CROSS-CONTINENTAL PERSPECTIVES: ANALYSING TAX NON-COMPLIANCE REGULATIONS IN CANBERRA, JOHANNESBURG AND WASHINGTON

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Abstract

This cross-sectional study analyses tax compliance frameworks across South Africa, Australia, and the United States, offering a comparative perspective. Despite amendments to the South African Tax Administration Act, subjective taxpayer behaviour remains a major factor in non-compliance. The primary goal is to refine South Africa's tax penalty system by evaluating its effectiveness against those in Australia and the US. The article delves into the administration of tax non-compliance and understatement penalties, highlighting key similarities and differences. It identifies challenges from past litigations and provides policymakers with actionable insights. This nuanced comparison illuminates global tax penalty structures and informs future regulatory improvements.

Keywords: Administrative practices, Australia, non-compliance, penalty structures, South Africa, Tax administration, Tax evasion, Tax penalty regimes, United States

I INTRODUCTION

The perception of taxation as punitive and unnecessary has long been a point of contention between taxpayers and regulatory authorities. Since the inception of formal tax systems, there has always been a segment of the population resistant to compulsory tax payments, often resorting to various strategies to evade their obligations. This enduring pattern of tax non-compliance, where taxpayers fail to meet the requirements outlined by tax legislation, reflects deeper tensions rooted in historical precedent and conflicting views on the fairness of tax burdens and the role of government in society.

Tax compliance[1] is a cornerstone of modern economies, as few alternatives exist to fund the extensive government expenditures necessary for national functioning. Non-compliance with

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[1] James, Simon, and Clinton Alley. "Tax compliance, self-assessment and tax administration." (2002). The researchers contend that defining tax compliance, in its simplest terms, often revolves around the extent to which taxpayers adhere to tax laws. However, akin to many conceptual frameworks, the understanding of compliance can be viewed along a continuum of definitions. This spectrum spans from a more narrowly focused law enforcement approach, encompassing broader economic

tax obligations presents a significant challenge for governments, as it directly undermines public revenue and compromises the ability to meet essential public needs. Government expenditures span crucial sectors[2], all of which require substantial financial resources. While governments may generate some revenue through alternative means, these streams are often insufficient to cover the full scope of expenditures. Consequently, governments may resort to borrowing, but such loans must be repaid with interest, which further highlights the critical importance of taxation as the primary method of funding government operations. Taxation, therefore, serves as a necessary instrument for economic sustainability rather than merely a regulatory burden[3].

Effective tax collection depends on widespread adherence to tax obligations. Non-compliance, whether deliberate or inadvertent, is frequently seen by tax authorities as resistance to government mandates, prompting enforcement measures such as penalties. This resistance can take the form of legal tax avoidance or illegal tax evasion[4]. Tax avoidance involves the strategic structuring of financial affairs to minimize tax liability within the bounds of the law, often taking advantage of legal loopholes or anti-avoidance measures[5]. For such strategies to be lawful, tax authorities must determine that the primary intent is not to evade taxes. In contrast, tax evasion is the illegal manipulation of financial records or tax filings to reduce tax liability, such as by falsifying income or inflating deductions. This distinction between avoidance and evasion is critical, as the latter constitutes a criminal offense, while the former remains a contested but technically legal practice.

Despite efforts to enhance tax compliance, tax evasion remains a significant concern, distinct from tax avoidance due to its intentional and illegal nature. It occurs when individuals deliberately fail to meet their tax obligations, a practice that has persisted throughout history and is expected to continue. While some taxpayers view taxes as burdensome, fulfilling these obligations is a commitment to fiscal citizenship and adherence to the nation's tax laws.
Tax evasion is a global issue, often involving high-profile individuals, as reported by the media[6]. Tax authorities face ongoing challenges in combating this behaviour, balancing enforcement with encouraging voluntary compliance. To deter evasion, they impose penalties, recognizing it as a serious offense.

