpayers pay their tax on time), (ii) the country norm (being how many taxpayers in the country pay their tax on time), (iii) the minority norm (being that a taxpayer is in the minority of taxpayers who did not pay their taxes on time), (iv) a gain (being what taxpayers could gain from paying taxes), and (v) a loss (being what taxpayers would lose out on if there was not sufficient tax revenue). They found that each of these types of messaging produced (to varying degrees) an increase in payment from taxpayers who did not receive any form of messaging. The most effective form of messaging was the one that utilised the minority norm (illustrating the impact of peer effects). In other words, taxpayers are more likely to pay their taxes when they are shown that other taxpayers are also paying their taxes. They also examined the impact of descriptive messaging¹⁶² (or what others do) against the impact of injunctive messaging¹⁶³ (or what other taxpayers believe should be done). In this case, they found that descriptive norms had a more significant impact than injunctive norms. This was confirmed in a study in the US undertaken by Coleman.¹⁶⁴ Hallsworth *et al* reiterate that the marginal cost for the policymaker in this intervention was negligible. However, messaging in relation to social norms has not always been effective. Moreover, it may even have a negative impact.¹⁶⁵

In a laboratory experiment, Hermann *et al*¹⁶⁶ find that participants in different countries impose differing average punishments for free riders. The implication of this is that different communities will have different social norms, and as such, they will behave differently (both in respect of the decision to evade and the punishment they believe to be appropriate for tax evaders). They also find

¹⁶² In this case, they used the phrase ‘everyone in the UK should pay their tax on time.’

¹⁶³ In this case, they used various injunctive messages. These included the phrases ‘the great majority of people agree that everyone in the UK should pay their tax on time’, ‘88% of people agree that everyone in the UK should pay their tax on time’, and ‘nine out of ten people agree that everyone in the UK should pay their tax on time.’

¹⁶⁴ Stephen Coleman ‘The Minnesota income tax compliance experiment: State tax results’ (1996) Munich Personal RePEc Archive Paper No. 4827.

¹⁶⁵ See, for example, Marco Hernandez *et al* *Applying behavioral insights to improve tax collection: Experimental evidence from Poland* (2017) The World Bank; Peter John and Toby Blume ‘How best to nudge taxpayers? The impact of message simplification and descriptive social norms on payment rates in a central London local authority’ (2018) 1(1) *Journal of Behavioral Public Administration* 1-11.

¹⁶⁶ Benedikt Herrmann, Christian Thöni, and Simon Gächter ‘Antisocial punishment across societies’ (2008) 319(5868) *Science* 1362-1367 at 1364.

a positive relationship they found between norms of civic co-operation and anti-social punishments. Other studies¹⁶⁷ have found similar results confirming this correlation.

Doerrenberg and Peichl¹⁶⁸ conducted a randomized survey experiment to determine the role of social norms and reciprocity on tax morale. They find that providing information on the extent of a social norm (for example, tax evasion) can have a negative effect on tax morale. In particular, if taxpayers believe the norm to be compliance but it is illustrated that non-compliance is more common or more frequent than compliant taxpayers had originally believed. This is especially with regard to the fact that, prior to any information, the true level of non-compliance is unknown.

Interestingly, Engel, Mittone and Morreale find that, for participants at all income levels, only the beliefs about compliance of high-income taxpayers have an impact.¹⁶⁹ This suggests that governments should focus on interventions aimed at improving compliance by high-income earners. In this regard, Engel, Mittone and Morreale explain that these targeted interventions will ‘pay a double dividend’ because it both (i) targets those who would contribute the most to tax revenue, and (ii) can impact the morale of the entire population.¹⁷⁰

Social norms are not the only type of norm to influence tax morale.¹⁷¹ In fact, it has been argued that internalised personal norms play a much larger role than social norms in this determination.¹⁷² Personal norms (sometimes referred to as personal traits) are the factors inherent to the individual. For example, where some taxpayers will choose not to evade taxes simply because they are predisposed not to evade,¹⁷³ some taxpayers will choose to evade simply because the benefits of

¹⁶⁷ See, for example Christian Traxler ‘Social norms and conditional cooperative taxpayers’ (2010) 26(1) *Political Economy* 89-103; Michael Wenzel ‘An Analysis of Norm Processes in Tax Compliance’ (2004) 25(2) *Journal of Economic Psychology* 213-228; Ronald Cummings, Jorge Martínez-Vazquez, and Michael McKee ‘Cross Cultural Comparison of Tax Compliance Behavior’ (2001) International Studies Program Working Paper No. 01-3; Donna Bobek, Robin Roberts, and John Sweeney ‘The Social Norms of Tax Compliance: Evidence from Australia, Singapore, and the United States’ (2007) 74(1) *Journal of Business Ethics* 49-64.

¹⁶⁸ Philipp Doerrenberg and Andreas Peichl op cit note 84 at page 15.

¹⁶⁹ Christoph Engel, Luigi Mittone, and Azzurra Morreale op cit note 134 at page 19.

¹⁷⁰ Ibid at page 19.

¹⁷¹ Ioana Horodnic op cit note 53 at 869.

¹⁷² Peggy Jimenez and Govind Iyer ‘Tax compliance in a social setting: the influence of social norms, trust in government, and perceived fairness on taxpayer compliance’ (2016) 34 *Advances in Accounting* 17–26. Also see Marius van Oordt ‘The Influence of Social Ties on Taxation’ (2020).

¹⁷³ Susan Long and Judyth Swingen ‘The conduct of tax-evasion experiments: validation, analytical methods, and experimental Realism’ in Paul Webley, Henry Robben, Henk Elffers, and Dick Hessing (eds.) *Tax Evasion: An Experimental Approach* (1991) Cambridge University Press at 128 - 138.

evading taxes outweighed the benefits of complying.¹⁷⁴ Similarly, individuals who are inherently egalitarian or community-oriented (as opposed to individualistic individuals) are more likely to pay taxes (or at least be more willing to pay taxes).¹⁷⁵ As an alternative taxonomy of people's inherent traits, Torgler¹⁷⁶ refers to four types of taxpayers. First, the social taxpayer, who is primarily influenced by social norms. Second, the intrinsic taxpayer, who is motivated primarily by their sense of obligation. Third, the honest taxpayer, who is innately honest and will not attempt any forms of intentional non-compliance. Fourth, the tax evader, who has little to no intrinsic willingness to pay taxes. The final two types of taxpayers exist on either end of the spectrum of taxpayers and have the corresponding level of compliance. The first two types of taxpayers may exist anywhere on the spectrum of compliance. They are not typified by their level of compliance, but rather their primary motivating factors. According to Torgler,¹⁷⁷ it is not clear whether there is mobility between categories as a result of learned behaviour.¹⁷⁸ Unfortunately, noting how it is intrinsic to individuals, this kind of norm is much harder for tax authorities to influence than a social norm.¹⁷⁹

Positive personal norms could be built up through education – particularly for young people (this includes even those who are too young to pay taxes).¹⁸⁰ Mazar and Ariely posit that there is a 'likely possibility' that the critical period for the development of these personal norms is when individuals are younger as they are more sensitive to influences.¹⁸¹ They go further, arguing that after this critical period, the norms will remain relatively stable thereafter.¹⁸² Of course, personal norms can also be negatively influenced by one's environment. In other words, even if one is pre-disposed to honesty or altruism, this is not necessarily static. It is particularly susceptible to the influence of the social or external norms of individuals within the taxpayer's circle of influence. For example, if an individual

¹⁷⁴ Benno Torgler op cit note 142 at page 125.

¹⁷⁵ Daniel Barrett *et al* 'Individual differences in the motivation to comply across cultures: the impact of social obligation' (2007) 37(1) *Personality and Individual Differences* 19-31 at page 28.

¹⁷⁶ Benno Torgler op cit note 142 at page 124.

¹⁷⁷ Ibid at page 128.

¹⁷⁸ Although not within the scope of this research, it would be of interest to consider if, and when, taxpayers could move from one category to another. This "nature versus nurture" research may provide insight as to whether there are any policies that would be capable of overriding or reducing the innate non-compliant behaviour.

¹⁷⁹ Erich Kirchler *The Economic Psychology of Tax Behaviour* (2007) Cambridge University Press.

¹⁸⁰ Keith Walsh op cit note 120 at 454.

¹⁸¹ Nina Mazar and Dan Ariely 'Dishonesty in Everyday Life and its Policy Implications' (2006) 25(1) *Journal of Public Policy and Marketing* 117-126 at page 123.

¹⁸² Ibid at page 123.

holds both honesty and group conformity as a personal norm, if the social norm is non-compliance, an individual's need to conform with the group may outweigh their need to be honest and comply.

2.3 Conclusion

This chapter aimed to distinguish tax morale (being the totality of non-pecuniary motivations and factors for tax compliance which fall outside the expected utility maximization) from tax compliance (being when taxpayers have satisfied all of their tax obligations under the law). More specifically, it aimed to illustrate how tax morale could be used as a mechanism to improve tax compliance. In doing so, it considered why traditional models of compliance failed to accurately predict tax compliance decisions. Finally, it provides an outline of the determinants of tax morale. In doing so, it ascertains important factors to be considered in the empirical component and proposal sections in this study.

Chapter three seeks to determine which behavioural insights might be able to improve tax morale. To do this, it provides a theoretical overview of particular behavioural insights that may find application within the South African tax framework.

3. CHAPTER THREE: BEHAVIOURAL STRATEGIES

‘Human nature is not a problem that can be fixed by rules and regulations. All solutions to the existing problems must be based on how people behave, not on how we think they should behave.’ – Kirk Chisholm¹⁸³

Tax authorities have been increasingly utilising behavioural insights to achieve their strategic goals.¹⁸⁴ Some of the outcomes that tax authorities have achieved through the use of behavioural insights include reductions of the number of taxpayers owing taxes by as much as 33%,¹⁸⁵ improving the timeliness of personal income tax payments,¹⁸⁶ reducing the misreporting of income and expenses,¹⁸⁷ reducing improper payments of benefits to ineligible taxpayers,¹⁸⁸ increasing voluntary disclosures and reporting of wealth by as much as 30%,¹⁸⁹ increasing filing among prior non-filers by up to 15%,¹⁹⁰ and increasing self-service and online actions by more than 20%.¹⁹¹ This chapter provides an overview of various behavioural principles that may provide useful insight into ways in which tax morale can be improved.¹⁹²

¹⁸³ Kirk Chisholm ‘My Uncle Samuel’s Solution to the Moral Hazard Problem’ (2014).

¹⁸⁴ For example, the OECD notes that ‘a 2020 survey conducted by the Forum on Tax Administration (FTA), 73% of respondents agreed that behavioural insights were part of their organisation’s current strategy. Overall, around one third of FTA members are using behavioural insights.’ See OECD *Behavioural Insights for Better Tax Administration* (2021) OECD Publishing at page 2.

¹⁸⁵ As found in Denmark. See OECD *Behavioural Insights for Better Tax Administration* (2021) OECD Publishing at page 7.

¹⁸⁶ As found in Belgium. See OECD *Behavioural Insights for Better Tax Administration* (2021) OECD Publishing at page 7.

¹⁸⁷ As found in Australia. See OECD *Behavioural Insights for Better Tax Administration* (2021) OECD Publishing at page 7.

¹⁸⁸ Michael Green ‘Nudging New Mexico: Kindling compliance among unemployment claimants’ (2016) 18 *Deloitte Review* 144-163.

¹⁸⁹ As found in Norway. See OECD *Behavioural Insights for Better Tax Administration* (2021) OECD Publishing at page 7.

¹⁹⁰ As found in the United States. See OECD *Behavioural Insights for Better Tax Administration* (2021) OECD Publishing at page 7.

¹⁹¹ As found in the United States. See OECD *Behavioural Insights for Better Tax Administration* (2021) OECD Publishing at page 7. Also see OECD op cit note 184 at page 2.

¹⁹² Behavioural strategies should be tested to determine its effectiveness through, for example, randomised control trials or lab experiments. It could further identify positive or negative externalities. However, these experiments are outside of the scope of this study. This study will only provide solutions to be tested with due regard to the evidence from other jurisdictions.

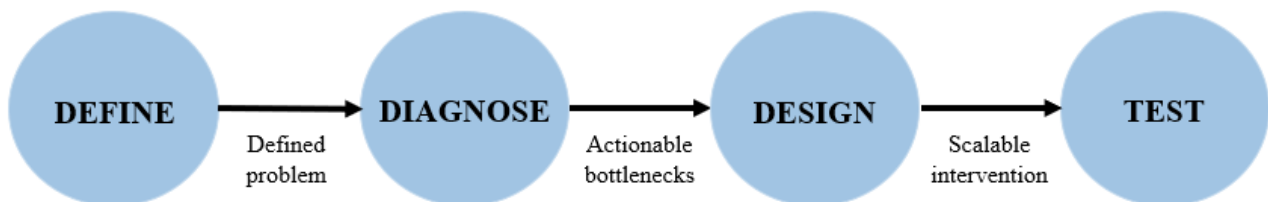
3.1 Theoretical Frameworks

This section will outline a framework for the development and delivery of behavioural change, being the Behavioural Design Process Framework *and* an overview of the ways in which individuals deviate from the standard neoclassical economic model of human behaviour. These are two distinct components but are both required to understand how individuals make decisions and how these deviations can be exploited to develop interventions to create behavioural change.

Behavioural Design Process Framework

The framework for the development and delivery of behavioural change provided by Münscher, Vetter and Scheuerle¹⁹³ consists of four key steps. It begins with defining the behavioural problem and target behaviour, followed by a determination of the kind of behaviour change approach applicable to the behavioural context, then an analysis of the reasons why people fail to display the target behaviour,¹⁹⁴ before concluding with the hypothesis-building.

Figure 1: Behavioural Design Process Framework



Source: adapted from ideas42 (2017)¹⁹⁵

¹⁹³ Robert Münscher, Max Vetter, and Thomas Scheuerle ‘A Review and Taxonomy of Choice Architecture Techniques’ (2016) 29(5) *Journal of Behavioral Decision Making* 511-524 at page 512.

¹⁹⁴ Saugato Datta and Sendhil Mullainathan ‘Behavioral design: A new approach to development policy’ (2014) 60(1) *The Review of Income and Wealth* 7-35 at page 22.

¹⁹⁵ ideas24 ‘Behavioural Design Teams: A Model for Integrating Behavioural Design in City Government’ (2018) at page 28.

Deviations from Neoclassical Assumptions

Alm¹⁹⁶ neatly summarises the ways in which humans defy the assumptions that neoclassical economics is modelled on:

- individuals have computational limits;
- individuals cannot accurately perceive the true cost of actions;
- individuals face limits on their self-control;
- individuals are affected by how choices are framed;
- individuals are influenced by the social context in which, and the process by which, choices are made; and
- individuals are motivated by group considerations.

This dissertation will utilise Alm's taxonomy. Each of these categories of deviations contain several behavioural phenomena that can be exploited to improve tax morale.

3.2 Computational Limits

Bounded Rationality

Bounded rationality is a theory that provides that individuals are constrained and thus can only act rationally within certain bounds. There are three primary constraints to individuals' decision-making,¹⁹⁷ being the limited information that is available, the limited capacity of the human mind to process the available information, and the limited amount of time within which a decision must be made. It provides that constraints should be considered an integral part of the decision-making process.

In most environments, there is imperfect information. Further, the search for information can be costly.¹⁹⁸ As a consequence, individuals tend to settle for '*less of it than is "optimal," if by "optimal"*

¹⁹⁶ James Alm 'What Motivates Tax Compliance' (2019) Tulane Economics Working Paper Series Working Paper 1903 at page 13.

¹⁹⁷ Lisbet Berg 'Who benefits from behavioural economics?' (2014) 44(2) *Economic Analysis and Policy* 221-232 at 222.

¹⁹⁸ George Stigler 'The Economics of Information' (1961) 69(3) *The Journal of Political Economy* 213-225.

is meant “all”.¹⁹⁹ While this may inhibit an individual’s rationality, some studies have argued that market effectiveness can be reduced by providing individuals with more information.²⁰⁰ Noting that the cost of searching for information can be too high for individuals to warrant, policy makers may want to consider making the information more readily available.

Cognitive Load Theory is a theory that first emerged in educational psychology²⁰¹ although it has found its way into behavioural economics. In general, it refers to the limit on the amount of new information that a person can process at any one point in time. Increased cognitive burden (as a result of sustained cognitive engagement) can result in cognitive fatigue. This fatigue can cause, *inter alia*, increased distractibility and changes in information processing.²⁰² Importantly, when individuals are cognitively fatigued, they are less likely to detect errors and less likely to remedy errors that they do detect.²⁰³ The impact of this limited capacity to process information has been studied in the context of taxation on numerous occasions. For example, Fochmann *et al* found that ‘[t]he more complex a tax rule is or is presented, the worse is the subjects’ quality of judgment and decisions.’²⁰⁴ Given the constraint on individuals’ processing capacity (in other words, their limited cognitive bandwidth), individuals use heuristics, or cognitive short-cuts, to make decisions or evaluate outcomes quickly and with a lower cognitive burden. Heuristics will be further discussed below. Noting the cognitive limitations of individuals, decision-makers should consider simplifying information to decrease the cognitive effort involved in processing the information.²⁰⁵

When there are limitations on the amount of time individuals have to make their decisions, their choices tend to be derived from emotional responses rather than cognitive processing.²⁰⁶ This

¹⁹⁹ Fred McCesney ‘Behavioural Economics: Old Wine in Irrelevant New Bottles?’ (2014) 21(1) *Supreme Court Economic Review* 43-76 at page 56.

²⁰⁰ *Ibid* at page 65.

²⁰¹ John Sweller ‘Cognitive load during problem solving: Effects on learning’ (1988) 12(2) *Cognitive Science* 257-285.

²⁰² For example, see Maarten Boksem, Theo Meijman, and Monique Lorist ‘Effects of mental fatigue on attention: an ERP study’ (2005) 25(1) *Cognitive Brain Research* 107-116; Monique Morist, Maarten Boksem, and Richard Ridderinkhof ‘Impaired cognitive control and reduced cingulate activity during mental fatigue’ (2005) 24(2) *Cognitive Brain Research* 199-205; Maarten Boksem, Theo Meijman, and Monique Lorist ‘Mental fatigue, motivation and action monitoring’ (2006) 72(2) *Biological Psychology* 123-132.

²⁰³ Glyn Hockey *et al* ‘Effects of negative mood states on risk in everyday decision making’ (2000) 14(6) *Cognition and Emotion* 823-855.

²⁰⁴ Martin Fochmann *et al* ‘Tax perception – an empirical survey’ (2010) Arqus Discussion Paper No. 99 at page 23.

²⁰⁵ Robert Münscher, Max Vetter, and Thomas Scheuerle *op cit* note 193 at page 515.

²⁰⁶ Ariel Rubinstein ‘Instinctive and Cognitive Reasoning: A Study of Response Times’ (2004) 117(523) *The Economic Journal* 1243-1259.

phenomenon has been exploited by companies. For example, a common sales technique is the use of a time limit and limited numbers of products to compel consumers to make a quick decision to buy products. However, even in the absence of an emotional response, the trade-off between speed and accuracy is well-documented.²⁰⁷ Here too, heuristics become relevant.

Blaufus *et al*²⁰⁸ find that taxpayers suffer from significant tax misperception (in terms of both a lack of knowledge and a misapplication of information) and that, even after they have been informed, taxpayers fail to incorporate this into their decision making.

An example of how limited cognitive capacity may manifest in the field of taxation is that taxpayers may make inadvertent errors in their tax returns. A study undertaken in the UK found that 7% of the tax gap in the UK was as a result of these inadvertent errors.²⁰⁹ Another example is that, where there is significant complexity in being a compliant taxpayer, this may increase the cost of compliance that, in turn, results in an increase in non-compliance. However, the empirical evidence on the effect of complexity is inconclusive.²¹⁰ Another application of bounded rationality in the context of taxation is when taxpayers delay the submission of their returns as a result of the cognitive burden.

Heuristics

Heuristics refer to '*process[es] for solving a problem which may aid in the solution but offers no guarantee of doing so.*'²¹¹ According to Kahneman and Tversky, while these heuristics can '*reduce the complex tasks of assessing probabilities and predicting values to simpler judgmental operations*'

²⁰⁷ For example, see Adele Diederich 'Dynamic stochastic models for decision making under time constraints' (1997) 41 *Journal of Mathematical Psychology* 260–274; Jerome Busemeyer and Adele Diederich 'Survey of decision field theory' (2002) 43(3) *Mathematical Social Sciences* 345–370; Adele Diederich and Jerome Busemeyer 'Simple matrix methods for analyzing diffusion models of choice probability, choice response time and simple response time' (2003) 47(3) *Journal of Mathematical Psychology* 304–322.

²⁰⁸ Kay Blaufus *et al* 'Tax Misperception and its Effects on Decision Making – Literature Review and Behavioural Taxpayer Response Model' (2022) 31(1) *European Accounting Review* 111–144 at page 136.

²⁰⁹ Her Majesty's Revenue and Customs 'Measuring Tax Gaps 2011' (2011) at page 10.

²¹⁰ Some studies argue that complexity is good for PIT compliance (see, for example, Edward Christie and Mario Holzner 'What explains tax evasion? An empirical assessment based on European data' (2006) Vienna Institute for International Economic Studies Working Paper 40) while others find that lower levels of complexity result in lower levels of evasion (see, for example, Grant Richardson 'Determinants of tax evasion: A cross-country investigation' (2006) 15(2) *Journal of International Accounting, Auditing and Taxation* 150–169).

²¹¹ Donald Taylor 'Decision making and problem solving' in James March (ed.) *Handbook of organizations* (1965) Rand McNally 48–86.

and thus be quite useful, ‘*sometimes they lead to severe and systematic errors...*’²¹² Although these decisions or evaluations are often subject to certain errors or biases, individuals accept the decisions. This acceptance is a form of “satisficing”; a term which broadly refers to the decision-making strategy that, rather than aiming for the optimal outcome, searches for an outcome that reaches some threshold of acceptability or would be considered “good enough”.²¹³

In the context of tax non-compliance, Heiner argued that under high degrees of certainty, individuals tend to revert to conventions rather than engaging in complex calculations (such as the optimal level of non-compliance).²¹⁴ This was confirmed in an experimental study by Spicer and Hero.²¹⁵ If this is the case, the types of heuristics and the way in which they operate are of interest.

One example of a heuristic is the confirmation bias. This is a heuristic that refers to the tendency to ‘*search for information that supports their beliefs and ignore or distort data contradicting them.*’²¹⁶ This phenomenon has been increasingly discussed in popular media to the extent that it relates to the spread of “fake news.”²¹⁷ Similarly, social media algorithms that suggest certain content reinforces the echo chamber created by confirmation bias. It is particularly pernicious tendency as it obstructs individuals from recognising errors in judgment and correcting these errors.²¹⁸ It can result in only partial processing thus leading to unreliable conclusions.²¹⁹

²¹² Amos Tversky and Daniel Kahneman ‘Judgment under Uncertainty: Heuristics and Biases’ (1974) 185(4157) *Science* 1124-1131 at page 1124.

²¹³ Herbert Simon ‘Satisficing’ in MacMillan Publishers Ltd (ed.) *The New Palgrave Dictionary of Economics* (2018) Palgrave Macmillan 11933-11935.

²¹⁴ Ronald Heiner ‘The origin of predictable behavior’ (1983) 73(4) *The American Economic Review* 560-595.

²¹⁵ Michael Spicer and Rodney Hero ‘Tax Evasion and Heuristics’ (1985) 26(2) *Journal of Public Economics* 263-267 at page 266.

²¹⁶ Uwe Peters ‘What is the Function of Confirmation Bias?’ (2022) 87(3) *Erkenntnis* 1351-1376 at page 1351.

²¹⁷ Jeff Stibel ‘Fake news: How our brains lead us into echo chambers that promote racism and sexism’ *USA Today* 15 May 2018.

²¹⁸ Hugo Mercier and Dan Sperber *The Enigma of Reason* (2019) Harvard University Press; Robert Merton ‘The self-fulfilling prophecy’ (1948) 8(2) *The Antioch Review* 193-210 at page 215.

²¹⁹ Uwe Peters ‘Illegitimate Values, Confirmation Bias, and Mandevillian Cognition in Science’ (2021) 72(4) *British Journal for Philosophy of Science* 1-24.

3.3 Perspective of the Cost of Actions

Fiscal Illusion

Fiscal illusion refers to the way in which the governmental fiscal burden is misjudged in relation to the benefit of the public expenditure for citizens.²²⁰ In other words, the utility ascribed to the public benefits are considered to be outweighed by the losses of the expenditure on public services. The consequence of this is that the amount spent on public services ends up being less than is required. In the same way, the cost of tax payments by taxpayers are considered to outweigh the benefits of public goods and services.²²¹

Variyam and Jordan²²² found that the extent of the asymmetric perception was dependent on framing choices. As such, it is no surprise that political attitude patterns are dependent on these framing effects.²²³ For example, the acceptance of public-funded programmes could be vastly different if the policy is framed as being “against unemployment” in comparison to “for the creation of jobs”. Milkman *et al*²²⁴ build on this, arguing that, in order to gain public acceptance, public decisions should be framed as increasing citizens’ welfare (through the provision of public services) as opposed to being framed as financial losses for citizens (through tax). Further, they also propose that legislative proposals should be bundled into bills²²⁵ (rather than single-policy bills) where losses and gains are combined to overcome loss aversion.²²⁶

²²⁰ Thomas Döring and Ruven Oehmke ‘Behavioural Economics and Government Purchases – Some Insights into the Fiscal Psychology of Public Expenditure’ (2020) 5(1) *International Journal of Public Finance* 56-80 at page 68.

²²¹ Ibid at page 68.

²²² Jayachandran Variyam and Jeffrey Jordan ‘Economic Perceptions and Agricultural Policy Preferences’ (1991) 16(2) *Western Journal of Agricultural Economics* 304-314.

²²³ Dennis Chong and James Druckman ‘Framing Public Opinion in Competitive Democracies’ (2007) 101(4) *American Political Science Review* 637-655.

²²⁴ Katherine Milkman *et al* ‘Policy Bundling to Overcome Loss Aversion – A method for Improving Legislative Outcome’ (2012) 117(1) *Organizational Behavior and Human Decision Processes* 158-167.

²²⁵ For example, consider the Taxation Laws Amendment Acts and Tax Administration Laws Amendment Acts that are promulgated in South Africa that contain amendments to various other Acts, including (but not limited to) the Customs and Excise Act 91 of 1964, the Value-Added Tax Act 89 of 1991, the Carbon Tax Act 15 of 2019, the Transfer Duty Act 40 of 1949, the Estate Duty Act 45 of 1955, the Income Tax Act 58 of 1962, and the TAA.

²²⁶ Ibid at page 164.

Saliency

The concept of salience refers to the impact on our behaviour by what our attention is drawn to.²²⁷ When one's attention is drawn involuntarily to a particular stimulus, it is considered to be salient.²²⁸ If an individual's attention reflects their choices and goals, it is considered to be top-down.²²⁹ In contrast, where an individual's attention is drawn involuntarily based on the salience of a stimulus, this reflects bottom-up attentional selection.²³⁰ Given the overload of stimuli that individuals are exposed to on a daily basis, there is a tendency to filter out as much information as possible. This is, in part, due to the cognitive load that would be required to process all of the stimuli. The stimuli that are registered tend to be novel, accessible, and simple.²³¹ Other factors that have been found to make a stimulus salient include contrast, surprise, and prominence.²³² High contrast in colour, shape, and orientation make a stimulus more salient.²³³ Similarly, unexpected changes in sensory inputs²³⁴ or unanticipated deviations from expectations²³⁵ tend to draw attention. Prominence refers to the tendency for stimuli that are more readily available to have a higher salience.²³⁶ It is important to recognise the salience of a stimulus to account for the potential overweighting of the stimulus.²³⁷ Conversely, stimuli that are not salient tend to be underweighted.²³⁸

²²⁷ Daniel Kahneman and Richard Thaler 'Anomalies: Utility maximisation and experienced utility' (2006) 20(1) *Journal of Economic Perspectives* 221–234.

²²⁸ Pedro Bordalo, Nicola Gennaioli, and Andrei Schleifer 'Salience' (2022) 14(1) *Annual Review of Economics* 521–544.

²²⁹ Dirk Kezel and Josef Schönhammer 'Salient stimuli capture attention and action' (2013) 75(8) *Attention, Perception, and Psychophysics* 1633–1643 at page 1633.

²³⁰ Ibid at page 1633.

²³¹ Paul Dolan *et al* 'Influencing behaviour: The mindspace way' (2012) 33(1) *Journal of Economic Psychology* 264–277. at page 269.

²³² Pedro Bordalo, Nicola Gennaioli, and Andrei Schleifer *op cit* note 228.

²³³ Anne Treisman and Garry Gelade 'A Feature integration theory of Attention' (1980) 12(1) *Cognitive Psychology* 97–136; Laurent Itti, Christof Koch, and Ernst Niebur 'A model of saliency-based visual attention for rapid scene analysis' (1998) 20(11) *IEEE Transactions on Pattern Analysis and Machine Intelligence* 1254–1259.

²³⁴ Heinrich Liesefeld *et al* 'Saliency maps for finding changes in visual scenes?' (2017) 79(7) *Attention, Perception & Psychophysics* 2190–2201 at page 2191.

²³⁵ Daniel Kahneman and Dale Miller 'Norm theory: Comparing reality to its alternatives' (1986) 93(2) *Psychological Review* 136–153.

²³⁶ Pedro Bordalo, Nicola Gennaioli, and Andrei Schleifer *op cit* note 228.

²³⁷ Shelley Taylor and Suzanne Thompson 'Stalking the Elusive "Vividness" Effect' (1982) 89(2) *Psychological Review* 155–181.

²³⁸ Ibid.

Salience has been used (at times inadvertently) in mainstream culture on many occasions.²³⁹ When attention is allocated to stimuli based on an incorrect belief, this accordingly will distort decisions.²⁴⁰ When the salience of a stimulus and the goal relevance are not aligned, individuals tend to make suboptimal decisions.²⁴¹ With this in mind, policy makers can manipulate the salience of stimuli to influence behaviour. For example, by bringing a particular (infrequent) occurrence to the front of mind, policy makers can create salience and thus influence decision-makers to change their behaviour.²⁴²

Optimism

‘[T]he difference between a person’s expectation and the outcome that follows’²⁴³ is a common bias experienced by individuals. The tendency to over-estimate positive outcomes and under-estimate negative outcomes is known as the optimism bias. The inverse also exists. Where individuals expect a worse outcome than actually occurs, this is the pessimism bias. While it may seem fairly innocuous to have a positive outlook on the future, where this outlook is not warranted, there are instances in which it may have sinister consequences. For example, it has been argued that this bias was a core contributor to the 2008 financial crisis.²⁴⁴ This is because, although evidence indicated that the market would contract, there were overly optimistic (and unrealistic) expectations that the market would continue to grow. Sharot argues that the bias will be stronger in circumstances where there are a greater number of unknown factors.²⁴⁵ Studies have found that optimistic illusions can be abolished, and when this occurs, the behaviours associated with those illusions can be diminished.²⁴⁶

²³⁹ For example, consider when where former US President Trump utilized tweets as a form of distraction from media coverage that was adverse to the former President. See Stephan Lewandowsky, Michael Jetter and Ullrich Ecker ‘Using the president’s tweets to understand political diversion in the age of social media’ (2020) 11(5764) *Nature Communications* 1-12.

²⁴⁰ Joshua Schwartzstein ‘Selective Attention and Learning’ (2014) 6(1) *Journal of the European Economic Association* 1423–1452.

²⁴¹ Pedro Bordalo, Nicola Gennaioli, and Andrei Schleifer op cit note 228.

²⁴² Ibid.

²⁴³ Tali Sharot ‘The optimism bias’ (2011) 21(23) *Current Biology* R941-R945 at page R941.

²⁴⁴ Ibid at R944.

²⁴⁵ Ibid at R944.

²⁴⁶ Ryan McKay and Daniel Dennett ‘The evolution of misbelief’ (2009) 32(6) *The Behavioural and Brain Sciences* 493–561.

Feedback

Knowing that individuals have limitations in perceiving the true cost of actions, performance can be improved through the provision of feedback. As noted by Cook and Berrenberg,²⁴⁷ there is a “knowledge gap” faced by individuals that constructive feedback is able to bridge. As such, feedback has been shown to improve decision-making.²⁴⁸ Feedback is even more effective in circumstances where feedback is otherwise usually infrequent or disconnected from decision-making.²⁴⁹ Feedback can also be linked to loss-aversion. In this regard, individuals are more sensitive to consequences of their actions when the feedback provided highlights the associated losses rather than the associated benefits.²⁵⁰ Further, it can offset the limitations in cognitive capacity (whether in attention or processing capacity) that make information unavailable in the ordinary course.²⁵¹

Feedback can come in various forms. One such manifestation is a warning. However, warnings are not always effective. Thaler, Sunstein, and Balz²⁵² provide a clear example of this. When security warnings about whether an individual wants to open email attachments become frustrating for an individual who has to consistently dismiss the warnings, at some point, the individual is going to open the attachments without due regard to the warning. As such, the warning is rendered completely ineffective.

3.4 Framing

Context matters. People behave differently under different circumstances.²⁵³ This can be exploited by framing a choice or judgment in a particular way. Different presentations of information can have a significant impact on people’s choices. In some circumstances, the policy proposals may involve framing the policy in a particular way. However, in some circumstances, the policy proposal may

²⁴⁷ Stuart Cook and Joy Berrenberg ‘Approaches to encouraging conservation behavior: A review and conceptual framework’ (1981) 37(2) *Journal of Social Issues* 73–107.

²⁴⁸ William Balzer, Michael Doherty, and Raymond O’Connor ‘Effects of Cognitive Feedback on Performance’ (1989) 106(3) *Psychological Bulletin* 410-433.

²⁴⁹ Robert Münscher, Max Vetter, and Thomas Scheuerle op cit note 193 at page 515.

²⁵⁰ Sandro Casal *et al* ‘Feedback and efficient behaviour’ (2017) 12(4) *PLOS One* 1-21 at page 17.

²⁵¹ Robert Münscher, Max Vetter, and Thomas Scheuerle op cit note 193 at page 515.

²⁵² Richard Thaler, Cass Sunstein, and John Balz ‘Choice Architecture’ in Eldar Shafir (ed.) *The Behavioural Foundations of Public Policy* (2012) Princeton University Press 428-439 at page 434.

²⁵³ For example, consider phenomena such as code-switching.

require reframing existing policies or strategies so as to induce a different decision by taxpayers. For clarity, reframing only refers to presenting information in a new way (as opposed to presenting new information).

Loss Aversion

Loss aversion refers to the tendency for individuals to weight losses more than an equivalent gain. As such, individuals tend to choose options that are framed as being successful rather than being framed as a loss, even if the probabilities are equivalent. For example, when presenting the following two options (i) investing all of one's money into a new business there was a 50% chance of success, and (ii) investing all of one's money into a new business if there was a 50% chance of failing, Weber²⁵⁴ finds that most people choose the option framed as a success. Studies have found that changing the framing of the choices and the associated risks can have a significant impact on individuals' behaviour.²⁵⁵

Status Quo Bias

Closely linked to loss aversion is the status quo bias. This has also been termed decision inertia. Consider Newton's first law: an object will remain (whether at rest or moving at a constant speed) unless acted upon by a force. Similarly, the behaviour of individuals will remain constant unless active steps have been taken to change it.²⁵⁶ This is the concept of the default which is discussed below. Kahneman, Knetsch and Thaler suggest that individuals do not easily move away from the status quo because the disadvantages of leaving the status quo appear to outweigh the advantages of doing so.²⁵⁷ Samuelson and Zeckhauser²⁵⁸ find that the advantages of remaining with the status quo increases as the number of alternatives increase. They also find that the status quo bias exists even

²⁵⁴ Ann Weber *Introduction to Psychology* (1991) HarperCollins.

²⁵⁵ Paul Slovic, Baruch Fischhoff, and Sarah Lichtenstein 'Facts and fears: Understanding perceived risk' in Daniel Kahneman, Paul Slovic, and Amos Tversky (eds.) *Judgment under Uncertainty: Heuristics and Biases* (1982) Cambridge University Press 463–489.

²⁵⁶ Christina Brown and Aradhna Krishna 'The skeptical shopper: a metacognitive account for the effects of default options on choice' (2004) 31(3) *Journal of Consumer Research* 529–539.

²⁵⁷ Daniel Kahneman, Jack Knetsch, and Richard Thaler 'Anomalies: The Endowment effect, Loss Aversion, and Status Quo Bias' (1991) 5(1) *Journal of Economic Perspectives* 193–206 at page 197.

²⁵⁸ William Samuelson and Richard Zeckhauser 'Status quo Bias in Decision Making' (1988) 1(1) *Journal of Risk and Uncertainty* 7–59 at 37.

when there are no framing effects in respect of gains and losses.²⁵⁹ In other words, although linked to loss aversion, it is not the only cause.²⁶⁰ For example, regret avoidance is an important consideration in this bias. Samuelson and Zeckhauser further find that the effect is stronger when the investment in the option is greater.²⁶¹

Defaults

Individuals, for various reasons, tend towards the “path of least resistance”. With this in mind, as noted by Thaler, Sunstein, and Balz,²⁶² we should expect individuals to choose the option that requires the decision-maker to do nothing (in other words, the default option). Individuals are also more likely to choose the default option when their choice has a larger number of options to choose from.²⁶³ This is indicative of the cognitive burden of alternative overload. Defaults can be determined by both the choice-maker and the choice architect. These have been shown to have been incredibly effective in several fields, ranging from investment decisions²⁶⁴ to organ donation.²⁶⁵ The use of defaults in policy interventions could manifest in many ways. These include (i) a simple default where each individual is allocated the same default,²⁶⁶ (ii) random defaults where individuals are randomly assigned a default, (iii) forced choice where an active choice must be made before goods or services are delivered,²⁶⁷ (iv) sensory defaults where the default changes based on inferences,²⁶⁸ (v) persistent defaults where previous choices are retained,²⁶⁹ (vi) reverting defaults where previous choices are “forgotten” or disregarded, and (vii) predictive defaults where defaults are based on the user’s

²⁵⁹ Ibid at page 36.

²⁶⁰ Ibid at page 36.

²⁶¹ Ibid at page 37.

²⁶² Richard Thaler, Cass Sunstein, and John Balz op cit note 252 at page 430.

²⁶³ Jonathan Levav *et al* ‘Order in product customization decisions: evidence from field experiments’ (2010) 118(2) *Journal of Political Economy* 274–299.

²⁶⁴ See, for example, Henrik Cronqvist and Richard Thaler ‘Design choices in privatized social security systems: learning from the Swedish experience’ (2004) 94(2) *American Economic Review* 424–428.

²⁶⁵ See, for example, Eric Johnson and Daniel Goldstein ‘Do defaults save lives?’ (2003) 302(5649) *Science* 1338–1339.

²⁶⁶ As discussed in chapter six, an example of this is SARS setting the “default” for an auto-assessment to be that the assessment is correct. The taxpayer would have to actively engage with the assessment if they believed it to be incorrect or incomplete.

²⁶⁷ An example of this is the withholding of the degrees by universities for students who haven’t paid their fees. In this case, until the students actively make the choice to pay their fees, the degrees are withheld.

²⁶⁸ An example of this is the default language of a website that is determined by the country of origin of the user.

²⁶⁹ An example of this is food delivery applications that retain a consumer’s previous order history and allow consumers to order what they had previously ordered.

previous behaviour.²⁷⁰ However, one should be cognisant of the ethical risks and considerations in setting defaults.²⁷¹ A further consideration is whether the default is accompanied by the relevant infrastructure. For example, it has been found in the context of organ donation that organ donation rates do not increase (even when policies have shifted to opt-out donation approaches) until it is accompanied by improvements in infrastructure (such as donor coordinators).²⁷² This example makes it clear that factors (for example, social, cultural, and environmental) can constrain the effectiveness of behavioural interventions.

3.5 Social Context and Processes

Messenger Effects

Messenger effects (also known as “source effects”²⁷³ or “communicator effects”²⁷⁴) refer to the tendency of individuals to weight information differently dependent on the source of the information.²⁷⁵ The relative weight given to specific pieces of information is based on how credible the individual believes the messenger or communicator to be.²⁷⁶ Where the consumer dislikes or distrusts the messenger, the consumer is less likely to incorporate information into their decision-making. The credibility may be informed by the messenger’s expertise, trustworthiness, or attractiveness (whether physical²⁷⁷ or ideological).²⁷⁸ While expertise has been found to have positive

²⁷⁰ An example of this is Google maps that may suggest the directions to a particular place when an individual consistently drives a particular route at a particular time. For example, it may suggest the directions to travel “home” as one travels from work to home around the same time each day of the week. See Eric Johnson *et al* ‘Beyond nudges: Tools of a choice architecture’ (2012) 23(2) *Marketing Letters* 487-504 at page 491.

²⁷¹ Craig Smith, Daniel Goldstein, and Eric Johnson ‘Choice without Awareness: Ethical and Policy Implications of Defaults’ (2013) 32(2) *Journal of Public Policy and Marketing* 159-172.

²⁷² Karthik Tennankore, Scott Kalrenbach, and Aviva Goldberg ‘Perspectives on Opt-Out Versus Opt-In Legislation for Deceased Organ Donation: An Opinion Piece’ (2021) 8(1) *Canadian Journal of Kidney Health and Disease* 1-6 at page 4.

²⁷³ Chanthika Pornpitakpan ‘The persuasiveness of source credibility: A critical review of five decades’ evidence’ (2004) 34(2) *Journal of Applied Social Psychology* 243-281.

²⁷⁴ Shelly Chaiken ‘Communicator physical attractiveness and persuasion’ (1979) 37(8) *Journal of Personality and Social Psychology* 1387-1397.

²⁷⁵ Paul Dolan *et al* op cit note 231 at page 266.

²⁷⁶ Herbert Simons, Nancy Berkowitz, and John Moyer ‘Similarity, credibility, and attitude change: A review and a theory’ (1970) 73(1) *Psychological Bulletin* 1-16.

²⁷⁷ Shelly Chaiken op cit at note 274.

²⁷⁸ Richard Yalch and Rebecca Elmore-Yalch ‘The effect of numbers on the route to persuasion’ (1984) 11(1) *Journal of Consumer Research* 522-527; Richard Petty, John Cacioppo, and David Schumann ‘Central and peripheral routes to advertising effectiveness: The moderating role of involvement’ (1983) 10(2) *Journal of Consumer Research* 135-146;

effects on attitudes towards the advocated position,²⁷⁹ the evidence on the effect of trustworthiness is mixed.²⁸⁰

Studies by both the American Psychological Association²⁸¹ and the Department for Food and Rural Affairs²⁸² find that distrust in government and industry plays a significant role in preventing action to combat behavioural change. MacGregor *et al*²⁸³ found that when conveyed by government and industry experts, the messages are likely to be considered to be untrustworthy. One UK Department of Health Programme (“Five a Day”) aimed to increase the intake of consumers’ fruit of vegetables. Instead, vegetable consumption over 5 years decreased.²⁸⁴ In contrast, a campaign using British comedians as the face had success in encouraging people to sign-up to a programme to quit smoking, and 65% of participants successfully quit smoking for a period of at least 28 days.²⁸⁵

3.6 Conclusion

In the context of the economics of choice, the consistent “irrational” behaviours of individuals have been considered. While some of these behaviours have been considered in the context of tax administration and tax compliance, few of them have been applied in the context of tax morale. By providing an overview of the framework of human behaviour, the possible behavioural mechanisms through which tax morale could be improved are elucidated.

Chapter four seeks to determine which features of the South African tax system influence tax morale. Accordingly, chapter four examines the landscape within which this study is undertaken. More

Kim Giffin ‘The contribution of studies of source credibility to a theory of interpersonal trust in the communication process’ (1967) 68(2) *Psychological Bulletin* 104–119.

²⁷⁹ See, for example, Thomas Webb and Paschal Sheeran ‘Does changing Behavioural intentions engender behaviour change? A meta-analysis of the experimental evidence’ (2006) 132(2) *Psychological Bulletin* 249–268.

²⁸⁰ For evidence that a trustworthy messenger is more influential than an untrustworthy messenger, see, for example, Elliot McGinnies and Charles Ward ‘Better liked than right: Trustworthiness and expertise as factors in credibility’ (1980) 6(3) *Personality and Social Psychology Bulletin* 467–472. For evidence that perceived trustworthiness is not effective, see, for example, Carl Hovland and Walter Weiss ‘The influence of source credibility on communication effectiveness’ (1951) 15(4) *Public Opinion Quarterly* 635–650.

²⁸¹ American Psychological Association ‘Psychology and Global Climate Change: Addressing a Multifaceted Phenomenon and Set of Challenges’ (2010) at page 65.

²⁸² Department for Food and Rural Affairs ‘A Framework for Pro-Environmental Behaviours’ (2008) at page 35.

²⁸³ Donald MacGregor *et al* ‘Perceived risks of radioactive waste transport through Oregon’ (1994) 14(1) *Risk Analysis* 5–14 at page 9.

²⁸⁴ UK Department of Health ‘5 A Day General Information’ (2010).

²⁸⁵ UK Department of Health and Social Care ‘Less Smoking, More Joking: Stoptober Campaign Launched’ (2014).

specifically, it briefly traces the development of personal income taxation in South Africa since its introduction alongside the development of the organisation which is responsible for the administration and collection of taxes generally, and it provides a succinct overview of the overarching tax administration legislative framework.

4. CHAPTER FOUR: THE DYNAMICS OF THE SOUTH AFRICAN TAX SYSTEM

'The past is never dead. It's not even past.' - William Faulkner, Requiem for a Nun

We cannot possibly begin to understand the state of taxation in our country without an understanding of where it started and how it has changed over the years. Similarly, tax morale is ever-changing. It will need to be understood with reference to recent economic, social, and political events. The last decade in South Africa has been rife with political scandals. This study considers those that most closely relate to taxation within South Africa. Further, it only examines these events to the extent that it may influence tax morale.

4.1 History of Income Taxation in South Africa

In South Africa, income taxes have been levied since 1914. At the time, South Africa had a very high cost of living in comparison to other members of the British Commonwealth.²⁸⁶ Proposing and promoting “new forms of taxation”, General Jan Smuts, who was the Minister of Finance and Defence at the time, felt that South Africa’s tax base would be able to absorb new forms of direct tax. General Smuts went further:

*'There is no doubt in abstract argument there is the very strongest case to be made out in favour of an income tax, but the difficulty that is experienced is in relation to administration. It is a more difficult tax to administer, you pry more closely into the concerns of the people, you make returns, and very often you tempt people to say what is not true.'*²⁸⁷ (emphasis added)

In other words, while Smuts recognised the value of implementing a direct income tax, it was recognised that this would elicit the temptation for taxpayers to ‘say what is not true’ leading to some level of non-compliance.

²⁸⁶ Johann Hattingh ‘On the Introduction of Income Tax in South Africa by Genl. JC Smuts: Three Eventful Months (24 April 1914 to 20 July 1914)’ in Johann Hattingh, Jennifer Roeleveld, and Craig West (eds.) *Income Tax in South Africa – The First 100 years* (2016) Juta & Co 54-76 at page 59.

²⁸⁷ Union of South Africa *House of Assembly, 1914* (1914) Cape Town Government Printer at pages 1936–1937.