The task of ensuring tax compliance is formidable, particularly with the growing reliance on self-assessment and electronic commerce. Self-assessment[7] shifts the responsibility for

interpretations, to more encompassing versions that involve taxpayer decisions aligning with the broader societal objectives articulated in tax policy. Beginning with the narrower end of the continuum, one proposed metric for gauging the degree of non-compliance is the 'tax gap.' This metric signifies the variance between the actual revenue collected and the hypothetical amount that would be obtained with 100 percent compliance. This approach provides a quantitative measure to assess the effectiveness of compliance efforts and the extent to which tax objectives are being realized.

[2] Such as healthcare, education, public safety, political stability, and law and policy development.

[3] James, Simon, and Clinton Alley. "Tax compliance, self-assessment and tax administration." (2002).

[4] Alm, J. (2018), *What motivates tax compliance?* Journal of Economic Survey, pp. 1-36

[5] Sections 80A – 80L of the Income Tax Act 58 of 1962

[6] Since time immemorial, taxpayers have sought means to mitigate or evade their tax liabilities, a trend anticipated to persist. According to Phindi Mjonondwane, the spokesperson for NPA South Gauteng, former Kaizer Chiefs defender Jimmy Tau found himself in legal trouble and paid a fine of R300 as an admission of guilt. Additionally, football star Teko Modise faced fraud charges for alleged failure to submit tax returns from 2013 to 2017. Actress Katlego Danke appeared in the Johannesburg Magistrate's Court on 21 August 2018 on charges of tax-related fraud. Moreover, Kaizer Chiefs goalkeeper Itumeleng Khune was under investigation by the Hawks for allegedly not submitting tax returns for the years 2016 and 2017. (Malatji, 2018).

[7] James, Simon, and Clinton Alley. "Tax compliance, self-assessment and tax administration." (2009). In their article both researchers argue that the prominence of tax compliance within tax policy is poised to grow, particularly as persistent challenges persist, and new complexities emerge from factors like self-assessment, the globalization of economies, and the advent of electronic commerce. These developments necessitate careful consideration of their policy implications on the

accurately calculating and reporting tax liabilities from tax authorities to taxpayers, requiring them to have a thorough understanding of their obligations. This complexity amplifies the challenges faced by tax authorities in promoting compliance.

The significance of the research presented in this article lies in its potential to offer valuable insights to policymakers and relevant authorities, particularly in developing countries, regarding necessary reforms to their penalty regimes. These refinements would align with the legal doctrine of *nulla poena sine lege*, which asserts that no punishment can be imposed without a pre-existing law explicitly prohibiting the conduct in question[8]. This principle has profound implications for the administration of penalties, particularly in two key dimensions[9].

A *Research problem*

A comparative analysis of penalty regimes enables policymakers to identify areas for improvement within their own frameworks. By leveraging international best practices and experiences, they can make informed decisions to enhance their country's penalty system. This article presents a comparative analysis of the tax compliance regulatory frameworks in South Africa, the United States, and Australia. The title of the article is inspired by the capital cities: Johannesburg, Washington, and Canberra.

The United States and Australia, with their extensive experience in tax administrative laws, offer valuable insights for this analysis. By examining their practices, the article aims to extract lessons that can strengthen and align South Africa's penalty regime with international standards.

Although the primary focus is on improving the tax penalty regime in a developing African nation, the research has broader implications for international tax revenue authorities. The choice of South Africa, the United States, and Australia for this comparative analysis, as depicted in Figure 1, is based on strategic considerations.

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administration of the tax system. Notably, the introduction of self-assessment introduces a specific risk—the potential temptation to resort to a more stringent enforcement regime. This highlights the importance of balancing effective enforcement with fair and equitable practices in order to maintain the integrity and effectiveness of the tax system.

[8] GrÄƒdinaru, Daniel. "The Principle of Legality." Proceedings of the 11th International RAIS Conference, November 19-20, 2018. No. 044DG. Research Association for Interdisciplinary Studies, 2018.

[9] First, it mandates that penalties must be clearly and precisely defined. The consequences for specific infractions must be articulated in a manner that is both comprehensible and unambiguous, ensuring that individuals have a clear understanding of the potential legal repercussions of their actions. This clarity safeguards individuals' rights to fair treatment and due process under the law. Second, the imposition of penalties must adhere to transparent and well-defined legal procedures. This requirement ensures that penalties are imposed consistently, predictably, and in accordance with established legal rules. By upholding these procedural safeguards, the principle of nulla poena sine lege prevents arbitrary or unjust punishment, promotes the rule of law, and ensures a fair legal system.

Figure 1: Geographic location of South Africa, United States and Australia[10]

South Africa's membership in organizations such as the African Union, the Southern African Development Community (SADC)[11], and the BRICS Group highlights its commitment to regional integration, economic development, and cooperation[12]. Additionally, its participation in the United Nations (UN) since the end of apartheid in 1994 reflects its dedication to global collaboration, peacekeeping, and adherence to international norms[13].

In contrast, the United States stands as a global economic powerhouse with a complex and established tax regime. Its extensive legal framework and enforcement mechanisms provide a nuance for comparison, showcasing both the strengths and challenges of a mature tax system[14]. Australia, with its distinctive legal tradition that blends common law principles and progressive regulatory practices, contributes a dynamic perspective on tax compliance[15]. The overarching objective of this article is to conduct a comprehensive comparative analysis[16] of the criminal and administrative penalty regimes related to tax non-compliance in South Africa, the United States, and Australia. This article strategically selects these nations

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[10] Ponyana and Ndlovu, 2024.

[11] Serving as a key player in SADC, South Africa actively promotes trade, infrastructure development, and socio-economic ties among the 16 member states.

[12] Affiliations with BRICS, the UN, and SADC collectively points to South Africa's commitment to economic collaboration, adherence to international governance protocols, and a focus on regional growth strategies.

[13] Holding non-permanent seats on the UN Security Council multiple times further solidifies South Africa's image as a responsible and cooperative global actor.

[14] The United States Code, specifically Section 6651 of Title 26, Subtitle F, Chapters 61 and 68, Subchapter A, Part I, contains tax administrative penalty clauses akin to those in South Africa. The provisions of this legislation are subject to examination and comparison with those outlined in Chapters 15 and 16 of the South African Tax Administration Act to ascertain potential areas necessitating improvement.

[15] The Australian Tax Administration Act 1953 (hereafter Australian Tax Administration Act) contains penalty provisions similar to those found in South Africa, particularly in Part III, "Prosecution and Offences," Division 2, spanning from Sections 8B to 8W.

[16] This article critically evaluates and contrasts these provisions with Chapters 15 and 16 of the South African Tax Administration Act, aiming to discern whether any improvements are warranted to align with international best practice principles. Additionally, the severity of penalties for non-compliance, particularly regarding non-payment of taxes or understatement of taxable income, is scrutinized to determine variances between South Africa and Australia.

to encompass a diverse range of regulatory approaches, enabling a nuanced examination of how historical, legal, and geographical factors influence tax compliance frameworks. Notably, when developing the South African Tax Administration Act, it was essential for South African tax authorities to adhere to international best practices in tax administration—principles such as fairness, equity, certainty, simplicity, efficiency, and effectiveness. As part of this effort, the South African Revenue Service (SARS) conducted a comparative analysis with tax administrations in Australia and the United States[17].By investigating the factors contributing to non-compliance and evaluating measures to promote compliance, this research aims to provide valuable insights for developing an efficient and equitable tax system that enhances compliance and improves revenue collection[18].

B *Research method*

This article adopts a qualitative research approach, firmly situated within the interpretivist paradigm. Within this paradigm, emphasis is placed on comprehending the subjective experiences and meanings that individuals attribute to social phenomena. The interpretivist paradigm subscribes to the epistemological belief that reality is not an objective, fixed, and quantifiable entity, but rather a dynamic and subjective construct shaped by individual perceptions, values, and cultural contexts. The primary aim of the article is to explore the social reality by delving into the subjective experiences of individuals within Australia and the United States concerning tax administrative processes, particularly penalties, and the significance they attach to them.

Moreover, this research approach acknowledges the ontological belief that social reality is socially constructed. In other words, the article recognizes that social reality is established and perpetuated through social processes and interactions. Consequently, the research endeavours to examine and analyse the social constructions of reality by scrutinizing secondary texts, rather than quantifying or measuring social phenomena. Through this methodological lens, the article seeks to uncover the intricate and dynamic ways in which social reality is shaped, how individuals navigate it, and how their experiences and perspectives are influenced by social and cultural factors.