Since its original introduction, South Africa's tax policy has undergone numerous amendments prompted by the various committees and commissions that have been appointed to review tax policy. This includes the Committee of Enquiry into the Income Tax Act (colloquially known as the Steyn Committee) of 1949, the Commission of Inquiry into Fiscal and Monetary Policy in South Africa (colloquially known as the Franzen Commission) of 1967, and the Commission of Inquiry into the Tax Structure of the Republic of South Africa (colloquially known as the Margo Commission) of 1984.²⁸⁸

After the establishment of multi-racial democracy and the April 1994 election of the ANC government, in June of the same year, the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa (colloquially known as the Katz Commission) was appointed. It was mandated to investigate almost every aspect of the South African tax regime which had been inherited from the previous government with a specific focus on the political, social, and economic goals of the incumbent government.²⁸⁹ This included a review of personal income tax and the relevant tax base, tax thresholds, and tax rates. For the purpose of this dissertation, the most important consequence of this Commission was that the South African Revenue Service (**SARS**) was created in terms of the South African Revenue Service Act 34 of 1997 (the **SARS Act**). This was a restructure of the Inland Revenue and Customs and Excise Directorates in the Department of Finance (which is now National Treasury), creating an autonomous revenue collecting service.²⁹⁰ As a result, SARS would have the capability to collect national taxes²⁹¹ and adopt efficiency-enhancing organisational structures and incentives.²⁹² It also increased the capacity for audits, investigations, and prosecution,²⁹³ which significantly reduced the tax gap.²⁹⁴

Pravin Gordhan was the Commissioner of SARS from 1999 to 2009. Renwick, in his book *How To Steal A Country: State Capture and Hopes for the Future in South Africa* wrote that '[d]uring

²⁸⁸ Tony Norton 'MARGO: Oasis or Mirage?' (1987) 5(1) *Indicator SA* 29–31 at page 30.

²⁸⁹ Trevor Manual 'The South African Tax Reform Experience Since 1994 Address' 24 October 2002 at page 3.

²⁹⁰ In terms of section 2 of the SARS Act, while SARS is an '*organ of state within the public administration*', it remains '*an institution outside the public service*'. Public administration is regulated by, *inter alia*, Chapter 10 of the Constitution. Public service is regulated by, *inter alia*, section 197 of the Constitution and the Public Service Act (Proclamation 103 of Government Gazette 15791).

²⁹¹ Section 2 read with section 3 of the SARS Act.

²⁹² Trevor Manual op cit note 289 at page 3.

²⁹³ Ibid at page 4.

²⁹⁴ Ibid at page 3.

*[Gordhan's] tenure, SARS was "one of the best run and most respected agencies of the South African government, with a reputation for integrity and efficiency, and tax receipts improved impressively."*²⁹⁵ SARS was considered to be world class.²⁹⁶ It was found that, in 15 out of 27 indicators, SARS conformed to good international practice and in 11 indicators, SARS ranked only one rung below good international practice.²⁹⁷ Further, SARS consistently surpassed tax collection targets.²⁹⁸ The model that SARS was operating under was based on one formulated by Mr. Gordhan and his team. The focus of the operational model was on education and service first, and enforcement after. SARS was thus structured to meet that objective. The structural integrity of SARS was a large contributor to its efficiency.

After Gordhan, George "Oupa" Magashula was appointed as Commissioner.²⁹⁹ In 2013, Pravin Gordhan, who was the then Minister of Finance at that time, appointed an internal fact-finding committee into the allegations of improper conduct of the conduct of the SARS Commissioner, Mr. Oupa Magashula (**Inquiry into Mr. Oupa Magashula**).³⁰⁰ The Inquiry into Mr. Oupa Magashula was to investigate whether there was any breach of SARS processes or good governance and advise on appropriate remedies. In the Inquiry into Mr. Oupa Magashula, the committee found that the Commissioner had placed the reputation and credibility of SARS at risk by his conduct (specifically, having inappropriate conversations with a potential employee).

In its report, the committee noted the importance of the credibility of SARS. In this regard, it aptly noted that

'[t]here is no doubt that if this important institution loses credibility or is brought into disrepute, consequent upon the conduct of its employees, that conduct would have a direct effect on whether taxpayers will be honest in the

²⁹⁵ Robin Renwick *How to steal a country: State Capture and Hopes for the future in South Africa* (2018) Jacana Media at page 39.

²⁹⁶ The International Monetary Fund reviewed SARS in 2014, benchmarked against its Tax Administration Diagnostic Tool.

²⁹⁷ Commission of Inquiry into Tax Administration and Governance by SARS 'Final Report' (2018) at page 21, paragraph 3.

²⁹⁸ SARS 'Annual report 2003' (2003) at page 10.

²⁹⁹ SARS 'Appointment of a new Commissioner for the South African Revenue Service' 30 July 2009.

³⁰⁰ Zak Yacoob and Muzi Sikhakhane 'Report on: Fact Finding Inquiry into the Alleged Improper Conduct of the Commissioner of the South African Revenue Service (SARS) Mr. Oupa Magashula: Requested by Minister of Finance' (2013) at page 2.

*determination of the amount of money they owe to the country. It is not far-fetched to say that the kind of conduct we are talking about here, if pardoned or remains unchecked, could result in considerable loss of revenue. This loss could have a serious impact on the ability on the government of this country to deliver services to bring about reconstruction and to address the inequities of the past. In addition, if this conduct is taken lightly, other senior officials of SARS might begin to think that they too can behave in the same way with relative impunity. The more senior the official involved the more serious the potential consequences.*³⁰¹ (emphasis added)

Following the release of the report, Mr. Magashula resigned as the Commissioner and Ivan Pillay was appointed as acting Commissioner.

Also in 2013, the Tax Review Committee was created (the **Davis Tax Committee**). Since the previous commission was appointed in 1994, much had changed from an economic standpoint. The pace of globalisation, the 2008/9 economic recession, persistent unemployment, poverty and inequality all contributed to the need to review the tax system in order to create a framework that could address these challenges.³⁰² One of the considerations of the Davis Tax Committee, per the additional terms of reference that the Commission received, was ‘*whether the government and accountability model for SARS ... [is] appropriate for South Africa in 2016*’³⁰³

The Davis Tax Committee’s report on tax administration³⁰⁴ dealt with ‘*specific issues relating to the administration of tax in South Africa and accordingly its implications for the structure, operation and practice of the South African Revenue Service (SARS). Not only is the optimum level of efficiency and accountability in all SARS operations vital to the maximization of tax collection but, failure to achieve optimum performance, affects the State’s ability to capacitate millions of poor people.*’³⁰⁵

³⁰¹ Ibid at page 28.

³⁰² Ministry of Finance, Republic of South Africa ‘Terms of Reference for the South African Tax Review Committee’ (2013) at page 4, paragraph 4.

³⁰³ Commission of Inquiry into Tax Administration and Governance by SARS op cit note 297 at page 178, paragraph 17.

³⁰⁴ The Davis Tax Committee ‘Report on Tax Administration for the Minister of Finance’ (2017).

³⁰⁵ Ibid at page 4, paragraph 2.

The report further dealt with ‘*the protection which must be afforded to taxpayers; that is the balancing of the powers and rights of SARS against those of taxpayers. [It] deals with an issue of growing concern to many tax jurisdictions, namely the need to include, within the relevant legislative framework, a taxpayers’ Bill of Rights and the further extent to whether the existing institution designed to protect taxpayers, namely the office of the Tax Ombud has sufficient powers and resources to meet the objectives which have been set for the office.*’³⁰⁶

Here, the report noted various factors that illustrate the importance of the administration in promoting tax morale. In particular, ‘*[e]ffective scrutineering functions have to be appropriately structured and resourced otherwise they cannot fulfil public expectations of holding to account large and well-resourced revenue authorities.*’³⁰⁷

The report concludes with a number of recommendations, including extending the Tax Ombud’s functions and powers to include acting as a mediator in a tax alternative dispute resolution mechanism, and the ability to adjudicate disputes brought before the Tax Ombud subject to the usual review and appeal process by the courts, staffing the office of the Tax Ombud with qualified tax technical analysts, the standardisation of processes within the Office of the Tax Ombud, requiring SARS to submit a report to Parliament in relation to actions recommended by the Tax Ombud, granting the Tax Ombud with power to provide relief to taxpayers placed under hardship due to SARS’ tax administration, and finally, providing taxpayers with legal representation against SARS (subject to financial constraints).³⁰⁸ Regrettably, most of these changes have not been implemented.

While there may have been room for improvement, for the period from 1999 to 2009, SARS was a highly respected institution (locally and globally) and it was known for both its efficiency and impressive service delivery.³⁰⁹ Unfortunately, this did not last.

In May 2018, the Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service (the **Nugent Commission**) was constituted with Judge Robert Nugent

³⁰⁶ Ibid at page 5, paragraph 5.

³⁰⁷ Ibid at page 79, paragraph 2.

³⁰⁸ Ibid at page 79, paragraphs 1-2.

³⁰⁹ Johann Van Loggerenberg and Adrian Lackay *Rogue: The Inside Story of Sars’s Elite Crime-Busting Unit* (2016) Jonathan Ball Publishers at pages 10 – 17.

appointed as Commissioner. The terms of reference of the Nugent Commission³¹⁰ noted several important considerations:

‘taxation forms a crucial basis for a democratic government’;

‘the significant revenue shortfalls ... are identified as key fiscal risks’;

‘the public must have confidence that SARS is managed to the highest standard of ethics, integrity and efficiency’;

‘certain practices in the tax system have undermined taxpayer morality and confidence’;

‘administrative provisions relating to revenue collection must be transparent, applied fairly and applied without fear or favour’;

‘corrective measures need to be implemented to maintain taxpayer morality and confidence’; and

‘deterioration in revenue collection, transparency of, and fairness in tax administration present a threat to fiscal sustainability, service delivery to the public and the continued deepening of our democratic gains’.

It is clear from these terms that the perception of tax administration has a substantial effect on tax morale, and that poor administration has a detrimental impact on the fiscal sustainability.

The Nugent Commission Report outlined the impact of Mr. Thomas Moyane’s appointment as SARS Commissioner in 2014 and the events during his tenure. According to the Nugent Commission, Moyane worked with Bain and Co. (**Bain**) to review and restructure SARS to suit its imperatives.³¹¹ In terms of a contract awarded to Bain to undertake this review and restructure of SARS, according

³¹⁰ Published in Government Notice 17 of Government Gazette 41652.

³¹¹ Commission of Inquiry into Tax Administration and Governance by SARS op cit note 297 at page 51, paragraph 4.

to the Nugent report, a number of significant changes were made, fragmenting many functions that had previously operated cohesively.³¹² Five of the key transformations are discussed below.

First, the fragmentation of the Compliance Division. The Compliance Division had developed a dedicated tool for the measurement and monitoring of tax compliance that was used to formulate strategies targeted at areas of non-compliance.³¹³ This tool was internationally renowned having been recognised by the IMF. The restructure disbanded the compliance research unit which in turn extinguished the ability of the division to determine areas of non-compliance and develop the requisite strategies to address the non-compliance.³¹⁴

Second, the restructuring of the legal and enforcement unit. SARS had a High Court Litigation Unit that could work swiftly. Units were splintered and no clear reporting lines were established.³¹⁵

Third, the hamstringing of the Information Technology Division. This division drove the modernisation programme by creating the capacity to apply technology and systems which enabled SARS to '*implement a business model that incorporates sophisticated risk management and the promotion of voluntary tax and customs compliance*'.³¹⁶ Through the modernisation programme, the Information Technology division aimed to improve performance in three key areas, namely service, enforcement and compliance, and cost efficiency.³¹⁷ This programme was completely halted by Mr. Moyane and a moratorium was placed on modernisation updates.³¹⁸ After the modernisation programme ceased, the division struggled to both recruit and retain the skilled professionals required to fulfil its mandate.³¹⁹

Fourth, the resignation of a number of the most senior employees at SARS, including various Chief Officers. During Moyane's tenure, many skilled employees resigned, were displaced, or were

³¹² Ibid at page 53, paragraph 12.

³¹³ Ibid at page 54, paragraph 14.

³¹⁴ Ibid at page 54, paragraph 14.

³¹⁵ Ibid at page 55, paragraph 16.

³¹⁶ Ibid at page 62, paragraph 6.

³¹⁷ Ibid at page 62, paragraph 6.

³¹⁸ Ibid at page 63, paragraph 9.

³¹⁹ Ibid at page 63, paragraph 9.

appointed to supernumerary posts. Two key outcomes of this were the loss of management, which broke down governance, and the loss of institutional knowledge.³²⁰

Fifth, the Anti-Corruption and Security Unit was disbanded. The unit, prior to the restructure, aimed to combat corruption within SARS. In 2010, the Department of Public Service and Administration rated it as the best anticorruption unit of 85 government departments.³²¹ After the unit was disbanded, a new unit, Fraud Investigations, was created. Instead of dealing with syndicates and collusion within SARS, it was relegated to merely investigating incidents of minor fraud, such as forged medical notes.³²²

Ultimately, the restructure impacted not only efficiency, but also governance. For effective governance, there should be oversight over the entire collection process. The various restructures within SARS removed the oversight and, consequently, the requisite checks and balances no longer existed. The Nugent Commission concluded that *‘the catastrophe at SARS is attributable to a massive failure of elementary principles of governance coupled with pervasive breaches of integrity.’*³²³ It noted the devastating impact that it had on revenue collection. More importantly, it noted the material impact it would have on tax morality.³²⁴

4.2 Overview of the Current Tax Administration System

The main pieces of legislation that govern personal income tax in South Africa are the Tax Administration Act 28 of 2011 (the **TAA**) and the Income Tax Act 58 of 1962 (the **Income Tax Act**).

The TAA came into effect on 1 October 2012. One of the key objectives of the TAA is to provide for the effective and efficient collection of tax. It aimed to this by, *inter alia*, *‘[providing] for the alignment of the administration provisions of tax Acts and the consolidation of the provisions into one piece of legislation to the extent practically possible.’*³²⁵ Previously, each tax Act provided for its

³²⁰ Loggerenberg and Lackay wrote that *‘[t]he institute was haemorrhaging. Within less than six months after Moyane’s appointment, the storm we had anticipated in March 2014 turned into a howling hurricane.’* See Loggerenberg and Lackay op cit note 309.

³²¹ Commission of Inquiry into Tax Administration and Governance by SARS op cit note 297 at page 110, paragraph 1.

³²² Ibid at page 111, paragraph 3.

³²³ Ibid at page 169, paragraph 1.

³²⁴ Ibid at page 169, paragraph 2.

³²⁵ Preamble to the TAA.

own procedures, obligations, and remedies, which had the resultant effect of duplication, confusion in interpretation, and more convoluted disputes. The consolidation and alignment of these processes and remedies significantly streamlined and simplified the administration of tax.

A guide to the TAA (the **Short Guide**) was issued in order to clarify the obligations and entitlements of taxpayers under the TAA.³²⁶ This was an important first step in the compliance process with reference to the fact that there is a positive relationship between taxpayer compliance and the clarity of taxpayers' rights and obligations. The Short Guide provides that the TAA seeks to simply administrative provisions. This is because it recognises that *'[i]t is an established principle that simplified law enhances clarity. It is easier for a taxpayer to fully comply with law he or she understands, than with law that is too technical and therefore difficult to understand and comply with.'*³²⁷ It further acknowledges taxpayers are more likely to voluntarily comply with their obligations if they believe the tax system to be fair and equitable.³²⁸

4.3 Conclusion

Having considered the history of income taxation in South Africa with particular reference to the various tax Commissions and their subsequent reports, the impact of taxpayer morality and confidence are being increasingly recognised as important components of a strong tax system. Similarly, the importance of perception (especially in respect of equity and fairness) is echoed in the legislative framework. It is further recognised that the tax system in its current form requires corrective measures to improve both morality and confidence. While some steps have been taken in this regard, such as the Inquiry into Mr. Oupa Magashula undertaken to investigate the impact of conduct on the reputation and credibility of SARS and the appropriate remedies, it could be argued (as the Davis Tax Committee and Nugent Commission did) that more should be done to promote tax morale.

³²⁶ SARS 'Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)' 29 March 2018 at page 4.

³²⁷ Ibid at page 4.

³²⁸ Ibid at page 4.

With reference to the fact that this study aims to determine which features of the South African tax system influences tax morale, chapter five outlines the research design and the methodology that will be employed in this study.

5. CHAPTER FIVE: RESEARCH DESIGN AND METHODOLOGY

5.1 *Research Design*

This study uses a mixed method research design in that it combines both qualitative and quantitative research approaches. In this case, a sequential explanatory design³²⁹ is used as the qualitative analysis will build on the initial results of the quantitative results. However, unlike a typical sequential explanatory design, the first stage is not weighted more than the second stage. In fact, in this case, the qualitative data is of more significance.

In the first, quantitative, stage, survey data is analysed to determine the relative importance of determinants of tax compliance. In the second, qualitative, stage, the research is based on a literature review of various sources, including the applicable provisions of the 1996 Constitution,³³⁰ the relevant domestic legislation and case law, relevant international jurisprudence, legislation, policy, and guidelines, as well as scholarly writing, publications, and research on relevant areas of tax administration, public law, and behavioural economics.

5.2 *Data Description*

This study uses attitude and perception data from an Afrobarometer survey (the Quality of Democracy and Governance in South Africa Round 7, 2018) compiled by Plus 94 Research to analyse tax compliance through an analysis of tax morale. To be clear, the survey was developed and carried out by Afrobarometer; this dissertation uses the data compiled from that survey.

Afrobarometer uses a clustered, stratified, multi-stage, probability sample design.³³¹ In round 7, a nationally representative sample of 1829 South African citizens³³² older than 18 years old were selected and interviewed in a face-to-face interview in a language of the respondent's choice (of eight official languages³³³) between July and September 2018. The 2011 Population and Housing Census

³²⁹ John Creswell and Vicki Plano-Clark *Designing and Conducting Mixed Methods Research* (2007) Sage Publications Ltd at page 211.

³³⁰ Constitution of the Republic of South Africa 1996.

³³¹ Afrobarometer 'Data Codebook for a Round 7 Afrobarometer Survey in South Africa' (2018) at page 2.

³³² This excludes individuals that live in institutionalised settings (for example, students in dormitories, persons in prisons, police or military barracks, hospitals or nursing homes, or quarantined areas).

³³³ The survey languages are Afrikaans, English, Sepedi, Sesotho, Setswana, Tshivenda, IsiXhosa, and IsiZulu.

frame, from Statistics South Africa, was used to select individual primary sampling units. The clusters contained eight households in each primary sampling unit. The data has also been weighted to account for selection probabilities. Importantly, the sample is representative of the entire country rather than representative of personal income taxpayers. The scope of this dissertation does not extend to carrying out a survey, but it would be recommended that a study of this nature be carried out again but limited to a representative sample of personal income taxpayers as this may provide better insight into the tax morale of personal income taxpayers.

5.3 *Econometric Design*

While some studies evaluating determinants of tax morale employ ordered logits,³³⁴ the majority of studies use ordered probits.³³⁵ As such, ordered probits will be used in this study. In interpreting this model, the coefficients will be indicative of the sign of the effect of a variable on tax morale and the marginal effects will be indicative of the quantitative effect of a variable on tax morale. The marginal effects indicate the probability of a taxpayer belonging to a particular tax morality category when an independent variable increases by a single unit.

To measure tax morale, the response to the following question will be used:

For each of these, please tell me whether you, personally, have done any of these things during the past year. If not, would you do this if you had the chance?

This question was ranked on a scale from 0 to 4, where 0 represents that someone had never (and would never) refuse to pay a tax, and 4 represents someone having refused to pay taxes often. For the purpose of simplifying the interpretation, the scale is inverted (in other words, it is inverted so that 4 represents never having refused to pay taxes and 0 represents having refused to pay taxes often).

³³⁴ See, for example, Predrag Bejaković and Slavko Bezeredi ‘Determinants of Tax Morale in Croatia: An Ordered Logit Model’ (2019) 10(2) *Business Systems Research* 37-48, and Ignacio Lago-Peñas and Santiago Lago-Peñas op cit note 58.

³³⁵ See, for example, James Alm and Benno Torgler ‘Estimating the Determinants of Tax Morale’ (2004) presented at National Tax Association 97th Annual Conference on Taxation (United States); MirHadi Kondelaji *et al* ‘Analyzing Determinants of Tax Morale Based on Social Psychology Theory: Case Study of Iran’ (2016) 20(4) *Iranian Economic Review* 579-595; Cevat Bilgin ‘An Empirical Analysis of Tax Morale in Bosnia-Herzegovina’ (2016) 5(9) *Balkan Journal of Social Sciences* 166-183; Cevat Bilgin op cit note 62.

Accordingly, the model is interpreted so that an increase in the dependent variable reflects an increase in tax morale. All individuals that responded “don’t know” to the question and individuals who did not respond to the question at all were dropped from the sample.

To capture the factors that correlate with tax morale, the following ordered probit model is econometric model is estimated:

$$Prob(TM_i) = \beta_0 + \beta_1 DEM + \beta_2 CORRUPT + \beta_3 FISCEX + \beta_4 FAIR + \beta_5 GOVT + \beta_6 TRUST + \beta_7 INFO + u$$

TM_i measures the level of tax morale. The vector DEM denotes the respondent’s demographic characteristics³³⁶ (including age,³³⁷ gender,³³⁸ economic conditions³³⁹ education level, race, employment status, and geographical location). The vector $CORRUPT$ provides a measure of perceived corruption and how it is perceived to have changed over time. The vector $FISCEX$ denotes the respondent’s perception of fiscal exchange. The vector $FAIR$ measures whether “ordinary” taxpayers are treated in the same way as “rich” taxpayers (in other words, retributive fairness). The variable $GOVT$ is a vector relating to governmental factors. The vector $TRUST$ denotes the respondent’s trust in various institutions. The vector $INFO$ denotes the respondent’s access to information.

Given the limited information available in the dataset, this study does not control for social or personal norms. Ideally, this study should be carried out again with a survey questionnaire designed specifically for this purpose in order to capture all of the relevant information.

A number of changes have been made in terms of how the demographic variables are coded. Age was originally coded as a continuous variable from 18 – 99. However, it has been recoded having grouped

³³⁶ While some studies have found that marital status may influence tax morale, this information was not available in the Afrobarometer survey and thus has been excluded from this study.

³³⁷ Many studies on this topic utilise classes of ages rather than age as a continuous variable. See Benno Torgler op cit note 143 at page 52.

³³⁸ A dummy variable has been used with male being the reference category (having due regard to the fact that males have been found to have a lower tax morale).

³³⁹ Afrobarometer does not include any information on respondents’ income or wealth in general. Accordingly, the following questions were used as a proxy for wealth (as a measure of socio-economics status): ‘In general, how would you describe your own present living conditions?’ and ‘In general, how do you rate your living conditions compared to those of other South Africans?’

individuals into one of three age categories, being 18-34, 35-60, and 60 and above. This is because it will provide a more meaningful interpretation to consider an age-group rather than single-year changes in age. The education variable captured by the survey is quite comprehensive but has been simplified significantly to reflect only the completion of primary education, secondary education, or tertiary education. Since the survey is conducted in numerous countries across Africa, it reflects a variety of racial categories that are not relevant in the South African context. The race variable has been recoded to reflect the racial categories that are used in the South African census. The employment variable measures whether the respondent has a job that pays a cash income, and if so, whether it is full-time or part-time. This has been recoded so as not to distinguish between unemployed respondents who are searching for a job and those who are not. Geographical location indicates the respondent's province of residence.

A number of variables are used to measure corruption and perceptions of corruption.³⁴⁰ A single additive index was created using responses to questions about how corrupt the respondent believes various institutions to be. Responses to the questions on how the level of corruption in South Africa has changed over the past year are also included.

A number of variables are used to measure perceptions of fiscal exchange.³⁴¹ This includes responses to questions on whether taxpayers have had contact with public services, an additive index measuring how well or badly the government is handling certain issues including the improvement of basic services, addressing educational needs, providing water and sanitation services, and providing a reliably supply of electricity. These responses are used to measure the effectiveness of government.

As a measure of fairness and inequality, an index is created based on responses to questions about whether people are treated unequally under the law, whether officials who commit crimes go unpunished, and whether ordinary people who break the law go unpunished are also included. As

³⁴⁰ The study had intended to include responses to questions on how often, if ever, respondents had to bribe, gift, or do a favour in order to obtain certain services (including school services, medical care, government documents, government infrastructure, assistance from police or avoiding police-related issues, or assistance from courts) to measure actual corruption, but there was a significant amount of missing data. As such, a decision was taken to exclude these measures.

³⁴¹ The survey contains questions about the ease of obtaining certain services which would have been a good metric for fiscal exchange. However, the pre-requisite for these variables is whether survey participants have utilised those services. In this case, the number of participants who have utilised those services would result in too many observations being dropped. As such, none of the ease of accessing assistance variables have been included.

further measures of fairness, responses to questions about how likely it is that an ordinary person and a rich person could pay a bribe or use personal connections to avoid paying taxes they owe to the government are used.

The vector named governmental factors includes perceptions about democracy. First, whether respondents believe that it is more important that government is held accountable for its actions or whether it is more important that government make decisions quickly. Second, whether respondents believe that it is important for Parliament and the President to justify how taxpayer money is spent. Third, perceptions about how much of a democracy respondents believe South Africa is. Fourth, respondents' satisfaction with how democracy in South Africa works. Fifth, whether it is important to obey the law regardless of who the taxpayer voted for. It also includes perceptions about respect. Specifically, perceptions of how taxpayers are treated by government and state officials.

A number of variables are used to create a single additive index to measure institutional trust. This includes responses to questions on how much the respondent trusts various institutions, including the President, Parliament, the courts of law, SARS, and the Public Protector.

To capture access to information, variables are used to measure measuring how often a respondent gets their news from particular sources, including the radio, television, newspapers, internet, and social media such as Facebook or Twitter. Another variable is used to measure how often the respondent discusses political matters with their friends or family.

5.4 Limitations

The survey is based on self-reported, subjective, questions that in turn leaves the responses subject to bias. There are various types of response biases (or deviations of the reported values from the true values) that are associated with self-reported survey data.

First, socially desirable responding, or the tendency of respondents to, in general, answer surveys in the way they believe they are expected to answer.³⁴² This tends to be guided by the existing *boni*

³⁴² Delroy Paulhus 'Socially Desirable Responding: The Evolution of a Construct' in Henry Braun, Douglas Jackson, and David Wiley (eds.) *The Role of Constructs in Psychological and Educational Measurement* (2002) Routledge 49-69.

mores in the relevant community. This bias is likely to be prominent in this case where the questions pertain to socially undesirable acts (such as tax evasion). In this case, respondents are more likely to answer untruthfully when asked questions about their own tax payment.³⁴³ Another factor impacting this bias is the fact that the interviews are conducted face-to-face. Had the surveys been more anonymous (for example, a survey taken online or telephonically), the respondent would face less “exposure” of their socially undesirable behaviour and may be more inclined to answer truthfully³⁴⁴ than in a face-to-face interview where the respondent may fear judgment by the interviewer. The consequence of this type of bias is that the measure of tax compliance will likely be over-reported.

Second, acquiescence, or the tendency of respondents to agree to statements with no regard to the content of the question.³⁴⁵ This tends to be prominent where questions are ambiguous³⁴⁶ or quite lengthy.³⁴⁷ While, in general, there are ways to minimise the risk of this bias (such as avoiding certain question formats or wording questions in the positive as opposed to in the negative), given that this study uses an already established database, these methods are not feasible in the circumstances.

Third, moderacy response bias and extreme response bias. While the former refers to the tendency to choose “middle of the road” responses (irrespective of the content of the question),³⁴⁸ the latter refers to the tendency to choose the extreme responses (irrespective of the content of the question).³⁴⁹ As above, the extreme response bias (more specifically, extremely positive) is more prominent with face-to-face interviews.³⁵⁰

³⁴³ See, for example, Karyl Kinsey ‘Deterrence and alienation effects of IRS enforcement: An analysis of survey data’ in Joel Slemrod (ed.) *Why people pay taxes: Tax compliance and enforcement* (1991) The University of Michigan Press.

³⁴⁴ Roger Tourangeau, Lance Rips, and Kenneth Rasinski *The psychology of survey response* (2000) Cambridge University Press; Roger Tourangeau and Ting Yan ‘Sensitive questions in surveys’ (2007) 133(5) *Psychological Bulletin* 859-883 at page 864; Peter Preisendörfer and Felix Wolter ‘Who is Telling the Truth? A validation Study on Determinants of Response Behaviour in Surveys’ (2014) 78(1) *The Public Opinion Quarterly* 126-146 at page 130.

³⁴⁵ Jon Krosnick ‘Response strategies for coping with the cognitive demands of attitude measures in surveys’ (1991) 5(3) *Applied Cognitive Psychology* 213-236.

³⁴⁶ Loren McBride and Gary Moran ‘Double agreement as a function of item ambiguity and susceptibility to demand implications of the psychological situation’ (1967) 6(1) *Journal of Personality and Social Psychology* 115-118.

³⁴⁷ D Trott and Douglas Jackson ‘An experimental analysis of acquiescence’ (1967) 2(4) *Journal of Experimental Research in Personality* 278-288.

³⁴⁸ Jon Krosnick and Leandre Fabrigar ‘Designing Rating Scales for Effective Measurement in Surveys’ in Lars Lyberg *et al* (eds.) *Survey Measurement and Process Quality* (1997) John Wiley 141-164.

³⁴⁹ Eric Greenleaf ‘Measuring extreme response style’ (1992) 56(3) *Public Opinion Quarterly* 328-351.

³⁵⁰ Cong Ye, Jenna Fulton, and Roger Tourangeau ‘More positive or more extreme? A meta-analysis of mode differences in response choice’ (2011) 75(2) *Public Opinion Quarterly* 349-365 at page 362.

Fourth, recall bias. In this case, respondents' responses tend to be primed by recent events as opposed to events occurring earlier in time. For example, responses to questions about the state of the nation is more likely to be influenced by current news than the historic trend. Similarly, responses tend to be primed by events which are more psychologically significant than those of less significance. For example, if a particular piece of information makes a respondent very angry, their responses will be more influenced by this than information that the respondent is disinterested in.

Other types of bias may exist, not due to the self-reporting of the survey, but due to the type of respondents. 17% of those contacted by the surveyors refused to answer the survey. If these non-responders were systemically different from the respondents (for example, in behaviour or attitudes), there would likely be a non-response bias. This may impact the ability for the survey to be generalised.

While these are not all of the forms of bias that this study may suffer from, it is among the more prominent forms.

5.5 Conclusion

Chapter five has provided the overview of the design and methodology required to perform the empirical work that forms the basis of the analysis undertaken in chapter six. Accordingly, chapter six critically analyses the data through a discussion of the empirical findings, highlighting common themes and isolating which of the determinants of tax morale identified in chapter two appear to be driving non-compliance in the sample. It proceeds to provide a comparison of South African tax policy and legislative strategies, beyond deterrence strategies, with similar legislation and policies in other jurisdictions.

6. CHAPTER SIX: ANALYSIS

The dissertation thus far has considered the literature as it relates to behavioural economics, tax compliance, and tax morale. Regrettably, this discussion is dominated by international literature. Consequently, there is very little analysis of how these theories and principles may apply in a South African context. However, social issues are generally deeply rooted in structures which cannot be dismantled through simple choice architecture or by using “copy-pasted” approaches. These structures and their surroundings need to be critically evaluated before behavioural solutions can be considered. Social structures often have a complex history and this generally calls for solutions that have a multi-pronged approach. The starting point for determining appropriate interventions is a consideration of the social, cultural, and environmental factors that may otherwise impede interventions. Accordingly, this chapter considers South African data and the relevant social, cultural, and environmental factors that may influence tax morale.

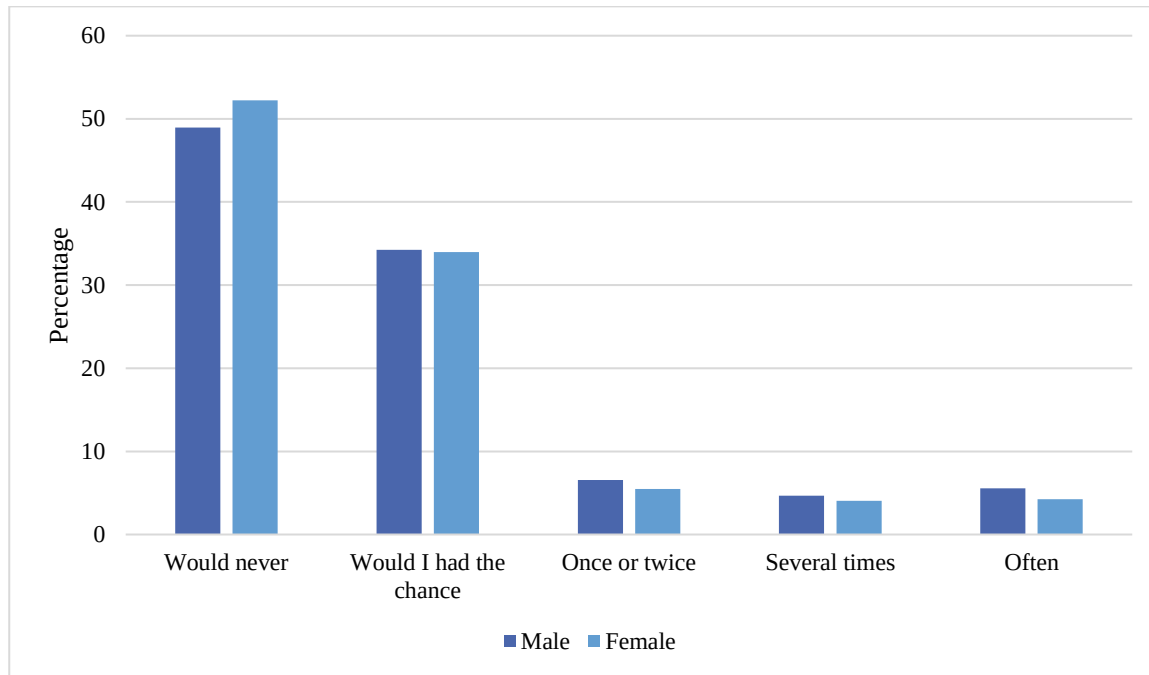
6.1 Tax Culture in South Africa

Demographic Factors

The evidence on the impact of age on tax morale has thus far been conflicting in literature. In this sample, the split between men and women are almost perfectly equal. In **Figure 2** below, although women are less likely to have never, and will never, refuse to pay taxes than their male counterparts,

overall, there is no significant difference in tax morale across gender. As such, it is not expected that gender will be a significant determinant in this study.

Figure 2: Impact of Gender on Tax Morale

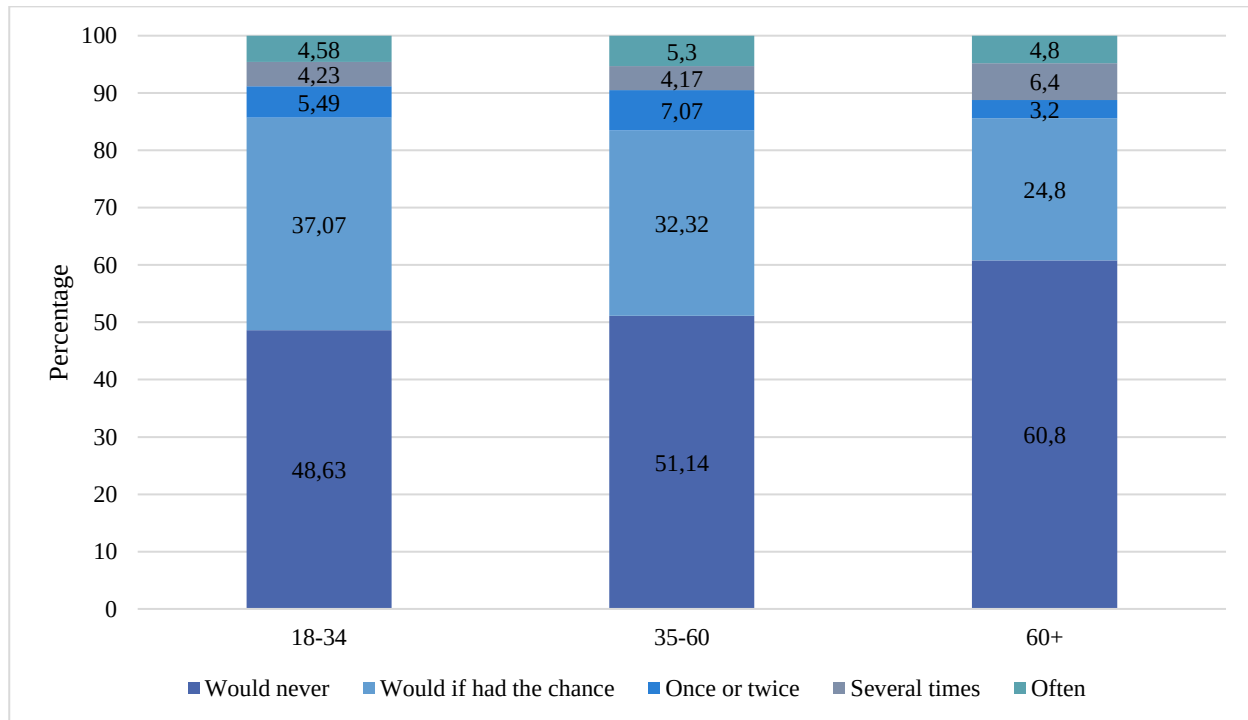


Source: own calculations from Afrobarometer Round 7

The evidence on the impact of age on tax morale has also been conflicting in literature. In this sample, those 18-34 make up 49% of the sample, those 35-60 make up 44% of the sample, and the remainder of the sample is over the age of 60. In **Figure 3** below, while the oldest class of taxpayers (being respondents aged 60 and over) is more likely to not have refused to pay taxes and never would than younger taxpayers, there appears not to be a significant difference between the age groups in respect

of taxpayers who have actually refused to pay their taxes.³⁵¹ As such, it is not expected that age will be a significant determinant in this study.

Figure 3: Impact of Age on Tax Morale



Source: own calculations from Afrobarometer Round 7

As with gender and age, the evidence on the impact of education on tax morale in literature has been mixed. In this sample, 12% of the population have completed no formal schooling³⁵² or have completed some formal schooling but have not completed primary school, 32% of the sample have completed at least a formal primary school education,³⁵³ 37% have completed a formal high school education,³⁵⁴ 12% of the sample have completed a diploma, and 7% of the sample have completed at

³⁵¹ For taxpayers 18-34, 14.3% of these taxpayers have refused to pay a tax. For taxpayers 35-60, 16.54% of these taxpayers have refused to pay a tax. For taxpayers over 60, 14.4% of these taxpayers have refused to pay a tax.

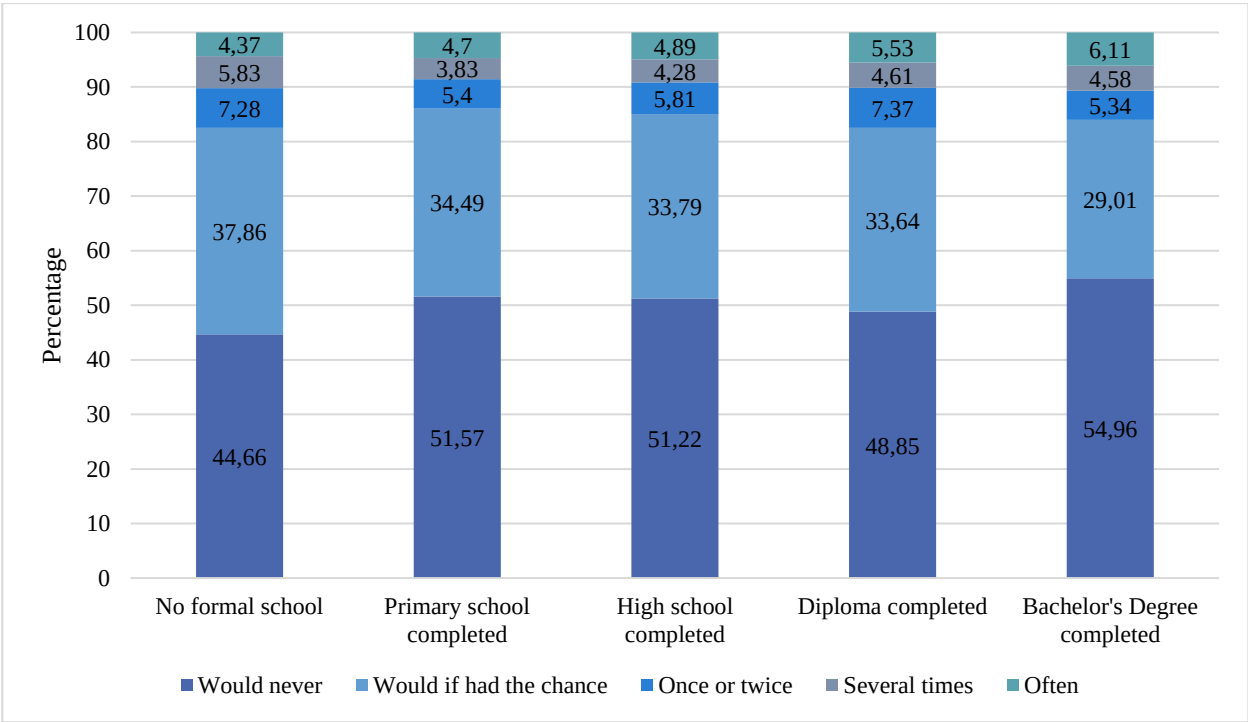
³⁵² This includes both respondents with no education and those with only an informal education.

³⁵³ This would include respondents who have completed some formal high school education but not completed high school. It is only compulsory for children to obtain up to a Grade 9 education in South Africa, which may explain why this number is so high.

³⁵⁴ This would include respondents who have completed some tertiary education but not completed tertiary education.

least a Bachelor’s Degree.³⁵⁵ In **Figure 4** below, although taxpayers who have completed at least a Bachelor’s degree high the highest proportion of taxpayers who have never, and would never, refuse to pay their taxes, it is also the group with the smallest percentage of taxpayers who have never refused to pay taxes but would do so if they got the chance. This is just one of the indicators illustrating that the relationship between tax morale and education is more complex than a simple linear relationship. Simplistically, the groups with the lowest percentage of taxpayers that have refused to pay taxes (albeit, only marginally) are those who have only completed primary school and only completed high school. While it may be of interest to determine the nature of the relationship between tax morale and education in South Africa in further research, overall, it is not expected that level of education will be a significant determinant in this study.

Figure 4: Impact of Education on Tax Morale



Source: own calculations from Afrobarometer Round 7

³⁵⁵ This includes respondents who have completed further education (such as post-graduate degrees).

Corruption

While this study has only outlined corruption in South Africa to the extent that it has applied to SARS (as expressed in the Nugent Commission Report), corruption of all forms (including State Capture) is pervasive in South Africa. While the exact value is difficult to pinpoint, it is estimated that, between 2014 and 2019, South Africa lost R1.5 trillion to corruption in the public sector.³⁵⁶ This translates to approximately R30 billion annually. This number has only continued to grow in the years since. Taxpayers' confidence is, to a large extent, determined by the efficiency and efficacy of government services, whether the revenue is spent appropriately and in an accountable manner, the perceived level of fraud and corruption in the government, and whether government is serious in combating fraud and corruption.³⁵⁷

A new story of corruption emerges every day and South Africans are inundated with the news of mismanaged funds. This ranges from the infuriating (for example, the Department of Human Settlement's Free State officials enriching themselves by occupying these low-income houses for private occasions such as drinking and partying or renting them out for profit³⁵⁸) to the absurd (for example, Eskom's purchase of a R200 000 wooden-handled mop³⁵⁹). This has, understandably, impacted on taxpayers' willingness to pay taxes as it has undermined taxpayers' confidence in the tax system. Taxpayers, rightly so, no longer trust that their taxes are not being used to fund essential services and other social projects, but rather being for the personal gain of a few select individuals.

Corruption occurs within all sectors, and the tax authority is not exempt from this phenomenon. Djumashev³⁶⁰ argues that corruption can create two distortions. First, '*the corrupt tax inspectors conceal tax evasion for the bribes paid by detected tax evaders,*' and second, that '*the corrupt public officials abuse the authority given to them by attaching excessive red tape to the public services they are supposed to provide.*' This causes prejudice to the fiscus as SARS will not collect revenue that it is legally entitled to, but it also reinforces perceptions of unfairness of treatment between taxpayers.

³⁵⁶ Londiwe Buthelezi 'SA lost R1.5 trillion to corruption in five years and continues to bleed' *News24* 23 June 2021.

³⁵⁷ L Wang *A Review of the Determinants of Voluntary Compliance with Tax Laws by South African Taxpayers with Particular Reference to Businesses in South Africa* (unpublished MPhil thesis, University of Pretoria 2010).

³⁵⁸ Staff Writer 'New low for corruption in South Africa as government officials take over low-income houses to drink and party in' *BusinessTech* 26 October 2022.

³⁵⁹ Staff Writer 'Eskom's procurement mess: R200,00 for a wooden-handled mop' *BusinessTech* 1 November 2020.

³⁶⁰ Ratbek Djumashev 'Corruption, Uncertainty and Growth' (2007) MPRA Paper No. 3716 at page 5.

It provides another disincentive for taxpayers who are ordinarily law-abiding to pay their taxes. One example of this (of many) occurred in February 2022 when two SARS employees were arrested on allegations of extortion after the two employees demanded money from a taxpayer in return for reducing or cancelling the taxpayer's debt.³⁶¹ SARS notes that '*[s]ince 2019, 15 individuals including 7 employees have been arrested for some form of collusive and corrupt behavior related to tax and customs administration.*'³⁶²

Of course, corruption is not limited to the public sector and state-owned entities. In recent years, South Africa has seen a number of big corporate scandals, including Steinhoff and McKinsey. This kind of corruption is also significant in the consideration of tax morale as it influences taxpayers' perception of fairness. There is little motivation for individual, law-abiding, taxpayers to pay their taxes if large corporates or high net worth individuals are not paying their share while simultaneously misappropriating taxpayers' money.