To gather secondary data, the article employs a comparative legal approach. This methodological choice is deliberate and purposeful, designed to identify relevant policy documents, journal articles, book chapters, court cases, legislations, and online publications related to the research question. The comparative legal approach is favoured for its methodical, replicable, transparent, and comprehensive nature. This approach ensures that the research process remains highly structured and rigorous, facilitating a thorough analysis of the literature.

C *Outline of this article*

[17] Tax Administration Bill, '…The drafting of the TAB was informed by international best practice a comparative evaluation the tax administration laws of other countries with practical experience with tax administrative laws over long periods, such as Australia….and the United States'

[18] The anticipated outcomes of this research carry significant implications for both the government and taxpayers. A more efficacious penalty regime will not only serve as a deterrent against non-compliance but also ensure fairness and legitimacy in tax administration. It will foster a sense of equity among compliant taxpayers and contribute to the overall stability and efficiency of the tax system.

This article examines tax non-compliance, starting with the underlying factors contributing to taxpayers' failure to meet their obligations and conditions that increase default likelihood. It then explores initiatives by SARS aimed at promoting voluntary compliance through various policies and programs. Following this, it investigates corrective measures implemented by tax authorities in Australia and the United States, including educational initiatives and enforcement strategies to enhance compliance. Finally, the article compares South Africa's penalty regime, as detailed in Chapters 15 and 16 of the Tax Administration Act, with the penalty frameworks of the U.S. and Australia, focusing on South Africa's percentage-based penalty under Section 210(2) and fixed-amount penalty under Section 211(1)[19] in relation to similar provisions in the U.S. Internal Revenue Code (IRC 6651) and Australia's Tax Administration Act[20], including its general anti-avoidance rules (GAAR)[21].

II NON-COMPLIANCE WITH TAX LAWS AND FAILURE TO PAY TAXES

Understanding taxpayer behaviour and the factors influencing their compliance attitudes are pivotal in crafting effective compliance strategies[22]. This section undertakes an in-depth examination of the myriad factors that underlie taxpayers' non-compliance and defaulting on tax payments.

A *Reasons for non-compliance with tax laws*

Recent years have seen a surge in research on tax compliance, with scholars like Becker[23], Alm *et al*.[24], Doran[25], Wenzel, and Thielman[26] contributing extensive reviews and empirical studies. James and Alley[27] argue that taxation works best when compliance is voluntary, reflecting taxpayers' willingness to follow both the spirit and specifics of tax laws without enforcement. Voluntary compliance benefits governments, yet non-compliance persists. Scholars question whether this stems from taxpayers feeling they do not see sufficient returns on their contributions, confusion over ambiguous tax laws, or concerns about unequal enforcement.

[19] U.S. Code 301.6651-1, Title 26, Subtitle F, Chapter 61, Subchapter A, Part I
[20] Sections 8B to 8W of the Tax Administration Act 1953
[21] Part IVA of the Income Tax Assessment Act 1936 (Cth)
[22] Kirchler, Erich. The economic psychology of tax behaviour. Cambridge university press, 2007.
[23] Becker, Gary S. "Crime and punishment: An economic approach." Journal of political economy 76.2 (1968): 169-217.
[24] Alm, James, Betty R. Jackson, and Michael McKee. "Estimating the determinants of taxpayer compliance with experimental data." National tax journal 45.1 (1992): 107-114.
[25] Doran, Michael. "Tax penalties and tax compliance." Harv. J. on Legis. 46 (2009): 111. Doran highlights the crucial role tax penalties play in encouraging compliance, asserting that these penalties clearly define the behaviour expected of taxpayers , distinguishing those who fulfill their obligations from those who do not .
[26] Wenzel, Michael, and Ines Thielmann. "Why we punish in the name of justice: Just desert versus value restoration and the role of social identity." Social justice research 19 (2006): 450-470.
[27] James, Simon, and Clinton Alley. "Tax compliance, self-assessment and tax administration." (2009). The researchers posit that the fundamental objective of taxation is to serve the welfare of citizens rather than to act as a punitive measure. In this light, adopting a policy that aligns with the adage "the unreasonable severity of the laws obstructs their execution" seems fitting. While the existence of sanctions is undoubtedly imperative to support effective tax administration, critical questions arise concerning the necessary extent of their application and the vigour with which they should be enforced. Importantly, there exist more constructive approaches to foster tax compliance that are in harmony with the overarching purpose of public spending as a net public benefit. Recognizing the positive role taxation plays in societal well-being can inform a more balanced and effective approach to compliance strategies.