Understandably, South Africans are not particularly confident about the levels of corruption within the various South African institutions. **Figure 5** illustrates the average level of perceived corruption within institutions. Participants were asked how many people within a particular institution were involved in corruption. It was ranked on a scale from 0 to 3, where 0 represents a belief that there is no corruption within a particular institution, and 3 represents the belief that all of the officials within particular institution are corrupt. On average, South Africans believe that all of the institutions have between some and most of the people within particular institutions being involved in corruption. There are at least two interesting points to note. First, of the State institutions, the courts (in particular, judges and magistrates) have the lowest average level of perceived corruption. This is a good sign for perceptions of judicial independence and impartiality, noting that the courts are expected to apply the law '*impartially and without fear, favour, or prejudice.*'³⁶³ Second, SARS has one of the lowest average scores. In fact, it has a lower score than the average score for business executives. This is a good step towards institutional trust of tax authorities (although it does not bode well for perceptions

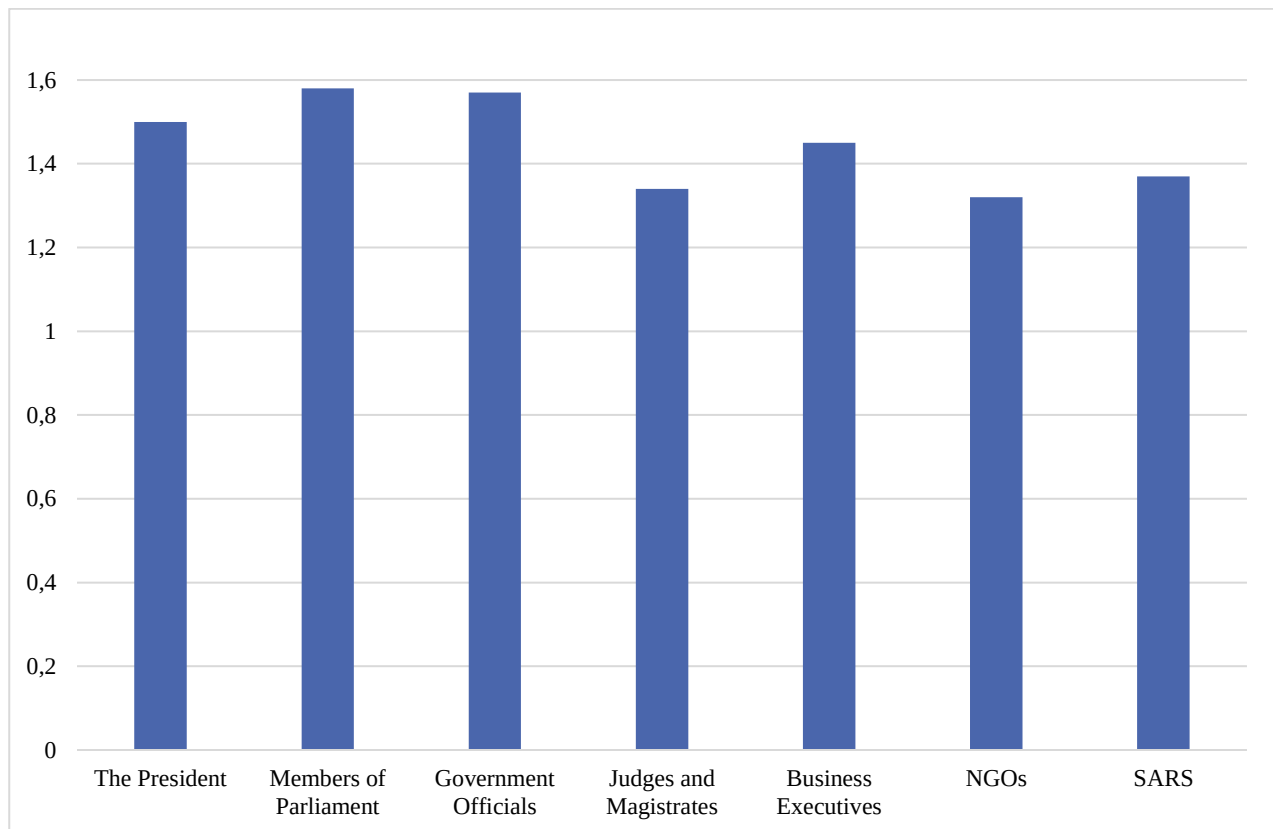
³⁶¹ SARS 'SARS will not tolerate employees who collude with taxpayers' 24 February 2022. For other examples, see SARS 'Arrest of SARS officials for alleged corruption' 14 December 2020; SARS 'Former SARS Customs officer sentenced to an effective six years for corruption' 14 January 2020; Staff Writer 'SARS employee arrested after alleged offer to write off tax debt for R20,000' *Business Insider SA* 7 October 2020.

³⁶² Ibid.

³⁶³ Section 165(2) of the Constitution.

of corruption within the private sector). It should be no surprise that non-governmental organisations have the lowest average score. South Africa has a number of incredible non-governmental organisations, such as Gift of the Givers, which has done exceptional work (in particular, in areas where the government has failed to act adequately).

Figure 5: Perceptions of Corruption of South African Institutions



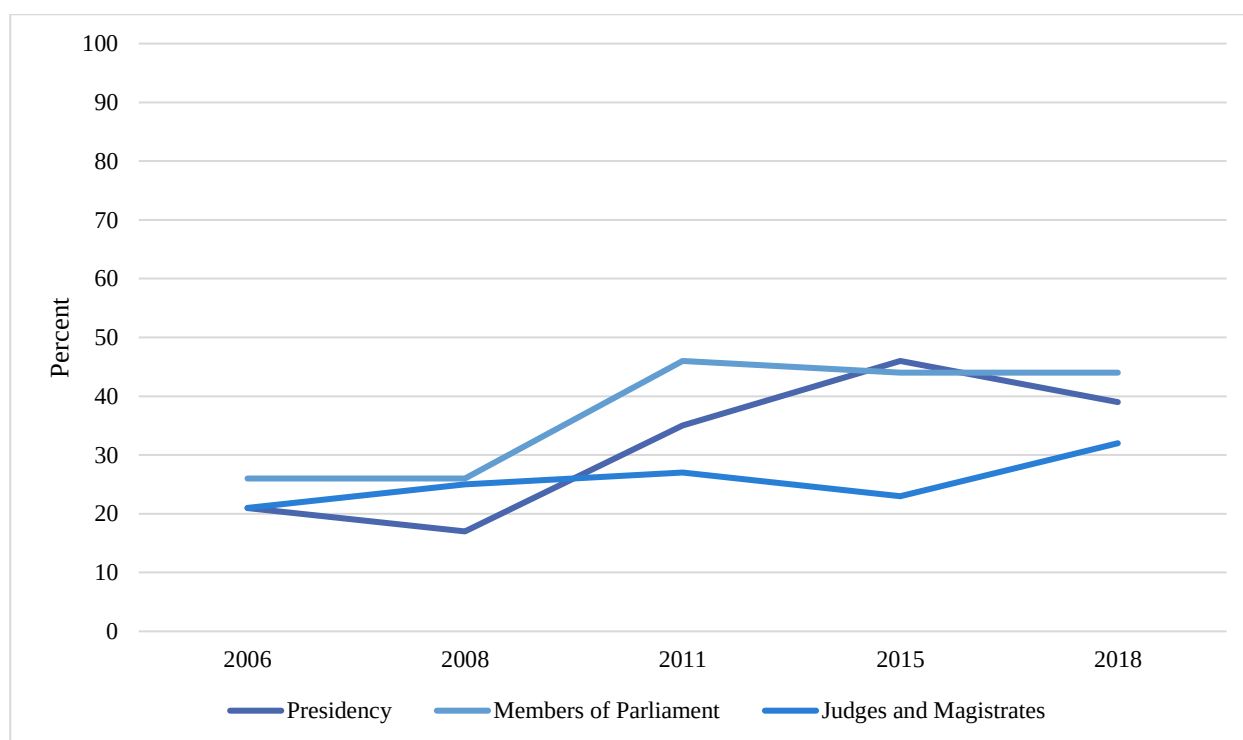
Source: own calculations from Afrobarometer Round 7

Figure 6 illustrates the percentage of people who believe that most or all of the people involved in various institutions are involved in corruption. While some of these institutions are based on specific people (for example, most South Africans would be aware of who the President is at any given time³⁶⁴ and many South Africans would be able to name at least a few members of parliament), most South

³⁶⁴ Specifically, Thabo Mbeki was the president of South Africa from 1999 to 2008, Kgalema Motlanthe took over for an eight-month period from 2008 to 2009, Jacob Zuma was President from 2009 to 2018 and was succeeded by the current President, Cyril Ramaphosa.

Africans would not know specific judges or magistrates and their impression is likely to be based on either anecdotal evidence or what they may have seen in the news. From 2008, both the perceptions of corruption within the Presidency³⁶⁵ and members of parliament³⁶⁶ increased quite steeply (although there was a slight decrease in perceptions of corruption from 2015 to 2018 in the Presidency). This presents a worrying trend and, based on the literature, could be expected to have had a significant depressive impact on tax morale.

Figure 6: Perceptions of Corruption of South African Institutions Over Time (2006-2018)



Source: own calculations from Afrobarometer Rounds 3 - 7

³⁶⁵ There was a 29-percentage point increase in perceived corruption from 2008 to 2015.

³⁶⁶ There was a 20-percentage point increase in perceived corruption from 2008 to 2015.

Reciprocity and Fiscal Exchange

As explained in chapter two, the two key components of fiscal exchange are the provision of services (or access to the provided services) and the quality (or effectiveness) of the provided services.³⁶⁷

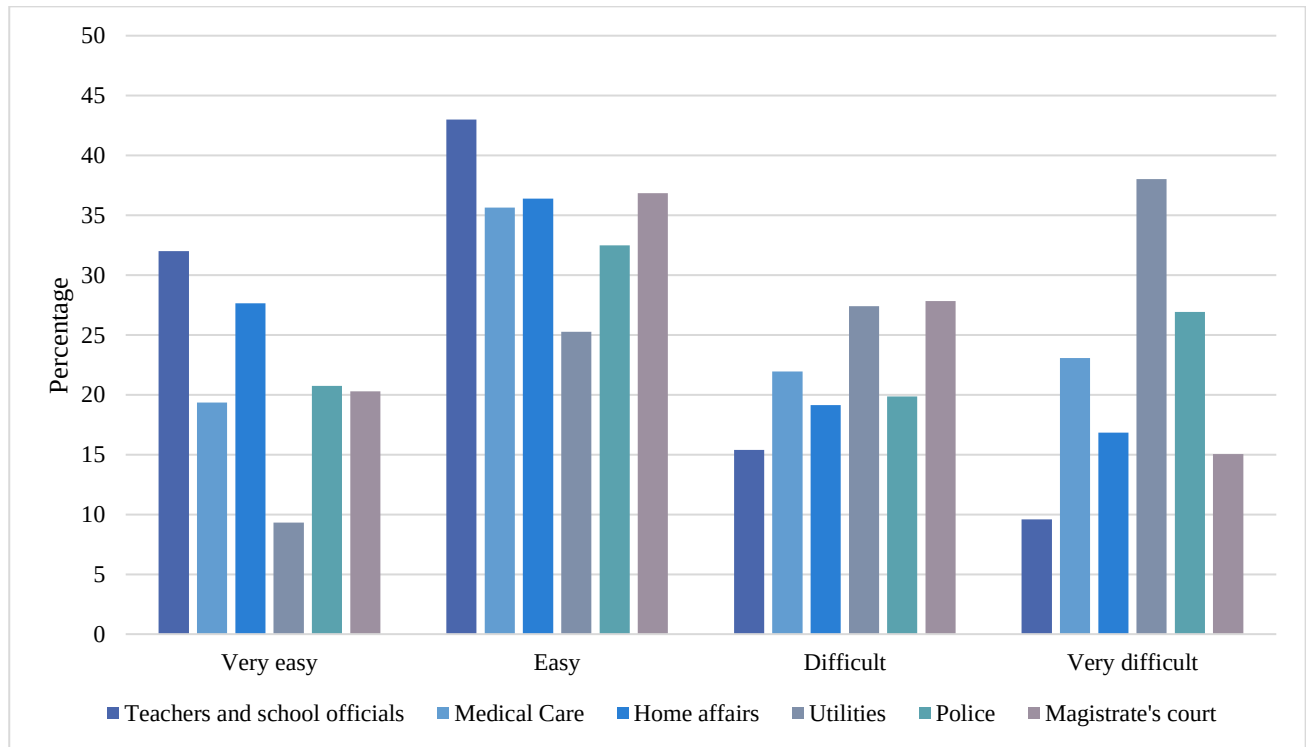
The access to public services in South Africa variable cannot adequately measure fiscal exchange. This is because the quality of many public services is often sub-par and, as such, many taxpayers choose to use privately provided services instead. For example, only 27% of survey participants had had contact with a public school in the preceding 12 months. However, 54% of survey participants had had contact with a public clinic or hospital within the preceding 12 months. Notwithstanding, some services are harder to avoid. For example, while taxpayers could utilise the services of private security companies, they would still require police assistance in certain scenarios.³⁶⁸ Similarly, while taxpayers may utilise borehole water or solar-powered electricity, these often do not suffice for taxpayers to completely move away from using water or electric services provided by the government. With reference to this, it is difficult to measure the provision of, and access to, government services. To the extent that these services have been utilised by South Africans, there are significant differences in the experiences of the ease of obtaining various services. For example, as illustrated **Figure 7**, the average person finds obtaining assistance from the Magistrate's Court quite difficult but obtaining services from teachers or school officials in the public sector is substantially easier. Similarly, about

³⁶⁷ See page 24.

³⁶⁸ Commonly, where theft has occurred, taxpayers may be required to report a crime with the police in order to get a case number if they wish to claim from their private insurers.

half of those who have had contact with a public clinic or school found it relatively easy to obtain the medical care that they needed.

Figure 7: Ease of Accessing Services

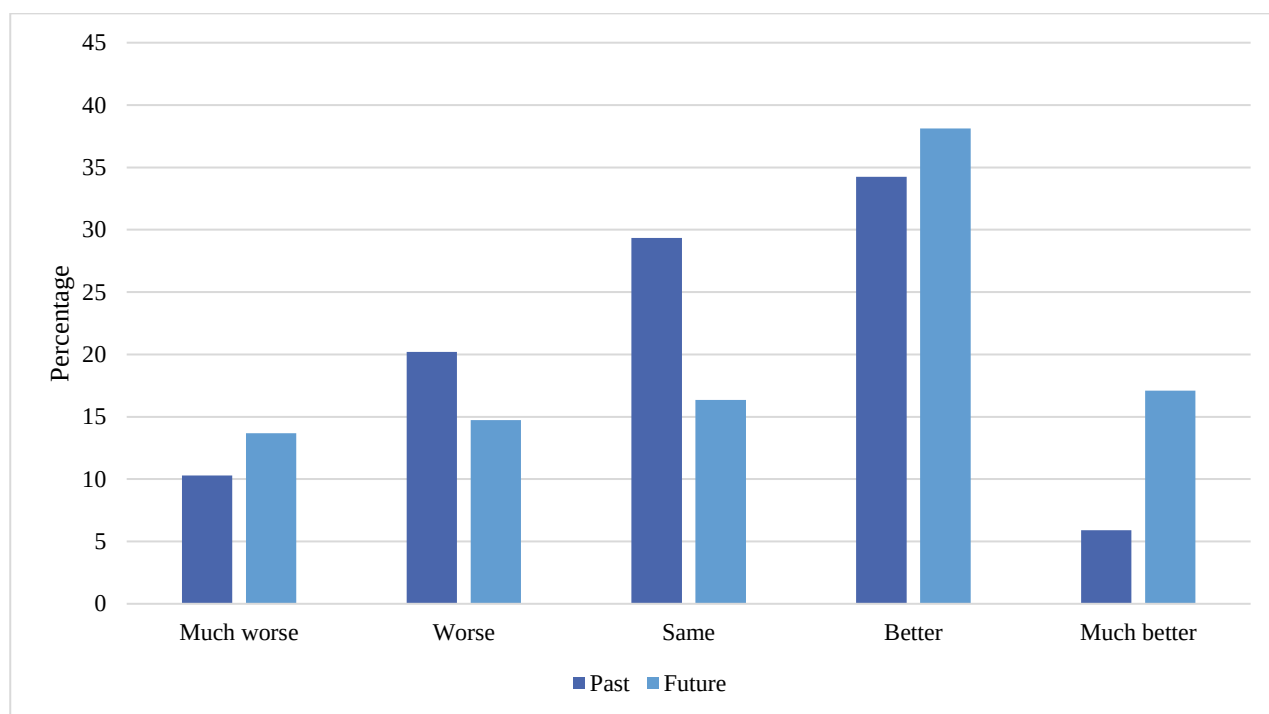


Source: own calculations from Afrobarometer Round 7

Given the difficulty in measuring fiscal exchange, one consideration is economic prosperity. **Figure 8** illustrates how survey participants rated the economic conditions in South Africa in comparison to 12 months prior, as well as how what they expected the economic conditions to be 12 months in the future. Overwhelmingly, participants believed that the economic conditions had either stayed the

same or improved over a 12-month period (although very few would describe the change as being “much better”).

Figure 8: Economic Conditions in the Past and the Future (2018)



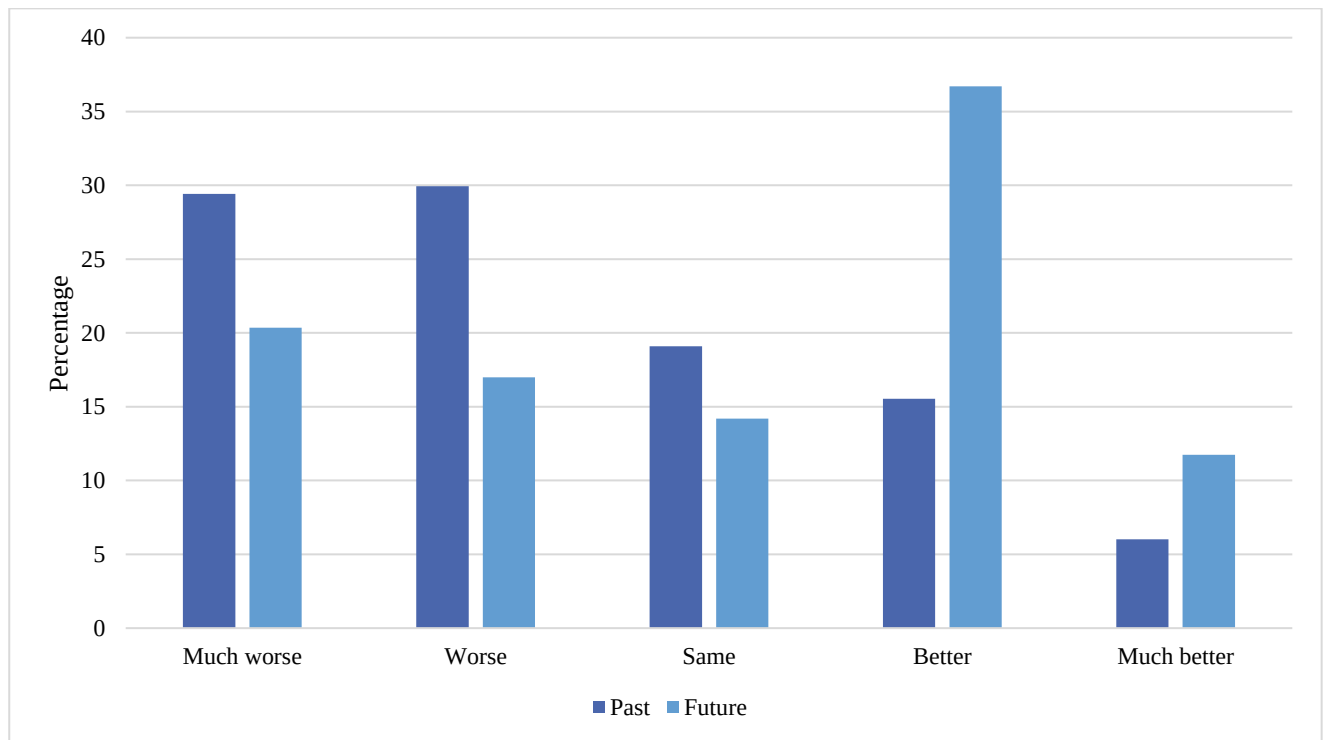
Source: own calculations from Afrobarometer Round 7

However, there is a portion of the population for whom the economic conditions have gotten worse. At that time,³⁶⁹ the overwhelming sentiment was that the economic conditions would get better (or even “much better”). This reflected a sense of optimism that was regrettably not realised. In **Figure 9** below, for approximately 60 % of the population, their economic conditions had in fact gotten worse (half of which was “much worse”). However, surprisingly, the depressive economic conditions did

³⁶⁹ Having reference to the fact that the survey was carried out in 2018.

not seem to dampen the optimism of South Africans. In 2021, almost half of the population believed that the economic conditions would be better or much better 12 months into the future.

Figure 9: Economic Conditions in the Past and the Future (2021)



Source: own calculations from Afrobarometer Round 8

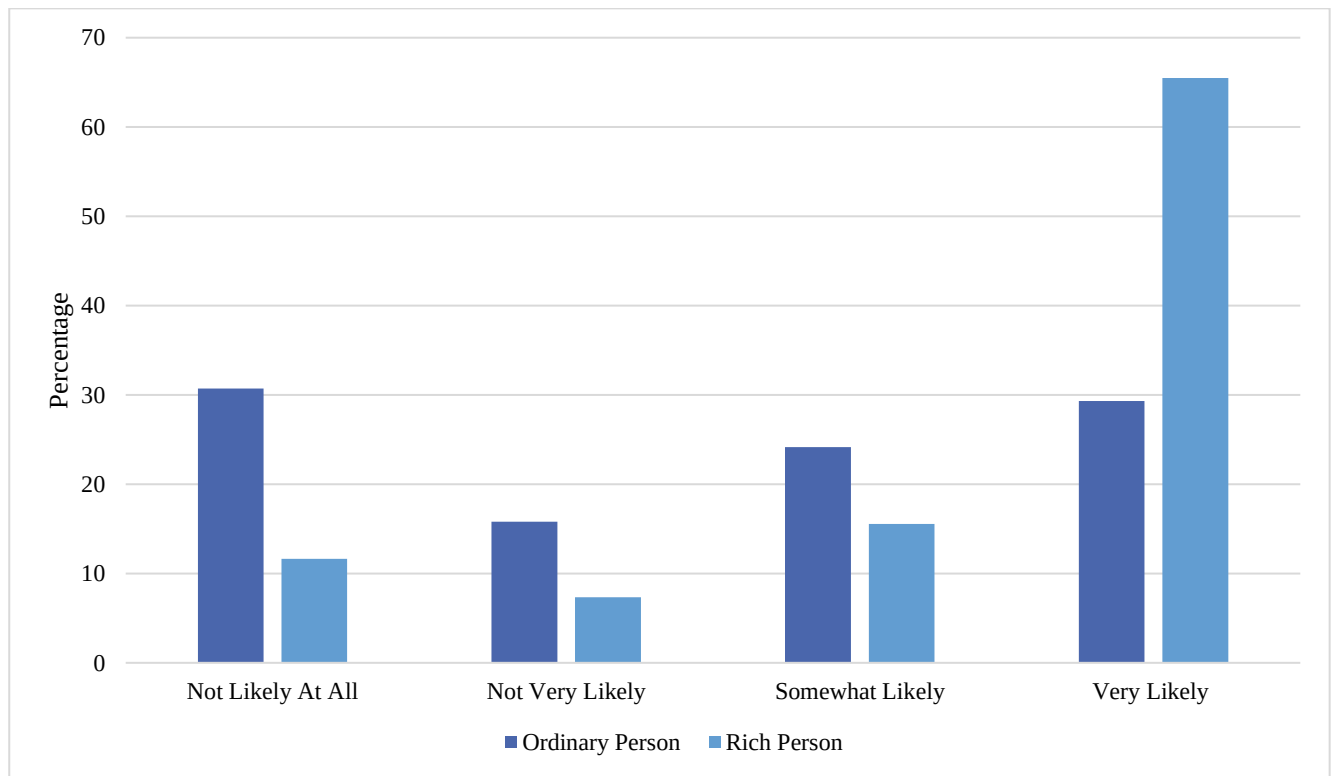
Fairness

South Africans are entitled to public services that are ‘*provided impartially, fairly, equitably and without bias.*’³⁷⁰ Notwithstanding, taxpayers do not always believe that they are being treated equally or that they are, in practice, subject to the same rules and regulations as other people. As illustrated in **Figure 10**, most South Africans believe that “rich” taxpayers are substantially more likely to get

³⁷⁰ Section 195(1)(d) of the Constitution.

away with avoiding paying taxes. This large discrepancy in the ability of taxpayers to avoid taxpayers could be expected to have a depressive effect on the tax morale of the “ordinary” taxpayer.

Figure 10: Using Bribes or Personal Connections to Avoiding Paying Taxes



Source: own calculations from Afrobarometer Round 7

Inequality

A 2022 World Bank report³⁷¹ has South Africa ranked as the most unequal country of the 164 countries in the World Bank’s global poverty database. The top 1% of taxpayers in South Africa (or approximately 480 000 taxpayers) pay around 61% of the total income tax bill.³⁷² For reference, in the United States of America (which ranks 47th on the World Bank’s report on inequality), only 47% of the population do not pay direct tax (as opposed to 87% in South Africa). With that in mind, the level of income inequality paired with the heavy tax burden laid on a small proportion of the

³⁷¹ The World Bank ‘Inequality in Southern Africa: An Assessment of the southern African Customs Union’ (2022) at page 1.

³⁷² Staff Writer ‘This is who is paying South Africa’s tax’ *BusinessTech* 26 October 2017.

population will undoubtedly have some impact on compliance behaviour – although the significance of this relationship has not been studied in South Africa.

The small proportion of the population that is required to pay tax appears not to be growing proportionally to the growth in the population. In fact, between 2010 and 2019, there was a decrease in the number of assessed taxpayers from 5.5 million to 4.9 million.³⁷³ In contrast, the population grew from almost 50 million South Africans³⁷⁴ to almost 59 million South Africans³⁷⁵ over the same period. The South African middle and upper class are emigrating and leaving South Africa in droves. Almost 1 million South African citizens (and taxpayers) emigrated between 2015 and 2020. Over the last decade, approximately 4 500 High Net Worth Individuals (**HNWIs**)³⁷⁶ have left South Africa.³⁷⁷ This amounts to approximately a R1.2 billion loss in income tax (and other indirect taxes).³⁷⁸ In terms of the study data, 27% of participants responded that within the past three years (of the date of the survey), they (or another member of their household) had gone to live in another country for more than three months. Similarly, 32% of respondents answered that they had considered emigrating (where 10% of the total respondents had considered emigrating “a lot”). Of the people who considered emigrating, 78% of those participants cited economic factors³⁷⁹ for their decision. 15% of those participants cited political factors³⁸⁰ and the remaining 7% cited social factors.³⁸¹

³⁷³ Staff Writer ‘Warning over South Africa’s shrinking tax base’ *BusinessTech* 7 September 2022.

³⁷⁴ Statistics South Africa ‘Mid-year population estimates 2010’ (2010) at page 7.

³⁷⁵ South African Government ‘Stats South Africa releases 2019 Mid-year Population Estimate’ (2019).

³⁷⁶ These are defined as individuals who have a wealth of R15.7 million or more, or approximately a US dollar millionaire. See Staff Writer ‘How many multi-millionaires live in South Africa’ *BusinessTech* 6 March 2022.

³⁷⁷ Michael Haldane ‘Wealthy South Africans are leaving in droves’ *MoneyWeb* 6 May 2022.

³⁷⁸ *Ibid.*

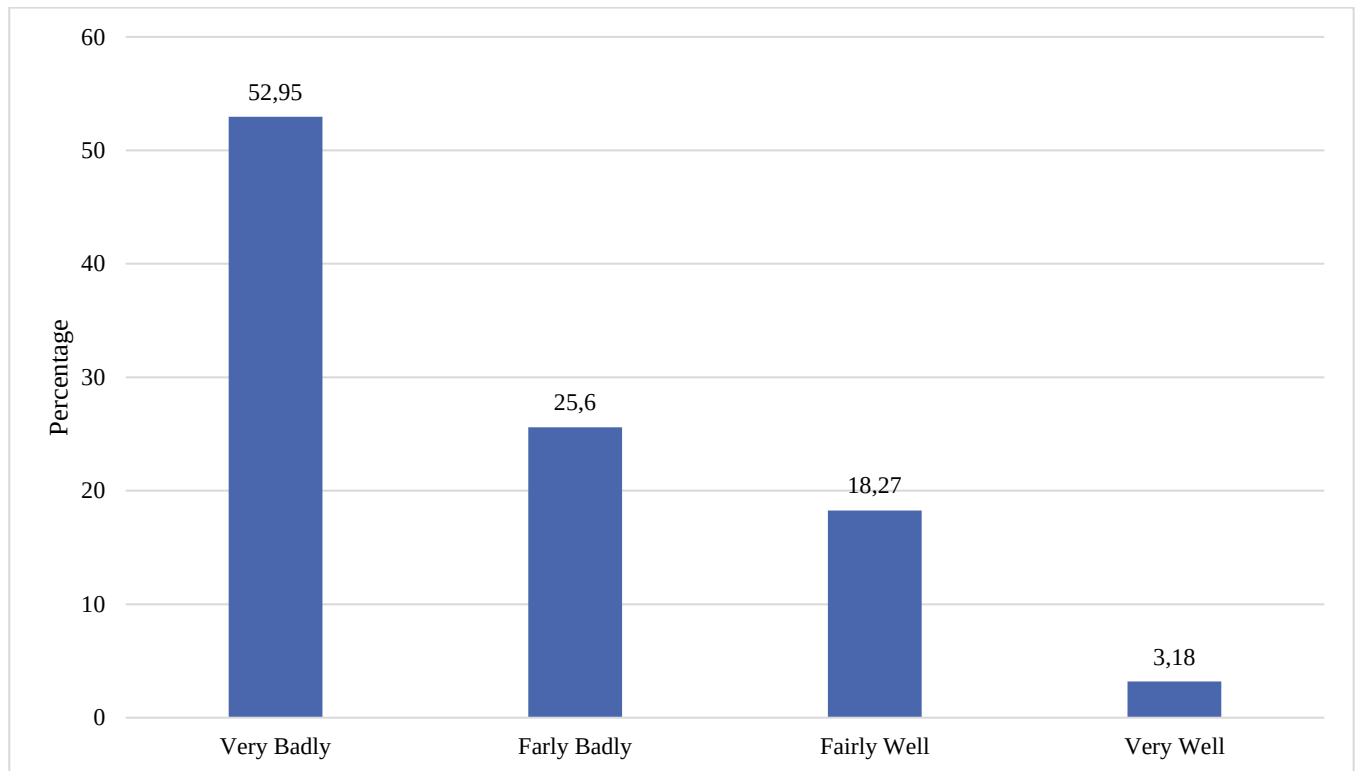
³⁷⁹ These include for work reasons, economic hardship, lower taxes, poverty, poor infrastructure and/or services, better business prospects, and natural disasters.

³⁸⁰ These include religious persecution, political persecution, civil war and/or threat of war, crime, and better rights and liberties.

³⁸¹ These include better schools, better healthcare, to pursue an education, to accompany family and/or friends who are moving or have moved already, and just for a new experience.

As illustrated in **Figure 11**, the majority of South Africans do not believe that the government is successfully narrowing the gaps between the rich and the poor. In fact, almost 78% of the population believe that the government is doing a bad job in this regard.

Figure 11: Is the Government Narrowing the Gap Between the Rich and the Poor?



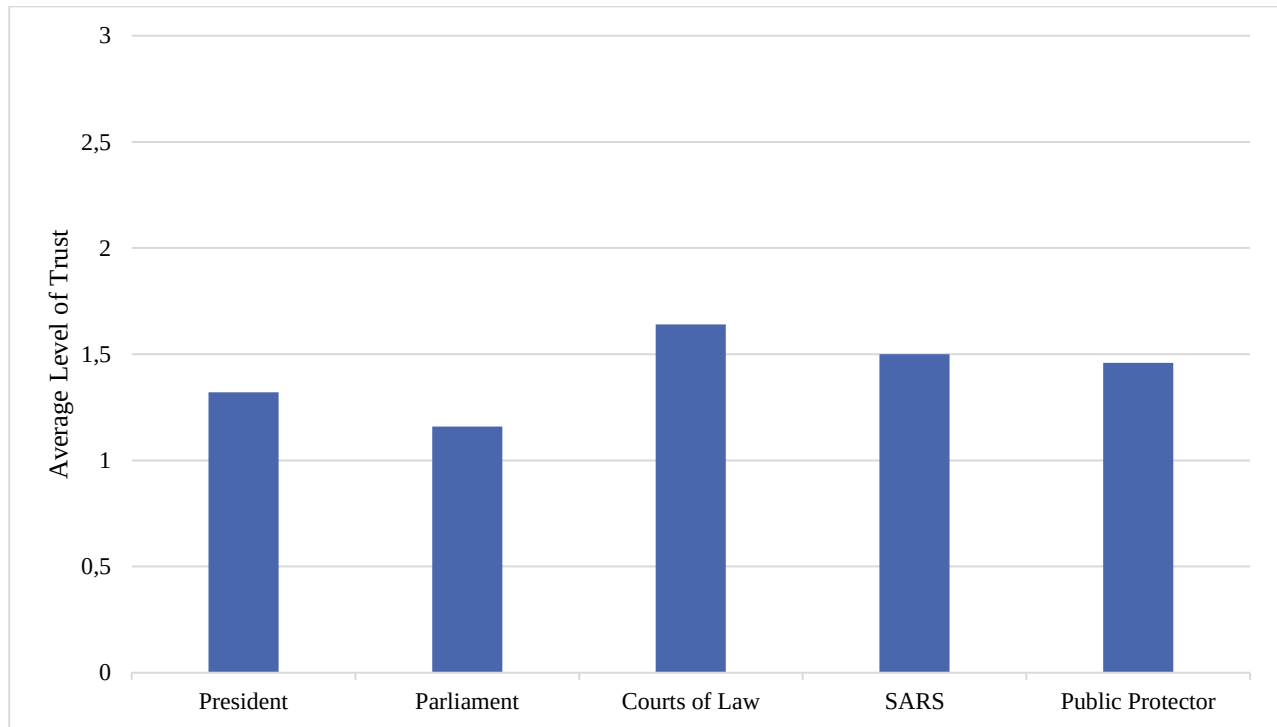
Source: own calculations from Afrobarometer Round 7

Governance and Institutions

Given events over the last decade, South Africa's institutional trust is likely to have suffered a significant blow. **Figure 12** below illustrates the level of trust in various South African institutions. It is ranked on a scale from 0 to 3, where 0 represents having no trust at all in a particular institution, and 3 represents having "a lot" of trust in the institution. When asked how much trust they have in

each institution, the predominant responses were “just a little” and “somewhat”. This is not particularly promising.

Figure 12: Average Trust in Institutions



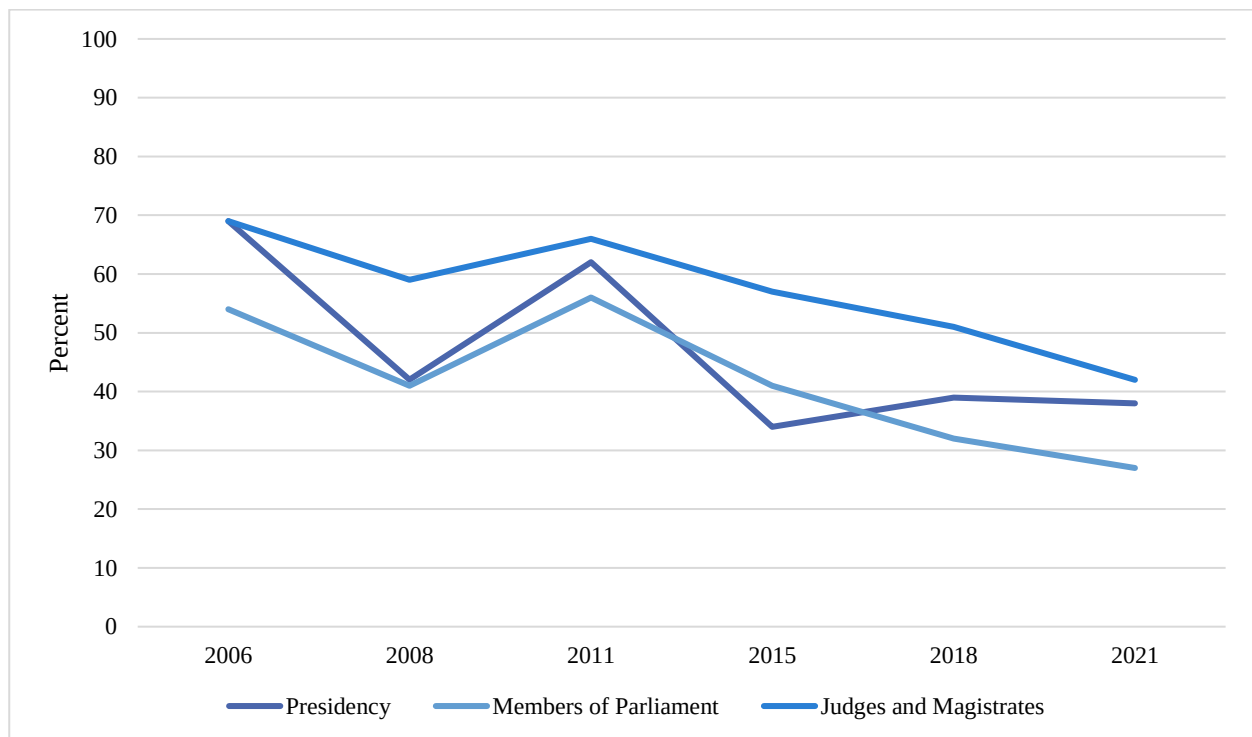
Source: own calculations from Afrobarometer Round 7

Figure 13 illustrates the perceptions of trust in South African institutions between 2006 and 2021. More specifically, the percentage of respondents that responded that they trust respective institutions “somewhat” or “a lot”. As mentioned above under corruption, this time period spans four presidents and some of this may be attributed directly to the President at the time of the survey and some of it may be “residual”. In other words, when there is a decrease in trust as a result of one president, the perceptions of trust may not recover even after the president has changed. In this case, while there were low levels of trust during the Zuma years, no significant recovery was made in the Ramaphosa years (even though there appeared to be positive sentiment around the time of his appointment, colloquially known as “Ramaphoria”³⁸²). As with the perceptions of trust in the Presidency, levels of

³⁸² Staff Writer ‘Here’s what is waiting for South Africa when ‘Ramaphoria’ is over’ *BusinessTech* 28 March 2018.

trust in both the courts and Parliament are showing a steady downward trend. This likely cannot be attributed to a single factor, but the platitude of corruption scandals and State Capture reporting (including reporting about “judicial capture”³⁸³) may have contributed to weakened ratings.

Figure 13: Trust in South African Institutions Over Time (2006-2021)



Source: own calculations from Afrobarometer Rounds 3 - 8

Information

Oberholzer found that many respondents to her study on perceptions of taxation would like to be more informed about taxation.³⁸⁴ In particular, that (i) there was a general need for tax education, (ii) they would like more information on the allocation of tax revenue by government, and (iii) the State

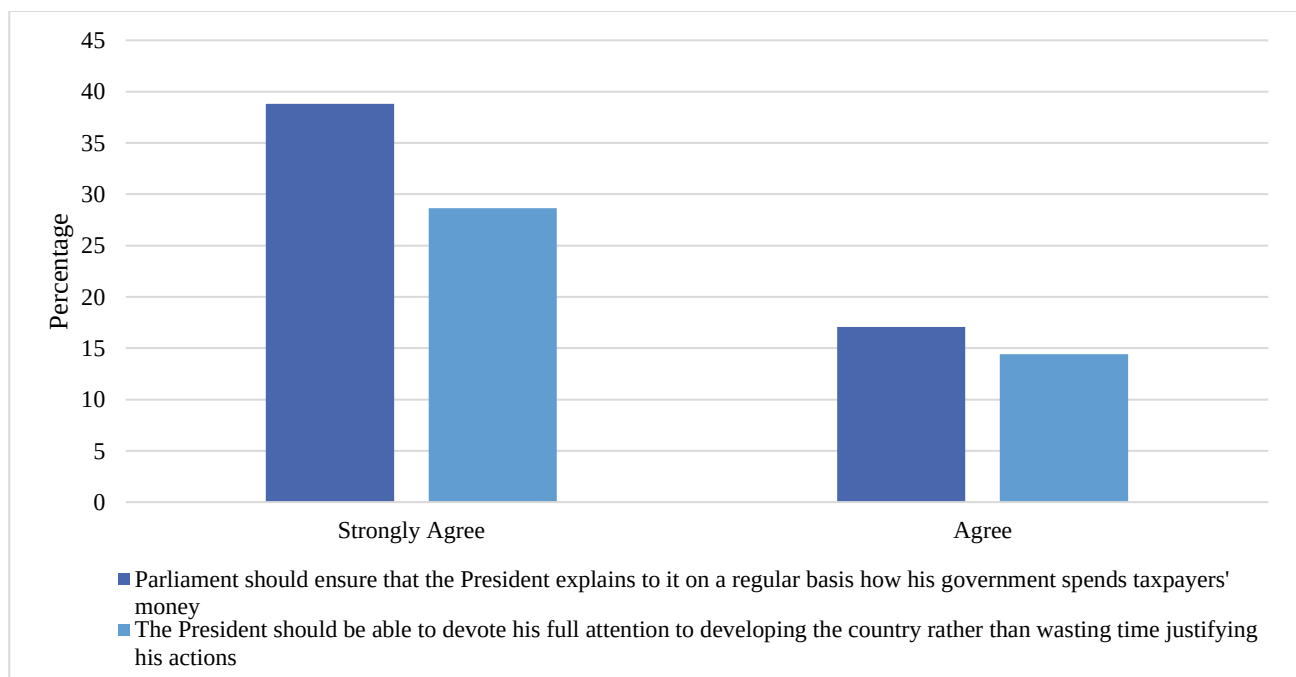
³⁸³ See, for example, Jeanette Chabalala ‘Mogoeng warns of capture of the judiciary: ‘I have confidence in judges, but watch us carefully’ *News24* 23 November 2019.

³⁸⁴ Ruanda Oberholzer op cit note 21 at page 211.

should make better use of the media to convey information regarding taxation.³⁸⁵ Examples of media would include TV, radio, and the Internet.

In **Figure 14**, respondents were asked whether they agreed either that the President should explain how government spends taxpayers' money or whether they agreed that the President should not need to justify spending decisions. Just over half of the participants believe that the President should be explaining how taxes are spent. One way in which this could be interpreted is that the way in which taxes are spent is important to taxpayers and if taxpayers are dissatisfied with the way in which the tax revenue is spent, there may be tax morale implications.

Figure 14: Explaining and Justifying Expenditure of Tax Revenue



Discussion of Empirical Findings

This dissertation will not present any significant descriptive statistics given that a brief overview is provided in the section above (albeit split across various categories).

³⁸⁵ Ibid at page 211.

Appendix A 1 presents the main results of the estimated ordered probit model. As outlined in chapter five, the model is non-linear and thus the estimated coefficients cannot be directly interpreted. Notwithstanding, the sign of the coefficients (in column 2) and the significance levels of each variable (in column 3) still provide useful information.

The marginal effects (at the mean) of each variable are presented in

Table 1 below.

Table 1: Marginal Effects of Regression

Dependent Variable: Tax Morale		Yes		No	
	Often	Several Times	Once or Twice	If Had the Chance	Never
Independent Variables					
<u>Demographic Factors</u>					
Age	0.000	0.000	0.000	0.001	-0.002
Gender	0.007	0.005	0.005	0.009	-0.025
Present Living Conditions	0.002	0.001	0.001	0.002	-0.005
Comparison of Living Conditions	-0.002	-0.001	-0.001	-0.002	0.006
Education	-0.008	-0.005	-0.005	-0.01	0.028
Race					
<i>White</i>	0.020	0.015	0.014	0.031	-0.080
<i>Black/African</i>	0.030	0.021	0.020	0.040	-0.110
<i>Indian/Asian</i>	-0.002	-0.002	-0.002	-0.005	0.010
<i>Coloured</i>	0.000	0.000	0.000	0.000	0.001
Cash Income	0.032	0.021	0.019	0.029	-0.102
<u>Corruption</u>					
Perceptions of Corruption	0.007	0.005	0.005	0.009	-0.025
Change in Perceptions of Corruption over Time	-0.001	0.000	0.000	-0.001	0.002
<u>Fiscal Exchange</u>					
Contact with Essential Government Services	0.000	0.000	0.000	0.000	-0.001
Handling Government Responsibilities	0.011	0.008	0.007	0.014	-0.040
<u>Fairness and Inequality</u>					
Equality of Treatment	0.003	0.002	0.002	0.004	-0.010
Ordinary Person Avoiding Taxes	0.000	0.000	0.000	0.001	-0.002
Rich Person Avoiding Taxes	-0.014	-0.01	-0.009	-0.017	0.050
<u>Government</u>					
Government Accountability	-0.002	-0.001	-0.001	-0.002	0.005
Justification of Tax Spending	0.003	0.002	0.002	0.003	-0.010
Democracy in South Africa	0.009	0.006	0.006	0.011	-0.032
Satisfaction with Democracy in South Africa	-0.011	-0.007	-0.007	-0.013	0.038
Obedying Government	0.004	0.003	0.003	0.005	-0.015
Respect from Public Officials	-0.007	-0.005	-0.005	-0.009	0.026
Comparative Treatment by Public Officials	-0.004	-0.003	-0.002	-0.005	0.013
<u>Trust</u>					
Institutional Trust	0.000	0.000	0.000	0.000	0.001
<u>Access to Information</u>					
Getting News from TV	0.004	0.003	0.002	0.005	-0.013
Getting News from Newspapers	0.002	0.001	0.001	0.002	-0.006
Getting News from the Internet	0.002	0.001	0.001	0.002	-0.007
Getting News from Social Media	0.004	0.003	0.003	0.005	-0.016
Frequency of Political Discussions	0.005	0.004	0.003	0.007	-0.019

Of all of the variables considered, the most statistically significant variables are (i) the index measuring how well (or badly) the government is handling certain issues, (ii) how likely it is that a rich person could pay a bribe or use personal connections to avoid paying taxes, and (iii) satisfaction with democracy in South Africa. All of these are statistically significant at the 1% level.

In respect of the demographic variables, the only variable that is statistically significant is the level of education which is significant at the 10% level. The probability of refusing to pay taxes (to any extent) decreases as one's education level increases, but the probability of never having refused to pay taxes increases (by almost 3 percentage points) with each increasing level of education. This is mostly consistent with findings that predict a negative impact of education on tax morale as it predicts that higher levels of education may increase the taxpayer's awareness of misspending and misappropriation. Interestingly, there is a 1 percentage point decrease in the probability of a currently compliant taxpayer refusing to pay taxes if they had the chance with each increasing level of education. It is not immediately clear what the cause for this is, but it may be due to the hypothesis that higher levels of education may be associated with increased awareness of the benefits of state-provided goods. It is not surprising that there are mixed results as this is consistent with international evidence. It is also not completely surprising that the other demographic variables are not significant as this is also in line with international evidence.³⁸⁶

In respect of the corruption variables, it was expected that these would have been more statistically significant than has been found in this study. Further, the variable measuring how the level of corruption in South Africa has changed over the past year has little to no impact on tax morale. It is hypothesised that this may not necessarily be an indicator of whether this actually affects tax morale. Rather, the result may be affected by other factors (for example, the suitability of the sample, the way in which the questionnaire is phrased, and the way the data is coded).

As mentioned above, one of the variables in the fiscal exchange vector is one of the most statistically significant variables in the study. The probability of non-compliance (to any extent) increases as one perceives the government to be more adept at their job (although by a very small amount). This is not consistent with international literature which has found that there is a positive impact of fiscal

³⁸⁶ For example, recall Alm, Martinez-Vazquez and Torgler op cit note 57 where it was found that gender was not a significant predictor of tax morale.

exchange. It is not immediately clear what the cause for this but it is possible that there is some bias (for example, omitted variable bias) that has influenced the direction of the variable. In this case, it may be that the impact of the variable omitted from the study is being captured in the fiscal exchange variable. The question regarding whether taxpayers have had contact with public services has almost no impact on tax morale at all. However, as explained in chapter five, the contact variable is not a perfect measure given that very few respondents had actually used any public services.

The fairness and inequality variables suffer from some of the same issues as the variables above. In particular, neither the index measuring equality nor the variable illustrating whether an ordinary person could pay a bribe or use personal connections to avoid paying taxes have any (statistically or economically) significant impact on tax morale. However, the variable indicating whether a rich person could pay a bribe or use personal connections to get out of paying taxes is one of the most statistically significant variables in the study. As with many of the other variables considered in this study, the direction of the impact on the independent variable differs for respondents who have never refused to pay taxes (and never would) and all of the other respondents. In this regard, the former category finds a 5-percentage point increase in the probability of never having refused to pay taxes the more it is perceived that a rich person could pay a bribe or use personal connections to get out of paying taxes while the latter category sees a decrease in the probability of belonging to a particular category the more it is perceived that a rich person could pay a bribe or use personal connections to get out of paying taxes. It was expected that tax morale would decrease if the rich could avoid paying taxes³⁸⁷ but it is not clear why there would be such a significant increase in the probability of compliant taxpayers remaining compliant if the rich could avoid paying taxes. In fact, one might even expect that these taxpayers would have a larger decrease in tax morale than taxpayers who were less compliant (in other words, they had refused to pay taxes or they would consider doing so).

Of the seven variables included in the governmental vector, three are statistically significant at the 10% level and one is statistically significant at the 1% level. The variables that do not have any statistically significant impact on tax morale are (i) whether respondents believe that it is more important that government is held accountable for its actions or whether it is more important that government make decisions quickly, (ii) whether respondents believe that it is important for

³⁸⁷ James Andreoni, Brian Erard, and Jonathan Feinstein op cit note 34 at page 818.

Parliament and the President to justify how taxpayer money is spent, and (iii) how respondents believe that they are treated by public officials in comparison to other people. In respect of how much of a democracy South Africa is, for every one-unit increase in how much of a democracy South Africa is perceived to be, there is a 3.2 percentage point decrease in the probability of a taxpayer never having refused to pay taxes. In contrast, there is an increase in the probability of belonging to a particular category as the level of perceived democracy in South Africa increases. In respect of how satisfied respondents are with the way democracy works in South Africa, for every one-unit increase in satisfaction with South African democracy, there is a 3.8 percentage point increase in the probability of never having refused to pay taxes. In contrast, there is a decrease in the probability of having refused to pay taxes for every one-unit increase in satisfaction with South African democracy for respondents who have refused to pay taxes. Considering how respected respondents feel in terms of their treatment by public officials, for every one-unit improvement in perceived treatment, there is a 2.6 percentage point increase in the probability of having never refused to pay taxes. In contrast, for previously non-compliant taxpayers, there is a decrease in the probability of refusing to pay tax for every one-unit improvement in perceived treatment. While there is an approximate 1 percentage point decrease in the probability of a compliant taxpayer who would refuse to pay taxes if they had the chance remaining in that category for every one-unit improvement in perceived treatment, this might be because they are less likely to refuse if they had a chance and more likely to never refuse to pay taxes at all.

Considering the above, none of the variables have economically significant impacts on tax morale. As has been mentioned, this could be as a result of numerous factors. In order to make a more accurate assessment, a more tailored questionnaire should be drawn up and a more specific sample should be chosen to ensure that the insights gleaned from the modelling is a true reflection. Notwithstanding, and despite the limitations, there is still value in the empirical approach taken in that it provides an important first step in the determination of important drivers of tax morale within South Africa. In this regard, there are several key takeaways to be considered both in this study and in further research. Further research should be conducted to analyse why the respondents who have never refused to pay taxes (and never would) consistently have different responses in respect of the direction to the remainder of the respondents. While this might have been explained away for some variables where international evidence had found mixed effects, this cannot be said for all of the variables.

6.2 Jurisdictional Analysis

As has been mentioned, tax policy and the corresponding legislative framework cannot be directly transplanted from one country to another. Each jurisdiction is likely to have nuances that make a particular piece of legislation or policy successful (or unsuccessful) in the context of that jurisdiction. This study considers legislative provisions from a number of countries, including Australia, Canada, Ireland, the UK, and the US. There are numerous similarities and differences between the jurisdictions analysed and South Africa.

These countries are either full common law countries or a mix of common law and civil law. With the exception of the US, these are also all countries that form part of the Commonwealth. These are also all OECD member countries. With these in mind, there are likely to be overlaps in legislation and policy. For example, the OECD provides guidance on tax-related issues which has become ‘*a fundamental part of the international tax architecture*’³⁸⁸ and many OECD member states are party to multilateral conventions such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters³⁸⁹ and the Multilateral Convention to Implement Tax-Treaty Related Measures to Prevent BEPS.³⁹⁰

However, while there may be policy and legislative overlaps as a result of shared memberships, there are many contextual differences that may result in different policy and legislative choices. For example, the jurisdictions considered are predominantly wealthy countries with access to more resources than South Africa. Accordingly, the resource-intensive policies and laws may not necessarily be appropriate in the South African context. It is also noted that there are idiosyncrasies that are not necessarily found in the jurisdictions analysed below. This includes factors such as the high unemployment rate, high poverty rate, and high inequality rate in South Africa. Accordingly, taxpayers may not respond in the same way in South Africa to the imposition of certain policies or pieces of legislation as taxpayers in the other jurisdictions did. However, these differences do not preclude South Africa from utilising the concepts underlying tax policy or legislation in other

³⁸⁸ For example, the OECD Model Tax Convention, the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, and the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting. See OECD ‘OECD Work on Taxation’ (2021).

³⁸⁹ Over 140 countries and jurisdictions are participating in this multilateral convention. Ibid.

³⁹⁰ Approximately 95 countries and jurisdictions have signed this multilateral convention. Ibid.

jurisdictions (where there is a vast amount of research on the implications already concluded) and tailoring it to suit the South African context.

6.3 Auto Registrations

South Africa

SARS aims to have 95% of standard taxpayers registered for tax be auto-registered.³⁹¹ Auto registration refers to the process of SARS registering any individual who has not registered for personal income tax where third party data providers had detected economic activity.³⁹² In terms of section 22(5) of the TAA, SARS may register a person for tax where that person that is obliged to register with SARS under a tax Act but has failed to do so. This auto registration process (which is currently limited to personal income tax) began in October 2022 and by December 2022, 180 000 taxpayers had been registered through this process. Once a taxpayer has been auto registered, SARS sends the taxpayer both an SMS and a letter to officially *‘welcom[e] them as a registered taxpayer and informing them of how to access [SARS]’ services and what their rights and obligations are.*³⁹³

SARS is obliged to impose a penalty where it is satisfied that non-compliance³⁹⁴ by a person exists.³⁹⁵ In the case of failure to register, the penalty may be remitted in certain circumstances.³⁹⁶ One of the requirements for the remittance of the penalty is that the failure to register was discovered because the person approached SARS voluntarily.³⁹⁷ Of course, this would not be the case where the taxpayer was auto registered.

Auto registrations have the potential to impact tax morale from both an “input” and an “output” perspective. In the circumstances, “input” refers to the scenario wherein low tax morale results in

³⁹¹ Interestingly, SARS considers, for the purpose of its voluntary compliance index, auto-registration as voluntary compliance. In this way, SARS’ metrics are artificially inflated to indicate better performance.

³⁹² SARS ‘Personal Income Tax: Auto Registration Will be Initiated from October 2022’ 28 September 2022.

³⁹³ Ibid.

³⁹⁴ Section 210(2) of the TAA defines non-compliance as the *‘failure to comply with an obligation that is imposed by or under a tax Act and is listed in a public notice issued by the Commissioner, other than- (a) the failure to pay tax subject to a percentage based penalty under Part C; (b) non-compliance in respect of which an understatement penalty under Chapter 16 has been imposed; or (c) the failure to disclose information subject to a reportable arrangement or mandatory disclosure penalty under section 212.’*

³⁹⁵ Section 210(2) of the TAA.

³⁹⁶ Section 216 of the TAA.

³⁹⁷ Section 216(a) of the TAA.

non-compliance while “output” refers to the scenario where a low(er) tax morale is the consequence of strategies that are being taken or could be taken. Put differently, it refers to when a low or diminished tax morale is either the reason for a particular behaviour or the result of a particular behaviour.

From an “input” perspective, individuals³⁹⁸ may choose not to register because they have a low tax morale and do not intend to register because they do not intend to pay their taxes.

From an “output” perspective, there may be positive or negative impacts on tax morale. For the layperson, the auto registration process may improve their perceptions of procedural fairness. However, where a taxpayer is auto registered, the taxpayer will incur a penalty for non-compliance that cannot be remitted as it fails to meet the criteria. Accordingly, this may damage any goodwill that the concept of auto registrations may have brought. If SARS were to advertise the consequences and highlight that a taxpayer should not wait to be auto registered by SARS (and rather that they should be proactive in registering as a taxpayer), this may improve perceptions of retributive fairness. As noted in chapter three, fairness is a significant driver of tax morale. Accordingly, improved perceptions of retributive fairness may improve tax morale. In the alternative, there may, in fact, be a depressive impact on tax morale for those who feel they have been unfairly punished in this regard. For example, where there is poor tax literacy, individuals may not know when they are required to register for tax. These taxpayers are more prone to feeling like they have been unfairly punished (especially where they believe the onus is on SARS to make them explicitly aware of their obligations as opposed to the onus being on the taxpayer to determine what their obligations are).

To determine the net effect on tax morale more definitively, one would have to carry out further research. However, given that the majority of taxpayers are salaried employees³⁹⁹ who likely are registered for tax, it is probable that the positive impact on tax morale would outweigh any negative impacts on tax morale.

³⁹⁸ These are likely only provisional taxpayers.

³⁹⁹ Chengetai Dare, Sophia du Plessis, and Ada Jansen ‘Tax revenue mobilization: Estimates of South Africa’s personal income tax gap’ (2019) 22(1) *South African Journal of Economic and Management Sciences* at page 2.

Of course, there may be reasons for taxpayers not registering to pay personal income tax that are entirely divorced from tax morale. For example, taxpayers may just not have registered because they have encountered hassle factors or because the cognitive load of doing so was too high. At present, there are three ways to register for tax.⁴⁰⁰ First, when an individual without a tax reference number registers for SARS eFiling, SARS automatically registers the individual and issues them with a tax reference number. Second, taxpayers can register through their employer. Third, an individual can call the SARS contact centre to make a booking and register in person. Salaried employees are unlikely to run into the same sorts of obstacles as provisional taxpayers. However, even for non-salaried employees, registration is relatively simple (especially since it is done automatically when registering for an e-filing profile). With this in mind, SARS should consider how it could make taxpayers more aware of both when one is required to register as a taxpayer as well as the simplicity of registration.

6.4 Auto-assessment

Auto-assessments refer to the “simulated assessments” or “auto-assessments” that are issued by tax authorities based on data from third parties. From a behavioural perspective, this should be considered in the context of cognitive load to the extent that it reduced the cognitive load for taxpayers. As noted above, any time that individuals are expected to complete complex tasks or engage in long processes, errors are likely to creep in.

Canada

Canada has a version of auto-assessments in its “Autofill my Return” programme which was first introduced in 2016⁴⁰¹ and is enabled by the use of third-party reporting.⁴⁰² The Canada Revenue Agency (**CRA**) will provide taxpayers with a copy of their tax return and taxpayers will only be required to return (with corrections) it in the event of errors with the auto-filled return. This system is susceptible to errors. There have been instances where some of the tax information slips that should

⁴⁰⁰ SARS ‘Payment Rules’ 1 April 2022.

⁴⁰¹ Staff Writer ‘Canada Revenue Agency automates most of your return, helping tax software’ *CBC News* 1 March 2016.

⁴⁰² The CRA website provides a list of information that is available for the 2016 – 2022 income tax and benefit returns, and a list of information that is available only for 2022 income tax and benefit returns. See CRA ‘Auto-fill my return’ (2023).

have been made available to the CRA were not included in the auto-filled return.⁴⁰³ While the CRA denies that this is a wide-spread problem,⁴⁰⁴ it nonetheless is indicative of the potential for incorrect auto-filled returns.

South Africa

In terms of a November 2021 letter to its stakeholders,⁴⁰⁵ SARS outlined that it uses data from third parties to issue “simulated assessments” or “auto-assessment” to non-provisional taxpayers. To be clear, the term auto-assessment is a misnomer as it does not correspond with the definition of an assessment in terms of the TAA⁴⁰⁶ as it is not the determination of any liability but is more akin to a return⁴⁰⁷ from which an assessment will be made. Taxpayers can either choose to accept the simulated assessment as is or edit the simulated assessment.

As SARS continues to identify new data sources and acquire new data, it will more accurately be able to compile and assess tax submissions with little to no input from a taxpayer. In terms of section 95 of the TAA, ‘SARS may make an original ... assessment based in whole or in part on an estimate if the taxpayer does not submit a return.’

In the ordinary course of events, if a taxpayer fails to file a tax return, SARS may make an assessment based on an estimate.⁴⁰⁸ In the case of personal income tax for non-provisional taxpayers, this is generally based on employer data and other third-party information.⁴⁰⁹ This estimate-based assessment is subject to objection and appeal, but only if SARS decides not to make a reduced or additional assessment after the taxpayer submits the return or relevant material.⁴¹⁰ However, in the case of an auto-assessment issued by SARS, if the auto-assessment elicits no response from the taxpayer, the taxpayer will receive an original assessment based on an estimate which is not subject

⁴⁰³ Jamie Golombek ‘Better double-check your tax return if you’ve been using the CRA’s Autofill’ *Financial Post* 28 March 2022.

⁴⁰⁴ Ibid.

⁴⁰⁵ SARS ‘Personal income tax (PIT) – new penalty rule and auto-assessment’ (2021).

⁴⁰⁶ Section 1 of the TAA defines an assessment as ‘the determination of the amount of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by SARS.’

⁴⁰⁷ This is defined in section 1 of the TAA as ‘a form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment, is a basis on which an assessment is to be made by SARS ...’

⁴⁰⁸ Section 95(1) of the TAA.

⁴⁰⁹ Section 95(2) of the TAA requires that the estimate be based on information that is readily available to SARS.

⁴¹⁰ Section 95(5) of the TAA.

to objection and appeal.⁴¹¹ The taxpayer is only eligible to apply for objection and/or appeal in the event where they have edited their auto-assessment and were issued with a revised assessment by SARS (in other words, it is the revised assessment that is subject to objection/appeal and not the original assessment).

Each year, SARS provides information on the annual “filing season” dates. This window is generally open for a number of months, often around the period July to November (although this is subject to change from year to year). A taxpayer may submit and file their personal income tax return at any point during this filing season. For example, taxpayers may begin to fill out their tax return in July and only complete and file it in November, should so they so choose. However, as of July 2022,⁴¹² rather than the ability to either edit or accept the auto-assessment, a taxpayer will only have the option to decline the assessment (in which case they would be able to edit the tax return before filing). While this may seem like nothing more than semantics, this nuanced change has a significant impact.

The reason that a taxpayer no longer needs to accept the auto-assessment is because it is considered an original assessment rather than an estimated assessment. SARS states that this change was made because in the 2021 filing seasons, 96% of auto-assessed taxpayers chose not to amend their returns.⁴¹³ In 2022, taxpayers who had been issued with an auto-assessment only had 40 business days (or approximately 2 calendar months) from the date of the taxpayer being notified of an auto-assessment being issued to the taxpayer (although a taxpayer may apply for an extension of this time period for an additional 21 working days, or approximately one calendar month).⁴¹⁴ However, as of 2023, taxpayers who were auto-assessed were given until 23 October 2023 (being the normal filing due date for non-provisional taxpayers in 2023) to revise their return if they needed or wanted to amend their auto-assessment.⁴¹⁵ This change was made with the intention of giving taxpayers more time to file a return should they wish to amend their auto-assessment. However, this presupposes that the auto-assessment was provided to the taxpayer more than 40 business days prior to 23 October 2023. While SARS provided that a taxpayer would be given the full 40 business days (from the date

⁴¹¹ In accordance with section 95 of the TAA. There is an argument that that SARS’ approach in this regard is not technically correct and whether non-response can, in fact, be considered agreement.

⁴¹² SARS ‘Media Release – 2022 Tax Filing Season’ 29 June 2022.

⁴¹³ SARS ‘Tax Practitioner Connect Issue 36’ September 2022.

⁴¹⁴ SARS op cit note 405.

⁴¹⁵ SARS ‘Filing Season 2023 for Individuals’ (2023).

of notice of the assessment) to edit or amend their auto-assessment should the auto-assessment be issued after 23 October 2023, but it is not clear what would happen to taxpayers whose auto-assessments were issued before the 23 October 2023 deadline but less than 40 business days prior to that deadline. In other words, it is not immediately clear that taxpayers are, in fact, better off. However, it appears that, for the most part, taxpayers were issued with their auto-assessments around 1 July 2023.⁴¹⁶ In other words, it is not clear that there are a significant number of taxpayers (if any at all) who had less than 40 business days to amend their auto-assessment.

Of course, as with any system, there are flaws in the implementation and execution of this system. There is not perfect information and SARS may not have access to certain information, including where taxpayers earn supplementary income or additional deductions such as donations. However, to reduce the cognitive load on taxpayers, it does not need to be perfect. It has taken a substantial amount of work off the hands of the taxpayer, leaving them only to review and potentially amend a few details. This needs to be considered alongside some of the potential increased administrative burden as has been discussed above, such as the decreased timeline within which to submit returns.

The decision from SARS to move away from accepting a correct auto-assessment to decline an incorrect auto-assessment has interesting behavioural consequences. This finds its basis in choice architecture. By re-framing the choice, SARS can further reduce the cognitive load of taxpayers. This was an evidence-based decision by SARS with reference to the fact that 96% of taxpayers had accepted auto-assessments in the 2021 filing season. As such, SARS moved from requiring an active choice (in other words, to *either* edit or accept the auto-assessment) to a default acceptance with an “out-out” option.

Examination

As has been noted, the auto-assessment process is not perfect and can sometimes produce inaccurate results. Due to certain behavioural biases such as the status quo bias, taxpayers may accept the incorrect prepopulated return without properly evaluating it.⁴¹⁷ Similarly, taxpayers may accept it simply because they trust the tax authorities to have produced the correct outcome (due to effects

⁴¹⁶ Based on the author’s experience in practice.

⁴¹⁷ William Samuelson and Richard Zeckhauser op cit note 258.

such as the messenger effect). Taxpayers may also accept the auto-assessment as a result of information campaigns.⁴¹⁸ Campaigns that promote the use of auto-assessments for simplicity may result in an individual trusting the ability of SARS to receive all the third-party information and declare it correctly, and as such, submit auto-assessments without review.

Although a user can either submit this auto-assessed return without changes, the liability still rests with the taxpayer to ensure the accuracy of the return. If incorrect or incomplete information is declared, the taxpayer will face the appropriate sanctions. Importantly, not all of the relevant information is currently available through third parties. For example, there are certain deductions, such as wear and tear⁴¹⁹ or home office deductions.⁴²⁰ However, SARS is working to close some of the gaps in information provided by third parties. For example, while information in respect of trust distributions or section 18A donations were not previously required to be provided to SARS by trusts or persons referred to in section 18A(1)(a) to (c) of the Income Tax Act, this was changed as of 30 June 2023 for the 2023/4 year of assessment.⁴²¹

To the extent that the taxpayer is liable for any penalties that may arise as a result of this incorrect return, in the case of overestimated liabilities, South African taxpayers are not able to object or appeal an auto-assessment that has been accepted (even if only tacitly accepted by not amending the auto-assessment). Fonseca and Grimshaw suggest that errors on the pre-populated returns implies incompetence (as opposed to merely imperfect information) which may, in turn, encourage evasion.⁴²²

Fonseca and Grimshaw confirm that defaults can reduce the cognitive load of filing a tax return.⁴²³ For the individuals where the reduction of the cognitive load is important, the default will be difficult to override (especially so where the default is incorrect). A large portion of the individuals studied responded to the incorrect default (in other words, the inaccurate pre-populated return) by evading

⁴¹⁸ For example, SARS actively campaigns for the use of auto-assessments by taxpayers.

⁴¹⁹ In terms of section 11(e) of the Income Tax Act.

⁴²⁰ In terms of sections 11(a), 11(d) and 11(e) read with sections 2(b) and 23(m) of the Income Tax Act.

⁴²¹ General Notice 3631 published in Government Gazette 48867.

⁴²² Miguel Fonseca and Shaun Grimshaw 'Do Behavioural Nudges in Prepopulated Tax Forms Affect Compliance? Experimental Evidence with Real Taxpayers' (2017) 3(2) *Journal of Public Policy and Marketing* 213-226 at page 214.

⁴²³ Ibid at page 223.

further.⁴²⁴ One reason for this may be the decreased moral costs associated with the non-compliant behaviour. Put differently, the incorrect submission was not directly due to the behaviour of the taxpayer and, accordingly, taxpayers do not feel as guilty about submitting the incorrect information as they would otherwise had they input the incorrect information themselves.⁴²⁵ The use of normative messaging was overpowered by the impact of the default.⁴²⁶ This presents an important question; do the convenience benefits of pre-populated returns outweigh the possible effects on the honesty of taxpayers? At present, SARS only utilises auto-assessments for those they deem “standard” taxpayers which may mitigate some of the risk. However, SARS should exercise caution as it works towards their goal of 95% of standard taxpayers being auto-assessed.

When considering nudges⁴²⁷ to improve honesty where tax returns have been pre-populated, the results have not been encouraging. For example, it has been found that where a lock on a pre-populated return⁴²⁸ was accompanied by a nudge for honesty, compliance actually decreased when the income value populated was below the taxpayer’s actual income.⁴²⁹ In other words, taxpayers who may have not felt compelled to under-declare their income of their own accord may choose not to amend their income upwards if the pre-populated income is lower than their true income. This could not be overcome by static nudges⁴³⁰ containing descriptive norm messaging,⁴³¹ but reactive nudges were effective.⁴³² Importantly, the authors of that study note that the finding on the efficacy of the reactive nudges were specific to the study and may not necessarily be capable of generalisation. Further, the complexity of the tax system (in contrast to the simulated study environment) may decrease the efficacy of the reactive nudges. Accordingly, further research should be conducted on reactive nudges.

⁴²⁴ Ibid at page 223.

⁴²⁵ Martin Fochmann, Nadja Müller, and Michael Overesch ‘Less cheating? The effects of prefilled forms on compliance behaviour’ (2018) arqus Discussion Paper No. 227 at page 5.

⁴²⁶ Miguel Fonseca and Shaun Grimshaw op cit note 422 at page 223.

⁴²⁷ A nudge is defined as an ‘*aspect of the choices architecture that alters people’s behavior in a predictable way without forbidding any options or significantly changing their economic incentives.*’ See Richard Thaler and Cass Sunstein *Nudge: Improving decisions about health, wealth, and happiness* (2008) Yale University Press at page 6.

⁴²⁸ Briefly, this refers to the scenario where a pre-populated value is “locked” and not able to be immediately edited. To edit the locked value, an action must first be taken. In this study, the participants were required to first click a checkbox confirming that they wanted to edit the field and click a checkbox again to confirm the new value.

⁴²⁹ Miguel Fonseca and Shaun Grimshaw op cit note 422 at page 224.

⁴³⁰ A static nudge is one which does not react to inputs.

⁴³¹ Miguel Fonseca and Shaun Grimshaw op cit note 422 at page 224.

⁴³² Ibid at page 224.

6.5 Tax Reprieves

Tax reprieves comprise both tax amnesties and voluntary disclosure programmes. A tax amnesty programme (**TAP**) is a reprieve wherein both the tax and the penalties associated with non-compliant behaviour are waived.⁴³³ In contrast, a voluntary disclosure programme (**VDP**) is distinguishable from a TAP as taxpayers are still required to settle their unpaid tax liabilities – only the penalties and/or interest are waived (or reduced).⁴³⁴ This type of reprieve tends to be more attractive to revenue services than a TAP as it still allows some immediate revenue (in the form of the unpaid tax liability) with the intention of still inducing voluntary compliance (through the waiver or reduction of penalties and/or interest).

Tax reprieves have been implemented in numerous countries in different forms and for varying time periods. However, evidence of the effects of tax reprieves is inconclusive. Where some studies have argued that tax reprieves motivate delinquent taxpayers to increase compliance in the future,⁴³⁵ other studies argue that these reprieves undermine tax morale and, consequently, lead to a decline in future compliance.⁴³⁶ Some studies have also shown tax reprieves to have no effect on compliance.⁴³⁷ Studies have also found conflicting evidence in respect of the long-term efficacy of these programmes.

⁴³³ OECD 'Update on Voluntary Disclosure Programmes: A Pathway to Tax Compliance' (2015) at page 14.

⁴³⁴ Katherine Baer and Eric Le Borgne *Tax Amnesties: Theory, Trends, and Some Alternatives* (2008) International Monetary Fund Washington.

⁴³⁵ See, for example, Herman Leonard and Richard Zeckhauser 'Amnesty, Enforcement, and Tax Policy' in Lawrence Summers (ed.) *Tax Policy and the Economy Volume 1* (1987) MIT Press 55-86; Ronald Fisher, John Goddeeris, and James Young 'Participation in Tax Amnesties: The Individual Income Tax' (1989) 42(1) *National Tax Journal* 15-27; and Benno Torgler 'Beyond Punishment: A Tax Compliance Experiment with Taxpayers in Costa Rica' (2003) 33(3) *Revista de Análisis Económico* 27-56.

⁴³⁶ See, for example, James Alm and William Beck 'Wiping the Slate Clean: Individual Response to State Tax Amnesties' (1991) 57(4) *Southern Economic Journal* 1043-1053; James Andreoni 'The desirability amnesty of a permanent tax' (1991) 45(2) *Journal of Public Economics* 143-159; Hari Luitel and Russell Sobel 'The Revenue Impact of Repeated Tax Amnesties' (2007) 27(3) *Public Budgeting & Finance* 19-38.

⁴³⁷ See, for example, Julio López-Laborda and Fernando Rodrigo 'Tax Amnesties and Income Tax Compliance: The case of Spain' (2003) 24(1) *Fiscal Studies* 73-96; James Alm, Jorge Martinez-Vazquez, and Sally Wallace 'Do Tax Amnesties Work? The Revenue Effects of Tax Amnesties During the Transition in the Russian Federation' (2009) 39(2) *Economic Analysis & Policy* 235-254.

Australia

Australia introduced a VDP in 1992 through the Taxation Laws Amendment (Self-Assessment) Act. In terms of that Act, if a taxpayer is liable to pay additional tax as a result of a tax shortfall, or part thereof, and the taxpayer voluntarily informs the Commissioner about the shortfall, or part thereof, before the taxpayer has been informed of an audit, then they are eligible for a reduction in the penalty tax.⁴³⁸ The reduction is tiered: an 80% penalty reduction if the shortfall, or part thereof, is at least AUD 1 000 and a 100% penalty reduction if the shortfall, or part thereof, is less than AUD 1 000.⁴³⁹

The criteria for a valid application has changed over the years. Initially, ‘*certain disclosures [could] be treated as having been made voluntarily, notwithstanding that they are made after notification of an audit, where the disclosure is about a matter outside the scope of the audit or it could be concluded that the disclosure would have been made even if the audit had not been commenced.*’⁴⁴⁰ This differed from most jurisdictions, where it is a requirement that the disclosure must regard behaviour that the revenue service had no knowledge of and where no audit had commenced. Further, even if an incomplete disclosure was made, if the degree of incompleteness is immaterial, the application could still be considered.⁴⁴¹ In 2000, the legislation was amended, introducing a provision stipulating that if the disclosure was made after an audit had commenced, then where the taxpayer discloses non-compliance after an audit starts, the reduction in the penalty is 20 % provided that the disclosure saves the Australian Tax Office (ATO) significant time or resources.⁴⁴² In 2010, the law was again amended. This time, the term “tax audit” was replaced with the phrase ‘*an examination ... of your affairs relating to a taxation law for a relevant period*’, which is much wider.⁴⁴³ Further, the penalty of a false or misleading statement that does not result in a shortfall was reduced to zero.⁴⁴⁴ In 2012, the ATO, in a binding taxation ruling, outlined the Commissioner’s interpretation of some of the concepts in section 284-225 of Schedule 1 of the Tax Administration Act 1953. It ruled, *inter alia*, that the term voluntary meant ‘*an act done without persuasion or compulsion on the part of the*

⁴³⁸ Section 226Z (a) – (b) of the Taxation Laws (Self Assessment) Act 101 of 1992.

⁴³⁹ Ibid at section 226Z (c) – (d).

⁴⁴⁰ Taxation Ruling TR 94/6 at paragraph 8.

⁴⁴¹ Ibid at paragraph 26.

⁴⁴² A New Tax System (Tax Administration) Act (No. 2) 91 of 2000.

⁴⁴³ Section 92 of Tax Laws Amendment (2010 Measures No. 1) Act 56 of 2010.

⁴⁴⁴ Ibid at section 91.

Commissioner'.⁴⁴⁵ The ruling notes that if disclosures that are made after the entity has been notified of an examination in relation to one taxation law, the disclosure will only be considered if it related to another taxation law (e.g. if there is an examination of a shortfall in general sales tax, but a disclosure is made in respect of income tax).⁴⁴⁶ Importantly, the ruling notes that decisions around prosecutions where voluntary disclosures have been made by entities fall within the purview of the Director of Public Prosecutions and is not considered in the ruling.

Canada

While Canada has had a VDP since at least 1970,⁴⁴⁷ the programme in its current form was only introduced in 2000. While it has undergone some changes since its initial introduction, these have been relatively minor. The Canadian VDP provides that the Minister of National Revenue has discretionary authority to grant relief from any penalty or interest.⁴⁴⁸ The programme provides for income tax disclosures of two kinds: (i) the general programme, and (ii) the limited-track program (which is for applications where the non-compliance had an element of intentional conduct). The general programme would entitle a taxpayer eligibility for penalty relief as well as (at most) partial interest relief. In contrast, the limited programme would only entitle taxpayers to reduced relief. More specifically, taxpayers will be charged penalties other than for gross negligence as well as interest.⁴⁴⁹ The limited programme would also require the waiver of certain rights in respect of objections and appeals.⁴⁵⁰ Both programmes would entitle a non-compliant taxpayer to relief from prosecution.⁴⁵¹ Further, the expectation is that, after the first VDP application, taxpayers remain compliant. For this reason, taxpayers are generally only entitled to the benefits of the VDP once. There would need to be exceptional circumstances that are (i) beyond the taxpayer's control, and (ii) in relation to a different matter than the first application in order for the second VDP application to be considered.⁴⁵²

⁴⁴⁵ Miscellaneous Taxation Ruling MT 2012/3 at paragraph 72.

⁴⁴⁶ Ibid at paragraph 92.

⁴⁴⁷ Canada Revenue Agency 'International Tax Gap and Compliance Results for the Federal Personal Income Tax System' (2018) at page 31.

⁴⁴⁸ Sections 13-16 of the Income Tax Information Circular No. IC00-1R6.

⁴⁴⁹ Ibid at section 6.

⁴⁵⁰ Section 66 of the Income Tax Information Circular No. IC00-1R6. Both the general and limited programme applications involve the waiver of some objection rights. For example, in terms of section 165(1.2) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp), a taxpayer may not object to an assessment made under section 220(3.1).

⁴⁵¹ Section 9 of the of the Income Tax Information Circular No. IC00-1R6.

⁴⁵² Ibid at section 25.

For a VDP application to be valid, it must: (i) be voluntary,⁴⁵³ (ii) be complete,⁴⁵⁴ (iii) involve the application or potential application of a penalty,⁴⁵⁵ (iv) include information that is at least one year past due, and (v) include payment of the estimated tax owing.⁴⁵⁶

One significant amendment was the introduction of a no-name disclosure process in 2007.⁴⁵⁷ This would allow an advisor to the taxpayer to provide information other than the identity of a taxpayer to a VDP officer with the intention of seeking advice about whether the case would be eligible for relief under the VDP. The certainty that a taxpayer may gain from a process like this would understandably factor into a taxpayer's decision to come forward. If a taxpayer did not think that they would be eligible for relief, they are unlikely to voluntarily disclose their non-compliance. This no-name process removes the uncertainty. However, in 2018, the no-name disclosure process was stopped⁴⁵⁸ and replaced with a pre-disclosure discussion process.⁴⁵⁹ The no-name disclosure process allowed for the initiation of a disclosure but the taxpayer was required to reveal their identity within 90 days of the effective date of disclosure.⁴⁶⁰ The pre-disclosure discussion still permits an anonymous discussion before the identity of the taxpayer is revealed, but it is a non-binding discussion as opposed to a true disclosure. In other words, it does not constitute acceptance into the VDP.⁴⁶¹ It has no impact on the revenue service's ability to audit, penalise, or refer a case for criminal prosecution.⁴⁶²

⁴⁵³ In terms section 31 of the Income Tax Information Circular No. IC00-1R6, a VDP application will not be voluntary if: '(i) the taxpayer was aware of, or had knowledge of an enforcement action set to be conducted with respect to the information being disclosed to the CRA; (ii) enforcement action relating to the subject matter of the VDP application has been initiated against the taxpayer, or a person associated with, or related to, the taxpayer (this includes, but is not restricted to, corporations, shareholders, spouses and partners), or against a third party, where the purpose and impact of the enforcement action against the third party is sufficiently related to the present application; or (iii) the CRA has already received information regarding the specific taxpayer's (or a related taxpayer's) potential involvement in tax non-compliance.'

⁴⁵⁴ In terms section 34 of the Income Tax Information Circular No. IC00-1R6, while the application must be complete, minor errors and omissions are not an adequate reason to disqualify an application.

⁴⁵⁵ In terms sections 35 and 36 of the Income Tax Information Circular No. IC00-1R6, the penalty types that are generally imposed are late filing penalties, failure to remit penalties, instalment penalties, omission penalties, or gross negligence penalties. If there is no penalty that applies, no relief can be sought through the VDP.

⁴⁵⁶ In terms section 40 of the Income Tax Information Circular No. IC00-1R6, the taxpayer may be considered for a payment arrangement if they cannot make payment of the tax at the time of the VDP application.

⁴⁵⁷ Solomon Rukundo 'Tax Amnesties in Africa: An Analysis of the Voluntary Disclosure Programme in Uganda' (2020) African Tax Administration Paper 21 at page 14.

⁴⁵⁸ CRA 'Backgrounder – Voluntary Disclosures Program' (2017).

⁴⁵⁹ Section 41 of the Income Tax Information Circular No. IC00-1R6.

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid at section 42.

⁴⁶² Ibid.

South Africa

TAPs in South Africa have been introduced on various occasions and to varying degrees. In 1995, the government provided a reprieve for taxpayers who were not registered to allow them to register without incurring a penalty.⁴⁶³ In 1996, an amnesty was introduced to provide taxpayers with sufficient time to regularise their affairs and become compliant with tax legislation.⁴⁶⁴ Another amnesty was introduced in 2003 to allow taxpayers with undisclosed offshore income to disclose this.⁴⁶⁵ Amnesties have also been introduced in respect of taxes other than personal income tax. An example of this is the amnesty for small businesses to declare unreported income and become compliant with tax legislation in 2006.⁴⁶⁶

As with tax amnesties, a number of VDPs have been implemented in South Africa. It was introduced in 2010 as a pilot project exempting both administrative and criminal penalties for taxpayers who voluntarily disclosed previously unreported income⁴⁶⁷ before being permanently re-introduced through the enactment of the TAA.⁴⁶⁸ VDP relief is available in respect of all taxes administered by SARS (excluding duties and levies charged in terms of the Customs and Excise Act 91 of 1964).⁴⁶⁹ Further, a special VDP (or **SVDP**) was introduced in 2016 targeted at taxpayers with undisclosed offshore income.⁴⁷⁰ This dissertation will focus only on the VDP (rather than the SVDP).

In terms of the VDP, taxpayers are eligible to relief in respect of prosecution, penalties, and interest. In terms of the TAA, to submit a valid VDP application, a disclosure⁴⁷¹ must: (i) be voluntary,⁴⁷² (ii)

⁴⁶³ Tax Amnesty Act 19 of 1995.

⁴⁶⁴ Final Relief on Tax, Interest, Penalty and Additional Tax Act 101 of 1996.

⁴⁶⁵ Exchange Control Amnesty and Amendment of Taxation Laws Act 12 of 2003.

⁴⁶⁶ Section 1 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act 9 of 2006.

⁴⁶⁷ SARS 'Joint Media Release – The South Africa Revenue Service (SARS) and the South African Reserve Bank (SARB) Invite Applications for the Voluntary Disclosure Programme' 5 November 2010.

⁴⁶⁸ Part B of Chapter 16 of the TAA.

⁴⁶⁹ Part B of Chapter 16 of the TAA read with the section 1 of the TAA definition of "tax Act".

⁴⁷⁰ Exchange Control Circular No. 6/2016 and Exchange Control Circular No 8/2016.

⁴⁷¹ In *Purveyors South Africa Mine Services (Pty) Ltd vs Commissioner for the South African Revenue Services* (135/2021) [2021] ZASCA 170 (**Purveyors**), the Supreme Court of Appeal held that the term "disclosure" means 'to open up to the knowledge of others; to reveal.' Recognising the difficulties with determining what information SARS is aware of, the Purveyors judgment has created some difficulties for taxpayers wanting to utilise the VDP.

⁴⁷² In *Purveyors*, the Supreme Court of Appeal made it clear that for a disclosure to be considered voluntary, the disclosure must (i) be made out of one's own free will, (ii) be made without constraint or compulsion, and (iii) precede any warnings from SARS.

involve a “default”⁴⁷³ which has not occurred within five years of the disclosure of a similar “default” by the applicant or a person referred to in section 226(3),⁴⁷⁴ (iii) be full and complete in all material respects,⁴⁷⁵ (iv) involve a behaviour referred to in column 2 of the understatement penalty percentage table⁴⁷⁶ in section 223,⁴⁷⁷ (v) not result in a refund due by SARS, and (vi) be made in the prescribed form and manner.⁴⁷⁸

While the VDP is generally not available to taxpayers who have been given notice of the commencement of an audit or criminal investigation into their affairs, it may be permitted if (i) the default in respect of which the person has sought relief would not otherwise have been detected during the audit or investigation, and (ii) the application would be in the interest of good management of the tax system and the best use of SARS’ resources.⁴⁷⁹

⁴⁷³ “Default” is defined in section 225 of the TAA as ‘the submission of inaccurate or incomplete information to SARS, or the failure to submit information or the adoption of a “tax position”, where such submission, non-submission, or adoption resulted in an understatement.’

⁴⁷⁴ The wording of this sub-section was amended from ‘involve a ‘default’ which has not previously been disclosed by the applicant or a person referred to in section 226(3) by section 66 of the Tax Administration Laws Amendment Act 23 of 2015. The explanatory memorandum provided that the proposed amendment now ‘requires that the “default” must not be a default that occurred within five years of the disclosure of a similar “default” by the applicant, thereby widening the scope of the voluntary disclosure regime.’ See National Treasury ‘Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2015’ 2015.

⁴⁷⁵ While it is not explicit that an incomplete disclosure could be considered if the degree of incompleteness is immaterial (as was the case in the Australian VDP), section 231(1) of the TAA provides that the withdrawal of voluntary disclosure relief may occur only once it has been established that the VDP applicant ‘failed to disclose a matter that was material for purposes of making a valid voluntary disclosure’ [emphasis added]. This suggests that immaterial incompleteness would not warrant relief being withdrawn.

⁴⁷⁶ The behaviours listed in column 2 are: (i) substantial understatement; (ii) reasonable care not taken in completing return; (iii) no reasonable grounds for tax position taken; (iv) impermissible avoidance arrangement; (v) gross negligence; and (vi) intentional tax evasion.

⁴⁷⁷ The wording of this sub-section was amended from ‘involve the potential imposition of an understatement penalty in respect of the “default”’ by section 66 of the Tax Administration Laws Amendment Act 23 of 2015. The explanatory memorandum on the objects of Tax Administration Laws Amendment Bill 2015 provides that ‘the potential imposition of an understatement penalty as a requirement for a valid voluntary disclosure has been interpreted by SARS as meaning that in the absence of voluntary disclosure relief, an understatement penalty would be leviable. On this interpretation, a bona fide inadvertent error as contemplated in section 222(1) does not qualify for voluntary disclosure relief. A default that does not constitute a substantial understatement and where the other behaviours contemplated in section 223 are also not present would also not qualify for voluntary disclosure relief, notwithstanding that SARS may take a contrary view with regard to the assessment of the relevant behaviour. The ... amendment aims to resolve this issue by amending the requirement to rather refer to the behaviour in Column 2 of the understatement penalty percentage table in section 223, as opposed to involving the potential imposition of an understatement penalty in respect of the “default”.’ See National Treasury ‘Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2015’ 2015.

⁴⁷⁸ Section 227 of the TAA.

⁴⁷⁹ Section 226(2) of the TAA.

A no-name disclosure is permitted in terms of section 228 of the TAA. Under this section, the Commissioner may issue a non-binding private opinion as to a taxpayer's eligibility for relief under this section. This has no binding effect on SARS,⁴⁸⁰ but provides guidance as to SARS' opinion on a taxpayer's eligibility under this section.

Comparison

There are a number of concepts that the South African VDP does not currently incorporate.

First, the tiered system that Australia utilises. Although not in the VDP, South Africa does use tiered penalty systems, as seen in the understatement penalty percentage table in section 223 of the TAA as seen in **Figure 15** below. This provides a basis for which South Africa to build a framework with tiered VDP relief.

Figure 15: Understatement penalty percentage table

1 Item	2 Behaviour	3 Standard Case	4 If obstructive, or if it is a 'repeat case'	5 Voluntary disclosure after notification of audit or criminal investigation	6 Voluntary disclosure before notification of audit or criminal investigation
(i)	'Substantial under-statement'	10%	20%	5%	0%
(ii)	Reasonable care not taken in completing return	25%	50%	15%	0%
(iii)	No reasonable grounds for 'tax position' taken	50%	75%	25%	0%
(iv)	"Impermissible avoidance arrangement"	75%	100%	35%	0%
(v)	Gross negligence	100%	125%	50%	5%
(vi)	Intentional tax evasion	150%	200%	75%	10%

Source: section 223(1) of the TAA

⁴⁸⁰ Section 88 of TAA.

Second, the two streams of disclosure that has regard to whether the conduct was inadvertent or intentional that Canada utilises.

Third, the exclusion of multiple uses by a single taxpayer of the VDP. While the South African system requires that the default referred to in the VDP application not be similar to any default by the applicant in the five years preceding the application, there is nothing that prevents taxpayers from utilising the VDP multiple times. Importantly, to the extent that a valid disclosure has been made to SARS, the power to accept a voluntary disclosure is not discretionary.⁴⁸¹ If the requirements for a valid voluntary disclosure have been met, then SARS must grant the relief (even if the taxpayer has utilised the programme multiple times). In contrast, the Canadian system permits repeat applications only in exceptional circumstances. South Africa could thus consider either providing more stringent requirements to the extent that it relates to repeated applications, or, if considering the tiered relief system, SARS could offer less relief where there has been repeated conduct.⁴⁸²

Fourth, the limitation on the age of the non-compliance. In Canada, the information voluntarily disclosed must be at least one year past due. This provision was included because ‘*the program is not meant to be used as a de facto filing extension.*’⁴⁸³ Although, applications that include information relating to a taxation year more than one year past due in conjunction with information that is more recent may be considered.⁴⁸⁴

There are some key distinctions between the jurisdictions in respect of when penalties are imposed. For example, in Australia, the penalty of a false or misleading statement that does not result in a shortfall is zero.⁴⁸⁵ In contrast, in terms of the South African framework, understatement penalties may be imposed where there has been an understatement.⁴⁸⁶ An understatement is defined as ‘*any prejudice to SARS or the fiscus as a result of—(a) failure to submit a return required under a tax Act or by the Commissioner; (b) an omission from a return; (c) an incorrect statement in a return; (d) if*

⁴⁸¹ While there are instances where discretion may be exercised (for example, where the person seeking relief has already been given notice of the commencement of an audit or criminal investigation into that person’s affairs), this discretion cannot be exercised after it has been determined that a valid disclosure has been made.

⁴⁸² This is similar to Column 4 of the understatement penalty percentage table in section 223(1) of the TAA.

⁴⁸³ Section 37 of the Income Tax Information Circular No. IC00-1R6.

⁴⁸⁴ Ibid.

⁴⁸⁵ Ibid at section 91.

⁴⁸⁶ Section 222(1) of the TAA.

*no return is required, the failure to pay the correct amount of 'tax'; or (e) an 'impermissible avoidance arrangement'.*⁴⁸⁷ However, in *Purlish Holdings (Pty) Ltd v Commissioner for the South African Revenue Service* 81 SATC 204, it was held that *'prejudice is not only determinable in financial terms'*.⁴⁸⁸ In that case, *'the resource allocation in the form of additional time and human capital necessitated by the extensive audit also constituted prejudice to SARS, as such resources could have been utilised for other matters.'*⁴⁸⁹ In other words, penalties are imposed for a much broader set of circumstances.

There are also some similarities between the jurisdictions. For example, the South African no-name disclosure far more closely mirrors Canada's pre-disclosure discussion than a true no-name disclosure in that it is merely a non-binding private opinion as opposed to an actual disclosure. In the Canadian system, the number of no-name disclosures were not tracked so it is not possible to determine the impact of the policy change from these disclosures to the pro-disclosure discussion. However, it is clear that Canadian taxpayers are not availing themselves of these discussions. Between March 2018 to February 2019 (being the first year of the new Canadian VDP rules), only 412 pre-disclosure discussions were initiated by taxpayers with the CRA.⁴⁹⁰ This translates to approximately 3% of taxpayers who submitted VDP applications within the relevant period.⁴⁹¹ Neither the SARS Strategic Plan⁴⁹² nor the latest SARS Annual Report⁴⁹³ provide any statistics about the VDP process other than the total amount collected. As such, it is not clear to what extent the South African no-name disclosure process is utilised.

Although the South African VDP has a provision similar to the Australian VDP that would allow for disclosures even after the commencement of an audit or criminal investigation into their affairs, the requirement that the default would not otherwise have been detected during the audit or investigation read with the precedent set in *Purveyors South Africa Mine Services (Pty) Ltd vs Commissioner for the South African Revenue Services* (135/2021) [2021] ZASCA 170 (**Purveyors**) significantly

⁴⁸⁷ Section 221 of the TAA.

⁴⁸⁸ At paragraph 23.

⁴⁸⁹ Ibid.

⁴⁹⁰ Martin Sorensen and Nicholas Arrigo 'Voluntary Disclosure to CRA – It Ain't What It Used to Be' (2020).

⁴⁹¹ 7935 VDP applications were submitted by individuals and 4107 applications were submitted by other entities.

⁴⁹² SARS op cit note 18.

⁴⁹³ SARS 'Annual Report 2021/22' (2022).

narrows the scope. For example, while the Australian voluntariness requirement for a VDP application just refers to being ‘*an act done without persuasion or compulsion on the part of the Commissioner*,’⁴⁹⁴ Purveyors considers voluntary to have the dictionary definition being ‘*performed or done of one’s own free will, impulse or choice; not constrained, prompted, or suggested by another*.’⁴⁹⁵ While there are some similarities in the definitions, the addition of the terms “prompted” and “suggested” make the South African voluntariness threshold significantly harder to meet than the Australian threshold.

Interestingly, once the requirements for the VDP have been met in terms of section 226(2) of the TAA, there is no distinction in respect of the relief offered. Although not within the scope of this study, it may be of interest to do a cost-benefit analysis of moving towards a system that has an easier threshold in the case of disclosures where the taxpayer had already been informed of the commencement of an audit or criminal investigation, but where the relief is reduced (as is the case in Australia where only the relief offered is only 20% of the penalties).

Examination

TAPs have been well studied and there are several important outcomes that have been determined.