Historically, resistance to taxation has been fierce, as noted by Burg[28], who highlights that taxation has often been viewed as excessive and met with heated reactions. This resistance dates back to ancient civilizations and emphasizes the complex relationship between taxpayers and tax obligations[29]. Taxation itself is mandatory, with legal frameworks requiring contributions to the national revenue fund[30]. Torgler[31], however, notes that some view paying taxes as a moral dilemma, with the Duke of Westminster principle[32] reinforcing that taxpayers are only obliged to pay what the law demands, with no moral obligation to contribute beyond that.

The Duke of Westminster principle helps clarify the distinction between tax evasion, tax avoidance, and tax planning. Tax evasion involves illegal activities, such as falsifying information or concealing income to unlawfully reduce tax liability and is subject to legal penalties. Tax avoidance, while legal, exploits loopholes or inconsistencies in tax laws to reduce tax liabilities in ways not intended by lawmakers, often raising ethical concerns. In contrast, tax planning is a lawful and responsible approach where individuals or businesses organize their finances to minimize tax liability while complying with both the letter and intent of the law. A detailed discussion on tax planning falls outside of the scope of this paper.

In his seminal work, *Why People Obey the Law*, Tom Tyler[33] argues that compliance is rarely absolute[34]. Tyler's research suggests that lawmakers and legal authorities would achieve greater success by fostering respect for the legal system, rather than relying solely on the threat of sanctions[35]. Tyler further emphasizes that the effectiveness of legal authorities is contingent upon their ability to influence public behaviour[36]. Legal rules and judicial

[28] Burg, David F. A world history of tax rebellions: An encyclopaedia of tax rebels, revolts, and riots from antiquity to the present. Routledge, 2004.

[29] Van de Braak, Hans. "Taxation and tax resistance." Journal of Economic Psychology 3.2 (1983): 95-111 defines tax resistance as the deliberate efforts by citizens to avoid or resist tax payments. This phenomenon persists across cultures and historical contexts, illustrating its persistent and multifaceted nature.

[30] Although the exact origins of taxation remain uncertain, historical evidence suggests taxes were imposed in ancient times, such as the collection of tithes from citizens' harvests in Mesopotamian history. Stevens, Marty E. "Temples, tithes, and taxes: the temple and the economic life of ancient Israel". Baker Books, (2006) explains "taxes" as "regularized payments owed to the governing political authority, often charged as a percentage of income or as a special activity fee: in other words, taxes were the secular version of tithes." This suggests that in antiquity, taxes were owed to the Mesopotamian state (political), while tithes were presented to the temple (religious). During the Mesopotamian era, taxes took the form of tithes, consisting of one percent of each landowner's produce (crops and cattle). In ancient Egypt, taxes were collected in the form of mandatory labour, whereby taxpayers were taxed on their land, considered wealth by the government of the time .

[31] As noted by Torgler, Benno. "What do we know about tax fraud: an overview of recent developments." Social Research: An International Quarterly 75.4 (2008): 1239-1270, there is a notion of a "moral duty not to pay taxes," highlighting the tension between legal obligations and moral considerations.

[32] *Inland Revenue Commissioners v. Westminster (Duke), [1936] AC 1 (HL).* This principle finds support in the famous judgment of Lord Tomlin, who stated: "Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be" . This idea, commonly referred to as the "Duke of Westminster principle," emphasises that a taxpayer is required to pay only the amount legally owed, without any moral or additional obligation to contribute more.

[33] Tyler, Tom R. Why People Obey the Law. Princeton University Press, (2006). JSTOR, https://doi.org/10.2307/j.ctv1j66769.

[34] He notes that while many individuals engage in illegal activities—such as evading taxes, using illegal drugs, or driving under the influence—people are more likely to obey the law when they perceive it as legitimate, rather than out of fear of punishment.