First, compliant taxpayers may feel that the amnesty is unfair,⁴⁹⁶ especially where there is no punishment for non-compliant taxpayers. This is especially so where the majority of taxpayers are compliant.⁴⁹⁷ As has been discussed, perceptions of fairness are incredibly important for tax morale, and consequently, this needs to be carefully navigated. Even if it is not necessarily the case that TAPs are inequitable (vertical equity tends to increase when high net-worth individuals utilise tax amnesties and horizontal equity increases when tax evaders pay their tax bill⁴⁹⁸), perception is just as important, if not more, than the reality. In this regard, considering tiered penalty systems or limited-track programmes for intentional evasion may assist in managing perceptions of fairness as it may create

⁴⁹⁴ Miscellaneous Taxation Ruling MT 2012/3 at paragraph 72.

⁴⁹⁵ Purveyors at paragraph 19.

⁴⁹⁶ It was found that, in Turkey in 2016, the taxpayer perception of fairness was negatively affected by tax amnesties. See Recep Yücedoğlu and Idris Sarisoy ‘Are Tax Amnesties Good for Us All? Understanding Influence of Tax Amnesties on Benefitters and Non-Benefitters’ (2020) 66(3) *CESifo Economic Studies* 285-300 at page 296.

⁴⁹⁷ Herman Leonard and Richard Zeckhauser op cit note 435.

⁴⁹⁸ Eric Le Borgne ‘Economic and Political Determinants of Tax Amnesties in the U.S. States’ (2006) IMF Working Paper WP/06/222.

the perception that the relief granted is appropriate with reference to the default. This would be in line with SARS' aim to have its *'actions ... be proportional to the level of non-compliance behaviour detected, moving through a continuum of "soft" enforcement to "hard" enforcement.'*⁴⁹⁹

Second, tax amnesties may result in non-compliant taxpayers to remain non-compliant if they believe that they could benefit from a future tax amnesty.⁵⁰⁰ Alm and Beck⁵⁰¹ find that anticipation of a future amnesty can result in poor present compliance as taxpayers expect that they non-compliant behaviour will be forgiven in the future. In other words, non-compliant taxpayers have less reason to fear being caught.⁵⁰² This may be the case both for permanent amnesty programmes, and temporary amnesty programmes where non-compliant taxpayers have reason to believe that there will be further amnesties offered. Thus, where a tax authority intends to implement a once-off TAP for a particular purpose, there should be credibility in the belief that the TAP is a one-time opportunity. The result found by Alm and Beck was confirmed by Andreoni,⁵⁰³ although Andreoni found that although evasion increases, this does not necessitate a decrease in tax revenue. He argues that this is because, to the extent that non-compliance increases as a result of anticipated amnesties, the underlying tax debt will nonetheless be collected by the government through the amnesty (in respect of both the new and pre-existing evasion). Luitel and Sobel⁵⁰⁴ find that, one-off TAPs provide a short-term revenue boost but a reduction in long-term revenue, and repeated TAPs produce very little additional short-term revenue while simultaneously leading to a reduction in long-term revenue as a result of reduced compliance. They further argue that non-compliance increases as additional amnesties are offered. Ross and Buckwalter⁵⁰⁵ also contemplate a scenario where taxpayers take TAPs into account in their tax planning. For example, instead of taking out a short-term loan with a financial institution, a taxpayer could forgo paying tax payments and then repay it during the tax amnesty (and even if

⁴⁹⁹ SARS op cit note 18 at page 9.

⁵⁰⁰ Herman Leonard and Richard Zeckhauser op cit note 435.

⁵⁰¹ James Alm and William Beck 'Tax Amnesties and Tax Revenues' (2016) 18(4) *Public Finance Quarterly* 433-453.

⁵⁰² Recep Yücedoğru and Idris Sarisoy op cit note 496.

⁵⁰³ James Andreoni 'The Desirability of a Permanent Tax Amnesty' (1991) 45(2) *Journal of Public Economics* 143-159 at page 157.

⁵⁰⁴ Hari Luitel and Russell Sobel op cit note 436 at page 37.

⁵⁰⁵ Justin Ross and Neal Buckwalter 'Strategic Tax Planning for State Tax Amnesties: Evidence from Eligibility Period Restrictions' (2013) 41(3) *Public Finance Review* 275-301 at page 277.

interest is not waived, the rates are often significantly lower than the interest rates offered by financial institutions).⁵⁰⁶

Third, Alm and Beck⁵⁰⁷ find that, if individuals believe that a current amnesty will result in a harsher enforcement regime in the future, TAPs can have a positive impact on tax compliance. In another study, Alm⁵⁰⁸ still finds that taxpayers will not voluntarily disclose previous non-compliance unless there is a credible threat of increased enforcement and harsher penalties upon detection. In other words, there needs to be significant changes in the tax system. Alm and Beck⁵⁰⁹ also find that the corollary holds true; lenience in enforcement has a negative impact on tax compliance.

Fourth, while amnesties are intended to recover revenue, the gains are often minimal and under-target.⁵¹⁰ This has been found in countries including the US, Ireland, Italy, Argentina, Turkey, and the Philippines. Other examples include Namibia, where a 2016 tax amnesty raised only N\$1.4 billion (which was N\$2.6 billion under their target) even with having extended the amnesty three times,⁵¹¹ and Ghana, where a 2018 tax amnesty raised GHC287 million against a target of GHC500 million.⁵¹² Further, it is not clear that the tax amnesty has a significant effect after having controlled for other factors, such as GDP and inflation.⁵¹³ After a study of tax amnesties across the world, Alm⁵¹⁴ finds that “hard-core” evaders do not participate in TAPs at a high rate. This contributes to the inability of TAPs to garner significant revenue. Fisher, Goddeeris and Young⁵¹⁵ found that the long-term increase in revenue (which is likely to be small) could be easily offset if the amnesty has any negative impact

⁵⁰⁶ Ibid at page 277.

⁵⁰⁷ James Alm and William Beck op cit note 501.

⁵⁰⁸ James Alm ‘Tax Policy Analysis: The Introduction of Russian Tax Amnesty’ (1998) International Studies Program Working Paper 98 – 6 at page 8.

⁵⁰⁹ James Alm and William Beck op cit note 501.

⁵¹⁰ Katherine Baer and Eric Le Borgne op cit note 434.

⁵¹¹ Kelvin Chiringa ‘Inland revenue collects N\$300 million as third tax amnesty deadline ends ... Fails to get the envisaged N\$400 billion’ *The Villager* 6 April 2018.

⁵¹² Magdalene Larnyoh ‘Ghana Revenue Authority fails to meet the Tax Amnesty Policy target of GHC500 million’ *Pulse* 18 March 2019.

⁵¹³ For example, in Kenya, a study of taxpayer data following the 2004 tax amnesty finds that it did not have a positive effect on tax revenue growth after controlling for other revenue factors like GDP and inflation. See Tom Kilonzo *The Effects of Tax Amnesty on Revenue Growth in Kenya* (unpublished MBA thesis, University of Nairobi, 2012).

⁵¹⁴ James Alm op cit note 508.

⁵¹⁵ Ronald Fisher, John Goddeeris, and James Young op cit 435 at page 26.

on otherwise compliant taxpayers. The cost of the amnesty needs to be carefully weighed against any possible savings that the revenue service may be making.

Fifth, there is mixed evidence on whether TAPs actually encourage compliance. Fisher, Goddeeris and Young⁵¹⁶ found that it is not an effective way to tax otherwise non-compliant taxpayers into compliant taxpayers.⁵¹⁷ In contrast, Christian, Gupta, and Young⁵¹⁸ found that amnesty participants do, in fact, continue to file their tax returns subsequent to participation in the programme.⁵¹⁹ The majority of studies on voluntary disclosure programmes have been conducted in “developed” countries and limited evidence exists on the efficacy of reprieves in South Africa and equivalents. Dare, Jansen and du Plessis⁵²⁰ use laboratory experiments to examine the behaviour of taxpayers in response to both once-off and permanent VDPs in South Africa. They find that, regardless of whether once-off or permanent, VDPs have an insignificant long-term effect on tax compliance. Notwithstanding, a once-off programme was found to be more effective than a permanent programme.

6.6 Remittance of Penalty for Nominal or First Incidence of Non-compliance

Canada

Canada does not have specific remission provisions, but rather a single general provision. It provides that the Minister of National Revenue⁵²¹ may ‘waive or cancel⁵²² all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer.’⁵²³ While the guidelines in the Income Tax Information Circular No. IC07-1R1 provide that relief from penalties and interest may only be granted

⁵¹⁶ Ibid at page 26.

⁵¹⁷ The primary objective of a TAP is not necessarily to tax otherwise non-compliant taxpayers into compliant taxpayers and as such, the rationale of the South African VDP needs to be carefully interrogated to determine if this is a concern in the South African context.

⁵¹⁸ Charles Christian, Sanjay Gupta, and James Young ‘Evidence on Subsequent Filing from the State of Michigan’s Income Tax Amnesty’ (2002) 55(4) *National Tax Journal* 703-721 at page 719.

⁵¹⁹ It is not immediately clear whether all of these returns were filed accurately.

⁵²⁰ Chengetai Dare, Ada Jansen and Sophia du Plessis ‘Taxpayers’ Behavioural Responses to Voluntary Disclosure Programmes: Evidence from South Africa’ (2018) ERS Working Paper 770.

⁵²¹ As defined in section 248(1) of the Income Tax Act R.S.C. 1952, c.1 (5th Supp.).

⁵²² In terms of section 22 of the Income Tax Information Circular No. IC07-1R1, waiver here refers to ‘penalties and interest otherwise payable by a taxpayer for which relief is granted by the CRA before these amounts are assessed or charged to the taxpayer’ while cancellation here refers to ‘penalties and interest amounts that were assessed or charged to the taxpayer for which relief is granted by the CRA.’

⁵²³ Section 220(3.1) of the Income Tax Act R.S.C. 1952, c. 148 (5th Supp.).

when the inability to satisfy a tax obligation is due to (i) extraordinary circumstances,⁵²⁴ (ii) actions of the CRA,⁵²⁵ or (iii) the inability to pay / financial hardship, these guidelines are not binding and are not a sufficient reason not to grant relief where it may be just or equitable to do so.

United States

In the US, penalties may be abated for one for four reasons which include for administrative reasons and where reasonable cause is shown.⁵²⁶ One type of administrative relief is a first time abatement (FTA) which provides relief for (i) failure to file penalties,⁵²⁷ (ii) failure to pay penalties,⁵²⁸ and (iii) failure to deposit penalties.⁵²⁹ To be eligible for the relief, the taxpayer needs to have been previously compliant⁵³⁰ and must be currently compliant.⁵³¹

In *Oosterwijk v. United States*,⁵³² a couple facing late filing penalties (in part due to the negligence of their accountant) was precluded from applying for an FTA due to a \$7 late payment penalty that was waived under the FTA policy three years prior. Consequently, they were previously non-compliant and they ultimately became liable for \$274 634.73 in penalty payments. This illustrates how strictly the policy is enforced and that there is little leeway, even where it may be just and equitable to allow the abatement.

South Africa

In terms of 215 of the TAA, any taxpayer that is aggrieved by a penalty assessment may apply to have SARS remit the penalty. More specifically, section 217 of the TAA regulates the ‘*remittance of*

⁵²⁴ In terms of section 25 of the Income Tax Information Circular No. IC07-1R1, extraordinary circumstances include natural or human-made disasters, civil disturbances or disruptions in services, serious illness, or accident, or serious emotional or mental distress.

⁵²⁵ In terms of section 26 of the Income Tax Information Circular No. IC07-1R1, this may include processing errors or delays, errors in material made available to the public, incorrect or delayed information provided to the taxpayer, or other undue delays.

⁵²⁶ IRM 20.1.1.3(1).

⁵²⁷ In terms of the penalties imposed under IRC § 6651(a)(1), § 6698(a)(1), or § 6699(a)(1).

⁵²⁸ In terms of the penalties imposed under IRC § 6651(a)(2), and/or § 6651(a)(3).

⁵²⁹ In terms of the penalties imposed under IRC § 6656. See IRM 20.1.1.3.3.2.1(1).

⁵³⁰ In terms of the IRM, this requires having filed the return for the three years preceding the penalty (if required) and not having received any penalties during those three preceding years.

⁵³¹ In terms of the IRM, this requires having filed all required returns (or having an extension within which to file the return) and having paid (or arranged to pay) are taxes due (for years other than the year in which the penalty was imposed).

⁵³² Civ. No. CCB-21-1151, 129 A.F.T.R. 2d 2022-xx, (D. Md. Jan. 27, 2022).

penalty for nominal or first incidence of non-compliance.' The penalty may be remitted if the penalty has been imposed in respect of (i) a first incidence of non-compliance,⁵³³ or (ii) a particular type of non-compliance⁵³⁴ that lasts less than 5 business days.⁵³⁵ Before remitting the penalty, SARS must be satisfied that (i) '*reasonable grounds for the non-compliance exist*,'⁵³⁶ and that (ii) '*the non-compliance in issue has been remedied*.'⁵³⁷ Alternatively, a percentage-based penalty⁵³⁸ could also be remitted. The same requirements would need to be met as above.⁵³⁹ Separately, section 218 of the TAA permits the remittance of a penalty in exceptional circumstances,⁵⁴⁰ but this is a much higher threshold to meet than "reasonable grounds" and as such, would likely not be the preferred approach for a first-time incident. However, section 217 of the TAA does require that the penalty be nominal which may be a constraining factor.⁵⁴¹

Reasonable grounds are not defined in the TAA and references to reasonable grounds in case law,⁵⁴² interpretation notes,⁵⁴³ and other sources of guidance (rightly) provide no closed lists as to what may constitute reasonable grounds (although some guidance is offered as to what would not meet this

⁵³³ This is defined in section 208 of the TAA as '*an incidence of non-compliance by a person if no 'penalty assessment' under this Chapter was issued during the preceding 36 months, whether involving an incidence of non-compliance of the same or a different kind, and for purposes of this definition a 'penalty assessment' that was fully remitted under section 218 must be disregarded.*'

⁵³⁴ In terms of section 210 of the TAA, '*non-compliance is failure to comply with an obligation that is imposed by or under a tax Act and is listed in a public notice issued by the Commissioner, other than-(a) the failure to pay tax subject to a percentage based penalty under Part C; (b) non-compliance in respect of which an understatement penalty under Chapter 16 has been imposed; or (c) the failure to disclose information subject to a reportable arrangement or mandatory disclosure penalty under section 212.*'

⁵³⁵ Section 217(1)(b) of the TAA.

⁵³⁶ Section 217(1)(b)(i) of the TAA.

⁵³⁷ Section 217(1)(b)(ii) of the TAA.

⁵³⁸ Imposed in terms of section 213 of the TAA.

⁵³⁹ Section 217(3) of the TAA.

⁵⁴⁰ Section 218 of the TAA which governs the remittance of penalty in exceptional circumstances provides a closed list of exceptional circumstances, which includes (i) a natural or human-made disaster, (ii) a civil disturbance or disruption in services, (iii) a serious illness or accident, (iv) serious emotional or mental distress, (v) a capturing error on the part of SARS, a processing delay on the part of SARS, the provision of incorrect information in an official publication or media release issued by the Commissioner, a delay on the part of SARS in providing information to any person, or the failure by SARS to provide sufficient time for an adequate response to a request for information by SARS, (vi) serious financial hardship, or (vii) any other circumstance of analogous seriousness.

⁵⁴¹ The penalty must involve an amount of less than R2 000 if the penalty was imposed in terms of section 210 or 213 of the TAA, and R100 000 if the penalty was imposed in terms of section 212 of the TAA.

⁵⁴² For example, the Western Cape High Court ruled that a taxpayer's attempts to rectify a deficiency (even if unsuccessful) was sufficient to constitute a reasonable ground. See *Peri Formwork Scaffolding Engineering (Pty) Ltd v Commissioner for the South African Revenue Service* (A67/2020) [2021] ZAWCHC 165 at paragraph 66.

⁵⁴³ For example, Interpretation Note 15 deals with the exercise of discretion in the case of a late objection or appeal, but it considers the requirement of reasonable grounds (as it is also a term used in section 104 of the TAA). See SARS 'Interpretation Note 15 (Issue 5)' 21 December 2018.

requirement). However, it does provide that ‘*for a decision to be reasonable, the ... SARS official is required to consider all relevant matters*’⁵⁴⁴ and that ‘*there is no absolute standard which can be laid down for determining reasonableness and necessity. Principles can be established, but the application of those principles to particular circumstances can only be done on a case by case basis.*’⁵⁴⁵

Comparison

There are some significant differences in the jurisdictions in the penalty waiver provisions. First, in the US, since the FTA is only set forward in the Internal Revenue Manual (**IRM**), there is no enforceable right (as the IRM has no force of law).⁵⁴⁶ As such, any decisions would not be subject to appeal or objection. Second, while both South Africa and the US require the preceding 3-year period to have been fully compliant with no penalty assessments having been issued, South Africa allows for penalty assessments that have been fully remitted under section 218 of the TAA⁵⁴⁷ to be disregarded. There is no such scope in the US FTA policy. Third, the South African provision also allows for the waiver of penalties imposed due to the non-compliance that lasts less than 5 business days as well as non-compliance that involves an amount of less than R2 000. This essentially accounts for non-compliance that is *de minimis*. In this regard, South Africa’s waiver provisions are far more developed than some other jurisdictions.

In South Africa, the “first-instance” requirement applies to non-compliance of either the same or a different kind.⁵⁴⁸ In other words, there was a conscious choice on the part of the legislature not to bifurcate the non-compliance and it is not possible to have a “first incidence” multiple times across multiple types of non-compliance. Similarly, the US FTA waiver is not penalty-specific.⁵⁴⁹

⁵⁴⁴ Ibid at page 4.

⁵⁴⁵ *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3 at paragraph 104.

⁵⁴⁶ See, for example, *United States v. Hom*, 45 F. Supp. 3d 1175 (N.D. Cal. 2014); *Fargo v. C.I.R.*, 447 F.3d 706 (9th Cir. 2006); and *Carlson v. United States*, 126 F.3d 915 (7th Cir. 1997).

⁵⁴⁷ This refers to penalties that have been remitted due to exceptional circumstances.

⁵⁴⁸ Section 208 of the TAA

⁵⁴⁹ IRM 20.1.1.3.3.2.1(11).

6.7 Compromise of Tax Debt

Australia

In terms of the Australian Income Tax Assessment Act,⁵⁵⁰ there are no explicit provisions that relate to compromise. However, the provisions of this Act read with other acts indicate that this is a power within the Commissioner of Taxation's purview.

First, the Income Tax Assessment Act provides that the Commissioner of Taxation has general administration of the Income Tax Assessment Act 27 of 1936. Second, the Public Governance, Performance and Accountability Act⁵⁵¹ provides that the '*accountable authority*⁵⁵² of a Commonwealth entity must govern the entity in a way that: (a) promotes the proper use and management of public resources for which the authority is responsible; and (b) promotes the achievement of the purposes of the entity; and (c) promotes the financial sustainability of the entity.'⁵⁵³ It goes further providing that in making those decisions, '*the accountable authority must take into account the effect of those decisions on public resources generally.*'⁵⁵⁴ Third, the Public Governance, Performance and Accountability Rule 2014⁵⁵⁵ provides that '*[t]he accountable authority of a non-corporate Commonwealth entity must pursue recovery of each debt for which the accountable authority is responsible unless: (a) the accountable authority considers that it is not economical to pursue recovery of the debt; or (b) the accountable authority is satisfied that the debt is not legally recoverable; or (c) the debt has been written off as authorised by an Act.*'⁵⁵⁶

Read together, these provisions empower the Commissioner of Taxation to compromise undisputed tax debts if exercised for one of the permissible purposes outlined above. While there are no "hard and fast" rules and the Commissioner of Taxation has discretion as to whether to accept a compromise

⁵⁵⁰ 27 of 1936.

⁵⁵¹ 123 of 2013.

⁵⁵² In terms of section 12(2) of the Public Governance, Performance and Accountability Act 123 of 2013.

⁵⁵³ Ibid at section 15(1).

⁵⁵⁴ Ibid at section 15(2).

⁵⁵⁵ Made under the Public Governance, Performance and Accountability Act 123 of 2013.

⁵⁵⁶ Section 11 of the Public Governance, Performance and Accountability Rule 2014.

or not, the Practice Statement⁵⁵⁷ sets out the following guiding principles in the consideration of compromise applications:

- The Commissioner of Taxation will not accept compromise proposals that offer less than the tax debtor's total net assets in full satisfaction of the taxation debt;
- The Commissioner of Taxation will not accept compromise proposals unless there is a benefit in doing so over and above that which would flow from taking actions under either the Bankruptcy Act or the Corporations Act;
- The Commissioner of Taxation must be able to quantify the tax debtor's total taxation debt;
- The Commissioner of Taxation will neither prejudice other creditors' entitlements, nor accept that other creditors can prejudice the Commissioner's entitlements;
- The Commissioner of Taxation will not consider requests for compromise where this may directly or indirectly impact on other actions involving the tax debtor or other parties;
- The Commissioner of Taxation cannot accept compromise proposals where the only reason to support the proposal is the tax debtor's claim of hardship in paying their taxation debts;
- The Commissioner of Taxation will take into account the tax debtor's compliance history;
- The Commissioner of Taxation will not accept a compromise proposal where the tax debtor could lodge a debt agreement under Part IX of the Bankruptcy Act; and
- The Commissioner of Taxation will not accept a compromise proposal where, within 5 years immediately before the proposal, the tax debtor has been a: party to an earlier compromise agreement with the Commissioner of Taxation; bankrupt; or party to an arrangement under Part IX or Part X of the Bankruptcy Act or Part 5.3A of the Corporations Act.

United States

The Internal Revenue Code (**IRC**) allows the Secretary of the Treasury to ‘*compromise any civil or criminal case arising under the internal revenue laws.*’⁵⁵⁸ There are four key objectives that this aims to achieve, namely (i) efficient and effective collection of tax debts at the lowest collection cost and at the earliest point in time, (ii) resolve tax disputes in a manner that is in the best interest of both the

⁵⁵⁷ ATO Practice Statement Law Administration 2011/3.

⁵⁵⁸ IRC § 7122.

taxpayer and the government, (iii) allow taxpayers a fresh start, and (iv) secure revenue that may not otherwise have been collected.⁵⁵⁹ Nina Olsen, a National Taxpayer Advocate,⁵⁶⁰ writes that provisions like this may improve tax morale by providing taxpayers with reasonable opportunities to resolve their liabilities.⁵⁶¹

The following types of offers for compromise are considered:

- **doubt as to liability (DATL):** the basis for acceptance of an offer is where there is doubt that the liability is correct;
- **doubt as to collectability (DATC):** the basis for acceptance of an offer is where there is doubt that the tax can be paid in full; and
- **effective tax administration (ETA):** the basis for acceptance of an offer is where this is no doubt that the liability is correct or can be paid in full but requiring the taxpayer to fully pay the tax would either create an economic hardship or be a public policy/equity issue.⁵⁶² Notwithstanding, no compromise to promote ETA may be made if it would undermine tax compliance more generally.⁵⁶³

DATL exists where there is a ‘*genuine dispute as to the existence or amount of the correct tax liability under the law.*’⁵⁶⁴ It can only be utilised in the case where the taxpayer was not able to object or appeal the tax liability in the time given. In other words, it acts more as a procedural fairness mechanism than a substantive provision.

DATC exists where the ‘*the taxpayer’s assets and income are less than the full amount of the liability.*’⁵⁶⁵ This is the most commonly accepted ground for offers of compromise.⁵⁶⁶ Importantly,

⁵⁵⁹ IRM § 5.8.1.1(3).

⁵⁶⁰ The Taxpayer Advocate Service is an independent organisation within the IRS that aims to assist taxpayers and ensure they receive fair treatment.

⁵⁶¹ Nina Olsen ‘Minding the gap: a ten-step program for better tax compliance’ (2009) 20(1) *Stanford Law and Policy Review* 7-36 at page 26.

⁵⁶² Factors to be considered in the determination of whether economic hardship would be caused by collection are listed in 26 CFR § 301.7122-1(c)(3)(i). See 26 CFR § 301.7122-1(b); IRM op cit note 559 § Exhibit 5.8.1-1.

⁵⁶³ Factors to be considered in the determination of whether economic hardship would be caused by collection are listed in 26 CFR § 301.7122-1(c)(3)(ii).

⁵⁶⁴ 26 CFR § 301.7122-1(b)(1).

⁵⁶⁵ 26 CFR § 301.7122-1(b)(2).

⁵⁶⁶ US Government Accountability Office ‘IRS Offers in Compromise’ (2006) GAO-06-525 at page 1.

these offers will not be accepted if the revenue service is of the opinion that it would be able to collect the entire amount under an instalment agreement (which are further discussed in section 6.8 below).⁵⁶⁷ Briefly, the IRC provides for instalment agreements which will facilitate the partial collection of a tax liability. Although not within the scope of this dissertation, this interaction between instalment agreements and offers in compromise should be studied further.

An offer for compromise may be made on multiple grounds. For example, a taxpayer may make an offer on the basis of DATL and an offer on the basis of DATC. This reiterates that DATL is distinct from whether or not the taxpayer is capable of paying the liability.

The IRS, in terms of their policies, provide that compromise offers will be accepted when it is not likely that the full tax liability can be collected and if the amount offered in compromise ‘*reasonably reflects collection potential.*’⁵⁶⁸ However, even if the amounts collected through a compromise would be greater than could be collected through any other manner, if acceptance of the compromise offer would prejudice the government, the offer may be rejected.⁵⁶⁹

In 2006, the Government Accountability Office (**GAO**) studied the performance of the compromise programme.⁵⁷⁰ At that time, taxpayers who utilised the compromise programme paid, on average, only 16% of their tax liability.⁵⁷¹ In other words, it was writing off a significant amount.⁵⁷²

South Africa

Tax debts, or portions thereof, may be compromised by SARS officials.⁵⁷³ These compromises are intended to, *inter alia*, result in savings in the costs of collection of tax debts⁵⁷⁴ and the collection of a larger portion of a tax debt than would otherwise have been recovered⁵⁷⁵ at an earlier date than

⁵⁶⁷ IRM op cit note 559 § 5.8.4.3(3)

⁵⁶⁸ IRS Policy Statement 5-110, Offers will be accepted (1/30/1992).

⁵⁶⁹ IRS Policy Statement 5-89 (7/26/1960).

⁵⁷⁰ US Government Accountability Office op cit note 566.

⁵⁷¹ Ibid at page 1.

⁵⁷² In the 2005 financial year, it amounted to about USD 1 billion. See US Government Accountability Office op cit note 566 at page 1.

⁵⁷³ Section 200 of the TAA.

⁵⁷⁴ Section 202(1)(a) of the TAA.

⁵⁷⁵ Section 202(1)(c) of the TAA.

would otherwise be the case.⁵⁷⁶ Compromises must be made with due consideration due its impact on taxpayer compliance more broadly.⁵⁷⁷

The TAA sets out circumstances when it is not appropriate to compromise tax debt. No debt may be compromised if, *inter alia*:

- the taxpayer has compromised a debt within three years preceding the request for compromise;
- the taxpayer's tax affairs are not up to date;
- liquidation or sequestration proceedings have been initiated or are intended to be initiated against the taxpayer;
- other creditors will be prejudiced as a result of the compromise or other creditors will be placed in a preferential position relative to SARS as a result of the compromise; or
- the compromise would adversely affect taxpayer compliance more broadly.⁵⁷⁸

Comparison

There is no concept similar to DATL compromise in South African law (nor Australian law). It may be difficult for a South African taxpayer to conceptualise a scenario wherein the tax authorities to not only concede that there is some doubt as to the liability of the taxpayer (and by implication, that SARS made an error in their initial assessment), but also that SARS would go so far as to compromise the “doubtful” liability even though the taxpayer had the opportunity to follow the dispute resolution process and failed to do so. If SARS were to concede any error, this would generally be rectified through the objection or appeal process where an additional assessment would be issued.⁵⁷⁹ Having due regard to the importance of factors such as fairness and respect on tax morale, studying the impact of processes such as DATL compromise may provide insight on one mechanism through which voluntary compliance may be improved.

⁵⁷⁶ Section 202(1)(b) of the TAA.

⁵⁷⁷ Section 203(e) of the TAA.

⁵⁷⁸ Section 203 of the TAA.

⁵⁷⁹ This would be issued in terms of section 92 of the TAA.

In the US, the IRS may only collect tax liabilities for a period of ten years from the date of assessment of the tax (subject to some exceptions).⁵⁸⁰ For this reason, offers in compromise agreements may be more attractive in the US if an instalment agreement would be protracted and extend beyond the collection statute expiration date. In contrast, the prescription period for tax debts in South Africa is 30 years⁵⁸¹ which may mitigate the need to compromise a debt (as opposed to collection through an instalment agreement). However, a compromise agreement may still be more attractive than an instalment agreement given that (i) there are fewer risks in terms of default on the agreement, and (ii) it does not require monitoring (which can be resource-intensive).

The circumstances in which South Africa may not compromise a debt is much narrower than, for example, the circumstances under which the Australian tax authorities may not compromise a debt. However, the South African provisions provide for certain elements which must be considered, thus providing for a more flexible compromise regime.

6.8 Deferral of Payment

Noting that this dissertation has focused on tax morale rather than compliance in general, there is no discussion about the behaviour of credit-constrained individuals. For these taxpayers, even where there is high morale, there may still be low levels of compliance. In trying to provide strategies for tax collection during an economic crisis, Brondolo⁵⁸² recommends, *inter alia*, expanding assistance to taxpayers. One form of assistance is an instalment arrangement. Brondolo⁵⁸³ suggests that where these arrangements already exist, the timing of the payments should be extended.

Australia

Section 255-15 of Schedule 1 of the Tax Administration Act 1953 provides for the payment of tax liabilities by instalment. Interestingly, a payment arrangement agreement can be entered into even before the liability has arisen.⁵⁸⁴ The criteria for entering into an agreement of this sort is set out in

⁵⁸⁰ IRC § 6502(a)(1).

⁵⁸¹ Section 11(a) of the Prescription Act 68 of 1969.

⁵⁸² Peter Baird *et al* 'Reminders to Pay: Using Behavioural Economics to Increase Child Support Payments' (2015) OPRE Report 2015-20.

⁵⁸³ *Ibid* at page 12.

⁵⁸⁴ ATO Practice Statement Law Administration 2011/14.

the Practice Statements.⁵⁸⁵ The risk management criteria include factors such as (i) the total outstanding obligation, (ii) the characteristics of the total outstanding debt, and (iii) the attributes of the taxpayer.⁵⁸⁶

The specific instalment payment factors for consideration include *‘the information provided by the taxpayer and other information that may be held (or obtained) by the Commissioner, the circumstances that led to the inability to pay, the taxpayer's current financial position, including other current payment obligations and actions taken by the taxpayer to rearrange finances or borrow to meet the debt, the stage that any legal recovery action has reached and any grounds offered by the taxpayer to justify a request that further legal action be deferred, the offer made and the ability to meet payment of the debt (and the additional charges for late payment imposed by legislation) on those terms without seriously impacting on the taxpayer's ability to meet other obligations, whether there is a likely risk to the revenue by accepting payment by instalments and whether that risk could be overcome by seeking some form of security for the debt from the taxpayer ..., the solvency of the taxpayer and arrangements made with other creditors (arm's length or otherwise) to pay debts, compliance with other taxation obligations or commitments (for example, whether all lodgment obligations including activity statements (BAS/IAS) are up to date) and the history of the taxpayer's prior dealings with the Commissioner, whether there are alternative collection options that may result in payment in a shorter timeframe (for example, the use of garnishee provisions), the willingness of the taxpayer to enter into direct debit arrangements if that facility exists, and the willingness of the taxpayer to accept the conditions under which the Commissioner will agree to a payment arrangement.’*⁵⁸⁷

South Africa

In terms of section 167 of the TAA, a senior SARS official may enter into an instalment payment agreement with a taxpayer. This agreement may only be entered into if (i) *‘the taxpayer suffers from a deficiency of assets or liquidity which is reasonably certain to be remedied in the future,’* (ii) *‘the taxpayer anticipates income or other receipts which can be used to satisfy the tax debt,’* (iii)

⁵⁸⁵ ATO Practice Statement Law Administration 2011/14 read with ATO Practice Statement Law Administration 2011/6.

⁵⁸⁶ ATO Practice Statement Law Administration 2011/6.

⁵⁸⁷ ATO Practice Statement Law Administration 2011/14.

‘prospects of immediate collection activity are poor or uneconomical but are likely to improve in the future,’ (iv) *‘collection activity would be harsh in the particular case and the deferral or instalment agreement is unlikely to prejudice tax collection,’* or (v) *‘the taxpayer provides the security as may be required by the official.’*⁵⁸⁸ This section is clearly distinguished from other forms of write off or compromise as it is expected that the taxpayer’s future prospects are likely to improve.

The agreement may be modified or cancelled by SARS if (i) *‘the collection of tax is in jeopardy,’* (ii) *‘the taxpayer has furnished materially incorrect information in applying for the agreement’*, or (iii) *‘the financial condition of the taxpayer has materially changed’*.⁵⁸⁹

United States

The US offers two types of payment plans, being a short-term payment plan and a longer-term payment plan.

In terms of the short-term payment plan, taxpayers are given up to an additional 180 days in order to make payment of their tax liability in full.⁵⁹⁰ Importantly, any penalties and interest applicable could continue to accrue until full payment of the tax liability is made⁵⁹¹ (although there is no fee applicable for entering into this agreement⁵⁹²).

In terms of the longer-term payment plan, the taxpayer may enter into an agreement to pay the full liability in instalments.⁵⁹³ This is on the basis that it would facilitate the collection (whether full or partial) collection of the tax liability.⁵⁹⁴

One type of instalment agreement is the guaranteed instalment agreement (so named because the IRS must accept the taxpayer’s proposal to enter into the instalment agreement). The Secretary of the Treasury is required to enter into an instalment agreement if the taxpayer offers to enter into an instalment agreement if (i) the aggregate amount of the tax liability (excluding interest or penalties)

⁵⁸⁸ Section 168 of the TAA.

⁵⁸⁹ Section 167(5) of the TAA.

⁵⁹⁰ IRM 5.19.1.6.3

⁵⁹¹ IRM 5.19.1.1.1(2).

⁵⁹² IRM 5.19.1.6.4.6(11).

⁵⁹³ IRC § 6159(a).

⁵⁹⁴ IRC § 6159(a).

does not exceed \$10 000, (ii) the taxpayer has a clean tax history,⁵⁹⁵ (iii) the taxpayer is financially unable to pay the tax liability in full as it falls due, (iv) the instalment agreement requires full payment of the tax liability within 3 years, and (v) the taxpayer agrees to comply with all the provisions of Title 26 for the duration of the agreement.

Another type of instalment agreement is the streamlined instalment agreement (which is divided into two tiers).⁵⁹⁶ The first tier is for taxpayers who have an unpaid of less than \$25 000 (including penalties and interest). The second tier is for taxpayers who have an unpaid of between \$25 000 and \$50 000 (including penalties and interest).

If a taxpayer enters into, or proposes to enter into, an instalment agreement, then no levy⁵⁹⁷ may be made on either the property or the right to property of any person as a result of unpaid tax if (i) it is during the period of an instalment agreement offer in respect of the unpaid tax, (ii) if the instalment agreement offer is rejected, it is during the 30 days after the rejection of the offer, (iii) it is during the period of an instalment agreement in respect of the unpaid tax, or (iv) if the agreement is terminated, it is during the 30 days following the termination of the agreement.⁵⁹⁸

Comparison

One of the key distinctions between the South African and US instalment plan provisions is that the South African provision is discretionary while the US framework provides for both a discretionary and a non-discretionary component. Another key distinction is the time periods. The US imposes timelines on how long the taxpayers have to pay the full tax liability which South Africa does not include. As mentioned above, in the US, this is likely driven by the fact that the IRS only has a period of 10 years within which to collect an assessed tax liability (in contrast to SARS which has 30 years). However, the IRS does have the option to extend the collection period until the tax liability is satisfied

⁵⁹⁵ In this case, this refers to the taxpayer having not, within the 5 preceding years, (i) failed to file any required tax return, (ii) failed to pay any required tax, or (iii) entered into an instalment agreement for payment of any tax.

⁵⁹⁶ IRM 5.14.5.2.

⁵⁹⁷ In terms of IRC § 6331(b), a levy includes the '*power of distraint and seizure by any means.*'

⁵⁹⁸ IRC § 6331(k)(2).

or becomes unenforceable if there is an instalment agreement.⁵⁹⁹ Of course, as noted above, this is not always preferable given the additional risks of default and increased monitoring requirements.

6.9 Name and Shame

United States

In the US, a number of states have “name-and-shame” programmes (as illustrated in **Appendix A 2**).

For example, in California, the Revenue and Taxation Code (**RTC**) provides that the Franchise Tax Board must, at least bi-annually, publicise a list of the 500 largest tax delinquencies⁶⁰⁰ in excess of USD 100 000.⁶⁰¹ This list must include (i) the taxpayers’ name, (ii) the taxpayers’ address, (iii) the value of the tax delinquency and any interest or penalties thereon, (iv) the first date of notice of a state tax lien having been filed, (v) the type of tax that is delinquent, and (vi) the type, status, and license number of any occupational or professional license held by the taxpayer.⁶⁰² The procedural safeguards that the RTC provides for includes (i) the requirement for the Franchise Tax Board to offer the taxpayer written notice with a period of 30 days to allow for remittance or a payment arrangement to be made prior to the publication of the taxpayer’s particulars being published on the list,⁶⁰³ and (ii) contact details of the Franchise Tax Board for use by taxpayers who believe their placement on the list is erroneous.⁶⁰⁴ While there is no limitation on how long the taxpayers’ name may remain on the delinquency list for, the RTC does provide for instances when the taxpayers’ name must be removed from the list, including (i) when the taxpayer has arranged resolution of the delinquency with the

⁵⁹⁹ IRC § 6502(a)(2)(A).

⁶⁰⁰ A tax delinquency is defined in section 19195 of the RTC as ‘the total amount owed by a taxpayer to the State of California for which a notice of state tax lien has been recorded in any county recorder’s office in this state, pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.’

⁶⁰¹ For the purpose of this study, we refer to section 19195 of the RTC which refers to income taxes, but it should be noted that a similar provision exists (section 7063 of the RTC) which deals with sales and use taxes. Examples of delinquent taxpayers have included Courtney Love, Steven Seagal and Terrence Howard. The fact that the list is not discretionary ensures that no one is able to escape publication of their tax delinquencies regardless of income, celebrity-status, or their political connections. See Mara Siegler ‘Courtney Love, Michael Madsen top most delinquent taxpayers in California’ *PageSix* 23 June 2021.

⁶⁰² Section 19195(c) of the RTC. Additional information is publicised in the event that the taxpayer is a limited liability company or corporation.

⁶⁰³ Section 19195(d) of the RTC.

⁶⁰⁴ Section 19195(e)(1) of the RTC.

Franchise Tax Board,⁶⁰⁵ (ii) delinquencies where active bankruptcy proceedings have been initiated, (iii) delinquencies where active bankruptcy proceedings have been completed and there are no available assets to pay for the delinquent amount(s), and (iv) delinquencies that have been determined by the Franchise Tax Board to be uncollectible.⁶⁰⁶

Another example can be found in Delaware. The Secretary of Finance is obliged to publish on the Division of Revenue website a list of both personal income taxpayers and business that owe unpaid tax and additions to tax.⁶⁰⁷ This list is to be published quarterly⁶⁰⁸ and must include (i) the taxpayer's name, (ii) the taxpayer's address, (iii) the total by type and the amount of tax and additions to tax due, (iv) the date that the tax was determined to be due.⁶⁰⁹ The monetary threshold for publication is USD 1 000.⁶¹⁰ The procedural safeguards provided for in the Delaware Code are that (i) the overdue liability must have been reduced to a judgment,⁶¹¹ (ii) the taxpayer must have been notified of the Secretary of Finance's intention to publish the taxpayer's details sixty days prior to publication, and (iii) the taxpayer's details cannot be published if they have (since the mailing of the notice mentioned in (ii)) paid the liability in full or entered into a payment agreement with the Division of Revenue. As in California, while there is no limit on how long the taxpayer's name may remain on the list, the name (and corresponding details) must be removed within 30 days of either receipt of full payment of the delinquent liability or a written payment arrangement being made with the Division of Revenue.⁶¹²

United Kingdom

In the UK, section 94 of the Finance Act 2009⁶¹³ provides that the Commissioners for Her Majesty's Revenue and Customs (**HMRC**) may publish information about any person if (i) the taxpayer was

⁶⁰⁵ In terms of section 19195(h) of the RTC, the taxpayer's name can be placed back onto the delinquency list in the event that the taxpayer fails to comply with the terms of the arranged resolution.

⁶⁰⁶ Section 19195(f) of the RTC.

⁶⁰⁷ 30 Delaware Code § 359(b)(1).

⁶⁰⁸ 30 Delaware Code § 359(b)(3).

⁶⁰⁹ Additional information is publicised in the event that the taxpayer is an entity other than a non-juristic person. See 30 Delaware Code § 359(b)(2).

⁶¹⁰ 30 Delaware Code § 359(b)(5)(b).

⁶¹¹ 30 Delaware Code § 359(b)(4)(a).

⁶¹² 30 Delaware Code § 359(b)(7)(a). In terms of 30 Delaware Code § 359(b)(7)(b), the taxpayer's name can be placed back onto the delinquency list in the event that the taxpayer fails to comply with the terms of the payment arrangement.

⁶¹³ Act 2009 c. 10.

found to have incurred at least one relevant tax penalty, and (ii) the potential lost revenue in relation to the penalty (or the combined sum of the potential lost revenue of all of the penalties) exceeds £25 000. The particulars that may be published include the taxpayer's name, the taxpayer's address, the nature of any business carried on by the taxpayer, the amount of the penalty or penalties and the potential lost revenue in relation to the penalty, the period of non-compliance giving rise to the penalty or penalties, and any other information that the Commissioners considers appropriate.⁶¹⁴ The intention is that the deliberate tax defaulter should be identifiable.⁶¹⁵

While the information may be published in any manner that the Commissioners for HMRC considers appropriate,⁶¹⁶ there are procedural requirements before the information may be published. Specifically, Commissioner must (i) inform the taxpayer that their particulars are being published, and (ii) the taxpayer must be afforded the opportunity to make representations about whether the information should be published.⁶¹⁷

The HMRC is not permitted to publish the details of those taxpayers who have been non-compliant through *bona fide* errors or failing to take reasonable care. Rather, the HMRC may only publish the details of offenders who have engaged in deliberate defaults.⁶¹⁸ The HMRC publishes a list of offenders quarterly on its website⁶¹⁹ where the tax offenders' particulars remain for a period of 12 months.⁶²⁰

Ireland

In Ireland, the tax authority publishes a quarterly list of defaulters. Section 1086A of the Taxes Consolidation Act 39 of 1997 provides that the Revenue Commissioners must compile a list of the names and addresses and the occupations or descriptions of every person (i) *on whom a fine or other penalty was imposed by a court under any of the Acts,* (ii) *'on whom a fine or other penalty was otherwise imposed by a court ... in respect of an act or omission by the person in relation to tax,'* or

⁶¹⁴ Section 94(4) of the Finance Act 2009 c. 10.

⁶¹⁵ Section 94(4)(f) of the Finance Act 2009 c. 10.

⁶¹⁶ Section 94(5) of the Finance Act 2009 c. 10.

⁶¹⁷ Section 94(6) of the Finance Act 2009 c. 10.

⁶¹⁸ Section 94(2) of the Finance Act 2009 c. 10.

⁶¹⁹ See HMRC 'Details of deliberate tax defaulters' (2023).

⁶²⁰ Section 94(9) of the Finance Act 2009 c. 10.

(iii) the Revenue Commissioners entered into a settlement agreement with for the payment of tax, payment of interest on a tax, or a fine or penalty related to a tax.⁶²¹ This list must, notwithstanding the relevant tax secrecy laws, be published in *Iris Oifigiúil* (the official gazette of the Government of Ireland) and may be published in any other matter that the Revenue Commissioners consider appropriate.⁶²²

South Africa

In South Africa, the Commissioner may publish ‘*for general information*’ certain particulars⁶²³ of taxpayers relating to a tax offence if they have been convicted of that offence and all review or appeal proceedings have been completed (or were not instituted).⁶²⁴ The South African provision has very little substance to it. From a procedural safeguard perspective, it only provides that the publication may only take place if either all of the appeal or review proceedings relating to the offence have been completed or they were not instituted (within the period allowed).⁶²⁵

This provision has been used on occasion. For example, in 2018, SARS published the name of certain well-known public figures⁶²⁶ who had been convicted of tax offences.⁶²⁷ In both 2020⁶²⁸ and 2021,⁶²⁹ SARS reiterated that they would continue to do so.

⁶²¹ The list is organized by the type of non-compliance as a sub-heading, and includes the taxpayer’s name, taxpayer’s address, taxpayer’s occupation, the fine amount, the sentence (if any), and the number of charges.

⁶²² For example, as of December 2020, the defaulter list was published on the official Office of the Revenue Commissioners’ website.

⁶²³ In terms of section 74(2) of the TAA, this includes the name and area of the taxpayer, the particulars of the fine or sentence imposed, and any other particulars that the Commissioner thinks is fit. However, it must be noted that, in terms of *Arena Holdings (Pty) Ltd t/a Financial Mail and Others v South African Revenue Service and Others* (CCT 365/21) [2023] ZACC 13; 2023 (8) BCLR 905 (CC); 2023 (5) SA 319 (CC); 86 SATC 1 (30 May 2023), the Commissioner may disclose taxpayer information of non-compliance if it is in the public interest to a third party where the Commissioner receive a Promotion of Access to Information Act 2 of 2000 request for information. The third party, not the Commissioner, will publish the requested information.

⁶²⁴ Section 74(1) of the TAA.

⁶²⁵ Section 74(1)(b) of the TAA.

⁶²⁶ For example, former Bafana Bafana midfielder player Mr. Tsholofelo Teko Modise. See SARS ‘Ten taxpayers sentenced for failure to submit tax returns’ 9 July 2018.

⁶²⁷ Ibid.

⁶²⁸ SARS ‘Update on SARS Filing Season (PIT)’ 20 August 2020.

⁶²⁹ SARS ‘Launch of Filing Season: Statement by the SARS Commissioner’ 1 July 2021.

Comparison

The South African “name and shame” provision is quite scant. There are numerous considerations to be had when comparing the South African disclosure provision against those of other jurisdictions. Two of these are discussed below.

First, most of the jurisdictions considered are mandated to disclose offenders’ details (although there are variations in how many offenders and what value of offences are publishable). While SARS has utilised the disclosure provisions before, in general, SARS is seemingly quite devoted to maintaining taxpayer secrecy. For the avoidance of doubt, while SARS is required to maintain taxpayer secrecy and the confidentiality of information in most circumstances,⁶³⁰ SARS is permitted to disclose information in terms of the section 74 of the TAA carve-out. In this case, maintaining taxpayer secrecy (and opting not to use section 74 of the TAA more regularly) is a policy choice and SARS is by no means required to do so. However, noting that much of the literature and empirical evidence seems to point towards these provisions having a generally damaging effect on tax morale, South Africa is likely to want to have maintain the discretion as to whether or not to publish and how many names to publish.

Second, since most of the other jurisdictions considered have mandatory publication regimes, they have stronger procedural safeguards. South Africa does not have this incorporated into its provision save for the proviso that all review and/or appeal proceedings must either have been completed or not have instituted within the required time period. In this regard, the South African authorities may want to consider stronger procedural safeguards. Of course, South Africans are, to some extent, protected by the right to just administrative action⁶³¹ and the Promotion of Administrative Justice Act 3 of 2000 (**PAJA**). Notwithstanding, South Africa may want to be more explicit about procedural safeguards (considering that the safeguards of action being “reasonable” and “procedurally fair” that the Constitution and PAJA provides for are somewhat vague and less predictable). Some of the explicit safeguards provided for in other jurisdictions need not be included (for example, the UK’s provisions afford the taxpayer reasonable opportunity to make representations before the publication of the

⁶³⁰ See chapter 6 of the TAA.

⁶³¹ Section 33 of the Constitution.

taxpayers' details) as this is already required in terms of PAJA.⁶³² However, some might strengthen South Africa's procedural fairness (for example, that the tax authority cannot publish the taxpayer's details if the offence was a *bona fide* error as is the case in the UK).

6.10 Taxpayers' Charter or Bill of Rights

As outlined in chapter three, perceptions of trust, fairness, and the legitimacy of institutions are significant drivers of tax morale. Interventions to improve compliance should enhance the legitimacy of the tax system. The OECD notes that '*[t]axpayers who are aware of their rights and expect, and in fact receive, a fair and efficient treatment are more willing to comply.*'⁶³³

Australia

In Australia, the Taxpayers' Charter outlines the rights and obligation of taxpayers as well as the obligations of the Australian Taxation Office (ATO).⁶³⁴ It emphasises that the relationship between taxpayers and the ATO is based on mutual trust and respect and that the ATO will nurture that relationship by, *inter alia*, treating the taxpayer fairly and respectfully. However, the Australian Taxpayers' Charter does not have any force of law.

The Courts have also found that the Charter does not create any duty of care where the principles of the Charter are breached, stating that

*'[e]ven if there was a departure from some standard specified in such a document, it could not vest a private right to recover tort damages in a person affected by the departure. In recent times the determination of the existence of a duty of care has been directed to be established by recognition of novel areas of duty on an incremental or case by case basis.'*⁶³⁵

⁶³² In terms of section 3(2)(b)(ii) of PAJA, administrators must give any person whose rights are materially and adversely affected a reasonable opportunity to make representations.

⁶³³ OECD 'Principles of Good Tax Administration' (2001) Practice Note GAP001 at page 3.

⁶³⁴ ATO 'Australian Taxpayers' Charter' (2022).

⁶³⁵ *Harris v Deputy Commissioner of Taxation* [2001] NSWSC 550.

Similarly, while the ATO has Law Administration Practice Statements that provide guidance to tax officials, they are not binding.

Canada

In Canada, the CRA adopted a Taxpayer Bill of Rights that provides for the sixteen rights of taxpayers and the procedures to be followed should taxpayers believe that their rights have been violated or infringed upon.⁶³⁶ Some of these rights provided for are legislated⁶³⁷ (and thus clearly enforceable) and some are not.⁶³⁸ These non-legislated rights (often termed “service rights” as they have their basis in quality of service) can only be upheld through the CRA Service Complaints process or through the Taxpayers’ Ombudsman. In other words, it is not legally enforceable.

United Kingdom

In the UK, the HMRC Charter is mandated by legislation⁶³⁹ and requires that the Commissioners prepare a Charter that includes ‘*standards of behaviour and values to which Her Majesty’s Revenue and Customs will aspire when dealing with people in the exercise of their functions.*’⁶⁴⁰ It must be regularly reviewed and published with revisions where appropriate.⁶⁴¹ Importantly, the Commissioners are required to review and report on the extent to which the HMRC has complied with the standards set out in the Charter.⁶⁴² As with the Australian Charter, it is based on the principles of mutual respect. It provides that HMRC will ‘*always treat [taxpayers] in line with [HMRC’s] values of respect, professionalism and integrity.*’⁶⁴³

⁶³⁶ CRA ‘Taxpayer Bill of Rights Guide: Understanding your rights as a taxpayer’ (2022).

⁶³⁷ For example, right two provides for the right to receive service in both official languages. In terms of section 22 of the Official Languages Act (R.S.C., 1985, c. 31 (4th Supp.)), ‘*every federal institution has the duty to ensure that any member of the public can communicate with and obtain services ... in either official language...*’

⁶³⁸ For example, the right to be treated professionally, courteously, and fairly.

⁶³⁹ Section 16A of the Commissioners for Revenue and Customs Act 2005 c.11.

⁶⁴⁰ Section 16A(2) of the Commissioners for Revenue and Customs Act 2005 c.11.

⁶⁴¹ Section 16A(3) of the Commissioners for Revenue and Customs Act 2005 c.11.

⁶⁴² Section 16A(4) of the Commissioners for Revenue and Customs Act 2005 c.11.

⁶⁴³ HMRC ‘The HMRC Charter’ (2022).

United States

In the US, there is a Taxpayer Bill of Rights which the IRS is subject to and which the Commissioner of the IRS is required to ensure that IRS are familiar with and act in accordance with.⁶⁴⁴ This is one of the few jurisdictions where these rights (even service-based rights) are legally enforceable. The rights include ‘(A) *the right to be informed*, (B) *the right to quality service*, (C) *the right to pay no more than the correct amount of tax*, (D) *the right to challenge the position of the Internal Revenue Service and be heard*, (E) *the right to appeal a decision of the Internal Revenue Service in an independent forum*, (F) *the right to finality*, (G) *the right to privacy*, (H) *the right to confidentiality*, (I) *the right to retain representation*, and (J) *the right to a fair and just tax system*.’⁶⁴⁵

These rights have been incorporated into a taxpayer publication (see **Appendix A 3**). While legislating the rights is a vital step, it does not necessarily increase the awareness of these rights. It also provides the same document in multiple languages, including English, Spanish, Chinese, Korean, Russian, and Vietnamese.⁶⁴⁶

One of the driving factors behind the introduction of the Taxpayers’ Bill of Rights was to create “organising principles” of taxpayer rights. For example, the right to be informed is found in at least four different provisions in the IRC (and not made explicit in many other provisions where perhaps it should be).⁶⁴⁷ Accordingly, the Taxpayers’ Bill of Rights would compile and collate the rights, making it simpler and readily accessible for taxpayers.

Prior to the implementation of this Taxpayers’ Bill of Rights, it was found that only 46% of US taxpayers believed that they had any rights as they relate to the IRS and of those 46% of taxpayers, only 11% knew what their rights were.⁶⁴⁸

⁶⁴⁴ IRC § 7803(a)(3).

⁶⁴⁵ IRC § 7803(a)(3).

⁶⁴⁶ Amanda Bartmann ‘Making Taxpayer Rights Real: Overcoming Challenges to Integrate Rights into a Tax Agency’s Operations’ (2016) 69(3) *Tax Lawyer* 587-624 at page 601.

⁶⁴⁷ In terms of IRC § 6213(a), the IRS is required to provide the taxpayer with a notice of deficiency to petition to Tax Court. In terms of IRC 7522(a), the notice of deficiency must inform the taxpayer of the basis for and the amount of tax, interest, and penalties due. In terms of IRC § 6330, the IRS is required to inform taxpayers before a notice of intent to levy is delivered along with other pertinent information. In terms of IRC § 6320(a), when a lien is filed, the IRS is required to inform the taxpayer.

⁶⁴⁸ National Taxpayer Advocate ‘2013 Annual Report to Congress: Volume One’ (2013) at page 14.

South Africa

While many jurisdictions have a Taxpayers' Charter (or Taxpayers' Bill of Rights), South Africa does not. Taxpayer rights in South Africa are premised on the Bill of Rights in the Constitution and given effect to in, *inter alia*, the TAA, PAJA, and the Promotion of Access to Information Act 2 of 2000 (**PAIA**).

SARS has a Service Charter⁶⁴⁹ that outlines SARS' commitments along with taxpayers' rights and obligations, but it is not a binding document and there is no recourse in the event that SARS does not comply with the standards of service that it has set out in the Service Charter. Further, the rights and obligations that the Service Charter outlines are relatively narrow and superficial. It does not provide a holistic overview of rights nor a framework for enforcing those rights. In this regard, it mostly outlines taxpayers' expectations rather than taxpayers' rights.

Introducing a Taxpayers' Charter or Bill of Rights into the South African framework is not a novel idea. For example, in the Office of the Tax Ombud's (**OTO**) 2016/17 Annual Report, the OTO called for the finalisation of a Taxpayer' Bill of Rights. The OTO argued that this would '*strengthen public confidence in the tax system*'.⁶⁵⁰ Similarly, the Davis Tax Committee highlighted the need for a Taxpayers' Bill of Rights.⁶⁵¹ One key reason for this is the complexity of the tax system in that taxpayers' rights are scattered across various pieces of law and hidden in the corresponding rules. In other words, it is difficult for taxpayers to know what their rights are because they cannot find the requisite information. Another key reason is that the law is not accessible in that it is not easy to understand (especially in a country where literacy rates are low and where only approximately 10% of the population are first-language English speakers⁶⁵²).

Comparison

Of the countries that have been considered, only the US has a formalised Taxpayers' Bill of Rights. The other countries have a Taxpayers' Charter which is a non-binding and unenforceable document

⁶⁴⁹ SARS released its new Service Charter with effect from 1 September 2023.

⁶⁵⁰ OTO 'Tax Ombud Annual Report 2016/17' (2018) at page 9.

⁶⁵¹ Davis Tax Committee op cit note 304 at page 3.

⁶⁵² The rights of the taxpayer are codified in IRC § 7803(a)(3).

outlining expectations and, to some extent, some rights and responsibilities of taxpayers. Although the content of the Charters varies across jurisdictions, they are principally much the same. One distinction is the legislated requirement in the UK for the performance of the HMRC against the Charter to be reviewed and published annually.

Examination

One issue that should be considered is whether creating a singular Taxpayers' Bill of Rights would have any tangible impact on access to justice for taxpayers. In this regard, further research should be conducted to determine whether the introduction of this Bill of Rights would have any impact on the number of taxpayers enforcing their rights having due regard to how inaccessible the legal system is from a funding perspective. Similarly, further research should be conducted into whether embodying taxpayer rights in a legislative framework would have any unintended consequences. Since the majority of the Charters are based in policy, there are no mandates to be regularly reviewing performance and reporting on this performance. However, the UK has legislated this reporting requirement. Without this requirement, and without a regular examination of the consistent breaches and the extent thereof, it would be difficult to determine appropriate solutions. While the OTO in South Africa regularly reports on systemic issues faced by taxpayers in relation to SARS as well as samples of some of the complaints they have received (along with the corresponding recommendations and resolution),⁶⁵³ this is not as comprehensive as the UK requirement.

6.11 Co-operative Compliance

Co-operative compliance could be defined as *'the establishment of a trust-based co-operative relationship between taxpayers and the tax authorities on the basis of voluntary tax compliance leading to the payment of the right amount of tax at the right time.'*⁶⁵⁴ Many countries have developed co-operative compliance programmes. While these are primarily targeted at companies, it can also be utilised in the context of taxpayers, especially high-net worth taxpayers with complex profiles.

⁶⁵³ OTO 'Tax Ombud's Annual Report 2021/22' (2022) at page 30.

⁶⁵⁴ Esther Huiskers-Stoop and Hans Gribnau 'Cooperative Compliance and the Dutch Horizontal Monitoring Model' (2019) 5(1) *Journal of Tax Administration* 66-110 at page 66.

Netherlands

The Netherlands has, since 2005, utilised a model known as Horizontal Monitoring which could be defined as ‘*administrative supervision based on (informed) trust, mutual understanding and transparency between individual taxpayers and the Netherlands Tax and Customs Administration (NTCA)*’.⁶⁵⁵ Companies can enter into a Horizontal Monitoring relationship with the NTCA. This means voluntarily providing the NTCA with relevant information and receiving certainty in return. This certainty manifests as little to no audits and a lower likelihood of sanctions or prosecution.⁶⁵⁶ Even where random audits do take place, taxpayers have a level of certainty that their tax affairs are in order and would not result in any penalties. It essentially shifts the burden of review for the tax authorities from post-filing of the tax returns to pre-filing of the tax returns. It also reduces the heavy administrative burden of audits for the NCTA by having the taxpayer present all the relevant information and documentation to the NCTA voluntarily and changes the focus from audits to the control of tax risks. From the taxpayer’s perspective, the greater certainty allows for better tax planning and provisioning for risks. Companies with Horizontal Monitoring relationships with tax authorities perceive better working relationships with tax authorities.⁶⁵⁷

This policy is not grounded in any specific legislation, but the NTCA is empowered to develop its own enforcement processes.⁶⁵⁸ It is not offered to every taxpayer. There are certain requirements that must be met to determine if entering into the Horizontal Monitoring relationship is feasible.⁶⁵⁹ If, for example, the NCTA had doubts over the trustworthiness or transparency of the taxpayer proposing entering into a Horizontal Monitoring relationship, the NCTA would not be obliged to accept the taxpayer’s proposal to enter into this relationship. Even in the event that the NCTA does enter into the Horizontal Monitoring relationship, it remains a single tool in a “toolbox” of enforcement measures that the NCTA can, and should, use.

The key characteristics of the Dutch Horizontal Monitoring model are (i) ‘*discretion as the basis for supervision*’, (ii) ‘*tax cooperation based on a covenant*’, (iii) ‘*additional rules in published guidance*’,

⁶⁵⁵ Ibid at page 66.

⁶⁵⁶ Ibid at page 67.

⁶⁵⁷ Ibid at page 69.

⁶⁵⁸ Esther Huiskers-Stoop and Hans Gribnau op cit note 654 at page 68.

⁶⁵⁹ Ibid at page 69.

and (iv) ‘rights and obligations pursuant traditional legislation and regulations remain applicable.’⁶⁶⁰

To enter into this Horizontal Monitoring relationship, the taxpayer must (i) have an up-to-date client profile, (ii) have a Horizontal Monitoring meeting, (iii) have a compliance scan, (iv) ensure that any pending issues are resolved, (v) a covenant must be concluded, (vi) the tax control system must be analysed (and if necessary, improved), and (vii) there must be an adjustment of supervision.⁶⁶¹

The covenant contains four categories of mutual agreements, being ‘(i) agreements on the realisation of customised tax supervision, (ii) agreements on actual tax collection, (iii) agreements on actual insight into the taxpayer’s tax position, [and] (iv) agreements on updating the NTCA on the taxation process (real-time working).’⁶⁶²

Ireland

Ireland has a Horizontal Monitoring or “Enhanced Relationship” programme known as a Co-operative Compliance Framework available to large corporate taxpayers. The Irish Tax and Customs lists numerous benefits to the taxpayer, including (i) having a dedicated case manager to either resolve misunderstandings or progress urgent issues, (ii) fewer audit and other compliance interventions, and (iii) greater certainty regarding tax exposure.⁶⁶³ In return, the revenue service gets, *inter alia*, (i) more accurate forecasting of tax payments, (ii) reduced administration and compliance costs, and (iii) more confidence in the accuracy and timeliness of payments.⁶⁶⁴

Participants in the Co-operative Compliance Framework are obliged to, *inter alia*, (i) commit to ongoing self-reviews and inform the revenue service if issues are identified, (ii) conduct an Annual Risk Review Meeting with the revenue service, (iii) undertake risk reviews within agreed timeframes, (iv) consult with the revenue in advance of undertaking restructuring, reorganisations or major

⁶⁶⁰ Ibid at page 78.

⁶⁶¹ Ibid at page 80.

⁶⁶² Ibid at page 86.

⁶⁶³ Irish Tax and Customs ‘Large Corporates Division: Co-Operative Compliance Framework’ (2023) at page 5.

⁶⁶⁴ Ibid at page 6.

transactions, and (v) keep the revenue service informed of any economic and sectoral changes/insights.⁶⁶⁵

United States

The US has a Compliance Assurance Process which is intended to improve compliance with large corporate taxpayers by, *inter alia*, resolving issues before the filing of tax returns.⁶⁶⁶ It was originally introduced as a pilot project in 2005⁶⁶⁷ and aimed to reduce or eliminate the need for post-filing examinations. The benefits for taxpayers included ensuring more precise reporting.⁶⁶⁸ The potential benefits for the IRS include a more accurate, efficient, and timely resolution of complex corporate tax issues alongside allowing for a more efficient use of audit resources.⁶⁶⁹

The programme entails extensive cooperation between the IRS and taxpayers, and in particular, full and complete disclosure of all business transactions and the proposed treatment of any material issues.⁶⁷⁰ Importantly, it does not apply in respect of prospective or incomplete transactions. In other words, it only relates to completed transactions. This ensures that it is not used as a free tax and/or legal consulting service to debate the tax implications of prospective transactions as opposed to a service to determine how to properly account for completed transactions.

In 2011, the IRS announced that they were expanding the programme and making it permanent.⁶⁷¹ At that point, the programme had grown from 17 taxpayers in 2005 to 140 taxpayers.

In its current form, the Compliance Assurance Process has three phases, namely the CAP phase, the Compliance Maintenance Phase, and the Bridge Phase.⁶⁷² The CAP Phase ‘*employs real-time issue resolution to improve tax compliance.*’⁶⁷³ After the CAP Phase, the taxpayer may progress to the Compliance Maintenance Phase. In this phase, the IRS ‘*will reduce the level of review based on the*

⁶⁶⁵ Ibid at page 7.

⁶⁶⁶ IRM 4.51.8.1.

⁶⁶⁷ IRS ‘Announcement 2005-87’ (2005).

⁶⁶⁸ Ibid.

⁶⁶⁹ Ibid.

⁶⁷⁰ Ibid.

⁶⁷¹ IRS IR-2011-32 ‘IRS Expands and Makes Permanent Its Compliance Assurance Process (CAP) for Large Corporate Taxpayers’ (2011).

⁶⁷² IRM 4.51.8.2.

⁶⁷³ IRM 4.51.8.3

*complexity and volume of issues, and the taxpayer's history of compliance, cooperation and transparency in the CAP.*⁶⁷⁴ A number of factors will be considered in the determination of whether a taxpayer is eligible to proceed to this phase.⁶⁷⁵ Finally, after the Compliance Maintenance Phase, the taxpayer may progress to the Bridge Phase wherein the IRS *'will not accept any disclosures, conduct any reviews or provide any assurances regarding the bridged return'* because the IRS believes that *'the taxpayer compliance risk for the taxpayer's return is very low and that the expenditure of resources by the IRS and taxpayer to examine this return is not in the best interest of tax administration.'*⁶⁷⁶ The taxpayer can have the IRS consider a particular issue on a return if they require provided that they file a request for a pre-filing agreement.⁶⁷⁷

Since this programme is aimed at large corporate taxpayers, the majority of the criteria for eligibility are not relevant for the purpose of this study. However, it should be noted that it is required that the taxpayer *'not be under investigation by, or in litigation with, the IRS or another government agency that would limit the IRS' access to current corporate tax records.'*⁶⁷⁸ The IRS has sole discretion over whether or not to approve an application for the Compliance Assurance Process. If the application is rejected, the taxpayer must be provided with reasons for the decision.

If the taxpayer is accepted into the programme, they must execute a memorandum of understanding which details the requirements and agreement to meet the requirements. If either the taxpayer or the IRS fails to comply with the memorandum of understanding, the parties must first attempt to solve the issue. If the issue cannot be solved, the taxpayer's participation in the Compliance Assurance Process may be terminated.

Examination

One consideration in respect of a Horizontal Monitoring programme is the potential impact it may have on any disputes. For example, it is likely that taxpayers would encounter a scenario wherein the

⁶⁷⁴ IRM 4.51.8.4

⁶⁷⁵ In terms of IRM 4.51.8.4(4), these include (i) the taxpayer continuing to satisfy the eligibility and suitability criteria, (ii) the taxpayer completing at least one full CAP phase, (iii) the taxpayer having effective internal controls, and (iv) the taxpayer having been consistently compliant, cooperative, and transparent in the prior phases.

⁶⁷⁶ IRM 4.51.8.5

⁶⁷⁷ Ibid.

⁶⁷⁸ IRM 4.51.8.3.1

taxpayers disagree with the NCTA about their interpretation of the law. However, in the current legal framework, no objections or appeals could be lodged until after the taxpayer has taken a certain tax position. However, at this point, the taxpayer is open to facing penalties in the event of a dispute that is not settled in favour of the taxpayer. There is no framework for disputes to be resolved (or interpretations to be tested in a court) prior to the filing of a tax return. Related to this is the consideration of whether disagreements of interpretations of the law could influence perceptions of compliance by the tax authorities. If taxpayers who disagree with the tax authority are thought to be less compliant, this may damage the working relationship between the taxpayer and the tax authority, ultimately undoing any improvements to tax morale. Notwithstanding, this may not be too large of a concern as, given the nature of co-operative compliance, the number of disputes may be self-limiting.

Another consideration is whether the treatment of taxpayers as a result of entering into this relationship would conflict with the foundational principle of equality. Under South African law, every person is equal before the law and the State may not unfairly discriminate against anyone.⁶⁷⁹ A programme of this kind may be seen to give preferential treatment to a segment of the population that are already, in some regards, considered to be “above the law” by the general population.

6.12 *High Net Worth Individuals*

Many countries have strategies targeted specifically at HNWIIs. While this may be a small group of taxpayers, the perception that they are not being adequately monitored and penalised for non-compliance can significantly erode public confidence and tax morale given that they are highly visible group of taxpayers. As outlined earlier in this Chapter, HNWIIs are defined as those who have a wealth of at least USD 1 000 000. There is also another category that goes beyond this. Ultra-high-net-worth-individuals (**UHNWIIs**) are defined as having a net worth of at least USD 30 000 000.⁶⁸⁰ One distinct feature of these groups of taxpayers is that, primarily, their income is derived from capital income rather than from a salary or wages.⁶⁸¹ As such, much of their wealth is not in a conventionally taxable form. Similarly, they tend to have a significant portion of their income being earned abroad.⁶⁸² Given

⁶⁷⁹ Section 9 of the Constitution.

⁶⁸⁰ John Buchanan and Lucilla McLaughlin ‘Revenue Administration: Implementing a High-Wealth Individual Compliance Program’ (2017) IMF Technical Notes and Manuals 17/07.

⁶⁸¹ Ibid at page 7.

⁶⁸² Ibid at page 7.

that much of compliance interventions are focused on earnings, there is a significant lacuna in how HNWI and UHNWI are monitored. The OECD provides four key reasons for countries to focus on the HNWI and UHNWI sectors, being (i) the complexity of their affairs, (ii) the value of revenue at stake, (iii) the opportunity for aggressive tax planning, and (iv) the need to preserve public confidence and the integrity of the tax system.⁶⁸³

Australia

Australia is somewhat unique in that it manages high wealth and high-income individuals (**HII**) separately and through two separate units. In Australia, high wealth taxpayers are those who effectively control more AUD 30 million or more in net wealth.⁶⁸⁴ One way in which Australia engages with this group of taxpayers is through a *‘formal consultative forum with major accounting firms and legal advisors to discuss compliance risks in relation to wealthy people.’*⁶⁸⁵

South Africa

In South Africa, there were 31 85 HNWI and 561 UNWI in 2021.⁶⁸⁶ To target these taxpayers, a High Wealth Individuals Unit (**HWIU**) has been set up that aims to focus on the *‘compliance of individuals with wealth and complex financial arrangements.’*⁶⁸⁷

The HWIU has already begun their work with 1500 individuals having been selected for investigation by SARS at the start of 2022.⁶⁸⁸ These individuals were sent “pre-audit questionnaires” that included questions on *‘Fixed properties, including when held in private companies, trusts, or other structures; Shares in private companies, close corporations, and interests in trusts; Increasingly complex financial arrangements, from loan accounts to complex financial instruments; Vehicles and boats; Specialised attention is focused on cryptocurrency and farming interests; [and] Offshore assets/holdings and/or anything outside South Africa’* for a three year period.⁶⁸⁹ Further, as of the

⁶⁸³ OECD *Engaging with High Net Worth Individuals on Tax Compliance* (2009) OECD Publishing.

⁶⁸⁴ ATO ‘Wealthy and wise: A tax guide for Australia’s wealthiest people’ (2008) at page 4.

⁶⁸⁵ Ibid at page 9.

⁶⁸⁶ Staff Writer ‘South Africa sees big drop in ultra wealthy people’ *BusinessTech* 2 March 2022.

⁶⁸⁷ Minister Tito Mboweni ‘2021 Budget Speech’ 24 February 2021.

⁶⁸⁸ Staff Writer ‘How SARS is going after wealthy taxpayers in South Africa’ *BusinessTech* 25 February 2022.

⁶⁸⁹ Staff Writer ‘SARS is quizzing South Africa’s richest on their investments, assets and lifestyles’ *BusinessTech* 30 June 2022.

2023 tax year, provisional taxpayers with business interests who have assets above R50 million are required to declare specified assets and liabilities at market value (as opposed to at cost).⁶⁹⁰

The South African legislative framework may not be sufficient to target taxpayers with unexplained wealth. SARS Commissioner Edward Kieswetter believes that SARS is ‘*hamstrung and limited by its mandate*.’⁶⁹¹ SARS is currently able to ‘*use algorithms to investigate information regarding property, vehicles and beneficial ownership – identifying instances of unexplained wealth*’⁶⁹² but that it cannot ‘*conduct a “fishing expedition” to dig deeper*.’⁶⁹³ Kieswetter argues for the adoption of new laws to ‘*compel an individual to reveal the sources of their unexplained wealth*.’⁶⁹⁴

United Kingdom

In terms of the Proceeds of Crime Act,⁶⁹⁵ the High Court may make an unexplained wealth order (**UWO**) in respect of any property. In essence, this is an order requiring a person (whether natural or juristic) to provide a statement, *inter alia*, ‘*setting out the nature and extent of the respondent's interest in the property in respect of which the order is made*’⁶⁹⁶ and ‘*explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met)*.’⁶⁹⁷ An application for a UWO may only be made by an enforcement authority such as the National Crime Agency, HMRC, the Financial Conduct Authority, the Director of the Serious Fraud Office, or the Director of Public Prosecutions.⁶⁹⁸

In order for a UWO to be made, ‘*the High Court must be satisfied that there is reasonable cause to believe that - (a)the respondent holds the property, and (b)the value of the property is greater than £50,000*’,⁶⁹⁹ ‘*the High Court must be satisfied that there are reasonable grounds for suspecting - (a) that the known sources of the respondent's lawfully obtained income would have been insufficient for*

⁶⁹⁰ SARS op cit note 415.

⁶⁹¹ Staff Writer ‘SARS wants new laws to help it go after these taxpayers’ *BusinessTech* 15 August 2022.

⁶⁹² Ibid.

⁶⁹³ Ibid.

⁶⁹⁴ Ibid.

⁶⁹⁵ Section 362A of the Proceeds of Crime Act 2002 c. 29.

⁶⁹⁶ Section 362A(3)(a) of the Proceeds of Crime Act 2002 c. 29.

⁶⁹⁷ Section 362A(3)(b) of the Proceeds of Crime Act 2002 c. 29.

⁶⁹⁸ Section 362A(1) read with section 362A(7) of the Proceeds of Crime Act 2002 c. 29.

⁶⁹⁹ Section 362B(2) of the Proceeds of Crime Act 2002 c. 29.

the purposes of enabling the respondent to obtain the property, or (b) that the property has been obtained through unlawful conduct’,⁷⁰⁰ and ‘the High Court must be satisfied that - (a) the respondent is a politically exposed person,⁷⁰¹ or (b) there are reasonable grounds for suspecting that - (i) the respondent is, or has been, involved in serious crime⁷⁰² (whether in a part of the United Kingdom or elsewhere), or (ii) a person connected with the respondent is, or has been, so involved.’⁷⁰³

In conjunction with the UWO, the court may make an interim freezing order so as to prevent any person from disposing of the property mentioned in the UWO.⁷⁰⁴ If the person against whom the UWO was made fails to comply with the order (without reasonable excuse), the property referenced in the order is presumed to be recoverable property.⁷⁰⁵ If a UWO is made, it has effect despite any restriction on the disclosure of information.

Comparison

Of the countries considered above, Australia is the only country where the HNWI unit considers only income tax. Some transactions are likely to have implications for multiple forms of taxes. Accordingly, the benefits of having a single team managing a single transaction cannot be understated. This would minimise “back-and-forth” between the tax authorities and the taxpayer and would lead to increased efficiency. All of the countries considered above have HNWI units that undertake compliance initiatives in conjunction with acting as a point of contact for taxpayers.⁷⁰⁶ This is another strategy to increase efficiency as the audits carried out would be better targeted with reference to the fact that the unit has more information about the taxpayer and their risk levels. However, caution should be had in this regard as the threat of audit may, to some extent, hinder the

⁷⁰⁰ Section 362B(3) of the Proceeds of Crime Act 2002 c. 29.

⁷⁰¹ This is defined in section 362B(7) of the Proceeds of Crime Act 2002 c. 29 as ‘a person who is - (a)an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than the United Kingdom or another EEA State, (i)the United Kingdom, or (ii)an EEA state, (b)a family member of a person within paragraph (a), (c)known to be a close associate of a person within that paragraph, or (d)otherwise connected with a person within that paragraph.’

⁷⁰² The definition of involvement in “serious crime” is outlined in section 2 of the Serious Crime Act 2007 c. 27.

⁷⁰³ Section 362B(4) of the Proceeds of Crime Act 2002 c. 29.

⁷⁰⁴ Section 362J of the Proceeds of Crime Act 2002 c. 29.

⁷⁰⁵ Section 304(1) of the Proceeds of Crime Act 2002 c. 29 defined recoverable property as ‘property obtained through unlawful conduct.’

⁷⁰⁶ This is in contrast to countries such as, for example, France where the unit only conducts audits but does not act as a taxpayer contact point or the Netherlands where the unit acts as a taxpayer contact point but does not conduct risk assessments or audits.

ability for taxpayers to build a positive and productive relationship with the HNWI unit (and tax authorities more broadly).⁷⁰⁷

While South Africa does not have separate HNWI and HII units, the criteria for taxpayers covered under South Africa's HNWI includes those with high incomes.⁷⁰⁸

Examination

The OECD lists the benefits of having a single listed contact for HNWI (and their advisors) as increased accountability from tax authorities (especially in respect of obtaining a timely response), improved consistency and clarity, and the ability to build a longer-term relationship.⁷⁰⁹ Further, the OECD has found that dedicated HNWI unit has resulted in increased taxpayer satisfaction and a reduction in litigation between taxpayers and tax authorities.⁷¹⁰

6.13 Conclusion

This chapter aimed to achieve two key outcomes.

First, to provide an overview of South African data in respect of the relevant social, cultural, and environmental factors that may influence tax morale. It did so through descriptive summary statistics as well as through the presentation of the results of the estimated ordered probit model. The key insights provided by this section are that (i) governmental competency and perceptions of fairness play a significant role in determining tax morale, and (ii) the survey utilised in this study is not an adequate mechanism through which to test tax morale. It argues that a more tailored questionnaire and more specific sampling would provide a more accurate reflection of the state of tax morale and the determinants thereof.

⁷⁰⁷ In South Africa, the Competition Commission has a number of divisions, including the mergers and acquisitions division and the market conduct division. In this regard, the divisions operate pre-dominantly independently of each other. As such, companies can give information freely in the context of a market inquiry without any fear of it hindering their prospects of a successful merger. A similar concept could be considered, where the relationship management, and risk assessment and audit divisions operate completely independently of each other.

⁷⁰⁸ OECD op cit note 683 at page 55.

⁷⁰⁹ Ibid at page 61.

⁷¹⁰ Ibid at page 62.

Second, to provide an overview of current tax policy and legislative strategies, beyond deterrence strategies, that may impact tax morale (and thus tax compliance) in South Africa as well as a comparison of how similar legislation and policies are utilised in other jurisdictions.

Chapter seven builds on the analysis undertaken in chapter six by distilling it into legislative and policy proposals. It ties all of the previous chapters together by providing proposals that illustrate the how behavioural economics principles are utilised in the proposal as well as how it is anticipated to influence tax morale.

7. CHAPTER SEVEN: POLICY AND LEGISLATIVE IMPLICATIONS

‘You never want a serious crisis to go to waste. And what I mean by that is an opportunity to do things that you think you could not do before’⁷¹¹

In the thick of the 2008 financial crisis, then White House Chief of Staff Rahm Emanuel, speaking at a Wall Street Journal conference, noted that reforms for long-term problems (such as issues within the tax system) tend to be postponed for too long to the point where it becomes an immediate problem. He recognised that crises tend to be large enough to elicit the necessary buy-in from various stakeholders. Crises (such as the 2008 financial crisis) have devastating effects, as has been the case with State Capture. However, it also presents an opportunity to overhaul systems that previously would have not been prioritised. It is not just an opportunity to implement new policies, but an opportunity to completely rethink the foundations that underlie these policies.

As has been noted in the analysis of tax reform in other jurisdictions, legislators and policymakers need to be bold in their approach to reform. The *‘importance of well-informed policy advisors prepared to try new approaches to policy making, the value that can be gained from collaboration between academics, practitioners and policy advisors, and ... the courage of Ministers prepared to risk new approaches to public policy development’⁷¹²* cannot be underscored.

To ensure a comprehensive presentation of the recommendations, the following approach will be used. The recommendations will address the factual nature of the project or programme recommended. It will detail how the recommendation fits into the current legal framework before outlining the proposal. It will describe how the proposal would affect tax morale and tax compliance more generally. It will also consider which behavioural principles underlie the proposal.

⁷¹¹ Wall Street Journal ‘Rahm Emanuel on the Opportunities of Crisis’ 19 November 2008.

⁷¹² Robert Buckle “Symposium on Proposed Changes to the New Zealand Tax System: Introduction—Tax Policy Reform New Zealand Style” (2010) 44(2) *New Zealand Economic Papers* 129-136.

7.1 Recommendation 1: Amend VDP Legislation

Factual Description

The VDP in South Africa has been discussed above in chapter six above and will not be repeated here. However, for the purpose of this recommendation, it will be noted that improvements could be made upon the current framework. Although some studies have found that permanent VDPs are not effective and the benefit does not outweigh the potential cost to tax morale, this study does not advocate for the removal of this process from the current South African legislation. Rather, it recommends the addition of provisions that may offset some of the negative effects that the current VDP may have on tax morale.

Legal Framework

The current legislation as it related to the South African VDP has been discussed above in chapter six above and will not be repeated here.

Proposal

Four recommendations are made in this regard.

First, it is recommended that South Africa introduce the two-track VDP system as utilised by Canada. The general-track voluntary disclosure would utilise the current VDP framework. The limited-track voluntary disclosure would need to be introduced. In this respect, there would be reduced relief (in comparison to the general-track). This would require an assessment by SARS of whether there was an element of intentional conduct on the part of the taxpayer. This would be very similar to the assessment SARS would make when it determines what penalty to impose in terms of section 223 of the TAA. The aim of this would be to ensure that taxpayers cannot get the benefit of being intentionally non-compliant and not having to face any of the corresponding penalties.

Second, it is recommended that South Africa introduce a provision limiting the utilisation of the VDP multiple times (although the limitation should not be overly harsh).⁷¹³ One way in which this could

⁷¹³ Consider the strict application in *Oosterwijk v. United States* in the case of penalty abatement.

be done, as is the case in Canada, is to disallow repeated use of the VDP unless there are exceptional circumstances (or good cause shown, depending on the extent to which it is believed that multiple uses of the VDP should be allowed). This is especially having regard to research by Leonard and Zeckhauser⁷¹⁴ as well as Alm and Beck⁷¹⁵ that amnesties may result in non-compliant taxpayers remaining non-compliant if they believe that their non-compliant behaviour will be sanctioned or forgiven.

Third, it is recommended that South Africa incorporate a limitation on the age of the information disclosed as in the Canadian framework. With reference to the fact that the power to accept a voluntary disclosure is not discretionary, the VDP should not be allowed to be used as a dilatory tactic.

Finally, it is recommended that, in the light of *Purveyors* and how the scope for disclosures by taxpayers who have been given notice of the commencement of an audit or criminal investigation into their affairs be permitted (if the default would not otherwise have been detected during the audit or investigation and the application would be in the interest of good management of the tax system and the best use of SARS' resources) has been significantly narrowed, legislation clarify the voluntariness requirement so as to ensure that SARS still has discretion to utilise this provision effectively.

Tax Morale

This is intended to influence tax morale in predominantly through (retributive) fairness implications. Noting that VDPs may negatively impact tax morale through the perception that non-compliant taxpayers are not being adequately penalised for their non-compliance (especially when a VDP may be used multiple times), limiting the use of the VDP as well as the relief offered for taxpayers who are intentionally non-compliant may mitigate the otherwise negative impact of the VDP.

⁷¹⁴ Herman Leonard and Richard Zeckhauser op cit note 435.

⁷¹⁵ James Alm and William Beck op cit note 501.

In the South African context, noting that the variable indicating whether a rich person could pay a bribe or use personal connections to get out of paying taxes is one of the most statistically significant variables in the study, it is believed that targeting perceptions of fairness is of the utmost importance.

Behavioural Principles

The four recommendations above may all have loss aversion implications. In particular, the limitations and restrictions may result in a reframing of the VDP. For example, the taxpayer may consider a determination of partial relief under the limited-track programme (as opposed to full relief under the general-track programme) as a loss. With this in mind, it might be the case that taxpayers would weight that loss more than they would weight the possible benefits in terms of the general-track programme. This may result in fewer (non-compliant) taxpayers making voluntary disclosures.

7.2 Recommendation 2: Introduce a Taxpayer Rating System

Factual Description

At present, South Africa has a Tax Compliance Status (TCS) system on eFiling.⁷¹⁶ A TCS in its current form is essentially a binary rating-system where taxpayers are rated as either compliant or non-compliant. This status enables third parties to validate the tax compliance status of a taxpayer.

These tax compliance status certificates are required for numerous reasons. For example, in terms of Exchange Control Circular No. 6/2021, this compliance status would be required before emigrating taxpayers would be permitted to transfer their assets out of the country.

Notwithstanding taxpayer secrecy provisions, this status may be disclosed to any organ of state or to a person to whom the taxpayer has provided third party access to the taxpayer's tax compliance status (in other words, with the taxpayer's permission).⁷¹⁷

⁷¹⁶ Tax compliance status is regulated under section 256 of the TAA.

⁷¹⁷ Section 256(5) of the TAA.

Legal Framework

In terms of section 256 of the TAA, a taxpayer will be considered compliant if they:

- are registered for tax as required in terms of a tax Act;
- do not have any outstanding tax debt (excluding a tax debt which is the subject of an instalment payment agreement or a tax debt that has been suspended or that does not exceed the de minimis amount or any higher amount that the Commissioner may determine by public notice); and
- do not have any outstanding return (unless an arrangement with SARS has been made for the submission of the return).⁷¹⁸

Proposal

It is recommended that the tax compliance system be amended from a binary system to a multi-point system (for example, a five-point system as used in Latvia⁷¹⁹ or China⁷²⁰). This would provide non-compliant taxpayers with a tool to measure the improvement (or degradation) of their tax discipline. It is also intended to improve the transparency of taxpayer compliance as well as create scope for comparability. This framework should include publicly available scoring statistics, enabling taxpayers to view the general compliance levels, both on a national, provincial, and municipal level (while still maintaining taxpayer secrecy). It would also segment these compliance levels by other demographic factors, for example, occupation. This would allow taxpayers to see how they compare with their peers. It would further provide public justification for increased probabilities of audit for segments which have low-compliance ratings.

⁷¹⁸ Section 256(3) of the TAA.

⁷¹⁹ State Revenue Service ‘Taxpayer Rating System’ (2023).

⁷²⁰ State Taxation Administration Announcement No. 40 ‘Announcement on Issuing the “Tax Credit Management Measures (Trial)”’ (2014) read with State Taxation Administration Announcement No. 48 ‘Announcement of the State Administration of Taxation on Issuing the “Tax Credit Management Measures (Trial)”’ (2014), State Taxation Administration Announcement No. 8 ‘Announcement on Matters Concerning Tax Credit Evaluation’ (2018), State Taxation Administration Announcement No. 37 ‘Announcement on Matters Concerning Tax Credit Restoration’ (2019), and State Taxation Administration Announcement No. 15 ‘Announcement of the State Administration of Taxation on Matters Concerning Tax Credit Management’ (2020).

The Latvian State Revenue Service model could serve as a model for the scoring of the taxpayer rating system. The scoring concept used by the Latvian State Revenue Service is illustrated in **Table 2** below. The proposed South African scoring system would be amended slightly so that the top ranking would only be awarded to taxpayers who are fully compliant (in other words, they have a score of 100% compliance).

Table 2: Overall scoring concept of rating

Total Scoring	Description of the (Latvian State Revenue Service) Scoring
91%-100%	Excellent rating of the taxpayer, which suggests successful business activities and the complete fulfilment of all tax obligations
71%-90%	Good rating of the taxpayer, which suggests the conformity of economic activities to the tendencies of the sector or good discipline in fulfilling tax obligations
51%-70%	Medium rating of the taxpayer, which suggests periodic problems with the discipline in fulfilling tax obligations or with economic activities
31%-50%	Low rating of the taxpayer, which suggests poor discipline in fulfilling tax obligations and/or significant risks of economic activities
0%-30%	Very low rating of the taxpayer, which suggests systematic problems with discipline in fulfilling tax obligations and significant risks of economic activities

Source: State Revenue Service (2023)

To provide an objective assessment of the compliance of the taxpayer, multiple aspects should be considered. The following indicators could be considered in the creation of the ratings system.

The first indicator could be tax return submission discipline. This would include both current and historic returns. So as not to unfairly prejudice taxpayers, there should be a cut-off for how far back the assessment of historic returns will consider. For example, the ratings system might consider only returns going back a maximum of five years. As such, the indicator would be worth a total of six points – one for the current tax year and one point for each of the five preceding years. If the taxpayer failed to file a return, or filed a return late, they would receive zero points for that assessment period. If the taxpayer was not required to file a tax return in any of the preceding assessment period (because,

for example, they were not registered taxpayers), they would receive one point for each year of assessment that they were not required to file a tax return (so as not to unfairly prejudice any taxpayer).

The second indicator could be total unpaid tax liabilities. This would include both tax debt for the current tax period and any outstanding tax debts (in other words, there is no time limitation in respect of unpaid tax debts). This will exclude any debts which have been fully compromised, any debts currently being paid in terms of an instalment agreement, and any debts which have been suspended (for example, pending the outcome of a dispute). This indicator will be worth a total of five points. Five points would be awarded to a taxpayer with no outstanding tax debts. For taxpayers who do have an outstanding tax debt, the first four points would be awarded based on the value of the outstanding tax liability. For example, it could be that four points are awarded to a taxpayer with no more than R10 000 outstanding, three points are awarded to a taxpayer with no more than R50 000 outstanding, two points are awarded to a taxpayer with no more than R100 000 outstanding, one point is awarded to a taxpayer with more than R500 000 outstanding, and no points are awarded to a taxpayer with more than R1 000 000 outstanding. These are just guideline figures and are not necessarily the best levels at which to peg the points. The pegs should be determined with reference to a bell-curve of taxpayers' outstanding tax debts.

The third indicator could be the ratio of the unpaid tax liability to the total tax liability. It would account for the fact that the same amount of unpaid tax liability would represent different proportions of the total value of a taxpayer's assessed liability. This is primarily to have due consideration of the fact that extinguishing a debt may be more difficult for some taxpayers than for other taxpayers (noting their disposable income). As with the first indicator, this would have a time period over which it is measured. For example, it might only go back a maximum of five years. This indicator will be worth a total of five points. This will exclude any debts which have been fully compromised, any debts currently being paid in terms of an instalment agreement, or any debts which have been suspended. Five points would be awarded to a taxpayer with no outstanding tax debts. For taxpayers who do have outstanding tax debts, the first four points would be awarded based on the ratio of the outstanding tax debt to the total assessed tax liability. For example, it could be that four points are awarded to a taxpayer where the ratio of tax debt to tax contributions does not exceed 5%, three points are awarded to a taxpayer where the ratio of tax debt to tax contributions does not exceed 10%, two

points are awarded to a taxpayer where the ratio of tax debt to tax contributions does not exceed 25%, one point is awarded to a taxpayer where the ratio of tax debt to tax contributions does not exceed 45%, and no points are awarded to a taxpayer where the ratio of tax debt to tax contributions exceeds 45%. These are just guideline figures and are not necessarily the best levels at which to peg the points. The pegs should be determined with reference to a bell-curve.

The fourth indicator could be changes in outstanding debt. This would act as an encouragement to reduce any outstanding liabilities (in as short a time as possible). This indicator will be worth a total of five points. This would be measured over a period of time. For example, it might only go back a maximum of five years. This will exclude any debts which have been fully compromised, any debts currently being paid in terms of an instalment agreement, or any debts which have been suspended. Five points would be awarded to a taxpayer who has extinguished their entire tax liability in the current or previous tax period. For taxpayers who do have outstanding tax debts, the first four points would be awarded based on the percentage of the outstanding tax debt that has been extinguished in the current or previous tax period. For example, it could be that four points are awarded to a taxpayer who has extinguished over 80% of the assessed liability in the current and previous period, three points are awarded to a taxpayer who has extinguished between 60%-80% of the assessed liability in the current and previous period, two points are awarded to a taxpayer who has extinguished between 40%-60% of the assessed liability in the current and previous period, one point is awarded to a taxpayer who has extinguished between 20%-40% of the assessed liability in the current and previous period, and no points are awarded to a taxpayer who has extinguished less than 20% of the assessed liability in the current and previous period. These are just guideline figures and are not necessarily the best levels at which to peg the points. Although not currently accounted for, it might also consider increases in the principal outstanding debt (in other words, if the capital amount is increased as opposed to any increases due to interest).

The fifth indicator could be forced recovery. This indicator would measure whether taxpayers paid their tax liabilities voluntarily or whether the tax authority was required to take collection steps. As with the first indicator, this would have a time period over which it is measured. For example, it might only go back a maximum of five years. This will exclude any debts which have been fully compromised, any debts currently being paid in terms of an instalment agreement, or any debts which have been suspended. This indicator would be worth a total of five points. Five points would be

awarded to a taxpayer who has not had any collection steps taken against them in the current or previous tax period. For a taxpayer who has had collection steps taken against them in the current or previous tax period, the first four points would be awarded based on the severity of collection steps that are required to collect on a taxpayer's outstanding tax liability. For example, it could be that four points are awarded to a taxpayer who paid their tax liabilities voluntarily but after the deadline for payment, three points are awarded to a taxpayer who paid their tax liabilities after a notice of final demand for payment was made, two points are awarded to a taxpayer whose tax liabilities were only extinguished as a result of a third party notice having been issued, one point is awarded to a taxpayer whose tax liabilities were only extinguished as a result of any other recovery method (including the tax authority having applied for a civil judgment for recovery of tax)⁷²¹ and no points are awarded to a taxpayer who has no assets available and the recovery of the debt is not possible. These are just guideline figures and are not necessarily the best levels at which to peg the points.

The sixth indicator could be understatements and over-declarations. This indicator would measure whether taxpayers are filing their returns completely and accurately. It would penalise taxpayers for making substantial understatements or over-declarations. This should be measured over a period of time. For example, it might only go back a maximum of five years. This indicator would be worth a total of five points. Five points would be awarded to a taxpayer who has not made any understatements or over-declarations in the current or previous tax period. For taxpayers who have not filed completely accurate returns, the first four points would be awarded based on the understatement or over-declaration tax debt as a percentage of the total assessed tax liability in the current or previous tax period. For example, it could be that four points are awarded to a taxpayer whose additionally assessed tax liability does not exceed 1% more than the originally assessed amount, three points are awarded to a taxpayer whose additionally assessed tax liability does not exceed 5% more than the originally assessed amount, two points are awarded to a taxpayer whose additionally assessed tax liability does not exceed 10% more than the originally assessed amount, one point is awarded to a taxpayer whose additionally assessed tax liability does not exceed 25% more than the originally assessed amount, and no points are awarded to a taxpayer whose additionally

⁷²¹ In terms of section 172 of the TAA.

assessed tax liability exceeds 25% more than the originally assessed amount. These are just guideline figures and are not necessarily the best levels at which to peg the points.

The final indicator could be penalties. This indicator would act as an incentive to remain apprised of changes in tax law and policy. It would penalise taxpayers for having penalties imposed. This indicator would be worth a total of five points. This should be measured over a period of time. For example, it might only go back a maximum of five years. Five points would be awarded to a taxpayer who has not made any penalties imposed on them in the current or previous tax period. For taxpayers who have had penalties imposed upon them, the first four points would be awarded based on the value of penalties imposed on the taxpayer in the current or previous tax period. For example, it could be that four points are awarded to a taxpayer who had no more than R1 000 of penalties imposed on them in the current or previous tax period, three points are awarded to a taxpayer who had no more than R5 000 of penalties imposed on them in the current or previous tax period, two points are awarded to a taxpayer who had no more than R10 000 of penalties imposed on them in the current or previous tax period, one point is awarded to a taxpayer who had no more than R20 000 of penalties imposed on them in the current or previous tax period, and no points are awarded to a taxpayer who had more than R20 000 of penalties imposed on them in the current or previous tax period. These are just guideline figures and are not necessarily the best levels at which to peg the points.

The remainder of the provisions as they relate to a TCS would remain the same.

It is recommended that this status be illustrated on the home page of the SARS MobiApp or eFiling. This would make it easy for taxpayers to see as a constant reminder of their compliance status. Further research should be conducted regarding whether the score should (or could) be viewed by other parties (for example, such as financial institutions for the purpose of determining a credit score).

Tax Morale

This proposal is mainly intended to influence tax morale as it relates to social and personal norms. As outlined in chapter three, social norms refer to beliefs about how other people tend to behave. By creating a mechanism that illustrates to taxpayers what the compliance norm is (on a national, provincial, and municipal level). However, caution should be exercised in this regard as it might backfire if taxpayers believe that the level of compliance is lower than they previously believed. It

may also strengthen the personal norms of “social taxpayers” who are primarily influenced by social norms. By strengthening both social and personal norms, it is expected that tax morale increase. As explained by the contribution dilemma, having taxpayers that believe that other taxpayers are paying their share is the first step to increasing voluntary compliance.

In the South African context, with reference to the fact that noting that most South Africans believe that “rich” taxpayers are substantially more likely to get away with avoiding paying taxes, it is believed that targeting perceptions of fairness is of the utmost importance.

Behavioural Principles

The primary behavioural principle underlying this proposal is the use of feedback. With reference to the fact that individuals cannot accurately perceive the cost of actions, providing a ratings scale for taxpayers provides feedback to taxpayers that indicates what, and how much, they need to do to become a compliant taxpayer. As feedback in this area is generally infrequent, it could be expected that the feedback would be more effective.

There are also bounded rationality implications. With the binary TCS, third parties are only aware of whether taxpayers are currently compliant or non-compliant, but with little further information. By amending the compliance status to be measured on a five-point scale, it provides parties with additional information. Similarly, it provides taxpayers with additional information in terms of how they are progressing in their compliance ranking and reduces the cognitive load in respect of what they need to do to become fully compliant.

Making the compliance status permanently available would have implications in respect of salience. It brings it to the forefront of the taxpayer’s mind, hopefully enticing the taxpayer to make better (and more immediate) compliance decisions.

7.3 Recommendation 3: Use Public Figures in Messaging

Factual Description

‘All your years of paying tax; you still wonder why does it matter? It matters now more than ever. It matters to those who are exposed to harm to keep us away from it. The ones that leave

*behind all that they love. Your tax matters to them. Those who spend endless hours standing on their feet to care for others. It matters to those who are always at the heart of any crisis and our future generations. It matters to those who put so much love into giving selflessly to each and every family living on the breadline. It matters to all of us. To all taxpayers. Pay your fair share. Do it for your nation. Your tax matters.'*⁷²²

These were the words of a SARS TV advert that SARS published on their “SARS TV” YouTube page. It exploits emotion by showing snippets of, *inter alia*, President Cyril Ramaphosa making one of his first speeches about the Coronavirus when it hit South African shores in 2020, paramedics trying desperately to keep patients alive *en route* to a hospital, and donations being made to the impoverished. It is clear that SARS understands that by targeting the emotion of taxpayers, SARS are much more likely to elicit a positive response from taxpayers than by targeting the rational response of taxpayers.⁷²³

SARS also has a “Touching Lives” playlist on its SARS TV YouTube Channel that includes fourteen videos with the stories of individuals whose lives have been changed through the use of taxes.⁷²⁴ The anecdotes include phrases such as ‘*[w]e never expected this thing to happen, but eventually the doors have opened. It was the best investment that taxpayers could have made because it's changing people's lives*’⁷²⁵ and ‘*I want to thank the taxpayers because they helped not only me but thousands and thousands of people.*’⁷²⁶

As part of the push to build trust and improve the working relationship between tax authorities and taxpayers, while these emotional stories are a good start, SARS has not adequately considered all of

⁷²² SARS TV ‘SARS - #YourTaxMatters to South Africa – TV Advert’ 10 July 2020.

⁷²³ Numerous studies have shown that consumers use emotion more than information to evaluate a brand. For example, see Franz-Rudolf Esch *et al* ‘Brands on the brain: Do consumers use declarative information or experienced emotions to evaluate brands?’ (2012) 22(1) *Journal of Consumer Psychology* 75-85.

⁷²⁴ One video caption explains that ‘*[f]or every R10 in tax contributions, more than R1 goes to supporting millions of South Africans through social assistance grants and funding for development projects ... -- alleviating poverty, creating jobs and brining (sic) hope*’ while another caption explains that ‘*tax contributions are supporting investment of more than R840 billion over the next three years in infrastructure development, creating jobs, growing the economy and joining communities.*’ See SARS TV ‘Walking Tall’ 28 October 2012 and SARS TV ‘Bridging Gaps’ 16 November 2012.

⁷²⁵ *Ibid.*

⁷²⁶ *Ibid.*

the channels through which it presents itself.⁷²⁷ Put differently, these stories are only shown on the SARS TV YouTube page and other channels are not being adequately utilised. In the communication with taxpayers, impressions around, *inter alia*, friendliness, respectfulness, and approachability matter. Further, while SARS may utilise the stories of individuals in some of its adverts, it does not focus on this across all of its channels. For example, the SARS website (as illustrated in **Figure 16**) does not utilise any distinct imagery that may create perceptions of, *inter alia*, friendliness or approachableness *et cetera*.

Figure 16: SARS Website



Legal Framework

This is a policy-driven proposal and does not rely on any empowering legislation.

Proposal

It is recommended that SARS have adverts (or other forms of messaging) that feature prominent South Africans (such as sports personalities, comedians or media personalities, or religious and other community figures). Taxpayers are likely to emulate the behaviour of people that they admire

⁷²⁷ These channels include, for example, its own website, TV and radio, and various social media sites such as X (formerly known as Twitter), Facebook and Instagram.

(whether because those people are considered “successful” or “moral” or any other reason).⁷²⁸ Similarly, SARS should improve messaging around social norms and the outcomes achieved by tax revenue. SARS should focus on “building a brand” in the same way that any other company would to increase “buy-in” from taxpayers and improve consumer confidence.

Tax Morale

This is expected to improve tax morale primary through its linkages to trust in institutions (more specifically, trust in SARS). Using figures that South Africans trust to deliver messaging is expected to increase levels of trust that the public has (even if artificially). Trust is a strong predictor of resistance to tax authorities and is anticipated that higher levels of trust will result in a higher tax morale. This is also intended to mitigate the distortion effect created by negative media reports.

Behavioural Principles

The primary behavioural principle that underlies this proposal is the messenger effect. In this regard, recalling that individuals weight information differently dependent on the source of the information, messaging that features prominent South Africans is expected to be more likely to be incorporated into the taxpayer’s decision making than messages that simply come from SARS. This is especially with regard to the fact that many taxpayers distrust SARS which hinders the effectiveness of SARS messaging.

7.4 Recommendation 4: Allocation Expenditure Agency

Factual Description

In South Africa, the budget, the details of tax revenue, and details regarding how the tax revenue is spent are all made publicly available on the National Treasury website (going as far back as 1993). As such, if taxpayers wanted to, they could, at any point, review national and provincial

⁷²⁸ Yves Fassin ‘The Reasons Behind Non-Ethical Behaviour in Business and Entrepreneurship’ (2005) 60 *Journal of Business Ethics* 265-279. Also see Marius van Oordt op cit note 172.

expenditure.⁷²⁹ However, it does require South Africans to know where to find it and to bear the cognitive load of the search costs.

South Africans are also invited to share suggestions on the budget. For example, as illustrated in **Appendix A 4**, on 1 February 2023, Finance Minister Mr. Enoch Godongwana invited South Africans to share suggestions on a number of topics, including government spending priorities, managing the energy crisis, and tax revenues.⁷³⁰ This is not the first time that taxpayers have been invited to contribute to discussions about how tax revenue should be spent.

In 1992, upon accepting the Republican party's nomination for the presidency, President George H.W. Bush stated the following:

*'[a]fter all these years, Congress has become pretty creative at finding ways to waste your money. So we need to be just as creative at finding ways to stop them. I have a brand new idea. Taxpayers should be given the right to check a box on their tax returns so that up to 10 percent of their payments can go for one purpose alone -- to reduce the national debt.'*⁷³¹

While his proposal did not go much further than this speech, it poses an interesting question: should taxpayers be able to determine how their taxes are spent? In this example, it is limited to 10% of tax payments and limited to determining whether it should go towards a specific programme or not. In the US, watered-down versions of this proposal exist. For example, the Form 1040 (being the US individual income tax return) has a section where taxpayers could designate \$3 of their taxes to a specific fund (specifically, the Presidential Election Campaign Fund⁷³²).⁷³³ This does not impact the amount of tax that a taxpayer pays, but merely determines whether those \$3 should be allocated to the fund or not. Other pundits have developed far more radical proposals: taxpayers should be able to determine which programmes they are willing to fund and the *pro rata* amount of their tax payments that they would like to allocate to those programmes.⁷³⁴ For example, **Figure 17** below illustrates

⁷²⁹ While the national budget documents go as far back as 1993, provincial budget information only goes as far back as 2002.

⁷³⁰ Ministry of Finance '2023 Budget Tips – Make Your Voice Count' (2023).

⁷³¹ C-Span 'George H.W. Bush 1992 Acceptance Speech' 20 August 1992.

⁷³² The Presidential Election Campaign Fund funds certain expenses for eligible presidential election candidates.

⁷³³ Federal Election Commission 'Public funding of presidential elections' (n.d.).

⁷³⁴ David Boaz 'We should get to decide how the government spends our taxes' *The Washington Post* 15 April 2015; Daniel Indiviglio 'What If Taxpayers Could Decide How Their Money Is Spent?' *The Atlantic* 3 October 2010.

what it might look like if taxpayers were able to determine the percentage of their taxes that should be allocated towards a specific functional unit (alongside a suggested amount). This example also provides for the option to use solely the suggested amounts or to use the taxpayer's entire contribution where it is most needed.

Figure 17: Taxpayer's Expenditure Allocation Suggestions

My Federal Contribution	Suggested Contribution		Desired Contribution	
	<i>\$ Value</i>	<i>% of Total</i>	<i>\$ Value</i>	<i>% of Total</i>
Social Security	\$ 1,040.70	31.94%	\$ 651.70	20.00%
Medicare	\$ 625.51	19.20%	\$ 325.85	10.00%
Medicaid	\$ 385.28	11.82%	\$ 325.85	10.00%
Interest on the National Debt	\$ 287.03	8.81%	\$ 287.03	8.81%
Combat Operations in Iraq and Afghanistan	\$ 229.17	7.03%	\$ 97.76	3.00%
Military Personnel	\$ 192.79	5.92%	\$ 192.79	5.92%
Veteran's Benefits	\$ 74.65	2.29%	\$ 74.95	2.30%
National Parks	\$ 69.36	2.13%	\$ 65.17	2.00%
Federal Highways	\$ 63.89	1.96%	\$ 65.17	2.00%
Health care research (NIH)	\$ 46.54	1.43%	\$ -	0.00%
Foreign Aid	\$ 46.08	1.41%	\$ 32.59	1.00%
Education Funding for Low Income K-12 Students	\$ 38.17	1.17%	\$ -	0.00%
Military Retirement Benefits	\$ 32.60	1.00%	\$ 32.59	1.00%
Pell Grants for Low Income College Students	\$ 29.75	0.91%	\$ -	0.00%
NASA Space Program	\$ 28.09	0.86%	\$ 32.59	1.00%
Internal Revenue Service	\$ 17.69	0.54%	\$ 17.69	0.54%
Environmental Clean Up (EPA)	\$ 11.67	0.36%	\$ 13.03	0.40%
The FBI	\$ 11.21	0.34%	\$ 11.21	0.34%
Head Start	\$ 10.91	0.33%	\$ -	0.00%
Public Housing	\$ 10.50	0.32%	\$ 10.50	0.32%
Drug Enforcement Agency	\$ 3.14	0.10%	\$ 162.93	5.00%
Amtrak	\$ 2.23	0.07%	\$ -	0.00%
Smithsonian Museum	\$ 1.12	0.03%	\$ 1.12	0.03%
Funding for Arts	\$ 0.24	0.01%	\$ -	0.00%
Salaries and benefits for members of Congress	\$ 0.19	0.01%	\$ 0.19	0.01%
Paydown of National Debt	\$ -	0.00%	\$ 857.82	26.33%
	\$ 3,258.51	100.00%	\$ 3,258.51	100.00%

Please Use the Suggested Contribution Values ☐

Please Use My Entire Contribution Where It Is Most Needed ☐

Source: David Indiviglio (2010)

South Africa is likely not ready for proposals as radical as those described above. The administrative requirements alone from a budgeting point of view would likely be somewhat of a nightmare and it is not clear that all departments would receive the basic amount of funding they would need to operate. In the event where the allocation of a taxpayer's tax revenue is completely dependent on a taxpayer's

suggestion, numerous behavioural considerations would come into play (including bounded rationality and salience). Some departments would be likely to receive more funding simply because they are salient and simple to understand. For example, South Africa has incredibly high rates of crime and it might be that people allocate more money to policing at the expense of less salient departments (for example, agricultural and rural development). Further, the majority of the country is not informed enough (whether due to ignorance, apathy, or otherwise) to know the budgetary requirements of each department and the various programmes that each department is responsible for. There are ways to get past these issues (for example, Boaz suggests that Congress be given the power to override the taxpayers' decision with a supermajority vote to ensure adequate amounts of money are given to essential service⁷³⁵). It is suggested that this kind of budgeting would provide accountability and fiscal responsibility and ensure that departments are spending effectively and efficiently.

Another option is the participatory budgeting, which emerged in Porto Alegre in Brazil as early as the early-1990s.⁷³⁶ Participatory budgeting can be defined as a practice that '*empowers citizens to identify community needs, work with elected officials to craft budget proposals, and vote on where and how to spend public funds.*'⁷³⁷ The context was a country that transitioned to democracy from a dictatorship, had a significant income inequality, and experienced significant corruption.⁷³⁸ The results of a participatory budgeting model have included reduced corruption, improved cooperative governance, increased transparency in the use of public funds, improved efficiency, and the redistribution of wealth.⁷³⁹ This model became so popular that by 2013, there were between 1269 and 2278 participatory budgets worldwide⁷⁴⁰ (of which around 15-30 could be found in Anglophone Africa⁷⁴¹). Considering the varying characteristics of the jurisdictions in which participatory

⁷³⁵ Ibid.

⁷³⁶ Teresa Melgar 'A Time of Closure? Participatory Budgeting in Porto Alegre, Brazil, after the Workers' Party Era' (2014) 46(1) *Journal of Latin American Studies* 121-149 at page 121.

⁷³⁷ Hollie Russon Gilman 'Engaging Citizens: Participatory Budgeting and the Inclusive Governance Movement within the United States' (2016) Ash Center Occasional Papers Series at page 1.

⁷³⁸ Yves Sintomer, Carsten Herzberg, and Anja Röcke 'Transnational Models of Citizen Participation: The Case of Participatory Budgeting' in Nelson Dias *Hope for Democracy: 25 Years of Participatory Budgeting Worldwide* (2014) Nelson Dias 28-46 at page 32. Although South Africa did not transition from a dictatorship, there are many similarities between the context of South Africa and Brazil (and, in particular, the city of Porto Alegre).

⁷³⁹ Ibid at pages 33-34.

⁷⁴⁰ Yves Sintomer, Carsten Herzberg, and Anja Röcke op cit note 738 at page 29.

⁷⁴¹ Ibid at page 31.

budgeting has been implemented, implementation has been diverse and it is clear that there is no single “correct” approach. Regardless of how it is implemented, it should be done alongside existing participatory structures.⁷⁴²

The two US proposals and participatory budgeting are just some ways in which taxpayers could be given the opportunity to have some agency in the allocation of national revenue. South Africa already has some form of participation in budgeting processes, although it is argued that the current model of South Africa’s budgetary participation is inadequate.

Arnstein⁷⁴³ set out one of the most influential models of citizen participation, the “Ladder of Citizen Participation.” In this model, as set out in **Figure 18**, there are eight “rungs” that describe three forms of citizen participation, ranging from non-participation to the various degrees of citizen power with token power sitting in the middle. When considering the level of citizen participation, South Africa finds itself operating predominantly on the lower rungs. There is “informing” to the extent that South Africans are made aware of the budget each year and how tax revenues are to be spent. There is “consultation” to the extent that the public can, for example, attend and participate in public hearings.⁷⁴⁴ However, as seen in the Ladder of Citizen Participation, these are only token forms of power. In other words, they aim to create an impression of participation when there is, in fact, very little citizen power created through these mechanisms. As outlined above, one need not advocate for full citizen control and allowing participants to ‘*be in full charge of policy and managerial aspects, and be able to negotiate the conditions under which “outsiders” may change them*’⁷⁴⁵ in order to provide citizens with some level of real power. For example, delegated power, one rung down from citizen control, would entail public institutions giving up some level of power, control, and decision-making authority to citizens. Partnership with citizens would also constitute citizen power. In this

⁷⁴² Ibid at page 44.

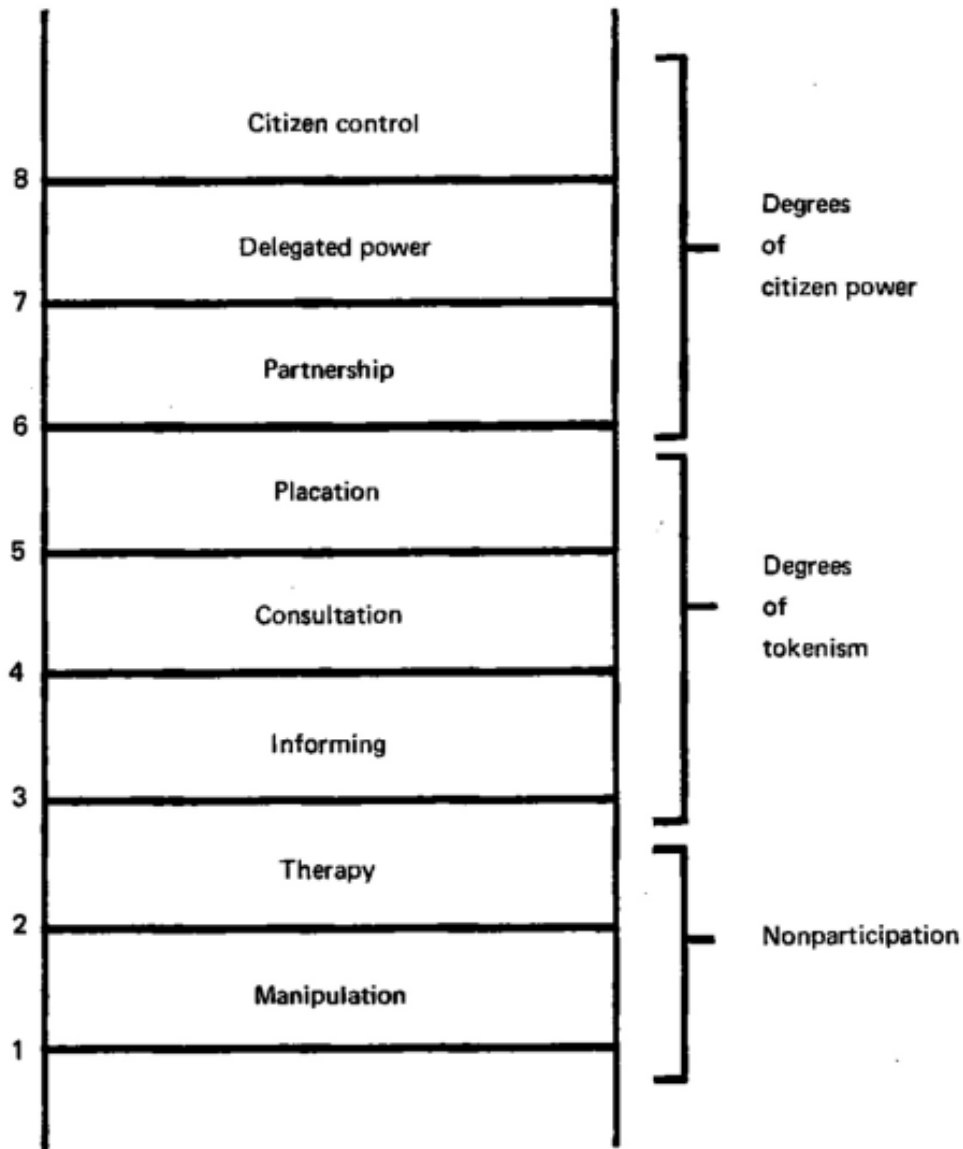
⁷⁴³ Sherry Arnstein ‘A Ladder of Citizen Participation’ (1969) 85(1) *Journal of the American Planning Institution* 24-34.

⁷⁴⁴ For example, public hearings hosted to engage with the Finance Committees of Parliament or with the Appropriations Committees.

⁷⁴⁵ Sherry Arnstein op cit note 743 at page 32.

case, government (whether municipal, provincial, national or otherwise) could share responsibilities through, for example, committees.

Figure 18: Ladder of Citizen Participation



Source: Sherry Arnstein (1969)

Legal Framework

The Constitution sets out the basic values and principles governing public administration.⁷⁴⁶ It requires that *‘people’s needs must be responded to, and the public must be encouraged to participate in policy-making.’*⁷⁴⁷

There are several pieces of legislation that provide a framework for participative decision-making in the budgeting process at a municipal level.

The Local Government: Municipal Structures Act 117 of 1998 provides that the *‘object of a ward committee is to enhance participatory democracy in local government.’*⁷⁴⁸

The Local Government: Municipal Systems Act 32 of 2000 requires that the municipality *‘must involve the local community in the development, implementation and review of the municipality’s performance management system, and, in particular, allow the community to participate in the setting of appropriate key performance indicators and performance targets for the municipality’*,⁷⁴⁹ and that members of the community have the right to *‘contribute to the decision-making processes of the municipality’*⁷⁵⁰ and *‘to regular disclosure of the state of affairs of the municipality, including its finances.’*⁷⁵¹ Further, the municipality council is mandated to consult the community about *‘the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider and the available options for service delivery.’*⁷⁵² Community participation must include consultative sessions with community organisations.⁷⁵³ The importance of involvement and participation in material decision-making processes could be expected to include participation in the budgetary process.

Chapter 4 of the Local Government: Municipal Finance Management Act 56 of 2003 sets out processes and procedures that relate to, *inter alia*, the preparation of the municipal budget. The Local

⁷⁴⁶ Section 195 of the Constitution.

⁷⁴⁷ Section 195(1)(e) of the Constitution.

⁷⁴⁸ Section 72(3) of the Local Government: Municipal Structures Act 117 of 1998.

⁷⁴⁹ Section 42 of the the Local Government: Municipal Systems Act 32 of 2000.

⁷⁵⁰ Section 5(1)(a) of the the Local Government: Municipal Systems Act 32 of 2000.

⁷⁵¹ Section 5(1)(d) of the the Local Government: Municipal Systems Act 32 of 2000.

⁷⁵² Section 4(2)(e) of the the Local Government: Municipal Systems Act 32 of 2000.

⁷⁵³ Section 17(2)(d) of the the Local Government: Municipal Systems Act 32 of 2000.

Government: Municipal Finance Management Act aims to ensure transparency in the financial affairs of municipalities.⁷⁵⁴ This is achieved through, *inter alia*, the mandate for the local community to be invited to submit representations in connection with the budget⁷⁵⁵ or to submit comments or representations in respect of incurring long-term debt.⁷⁵⁶

The Local Government: Municipal Property Rates Act 6 of 2004 requires that municipalities must invite community participation prior to adopting rates policies,⁷⁵⁷ particularly through the submission of comments and representations.⁷⁵⁸ All comments and representations must be considered.⁷⁵⁹

However, although participatory budgeting is facilitated through multiple pieces of local government legislation, this is not mirrored in any legislation at a national level.

In terms of the Public Finance Management Act 1 of 1999 (**PFMA**), National Treasury is responsible for, *inter alia*, ‘manag[ing] the budget preparation process [and] exercise[ing] control over the implementation of the annual budget.’⁷⁶⁰ In order to facilitate this, National Treasury may ‘do anything further that is necessary to fulfil its responsibilities effectively.’⁷⁶¹ Briefly, National Treasury consolidates budgets submitted by government departments (which have considered any public comments submitted or representations made) into a draft budget which is tabled in Parliament. Next, the Minister of Finance tables the budget in the National Assembly⁷⁶² and Parliament ultimately passes the budget. After the passing of the budget, the funds are allocated and then the planning and implementation begins.

Proposal

In order to build (or re-build) the social contract between the State and taxpayers, it is proposed that taxpayers are given some level of agency in the allocation of expenditure. There are two ways in

⁷⁵⁴ Section 2(a) of the Local Government: Municipal Finance Management Act 56 of 2003.

⁷⁵⁵ Section 22(a)(ii) of the Local Government: Municipal Finance Management Act 56 of 2003.

⁷⁵⁶ Section 46(3)(a)(ii) of the Local Government: Municipal Finance Management Act 56 of 2003.

⁷⁵⁷ Section 4(1)(a) of the Local Government: Municipal Property Rates Act 6 of 2004.

⁷⁵⁸ Section 4(2)(b)(ii) of the Local Government: Municipal Property Rates Act 6 of 2004.

⁷⁵⁹ Section 4(3) of the Local Government: Municipal Property Rates Act 6 of 2004.

⁷⁶⁰ Section 6(1)(c) and (d) of the PFMA.

⁷⁶¹ Section 6(2)(g) of the PFMA.

⁷⁶² Section 27(1) of the PFMA.

which this could be done that would still ensure that all government departments are funded appropriately and that the administrative burden on the State is not overwhelming.

Both proposals would offer taxpayers the opportunity to allocate a certain amount of their tax money (for example, R500) to a specific fund. The difference would lie in the mechanism through which the department funded is determined. While the money would be allocated to already existing functions, the money will be contained in a separate fund and not “lumped in” with the rest of the revenue allocated by National Treasury to those functions. The purpose of this is to ensure that taxpayers are able to see exactly how the money they have allocated is being used and spent. To reinforce this, National Treasury should publish both the amount of money received by this fund along with details of exactly how this money is spent. If the taxpayer does not elect to allocate any money to this fund, the pre-determined amount will be allocated as usual with the rest of the tax revenue.

Since the budgetary process takes place over a roughly 18-month period, it is recommended that the funds be allocated with a lag. In other words, the tax allocated in tax returns in the 2022/23 financial year would only be utilised in the 2024/25 financial year.

The first option is a referendum-based option. All of the money would be allocated to a single fund. Each department would be able to submit a brief project proposal explaining what they would like to do with the money and how the money would be spent. Taxpayers would then be able to vote on which project they would like the money to fund. The money would then fund the project that received the majority of votes. This would allow taxpayers agency over not just the broad category that their money is being allocated to but would allow them to determine a more specific project. For example, while taxpayers may want to fund security, they may not be in agreement with the particular project that the relevant department would want to fund. One concern with this would be whether it would result in alternative overload (in other words, whether too many options would lead to a “choice paralysis”). If there are too many proposals, it may result in decision-paralysis and taxpayers may remove themselves from the decision-making process entirely. A similar outcome may result if the cognitive burden of reviewing the proposals is too high and taxpayers do not find it worth the energy of effort required to engage in the decision-making process.

A second option would be something more akin to the US Presidential Election Campaign Fund where taxpayers would be given the option to allocate some amount of money to one of three

functions (for example, health, social development, or learning and culture). This would presumably remove the alternative overload and cognitive load involved in the first option. However, by allowing the money to be split across, for example, three functions, it would reduce the amount of money received by those three functions respectively. As with the option above, the money would not be allocated to the functional unit in its entirety, but rather to a specific project within that functional unit.

Tax Morale

This is expected to influence tax morale primarily through its links to fiscal exchange. While this study does not make any recommendations in respect of the accessibility or quality of state-provided services, it is expected that this may improve tax morale by allowing for the provision of services (or more specifically, projects) that taxpayers would be satisfied with. As a secondary link, by allowing for increased participation in governance, it is expected that tax morale will improve as found by Alm, Jackson and McKee.⁷⁶³ There may also be implications in respect of distributive fairness. Finally, as explained by the contribution dilemma, compliance requires that there be institutional trust and that the taxes are invested in the public welfare.

Behavioural Principles

The primary behavioural principle that underlies this proposal relates to fiscal illusion. Recalling that taxpayers are not able to accurately perceive the benefits of public expenditure, by allowing taxpayers to determine the projects that tax revenue funds, it might allow taxpayers to feel greater satisfaction with the way in which tax revenue expenditure is allocated.

Additional Considerations

There may be some administrative difficulties with these provisions that this dissertation does not consider. For example, the project proposal is made without any knowledge of how much revenue it will ultimately receive which may make it difficult to adequately fund the proposed project (in the event that it does not receive sufficient funding). However, this is likely to only be a significant issue

⁷⁶³ James Alm, Betty Jackson, and Michael McKee op cit note 140.

in the first year that this proposal is implemented as subsequent years will have the benefit of the revenue collected in previous years to consider for more accurate revenue forecasting.

Another concern relates to earmarking of funds for a specific purpose. There may be a negative impact on tax morale to the extent that departments spend money on ill-advised projects for the sake of spending money.

The State may want to consider whether the proposal should be run as part of a private-public partnership or whether this would mitigate any tax morale gains (noting how common phenomena such as tender corruption is).

The State would need to carefully consider how it would publicise, frame, and explain this significant tax administration change to ensure that there is adequate uptake of this initiative. It would also need to carefully consider the types of proposals that would be well-received by the public.

7.5 Recommendation 5: Developing a Taxpayer's Bill of Rights

Factual Description

South Africans have many substantive taxpayer rights. These are premised on the Bill of Rights in the Constitution. However, these are scattered throughout various pieces of legislation. For example, while many rights are sourced in the TAA, taxpayers also have rights in terms of PAJA and PAIA. Consequently, taxpayers do not know what rights are available to them and how to enforce these rights. The Taxpayer Advocate Service in the US notes that '*labels and presentation matters*' and that the simplicity of a single Bill of Rights is a useful tool in educating taxpayers about their rights⁷⁶⁴ (even if it does not contain all the nuances of the right⁷⁶⁵).

⁷⁶⁴ National Taxpayer Advocate op cit note 648 at page 6.

⁷⁶⁵ For example, using the Bill of Rights as an example, citizens are guaranteed the right to "freedom of speech" but there are limitations and carve-outs to this right that are not included in the Bill of Rights.

Legal Framework

Although many of the rights that might be contained in a Taxpayers' Bill of Rights already exist in various pieces of legislation, this is primarily a proposal that requires the introduction of a new legislative provision. Accordingly, it does not neatly fit into any existing legal framework.

Proposal

Having compared jurisdictions with Taxpayers' Charters and jurisdictions with Taxpayers' Bill of Rights, it is posited that Charters do not account for the power imbalance between taxpayers and tax authorities given that they are generally not binding and generally provide expectations rather than enforceable rights. With this in mind, it is recommended that South Africa introduce a Taxpayers' Bill of Rights. These rights should include not only those already legislated, but also service-based rights (as in the Canadian Taxpayer Bill of Rights). In order to ensure the protection of these rights, the Bill of Rights should be codified (as has been done in the US). In line with the recommendations set out in the Davis Tax Committee, the rights in the Bill of Rights should include the right to finality, the right to privacy and confidentiality, the right to complete, accurate, clear and timely information, the right to pay no more than the correct amount of tax, the right not to pay tax amounts in dispute before you have had an impartial review, the right to legal representation, the right to quality service, and the right to fair and just tax system.⁷⁶⁶ It is also recommended that the Bill of Rights be reviewed annually and revisions be published as necessary (in line with the UK approach).

Similarly, in line with the UK approach, it is recommended that the performance of SARS in accordance with the standards set out in SARS' Service Charter be required to be reviewed and published annually. While the SARS Service Charter performance results are occasionally published on the SARS website, there is no mandate to publish annual (or more regular) reports. As such, there is no way to reliably measure the performance of SARS in this regard and no way to measure performance over time.

To ensure that the rights contained in the Taxpayers' Bill of Rights are realistically enforceable, the minimum standards required for each of these rights must be clearly set out. For example, the right

⁷⁶⁶ Davis Tax Committee op cit note 651 at pages 74-75.

to “quality service” is vague and immeasurable. As such, there should be guidelines for taxpayers to use as an evaluation tool. This would further improve the level of certainty that taxpayers have in respect of their rights.

Taxpayers are expected to abide by the relevant tax laws and rules promulgated under those laws and they are subject to fines and penalties in the case of non-compliance. In the same way that taxpayers are not aware of their rights, they are similarly unaware of all of their responsibilities. While a Taxpayers’ Bill of Rights could never purport to outline all of the taxpayers’ duties, it is recommended that the primary responsibilities be outlined. These would include general responsibilities, such as the responsibility to provide accurate information and to pay taxes on time.

Tax Morale

There are a number of ways in which this proposal is intended to improve tax morale.

First, while this study has mainly focused on reciprocity as it regards fiscal exchange, reciprocity also considers the social contract between taxpayers and the state more generally. Specifically, by bringing taxpayer rights to the forefront of interactions between taxpayers and tax authorities, it might be possible to begin repairing the social contract between taxpayers and tax authorities thus improving tax morale.

Second, it is intended to improve tax morale through linkages to fairness. As explained in chapter three, fairness includes procedural fairness. By clarifying the rights of taxpayers and providing mechanisms for enforcing these rights, it is expected that perceptions of fairness will improve consequently improving tax morale. However, it should be remembered that having enforceable rights is not sufficient. There needs to be a corresponding improvement in accessibility. This might require changes to, *inter alia*, reduce backlogs in court and the affordability of enforcing one’s rights. This is not addressed in this recommendation.

Third, it is intended to improve tax morale through its relationship with governance and institutions, and in particular, its relationship to the treatment of taxpayers by tax authorities. When taxpayers are

treated with respect, tax morale is likely to be higher. As such, codifying service-based rights is expected to improve tax morale.

Behavioural Principles

As with the majority of proposals presented thus far, there are implications in respect of bounded rationality. Taxpayers are constrained in terms of time (especially in dispute processes where there are time periods imposed). There is also a significant cognitive load imposed on taxpayers in the form of search costs in the determination of taxpayer rights. Thus, while the information is available to taxpayers, they behave as if they are constrained by limited information because it is too cognitively difficult for taxpayers to determine what rights and remedies are available to them. By providing a single Taxpayers' Bill of Rights and making the rights and responsibilities of taxpayers easily ascertainable, the bounds of rationality for taxpayers will be increased and the cognitive load will be reduced. This would allow taxpayers to make higher-quality decisions in respect of enforcing their rights.

There are also saliency implications. By presenting a single Taxpayers' Bill of Rights and ensuring the widespread publishing of these rights, the rights and responsibilities of taxpayers is made more salient. As such, taxpayers are far more likely to make decisions having regard to their rights and corresponding responsibilities.

Additional Considerations

While the proposal advocates for the creation and legislation of a Taxpayers' Bill of Rights, this by itself is not sufficient. As many alternative forms of communication as is reasonably feasible and practical should be utilised to create awareness. This might include articles in newspapers, information printed on the back of manual tax return forms, infographics published on SARS' twitter account, *et cetera*.

In addition to the Taxpayer's Bill of Rights, tax authorities may consider the creation of a "Tax Toolkit". This would, for example, provide information on where to find the information relevant to the right (where applicable). For example, where Taxpayers' Bill of Rights provides for the right to privacy and confidentiality, the taxpayer should be guided to the more comprehensive privacy and confidentiality provisions in the various pieces of legislation (such as the Constitution, the TAA,

POPI, *et cetera*). It might also include a contact list for which SARS officials to contact in different circumstances along with processes to follow (and the corresponding timelines) in various circumstances (see **Appendix A 5** for an example of what this may look like).

In the US provision, the Commissioner is required to ensure that employees of the IRS are familiar with the Taxpayers' Bill of Rights. With this in mind, it would be appropriate not only to legislate the Taxpayers' Bill of Rights, but to do so in conjunction with the introduction of additional training for SARS staff to ensure that they not only are aware of taxpayers' rights but also so that they are aware of how this manifests practically in different divisions, what kind of actions would infringe on these rights, where and how these rights may be limited, *et cetera*. It is not immediately clear the extent to which SARS employees are currently trained on the rights of taxpayers. In this respect, it may be useful to do some sort of baseline test along with testing after training to determine whether the training is effective or whether other measures need to be considered. This should be mandatory, annual training (as opposed to once-off training). This is particularly having regard to the fact that SARS' performance in respect of these rights will be published annually, and the focus can be determined by SARS' performance each year. For example, if SARS is consistently failing to meet the standard of "quality service", the annual training can focus on this component. Similarly, as tax law changes (for example, when the TAA is amended), employees should be informed of how the taxpayers' rights would fit into new processes and procedures. Employees should also be provided with adequate guidelines and reference materials that they can refer to at any point. In the event of non-compliance with these rights by SARS employees, there should be appropriate sanctions.

The introduction of this proposal could improve procedural fairness to the extent that SARS officials are more likely to act in accordance with the principles of procedural fairness if there are clearer guidelines as to what is required of them, they have been properly trained on expectations, and there are sanctions for non-compliance with the standards and expectations.

7.6 Recommendation 6: Expansion of powers and increase in focus in respect of HNWIs

Factual Description

While fair and equal treatment is a fundamental tenet of the South African legal system, higher income taxpayers are often higher risk and, as such, require additional focus by tax authorities. As

noted in chapter three, the perception that taxpayers in the higher income tax do not pay their “fair share” of tax is detrimental to tax morale. Recalling Engel, Mittone and Morreale’s findings that interventions targeted HNWI’s will ‘*pay a double dividend*’, this appears to be a particularly effective way to improve tax morale of the entire population. Noting that HNWI’s often have a high profile in the community and that they attract significant public attention, the general public is certain to be aggrieved by the tax offences of HNWI’s (especially if the perception is that they are not being treated in the same way as an “ordinary” taxpayer). Further, the OECD argues that communication is more effective with HNWI’s because of their higher profile in the community.⁷⁶⁷ In order to demonstrate equality and (retributive) fairness, tax authorities must ensure that their compliance strategy applies equally to taxpayers across all income segments.

As noted above, South Africa has a dedicated HNWI unit and has already begun its work focusing on these taxpayers. However, having the unit is not the end-goal. Rather, it is a vehicle for facilitating the improvement of widespread compliance. With this in mind, the HNWI unit should expand upon the work it is already currently doing.

SARS offers a large business centre (**LBC**) for large businesses that includes UHNWI’s.⁷⁶⁸ The LBC offers a ‘*[d]edicated relationship management by industry and sector, ensuring that tax teams allocated to the client has specialised knowledge and understanding of the client’s business; [a] highly skilled and professional team with proficiency on multiple tax types for taxpayers with complex tax portfolios, including those operating in multiple tax jurisdictions. To this end, SARS aims to facilitate clarity of the taxpayer’s obligations and improve efficiency in assessments, audits and dispute resolution processes; [and] [c]entralised management of the taxpayer’s tax compliance requirements across tax types which SARS’ refers to as a ‘One-stop shop’ end-to-end service. This service provides the taxpayer with seamless interaction with SARS for any tax requirement or query the taxpayer may have, through one relationship management team who manages their entire tax*

⁷⁶⁷ OECD op cit note 683 at page 40.

⁷⁶⁸ This is defined as ‘*groups or entities with a turnover greater than R1 billion; Companies listed on the Johannesburg Stock Exchange; Financial services with a turnover greater than R500 million; Mining companies with turnover greater than R500 million; All entities or groups of companies with a combined total assets value greater than R100 million, as well as multinational companies [and] Ultra High Net-Worth Individuals whose total assets are in excess of R75 Million.*’ See Staff Writer ‘SARS revives unit focusing on companies and wealthy South Africans – here’s what you need to know’ *BusinessTech* 24 October 2019.

portfolio.⁷⁶⁹ The LBC, which has boosted corporate tax revenue,⁷⁷⁰ could be used a model for HNWIIs.

Legal Framework

This is a proposal that requires the introduction of empowering legislation, and it does not currently fit into any existing legal framework.

Proposal

One way in which the HNWI unit's mandate and powers could be extended is through the introduction of a cooperative compliance programme. This might include, for example, a "pre-filing programme" wherein the taxpayer has the ability to, in conjunction with their advisors, meet with dedicated HNWI tax authorities to discuss any concerns or uncertain tax positions prior to filing their tax return. Importantly, this must include a pre-filing dispute mechanism so that any differences in interpretation can be tested prior to filing so as to avoid the imposition of any penalties.

As with the cooperative compliance programmes that currently exist in respect of corporate taxpayers, there would need to be specific requirements that would need to be met before the taxpayer and tax authority enters into this kind of relationship. Further, this relationship needs to be governed by a contractual agreement that clearly delineates rights and responsibilities. This would include, *inter alia*, the taxpayer disclosing any material information to tax authorities.

While the South African tax administration system includes the possibility of obtaining binding rulings, this relationship is distinct in that it would be a continuing relationship and it would enable more immediate access than rulings (binding or otherwise) may allow for. Notwithstanding, it may be useful if the taxpayers' requests for advice in terms of transactions (and SARS' corresponding response) be published as a non-binding private opinion⁷⁷¹ for the purpose of being capable of being cited in proceedings involving the taxpayer to whom the opinion was issued. This should provide the

⁷⁶⁹ Ibid.

⁷⁷⁰ Naledi Ngcobo 'Re-establishment of Large Business Unit at SARS significantly boosted revenue collection' *SABC News* 1 April 2022.

⁷⁷¹ In terms of section 88 of the TAA.

taxpayer with some level of protection against penalties should SARS change its view. Similarly, it may be useful for SARS to, where appropriate, formalise their opinion in respect of an interpretation note or as part of a SARS guide. This would provide clarity to taxpayers more broadly. It may also reduce the number of ruling requests (although this is unlikely to be a significant reduction).

Another way in which the HNWU's role could be expanded is through the introduction of UWOs into South African law. This could resemble the UWO framework used in the UK. As is the case with the UWOs in the UK, this power need not be restricted to only the tax authority but could be extended to include law enforcement bodies more broadly. With this in mind, it could be implemented through an amendment to, for example, the Prevention and Combatting of Corrupt Activities Act 12 of 2004. This would afford SARS certain investigative powers that it does not currently possess. Of course, since this would be a much wider-reaching amendment than one which would amend only the powers of SARS, thorough research must be conducted into the impact of an amendment of this kind.

Tax Morale

This proposal is intended to influence tax morale primarily through its linkages to (retributive) fairness and inequality. Specifically, by focusing on the behaviour of HNWI, tax authorities can illustrate to taxpayers that all taxpayers are treated equally. This is particularly in respect of the recommendation that relates to UWOs. In respect of the HNWI Cooperative Compliance programme, it is intended to improve tax morale through improving relationships between taxpayers and tax authorities. Specifically, taxpayers that are treated with respect tend to have a higher tax morale.

Behavioural Principles

As with many of the proposals discussed thus far, there are implications from a bounded rationality perspective. Of course, it is not only the taxpayers that are information constrained – tax authorities are also constrained in this regard. SARS can only act rationally within the bounds of the information that it has. By increasing SARS' investigative powers, it increases the bounds of the information.

One must be cautious in how these powers are construed, particularly when having due regard to confirmation bias. While SARS' investigative powers should be strengthened, it should not allow for SARS to *'search for information that supports their beliefs and ignore or distort data contradicting*

them.⁷⁷² As such, there need to be procedural safeguards put in place to protect taxpayers' rights. While SARS' actions are subject to review in terms of PAJA, there should still be internal remedies created in the empowering provision.

Hopefully, the publication of statistics around how often SARS utilises this power would mitigate over-optimism by non-compliant taxpayers thus extinguishing optimistic illusions and, in turn, alleviating the associated behaviour. In other words, the increased awareness about the higher risk probability should hopefully decrease non-compliant behaviour.

There have been little to no repercussions for those who have unexplained wealth and do not disclose it in their taxes because SARS is not able to provide the relevant evidence required to prove allegations. In this regard, there is no incentive for non-compliant taxpayers to change their behaviour. As such, and with reference to the status quo bias, there needs to be a catalyst to encourage taxpayers to behave differently.

Additional Considerations

It is not immediately clear what the up-front requirements would be from a costing perspective, but it should be expected that additional staff would be required in the HNWU in order to manage the additional relationship management required for a cooperative compliance programme. While it could be anticipated that there would be a decreased burden in post-filing compliance (e.g., verifications and audits) for the HNWI segment, this may not necessarily translate to a decreased number of staff required in these departments when considering how overburdened the staff in these departments already are. As such, it would not be as simple as a restructure of personnel. Further, it should be expected that there is some amount of self-selection into a cooperative compliance programme. In other words, it may be that the taxpayers that opt-in to this programme are likely the low-risk taxpayers in any event and that it would not result in a significant reduction in the number of compliance activities required post-filing. In this case, there would be an increase in resources required in the HNWU without little to no reduction in resource requirement in, for example, the audit divisions.

⁷⁷² Uwe Peters op cit note 216 at page 1351.

Another consideration is whether there would be enough uptake in a cooperative compliance programme to warrant the additional resource requirements. In this regard, while corporate taxpayers may enter into these kinds of relationships to build their public profile and enhance their appeal (for example, to shareholders or potential shareholders), the same pressures may not necessarily apply to personal income taxpayers. While this study has not considered audits in any context (the penalties, the likelihood of being audited, *et cetera*), it may be that this proposal needs to be considered in conjunction with other tools such as audits. For example, there may be increased uptake if the likelihood of audits of HNWIs were greater and if HNWIs were subjected to greater scrutiny than they currently are.

As has been discussed above, perception is an incredibly important driver of tax morale (in particular, as it relates to perceptions of fairness and equity). While the dialogue around the HNWU (and the cooperative compliance programme in particular) needs to be positive to the extent that it encourages participation by taxpayers in this segment, it should not create the perception that these taxpayers are receiving favourable treatment. It should be clear to the general population that these programmes are put in place to ensure that HNWIs are being made to pay their fair share of tax.

Discussions between stakeholders would need to take place to determine the scope of this kind of programme and/or pilot programme. Once this has taken place, extensive and comprehensive guidelines should be developed and published to ensure that all parties are aligned in respect of their roles and responsibilities as well as service expectations (for example, response times) and substantive aspects (for example, types of tax covered, dispute resolution processes, *et cetera*). Similarly, it would need to be determined how much these relationships would differ from one taxpayer to another. In other words, to what extent would the relationship would be governed by an empowering provision (whether in terms of legislation, public notice *et cetera*) and to what extent would it be governed by the contractual agreement between the taxpayer and tax authority. This is important as it has fairness and equality implications.

In respect of the introduction of UWOs, the UK carried out a detailed and comprehensive impact assessment in 2017 prior to the introduction of UWOs. This estimated that there would be a cost of £0.3m present value over a period of ten years. The estimated benefit was £6.1m forfeited under civil

recovery (present value over a period of ten years).⁷⁷³ It also estimated that there may be no UWO applications in the first year but that there would be approximately 20 cases per year following the initial year.⁷⁷⁴ This evaluation along with the corresponding assumptions could be used as a basis for the South African cost-benefit analysis of introducing UWOs. While the metrics for success would primarily relate to the amount of money recovered, it would be interesting to determine (through, for example, public surveys) the impact that UWOs have on the tax morale of the general public. In other words, whether it creates the perception amongst the general public that authorities are serious about ensuring that everyone is equal before the law (regardless of status, income, or political connections).

7.7 Recommendation 7: Introduction of a Taxpayer Receipt

Factual Description

National Treasury publishes the budget review on its website.⁷⁷⁵ It also publishes additional information, such as the budget data and time series data in an excel format. In the budget review, consolidated spending by functional and economic classification is illustrated (see **Appendix A 7** and **Appendix A 7** for examples of this). However, this information is not necessarily readily accessible to taxpayers who do not have a strong financial literacy. It also imposes a high cognitive burden in respect of high search costs.

In the US, the Secretary of the Treasury is mandated to include, in the booklet for instructions for tax returns, pie-shaped graphs showing the relative sizes of both major outlay categories and major income categories.⁷⁷⁶ The intention behind this provision was to create a stronger link between what taxpayers pay and what they receive.⁷⁷⁷

However, the pie-charts in the US and the budgets in South Africa are either too superficial or too complex respectively, and neither of them relate the information to the particular taxpayer.

⁷⁷³ The Home Office ‘Criminal Finances Act – Unexplained Wealth Orders Impact Assessment’ (2017) at page 3.

⁷⁷⁴ Ibid at page 3.

⁷⁷⁵ The budget reviews as far as 1993 are published on the National Treasury website.

⁷⁷⁶ IRC § 7523(a).

⁷⁷⁷ National Taxpayer Advocate ‘2020 Purple Book’ (2019) at page 9.

Legal Framework

In South Africa, all money (subject to some exceptions) received by the national government must be paid into a National Revenue Fund.⁷⁷⁸ National Treasury is mandated to publish a monthly statement of revenue and expenditure regarding the National Revenue Fund.⁷⁷⁹

Proposal

It is recommended that, in order to make the tax revenue and expenditure information more relevant to the taxpayer would be to personalise the information through the provision of information such as the taxpayer's marginal and effective tax rates. This information would be provided in a taxpayer "receipt" which would show the taxpayer exactly what their tax has paid. This information could be provided on a taxpayer's e-filing profile where it is easily and readily accessible. It could be

⁷⁷⁸ Section 213(1) of the Constitution.

⁷⁷⁹ Section 32(1) of the Public Finance Management Act 1 of 1999.

something as simple as the receipt illustrated in **Figure 19** (which shows only categories of spending) or **Figure 20** (which shows the breakdown of the categories of spending).

Figure 19: Simple Taxpayer Receipt

*** 20 \$ 14 ***

AVERAGE TAXPAYER'S RECEIPT
1600 PENNSYLVANIA AVE NW, WASHINGTON, DC 20500

NATIONAL DEFENSE	\$1,263.18
HEALTH CARE	\$1,202.30
JOB AND FAMILY SECURITY	\$968.94
NET INTEREST	\$410.91
ADDITIONAL GOVERNMENT PROGRAMS	\$400.77
VETERANS BENEFITS	\$228.29
EDUCATION AND JOB TRAINING	\$182.63
NATURAL RESOURCES, ENERGY, AND ENVIRONMENT	\$101.46
IMMIGRATION, LAW ENFORCEMENT, AND ADMINISTRATION OF JUSTICE	\$101.46
INTERNATIONAL AFFAIRS	\$81.17
SCIENCE, SPACE, AND TECHNOLOGY PROGRAMS	\$50.73
AGRICULTURE	\$35.51
COMMUNITY, AREA, AND REGIONAL DEVELOPMENT	\$25.37
RESPONSE TO NATURAL DISASTERS	\$20.29
TOTAL:	\$5,073.00

X Mary Smith

PLEASE LEAVE THIS COPY FOR THE IRS!

Source: White House, April 2012

Source: Casey Bond (2014)

Figure 20: Detailed Taxpayer Receipt

Income Tax	Collapse All Sub-Categories	% of Total Income Tax Payment	\$4,590.00
National Defense		24.9%	\$1,142.91
Military personnel salaries and benefits		5.8%	\$266.22
Ongoing operations, equipment, and supplies		10.3%	\$472.77
Research, development, weapons, and construction		7.9%	\$362.61
Atomic energy defense activities		0.7%	\$32.13
Defense-related FBI activities and additional national defense		0.2%	\$9.18
Health care		23.7%	\$1,087.83
Medicaid and Children's Health Insurance Program (CHIP)		10.0%	\$459.00
Medicare physician, prescription drug, and other payments		10.5%	\$481.95
Health research and food safety		1.4%	\$64.26
Disease control and public health services		0.8%	\$36.72
COBRA tax credit and additional health care activities		0.9%	\$41.31
Job and Family Security		19.1%	\$876.69
Unemployment insurance		2.3%	\$105.57
Food and nutrition assistance		3.7%	\$169.83
Housing assistance		2.0%	\$91.80
Earned income, Making Work Pay, and child tax credits		3.3%	\$151.47
Supplemental Security Income		1.9%	\$87.21
Federal military and civilian employee retirement and disability		4.4%	\$201.96
Child care, foster care, and adoption support		0.6%	\$27.54
Temporary Assistance for Needy Families		0.7%	\$32.13
Railroad retirement and additional income security		0.5%	\$22.95
Education and Job Training		3.6%	\$165.24
Elementary, secondary, and vocational education		2.4%	\$110.16
Student financial aid for college		0.04%	\$1.84
Job training and employment services		0.3%	\$13.77
Employment training for people with disabilities and additional education and job services		0.9%	\$41.31
Veterans Benefits		4.5%	\$206.55
Income and housing support		2.1%	\$96.39
Health care		1.8%	\$82.62
Education, training, and additional veterans benefits		0.6%	\$27.54
Natural Resources, Energy, and Environment		2.0%	\$91.80
Water and land management		0.8%	\$36.72
Energy supply and conservation		0.5%	\$22.95
Environmental protection and other energy and natural resources		0.7%	\$32.13
International Affairs		1.6%	\$73.44
Development and humanitarian assistance		0.8%	\$36.72
Security assistance		0.4%	\$18.36
Foreign affairs, embassies, and additional international affairs		0.4%	\$18.36
Science, Space, and Technology Programs		1.0%	\$45.90
NASA		0.6%	\$27.54
National Science Foundation and additional science research and laboratories		0.4%	\$18.36
Immigration, Law Enforcement, and Administration of Justice		2.0%	\$91.80
Agriculture		0.7%	\$32.13
Community, Area, and Regional Development		0.5%	\$22.95
Response to Natural Disasters		0.4%	\$18.36
Additional Government Programs		7.9%	\$362.61
Net Interest		8.1%	\$371.79
TOTAL INCOME AND PAYROLL TAXES YOU PAID			\$9,110.00

Source: National Archives (2012)

Tax Morale

The primary driver of tax morale in this proposal is fiscal exchange. By strengthening the link between what taxpayers are paying and the services they are receiving in return, it is intended that tax morale could improve. There may also be implications in respect of distributive fairness.

Behavioural Principles

There are two main behavioural principles that underlie this proposal.

First, there are bounded rationality implications. Taxpayers are provided with more information in a way that it easy to digest and comprehend. Further, it minimises the cognitive burden of search costs by making it easily and readily accessible.

There are also saliency implications. By changing the way in which the information is presented and making it more accessible to taxpayers, the information becomes more salient and is more likely to influence their decision-making.

Additional Considerations

This proposal may backfire somewhat, and a pilot project should be rolled out at a local level before it is rolled out nationally to determine the definitive effect of this proposal. Specifically, when taxpayers were ignorant of how much was being spent on each functional category, they had very little to compare the provision of services to. Once the taxpayer is given a receipt, if they believe that the provision of services (in respect of access, quality, *et cetera*) does not match what they are actually paying, tax morale may decrease and the social contract may be further damaged. Similarly, taxpayer morale may decrease if taxpayers become aware that taxpayer money is spent on line items that the taxpayer is opposed to. Recall that while taxpayers may support a particular tax project in principle, they may be opposed to it in practice if they do not believe that the state will carry it out effectively or without any misappropriation or maladministration.

7.8 Miscellaneous Recommendations

The analysis above revealed that there are aspects that merit attention and could benefit from additional recommendations, although these recommendations do not necessitate a full proposal. These are outlined below:

- SARS should consider improving the communication around tax rules and regulations (especially when there are changes) to ensure that all taxpayers are adequately informed. This would require widely- targeted advertisements about the responsibilities of taxpayers and the corresponding sanctions for failure to comply. For example, as mentioned in chapter six above, SARS should how it can better advertise when taxpayers should register, the simplicity of registering, and the sanctions involved when a taxpayer fails to register. This could, *inter alia*, reframe the message around registration as well as reduce some of the cognitive load involved for taxpayers in the determination what is required of them. At present, SARS hosts educational workshops and webinars.⁷⁸⁰ These webinars are available on SARS' SARS TV channel. For example, on 23 September 2021, SARS hosted a webinar on '*[e]ducation on how to use [its] systems and processes webinar.*' While it is a proactive step, it requires taxpayers to actively seek out the information. Further, the information may not be available at the point in time at which a taxpayer requires it.
- SARS should consider researching, or commissioning research on, the optimal way in which to send reminders (such as reminders to file a tax return or to pay an assessed tax liability). This would include consideration of the mechanism through which the reminder is sent, the timing of the reminder, and the presentation of the reminder. In this regard, nudges have been found to be incredibly useful and analysis of this within the South African context could be a low-cost but efficient mechanism to achieve a stated goal.
- SARS should consider reducing the cognitive load and hassle factors involved in, *inter alia*, filing a tax return, knowing which documents to provide to file a complete tax return, and paying for an assessed tax. Alongside some of its application forms, the IRS sometimes provides complete booklets which include the IRS contact information, resources for the Taxpayer (such as the TAS), all the information that the taxpayer needs to how, a step-by-step

⁷⁸⁰ The schedule of these workshops and webinars can be found on the SARS website.

guide on how to complete the application, and an application checklist where documents are required. **Appendix A 8** provides excerpts from a booklet that accompanies the form for an offer in compromise. SARS could consider creating comprehensive booklets like this (which is distinct from the SARS guides that exist) that is user-friendly and geared towards the layperson who does not have legal representation and is not aware of the rules and requirements.

- SARS should consider clarifying the rules around auto-assessments. Any process which purports to improve efficiency and act as a method of convenience for taxpayers should not simultaneously remove procedural safeguards such as objections and appeals. While auto-assessments are an innovative and efficient mechanism, SARS should re-consider the framework within which it operates to ensure that taxpayers are not unknowingly being stripped of their procedural rights to fairness and administrative justice.
- SARS should consider researching, or commissioning research on, the effectiveness of a DATL compromise agreement on tax morale and voluntary compliance more broadly.
- Recalling that the costs of tax payments by taxpayers are considered to outweigh the benefits of public goods and services and noting that it was recommended that the State provide more readily available information on tax expenditure, National Treasury should consider how it frames the expenditure of tax revenue. Since this proposal has no impact on how money is spent but rather just the communication of this, it is a low-cost method and relatively easy to implement.
- SARS should consider researching, or commissioning research on, the structure of tax returns (especially in e-filing or mechanisms where technology can be utilised effectively) to the extent that there may be alternative overload implications. This may also include a consideration of the effectiveness of various defaults in tax returns (especially those completed on e-filing). Simplifying the complexity of the task, adding defaults, and adding additional in-built verification may reduce cognitive load and increase the accuracy of filing and minimise the hassle factors involved. Further, providing a more structured process for decision-making may help mitigate the effect of heuristics and other biases that may lead to non-compliance. This could involve simple restructuring of the tax return form. For example, since it has been found that individuals think about truthfulness and honesty only after they

have been prompted to do so, the signature box with the declaration⁷⁸¹ could be moved to the top of the return. As it stands, the declaration is at the end of the return. It could also be required that the taxpayer sign acceptance of a declaration before being allowed to make changes to the income tax return. Similarly, the electronic return could utilise pop-up warnings to make the risk of non-compliance more salient.

- SARS should consider researching, or commissioning research on, restructuring the e-filing website. In particular, where there are outstanding liabilities, trackers with milestones could be utilised to assist in building a sense of progress and accomplishment to encourage taxpayers to keep paying towards their liabilities. This may be especially useful where taxpayers have entered into, for example, an instalment plan.
- SARS should consider researching, or commissioning research on, the introduction of a SARS e-wallet to the extent that there may be mental accounting (in particular, payment decoupling) implications. Simply, it would entail an e-wallet where taxpayers (especially provisional taxpayers) can pay money into at any point in time. This would mitigate budgetary bottlenecks. It would allow for small, monthly debits or large lump-sum deposits. The idea is that multiple small monthly expenses would have a lower disutility than a single large tax payment. Further, this would operate as a pre-commitment device and may assist taxpayers who are particularly susceptible to inconsistent time preferences. Tax liabilities could be paid directly from this e-wallet. Refunds could also be paid into this e-wallet and thus taxpayers would not necessarily have to incur any out-of-pocket tax payments in a subsequent tax year. The Republic of Kazakhstan uses a “tax wallet” wherein any money in the tax wallet is automatically assigned to any tax liabilities that arise and this may provide a starting point for further research.
- National Treasury should consider researching, or commissioning research on, whether it would be in the interests of the State to establish the belief that a taxpayer’s contribution to

⁷⁸¹ The declaration requires the taxpayer to declare that the information furnished in the return is true and correct in every respect, that the taxpayer has disclosed in full the gross amounts of all income accrued to or received by the taxpayer during the period covered by the return, and that the taxpayer has the necessary receipts and records to support all of the taxpayer’s declarations on the form which the taxpayer will retain for inspection purposes. Although it is anticipated that this type of declaration would be sufficient to prompt a taxpayer to consider truthfulness and honesty, the declaration may need to be paired with a mechanism that requires the taxpayer to read, acknowledge, and take cognisance of the declaration.

taxes is the “final contribution” required for the state to provide the public good and, if so, how would be best to do this.

7.9 Other Provisions Considered

Several provisions were considered in chapter six above that have not been dealt with in the recommendations. No recommendations are being made in respect of these provisions. Some of these are dealt with below:

- Having reviewed the debt waiver provisions, it is believed that the South African provisions do not need to be amended as they are already quite developed.
- Having reviewed the public disclosure provisions (colloquially known as the “name and shame” provisions), it is believed that it is not appropriate in the current context to amend these provisions. In the event that policies around public disclosure are ever re-considered, Axelrod’s⁷⁸² prerequisites for the emergence of co-operation should be considered.
- Having reviewed the deferral of payment provisions, it is believed that it is not necessary in the current context to amend these provisions.

⁷⁸² Robert Axelrod *The Evolution of Cooperation* (1984) Basic Books.

8. CHAPTER EIGHT: CONCLUSION

Voluntary compliance is an important part of a well-functioning tax administration system. It promotes efficiency and minimises the need for enforcement activities. Noting that the last decade has been particularly turbulent for South Africa (and SARS specifically), tax morale is likely to have declined over this period. The increasing frustrations of taxpayers alongside the ever-decreasing South African tax base highlight the increasing importance of finding new and innovative ways to improve tax morale (and consequently, voluntary tax compliance). The hope is that through the improvement of tax compliance, South Africa is able to fund the social development programmes so vital for the country's growth and development.

8.1 *Summary of Findings*

Significantly, the empirical results did not indicate many variables with statistical significance. However, the variables that were found to be of particular importance in this context are (i) the index measuring how well (or badly) the government is handling certain issues, (ii) how likely it is that a rich person could pay a bribe or use personal connections to avoid paying taxes, and (iii) satisfaction with democracy in South Africa. Importantly, this cannot be simplified to the primary vectors of fiscal exchange, fairness and equality, and governance, as most (if not all) of the remainder of the variables that make up each of those vectors respectively were not found to be statistically significant at any level. Of course, statistical significance is not the only measure of importance. Other factors, such as economic significance, are also to be considered.

While behavioural insights may be able to provide low-cost amendments that should improve voluntary compliance, these should be implemented in conjunction with traditional compliance measures rather than instead of traditional measures. Of course, behavioural insights are not necessarily appropriate in every scenario and it should be carefully considered when behavioural insights may be better suited than traditional policy tools and vice versa.

8.2 *Areas for Further Research*

In econometrics, one can more accurately control for factors if the study is done over a period of time. In this case, noting how strongly factors such as trust and fiscal exchange are related so political

events and economic circumstances, it would be useful to conduct a study utilising panel data rather than cross-sectional data as has been done in this study.

Similarly, as has been mentioned previously above, a questionnaire should be created specific to the study. In this regard, one would be able to get a more tailored set of questions which could take into account factors that were not considered in this study (for example, risk profiles should be considered to control for taxpayers' inherent risk attitudes). Similarly, questions could be asked about taxpayers' previous engagements with SARS (if any) to determine the extent of the impact of the treatment of taxpayers and the manner in which (if at all) any issues were resolved. This dedicated survey questionnaire would likely also provide the opportunities for a better sample. For example, since income was not asked in the Afrobarometer survey, one could not draw any descriptive statistics for only income taxpayers or for taxpayers from different tax brackets. Finally, it may be useful to consider the impact that other taxes or fees have on personal income tax compliance. For example, whether changes in the VAT rate, municipal property taxes and levies, or the cost of electricity have on one's willingness to pay personal income tax.

It would be of value to determine the morality of corporate income taxpayers. For corporate taxpayers more so than personal income taxpayers, the distinction between tax evasion and tax avoidance is relevant. This is because there are more ways in which these taxpayers could structure their affairs so as to reduce taxation. This will require significant consideration of tax practitioners and external parties that may influence the extent to which these taxpayers are compliant. These taxpayers tend to have very different profiles to individuals given that the tax decisions are generally made by committee rather than by individuals. In the same regard, these taxpayers are often more likely to have sought advice before taking a particular tax position.

Econometric research should also be conducted on a number of potential determinants to ascertain its impact on tax morale. This includes determining to what extent, if at all, the use of non-pecuniary taxpayer incentives (such as public recognition) crowds out intrinsic motivation. Another area for testing test is the impact of auto-registrations (and the corresponding penalties) on taxpayers.

While this study considers potential legislative and policy changes (underpinned by behavioural insights), it is recognised that the implementation of these changes may come with significant challenges. A balance between equity and efficiency will need to be carefully struck. Noting that

South Africa has a nuanced and complex history which has damaged public goodwill, the legislature and policymakers will need to be incredibly cautious in this regard.

A thorough analysis of the environmental factors within the South African landscape should be undertaken to ensure that the environmental factors are properly incorporated into policymaking.

8.3 Concluding Remarks

Having regard to the economic and political changes that have taken place in South Africa over the last decade, it should be expected that tax morale in the country has been severely damaged. Regrettably, for as long as corruption and (especially the continued misappropriation of funds) remain, the social contract between South Africans and the state will remain fractured. This dissertation does not purport to argue that small behavioural changes is the silver bullet that can repair the trust in public institutions. It is recognised that tax morale is not completely dependent on SARS and tax administration, but State institutions more generally. However, this does not suggest that there is not still a need for the introduction of taxation policies that are focused on improving tax morale. Every legislative and policy-based change (especially the low-cost changes) provides an opportunity to repair the social contract and develop a more co-operative relationship between the State and taxpayers. With this in mind, South Africa should continue to research tax policy and build upon the work done in comparative jurisdictions to develop a tax administration that taxpayers have confidence in and can trust (as it once was).

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10. APPENDICES

10.1 Appendix A 1: Ordered Probit Regression Results

Dependent Variable:	Coefficient	Standard Error	Significance
Tax Morale			
Independent Variables			
<i>Demographic Factors</i>			
Age	-.004	.003	
Gender	-.069	.074	
Present Living Conditions	-.015	.027	
Comparison of Living Conditions	.016	.037	
Education	.076	.042	*
Cash Income	.003	.043	
<i>Corruption</i>			
Perceptions of Corruption	-.068	.052	
Change in Perceptions of Corruption over Time	.006	.03	
<i>Fiscal Exchange</i>			
Contact with Essential Government Services	-.003	.023	
Handling Government Responsibilities	-.109	.05	**
<i>Fairness and Inequality</i>			
Equality of Treatment	-.028	.015	*
Ordinary Person Avoiding Taxes	-.005	.033	
Rich Person Avoiding Taxes	.137	.037	***
<i>Government</i>			
Government Accountability	.015	.021	
Justification of Tax Spending	-.027	.021	
Democracy in South Africa	-.088	.045	*
Satisfaction with Democracy in South Africa	.104	.04	***
Obedying Government	-.04	.023	*
Respect from Public Officials	.072	.04	*
Comparative Treatment by Public Officials	.036	.042	
<i>Trust</i>			
Institutional Trust	.004	.045	
<i>Access to Information</i>			
Frequency of Political Discussions	-.052	.048	
Mean Dependent	3.104		
Observations	1050		
*** $p < .01$, ** $p < .05$, * $p < .1$			
Notes: Significance levels: * $0.05 < p < 0.10$, ** $0.01 < p < 0.05$, *** $p < 0.01$.			

10.2 Appendix A 2: US states that publish tax shame lists

State	Types of Tax Delinquents Published	Includes Names?	Includes Amount Owed?	Includes Delinquent Taxpayers' Addresses?
California	Individual & Business	Yes	Yes	Yes
Colorado	Individual & Business	Yes	Yes	Yes
Connecticut ²	Individual & Business	Yes	Yes	Yes
Delaware	Individual & Business	Yes	Yes	Yes
Florida	Business	Yes	Yes	Yes
Indiana	Business	Yes	No	Yes
Kansas	Individual & Business	Yes	Yes	Yes
Massachusetts	Individual & Business	Yes	Yes	No
Minnesota	Business	Yes	Yes	No
Nebraska	Individual & Business	Yes	Yes	Yes
New Jersey	Individual & Business	Yes	Yes	No
New York	Individual & Business	Yes	Yes	No
Oklahoma	Individual & Business	Yes	Yes	Yes
Pennsylvania	Individual & Business	Yes	Yes	No
Rhode Island	Individual & Business	Yes	Yes	Yes
South Carolina	Individual & Business	Yes	Yes	Yes
Vermont	Individual & Business	Yes	Yes	Yes
Wisconsin	Individual & Business	Yes	Yes	Yes
Wyoming	Individual & Business	Yes	Yes	Yes
Total	19	19	18	14

Source: Andrew Wilford (2020)

10.3 Appendix A 3: US Taxpayer Bill of Rights Publication 1



Your Rights as a Taxpayer

Publication 1

This publication explains your rights as a taxpayer and the processes for examination, appeal, collection, and refunds. Also available in Spanish.

The Taxpayer Bill of Rights

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections, and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

The IRS Mission | Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Publication 1 (Rev. 9-2017) Catalog Number 64731W Department of the Treasury Internal Revenue Service www.irs.gov

Source: IRS (2017)

Appendix A 4: Media Advisory ‘2023 Budget Tips – Make Your Voice Count



MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001 • 40 Church Square, PRETORIA, 0002 • Tel: +27 12 315 5372, Fax: +27 12 466 9055 • www.treasury.gov.za

MEDIA ADVISORY

2023 BUDGET TIPS – MAKE YOUR VOICE COUNT

The Minister of Finance, Mr Enoch Godongwana, will deliver the National Budget Speech on 22 February 2023. As usual, the budget allocation always aims to strike a balance between competing national spending priorities and limited resources.

It is in this context that Minister Godongwana invites South Africans to share their suggestions on the Budget. People may submit views on:

- municipal finances
- government spending priorities and what these should be
- addressing a large budget deficit
- stabilising State-Owned Entity finances
- managing the energy crisis
- tax revenues
- debt sustainability

Minister Godongwana looks forward to your contributions.

Contributions can be sent through to:

National Treasury website here: <https://bit.ly/3ruszsj>

Twitter: @TreasuryRSA and Facebook: National Treasury RSA with the hashtag #TipsForMinFin and #Budget2023

Issued by Ministry of Finance

Date: 01 February 2023

Hofisi ya Holobye wa Timali • Ofisi ya Minista wa Madheleli • Ministerie van Finansies • Kantoro ya Tona ya Diksheleke • Kantoro ya Tona ya Diksheleke • Ofisi ya Tona ya Diksheleke
i Ofisi likalngongqoshe wezeMali • i Ofisi yoMphathiso wezeMali • i Ihhovisi likalngongqoshe Wisozimali • Lihhovisi Landkuna Yozimali

National Treasury | @TreasuryRSA

Source: Ministry of Finance (2023)

10.4 Appendix A 5: The Taxpayer Roadmap

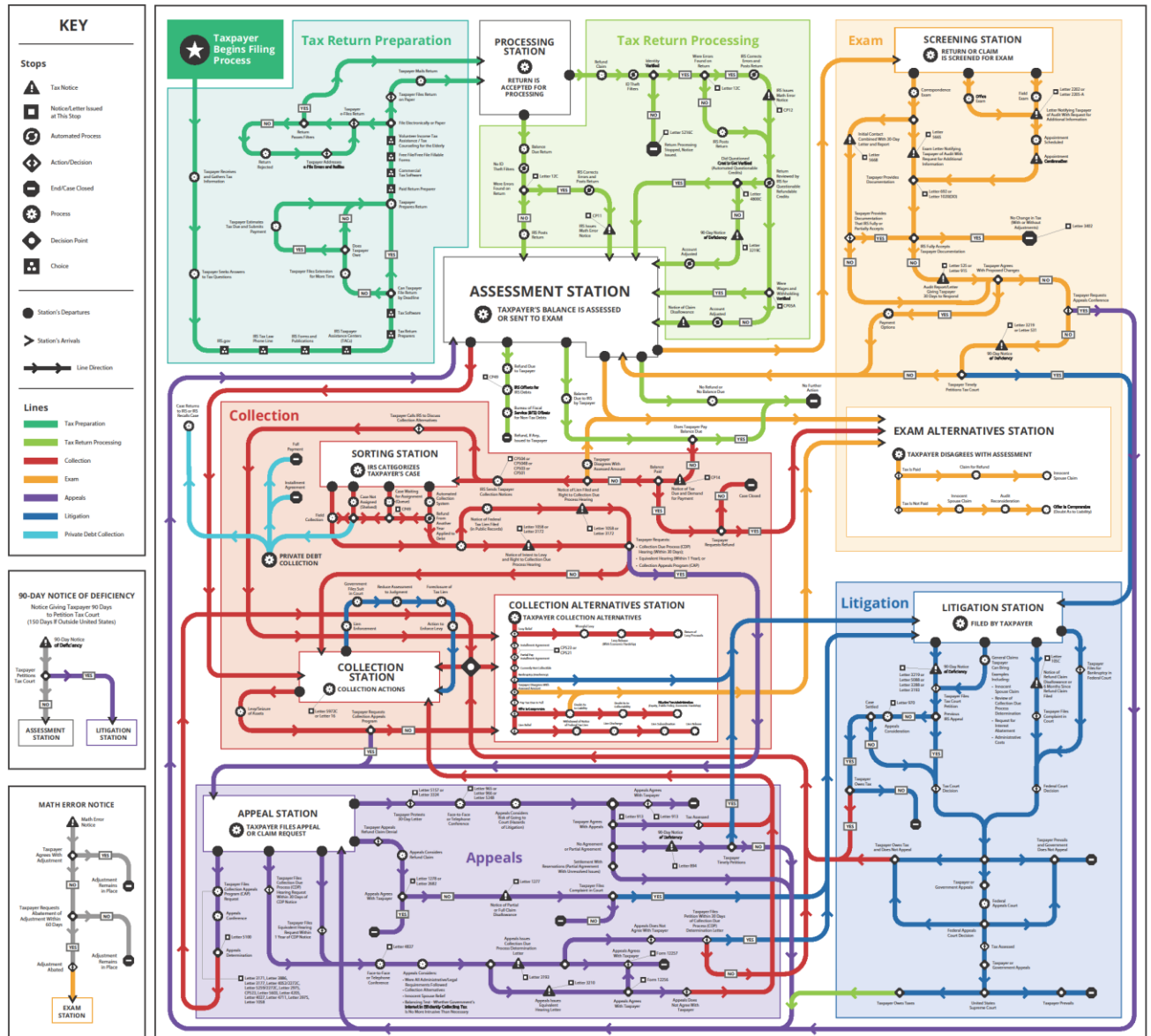
The Taxpayer Roadmap

An Illustration of the Modern United States Tax System

The map below illustrates, at a very high level, the stages of a taxpayer's journey, from getting answers to tax law questions, all the way through audits, appeals, collection, and litigation. It shows the complexity of tax administration, with its connections and overlaps and repetitions between stages. As you can see from its numerous twists and turns, the road to compliance isn't always easy to navigate. But we hope this map helps taxpayers find their way. A project of the Taxpayer Advocate Service.

For more information visit [TaxpayerAdvocate.irs.gov](https://www.irs.gov/taxpayeradvocate)

**TAXPAYER
ADVOCATE
SERVICE**
YOUR VOICE AT THE IRS



Source: TAS (n.d.)

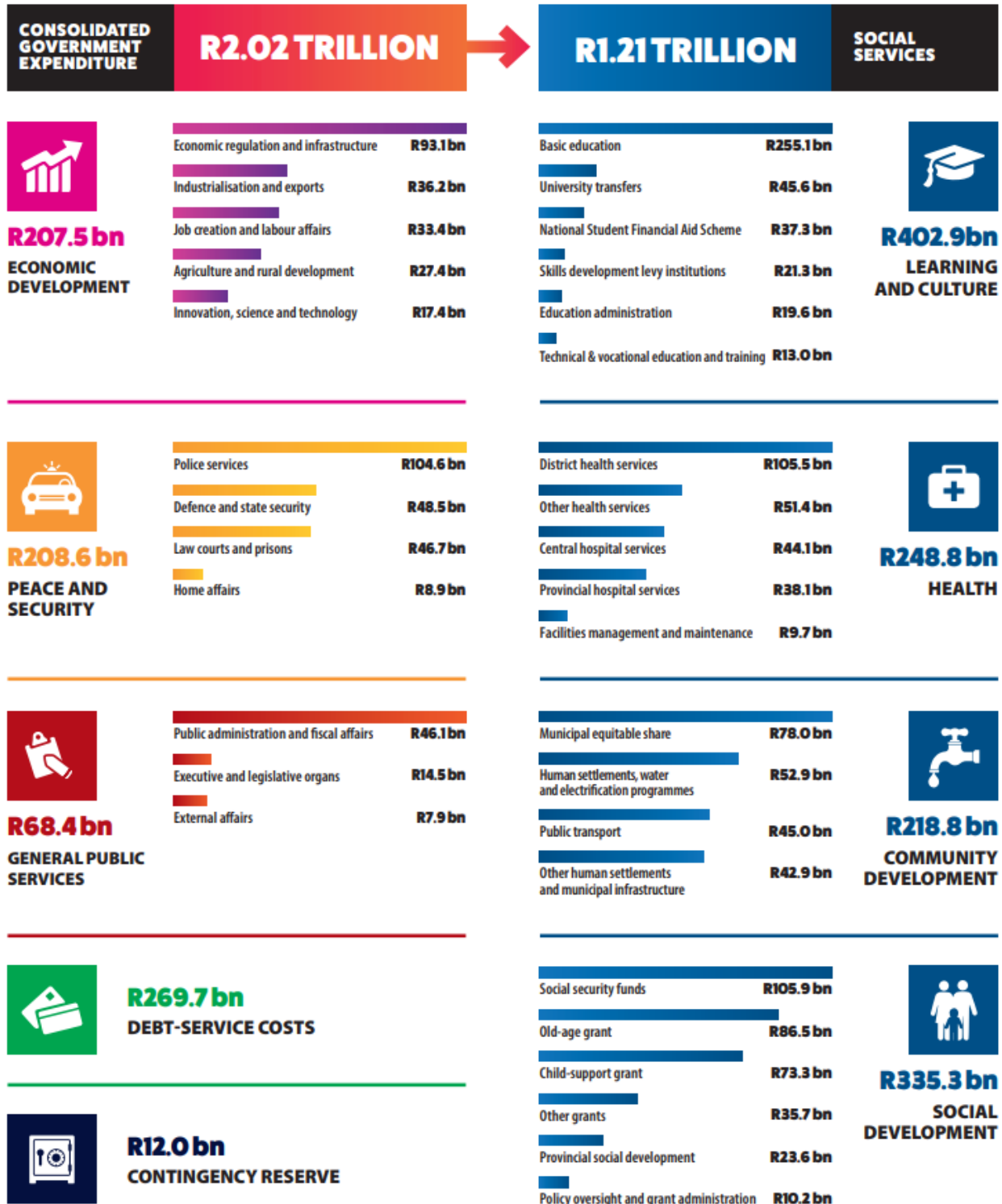
10.5 ***Appendix A 6: Consolidated Spending by Functional and Economic Classification, 2021/22***

CONSOLIDATED SPENDING BY FUNCTIONAL AND ECONOMIC CLASSIFICATION, 2021/22						
R billion	Compensation of employees	Goods and services	Capital spending and transfers	Current transfers and subsidies	Interest payments	Total
Basic education	208.2	27.7	13.8	22.6	0.0	272.3
Post-school education and training	12.4	2.2	4.7	100.4	0.0	119.6
Arts, culture, sport and recreation	4.2	3.3	1.1	2.5	0.0	11.0
Health	150.7	80.1	12.2	5.8	0.0	248.8
Social protection	15.4	8.5	0.9	204.5	0.0	229.4
Social security funds	5.0	7.1	1.2	92.1	0.4	105.9
Community development	18.9	15.0	77.6	107.1	0.2	218.8
Industrialisation and exports	10.5	5.1	7.0	13.6	0.0	36.2
Agriculture and rural development	12.3	7.4	5.2	2.5	0.0	27.4
Job creation and labour affairs	4.6	19.6	0.8	8.4	0.0	33.4
Economic regulation and infrastructure	24.2	30.4	25.7	5.0	7.8	93.1
Innovation, science and technology	4.8	4.1	1.6	6.9	0.0	17.4
Defence and state security	27.1	12.2	1.3	6.1	0.0	46.7
Police services	80.6	18.3	3.8	1.9	0.0	104.6
Law courts and prisons	34.1	11.7	1.7	1.0	0.0	48.5
Home affairs	4.8	3.3	0.6	0.2	0.0	8.9
Executive and legislative organs	8.0	4.8	0.3	1.4	0.0	14.5
Public administration and fiscal affairs	21.7	16.4	2.0	5.9	0.0	46.1
External affairs	2.8	2.3	0.5	2.1	0.1	7.9
Payments for financial assets						48.2
Debt-service costs					269.7	269.7
Contingency reserve						12.0
Total	650.4	279.5	161.9	590.0	278.3	2 020.4

Note: Payments for financial assets are not shown in the table, but are included in the row totals.

Source: National Treasury (2022)

10.6 Appendix A 7: Consolidated Spending by Functional and Economic Classification (Further Break Down), 2021/22



Source: National Treasury (2022)

10.7 Appendix A 8: Excerpts from IRS Form 656 (Offer in Compromise) Booklet

Form 656 Booklet Offer in Compromise



CONTENTS

■ What you need to know.....	1
■ Paying for your offer	3
■ How to apply	4
■ Completing the application package	5
■ Important information	6
■ Removable Forms - Form 433-A (OIC), Collection Information Statement for Wage Earners and Self-Employed Individuals; Form 433-B (OIC), Collection Information Statement for Businesses; Form 656, Offer in Compromise	7
■ Application Checklist	29

IRS contact information

If you want to see if you qualify for an offer in compromise before filling out the paperwork, you may use the Offer in Compromise Pre-Qualifier tool. The questionnaire format assists in gathering the information needed and provides instant feedback as to your eligibility based on the information you provided. The tool will also assist you in determining a preliminary offer amount for consideration of an acceptable offer but is no guarantee of offer acceptance. The Pre-Qualifier tool is located on our website at https://irs.treasury.gov/oic_pre_qualifier/.

If you have questions regarding qualifications for an offer in compromise, please call our toll-free number at 800-829-1040. A video on how to complete an offer in compromise is available for viewing at our website at <https://www.irsvideos.gov/Individual/PayingTaxes/CompletingForm656-OfferInCompromiseApplication>. Forms and publications are available by calling 800-TAX-FORM (800-829-3676), by visiting your local IRS office, or at www.irs.gov. For answers to frequently asked questions about the offer process from submission to closure see Offer in Compromise [FAQs](#).

Taxpayer resources

The Taxpayer Advocate Service (TAS) is an **independent** organization within the Internal Revenue Service (IRS) that helps taxpayers and protects taxpayers' rights. TAS can offer you help if your tax problem is causing a financial difficulty, you've tried and been unable to resolve your issue with the IRS, or you believe an IRS system, process, or procedure just isn't working as it should. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Low Income Taxpayer Clinics (LITCs) are **independent** from the IRS and TAS. LITCs represent individuals whose income is below a certain level and who need to resolve tax problems with the IRS. LITCs can represent taxpayers in audits, appeals, and tax collection disputes before the IRS and in court. In addition, LITCs can provide information about taxpayer rights and responsibilities in different languages for individuals who speak English as a second language. Services are offered for free or a small fee. For more information or to find an LTC near you, see the LTC page at www.taxpayeradvocate.irs.gov/litc or IRS [Publication 4134](#), Low Income Taxpayer Clinic List. This publication is also available online at www.irs.gov/forms-pubs or by calling the IRS toll-free at 800-TAX-FORM (800-829-3676).

Source: IRS (2023)

WHAT YOU NEED TO KNOW

What is an Offer?

An Offer in Compromise (offer) is an agreement between you (the taxpayer) and the IRS that settles a tax debt for less than the full amount owed. The offer program provides eligible taxpayers with a path toward paying off their tax debt. The ultimate goal is a compromise that suits the best interest of both the taxpayer and the IRS. Generally, you must make an appropriate offer based on what the IRS considers your true ability to pay.

Submitting an application does not ensure that the IRS will accept your offer. It begins a process of evaluation and verification by the IRS, taking into consideration any special circumstances that may affect your ability to pay.

This booklet will lead you through a series of steps to help you calculate an appropriate offer based on your assets, income, expenses, and future earning potential. The application requires you to describe your financial situation in detail, so before you begin, make sure you have the necessary information and documentation.

Are You Eligible?

Before your offer can be considered, you must (1) file all tax returns you are legally required to file, (2) have received a bill for at least one tax debt included on your offer, (3) make all required estimated tax payments for the current year, and (4) if you are a business owner with employees, make all required federal tax deposits for the current quarter and the two preceding quarters.

Note: If it is determined you have not filed all tax returns you are legally required to file, the IRS will apply any initial payment you sent with your offer to your tax debt and return both your offer and application fee to you. You cannot appeal this decision.

Bankruptcy, Open Audit or Innocent Spouse Claim

If you or your business is currently in an open bankruptcy proceeding, you are not eligible to apply for an offer. Any resolution of your outstanding tax debts generally must take place within the context of your bankruptcy proceeding.

If you are not sure of your bankruptcy status, contact the Centralized Insolvency Operation at 800-973-0424. Be prepared to provide your bankruptcy case number and/or Taxpayer Identification Number.

Resolve any open audit or outstanding innocent spouse claim issues before you submit an offer.

Can You Pay in Full?

Generally, the IRS will not accept an offer if you can pay your tax debt in full through an installment agreement or equity in assets.

Note: Adjustments or exclusions, which may be considered during the offer investigation, such as allowance of \$1,000 to a bank balance or \$3,450 against the value of a car, are only applied if you are an individual and after it is determined that you cannot pay your tax debt in full.

Your Tax Refunds

The IRS may keep any tax period refund, including interest, processed through the date the IRS accepts your offer by offsetting it against your tax debt, as applicable. Since your tax refund may be offset to the tax liability while the offer is pending, assistance from Taxpayer Advocate or the IRS at 800-829-1040 could be available for taxpayers (other than businesses) facing economic hardship. For example, the IRS accepts your offer on July 1, 2021, and you file your 2020 Form 1040 on April 15, 2021, showing a refund; the IRS will apply that refund to your outstanding tax debt. **The refund is not considered as a payment toward your offer.**

Doubt as to Liability

If you have a legitimate doubt that you owe part or all of the tax debt, complete and submit a **Form 656-L, Offer in Compromise (Doubt as to Liability)**. To request a Form 656-L, visit www.irs.gov or a local IRS office or call toll-free 800-TAX-FORM (800-829-3676).

Note: Do not submit both an offer under Doubt as to Liability and an offer under Doubt as to Collectibility or Effective Tax Administration at the same time. You must resolve any doubt you owe part or all of the tax debt before submitting an offer based on your ability to pay.

Source: IRS (2023)

COMPLETING THE APPLICATION PACKAGE

Step 1 – Gather Your Information

To calculate an offer amount, you will need to gather information about your financial situation, including cash, investments, available credit, assets, income, and debt.

You will also need to gather information about your household's gross monthly income and average expenses. The entire household includes all those in addition to yourself who contribute money to pay expenses relating to the household such as, rent, utilities, insurance, groceries, etc. This is necessary for the IRS to accurately evaluate your offer. The IRS may also use this to determine your share of the total household income and expenses.

In general, the IRS will not consider expenses for tuition for private schools, college expenses, charitable contributions, and other unsecured debt payments as part of the expense calculation.

Step 2 – Fill out Form 433-A (OIC), Collection Information Statement for Wage Earners and Self-Employed Individuals

Fill out Form 433-A (OIC) if you are an individual wage earner, operate or operated as a sole proprietor, or are authorized to submit an offer on behalf of the estate of a deceased individual. If you are married but living separately from your spouse then you each must submit a Form 433-A (OIC). This will assist in the calculation of an appropriate offer amount based on your assets, income, expenses, and future earning potential. You will have the opportunity to provide a written explanation of any special circumstances that affect your financial situation.

Step 3 – Fill out Form 433-B (OIC), Collection Information Statement for Businesses

Fill out Form 433-B (OIC) if the business is a Corporation, Partnership, or LLC. This will assist in the calculation of an appropriate offer amount based on the business assets, income, expenses, and future earning potential. If the business has assets used to produce income (for example, a tow truck used in the business for towing vehicles), the business may be allowed to exclude equity in these assets.

Step 4 – Attach Required Documentation

You will need to attach supporting documentation with Form(s) 433-A (OIC) and 433-B (OIC). See a list of the documents required at the end of each form. Include copies of all required attachments. **Do not send original documents.**

Step 5 – Fill out Form 656, Offer in Compromise

Fill out Form 656. The Form 656 identifies the tax years and type of tax you would like to compromise. It also identifies your offer amount and the payment terms.

Step 6 – Include Initial Payment and \$205 Application Fee

Include a personal check, cashier's check, or money order for your initial payment based on the payment option you selected (20% of the offer amount for a lump sum cash offer or the first month's payment for a periodic payment offer). Generally, initial payments will not be returned but will be applied to your tax debt if your offer is not accepted.

Include a separate personal check, cashier's check, or money order for the application fee. Make both payments (in U.S. dollars) payable to the "United States Treasury".

You may choose to make your initial offer payment and application fee through the [Electronic Federal Tax Payment System \(EFTPS\)](#).

Reminder: If you meet the Low-Income Certification guidelines DO NOT send any money.

Step 7 – Mail the Application Package

Make a copy of your application package and keep it for your records.

Mail the completed application package to the appropriate IRS facility. See page 29, Application Checklist, for details.

Note: If you are working with an IRS employee, let them know you are sending or have sent an offer to compromise your tax debt(s).

Source: IRS (2023)

APPLICATION CHECKLIST

Review the entire application using the Application Checklist below. Include this checklist with your application.

Forms 433-A (OIC), 433-B (OIC), and 656

- ☐ Did you complete all fields and sign all forms
- ☐ Did you make an offer amount that is equal to the offer amount calculated on the Form 433-A (OIC) or Form 433-B (OIC)? If not, did you describe the special circumstances that are leading you to offer less than the minimum in Section 3, Reason for Offer, of Form 656, and did you provide supporting documentation of the special circumstances
- ☐ Have you filed all required tax returns and received a bill or notice of balance due
- ☐ Did you include a complete copy of any tax return filed within 12 weeks of this offer submission
- ☐ Did you select a payment option on Form 656
- ☐ Did you sign and attach the Form 433-A (OIC), if applicable
- ☐ Did you sign and attach the Form 433-B (OIC), if applicable
- ☐ Did you sign and attach the Form 656
- ☐ If you are making an offer that includes business and individual tax debts, did you prepare a separate Form 656 package (including separate financial statements, supporting documentation, application fee, and initial payment)

Supporting documentation and additional forms

- ☐ Did you include photocopies of all required supporting documentation
- ☐ If you want a third party to represent you and receive confidential information during the offer process, did you include a Form 2848? If you want a third party to only receive confidential information on your behalf, did you include a valid Form 8821? Does the authorization include the current tax year
- ☐ Did you provide a letter of testamentary or other verification of person(s) authorized to act on behalf of the estate or deceased individual

Payment

- ☐ Did you include a check or money order made payable to the "United States Treasury" for the initial payment? (Waived if you meet Low-Income Certification guidelines—see Form 656)
- ☐ Did you include a separate check or money order made payable to the "United States Treasury" for the application fee? (Waived if you meet Low-Income Certification guidelines—see Form 656)

Mail your application package to the appropriate IRS facility

Mail the Form 656, 433-A (OIC) and/or 433-B (OIC), and related financial document(s) to the appropriate IRS processing office for your state. You may wish to send it by Certified Mail so you have a record of the date it was mailed.

If you reside in:

AZ, CA, CO, HI, ID, KY, MS, NM, NV, OK, OR, TN, TX,
UT, WA

AK, AL, AR, CT, DC, DE, FL, GA, IA, IL, IN, KS, LA, MA,
MD, ME, MI, MN, MO, MT, NC, ND, NE, NH, NJ, NY, OH,
PA, PR, RI, SC, SD, VA, VT, WI, WV, WY, or a foreign
address

Mail your application to:

Memphis IRS Center COIC Unit
P.O. Box 30803, AMC
Memphis, TN 38130-0803
844-398-5025

Brookhaven IRS Center COIC Unit
P.O. Box 9007
Holtsville, NY 11742-9007
844-805-4980