[35] According to Tyler, people are motivated to comply with the law when they believe that legal authorities are acting justly and their decisions are worthy of respect. This belief in legitimate authority is a crucial determinant of compliance.

[36] Legal authorities, while tasked with restricting the activities of those subject to their power, must ultimately rely on the voluntary cooperation of the public to be effective. This highlights the need for further exploration of the relationship between legal authorities and the citizens they govern, particularly the role of voluntary compliance in ensuring the legitimacy and authority of legal systems.

decisions hold little practical value if they do not affect the actions of those to whom they are directed[37].

Alm et al.[38] further explored taxpayer compliance, focusing on how individuals respond to tax rates, penalties, and the perceived risk of detection when choosing non-compliance[39]. Their findings align with the deterrence model, based on the economics-of-crime theory, which posits that taxpayers weigh the risks of detection against the potential benefits of evading taxes. Notably, their study found that higher tax liabilities are linked to increased rates of non-compliance.

I *Economic theory of criminal behaviour (economics-of-crime deterrence model)*

According to Becker's model[40], taxpayers adhere to tax laws primarily due to the adverse economic consequences associated with detection and subsequent punishment for non-compliance[41]. Expanding upon this model, Alm and Torgler introduced refinements that consider a fixed income (I), the declared income subject to taxation (R), the tax rate (t), and the probability (p) of detection for underreported income. If detected, taxpayers face penalties (f) per unit of unreported income. The adjusted model by Alm and Torgler illustrates the calculation of income after detection I_c and for undetected cases I_{nc} ,emphasizing the role of deterrence in shaping taxpayer compliance behaviour.

$I_c = I - tR - f[t(I - R)]$ (Equation adapted from Alm and Torgler[42])

For individuals who evade detection for underreported income, their income (I_{nc}) is represented by the following equation:

$I_{nc} = I - tR$ (Equation adapted from Alm and Torgler[43])

These theoretical constructs amplify the dynamic interplay between enforcement strategies, penalties, and taxpayer decisions, providing a framework to analyse and understand the complexities of tax compliance in modern economies.

The fundamental aim of an effective tax compliance program is to ensure that taxpayers perceive the consequences of underreporting income I_{nc} i as either financially unfeasible or

[37] A judge's ruling, for instance, is ineffectual if the parties involved feel they can disregard it. Similarly, a law that prohibits certain behaviours is ineffective if it fails to change the frequency of those behaviours. Consequently, the capacity of legal authorities to secure voluntary compliance is critical to their authority. Understanding why people follow the law, therefore, becomes a central issue in both legal studies and the social sciences.

[38] Alm, James, Betty R. Jackson, and Michael McKee. "Estimating the determinants of taxpayer compliance with experimental data." National tax journal 45.1 (1992): 107-114. Alm *et. al* suggested that the higher tax rates lead to significantly lower compliance, which is consistent with the notion that the payoff to successful evasion is greater when the tax rate is larger...

[39] Their study posits that rational taxpayers engage in a cost-benefit analysis, weighing their tax liabilities against the potential benefits of non-compliance, particularly when tax rates are high. Accordingly, higher tax rates typically correlate with increased levels of non-compliance. Additionally, their research reveals that rational taxpayers also consider the potential fine imposed upon detection, balancing it against the probability of being caught.

[40] Under Becker's framework, tax compliance is viewed through an "enforcement paradigm," focusing on deterring non-compliance through frequent audits and severe penalties for taxpayers found underreporting their income

[41] This perspective contrasts with simplistic character-based views of crime, which categorize individuals into "good guys" and "bad guys." Instead, the economic model emphasizes that criminal behaviour results from rational choices individuals make based on the perceived benefits and risks. While personal preferences (economic terminology for character traits) may play a role, engagement in criminal activities ultimately hinges on the available choices and the anticipated consequences.to lose are less inclined to view involvement in criminal activities as appealing.

[42] Alm, James, and Benno Torgler. "Do ethics matter? Tax compliance and morality." Journal of Business Ethics 101 (2011): 635-651.

[43] Alm, James, and Benno Torgler. "Do ethics matter? Tax compliance and morality." Journal of Business Ethics 101 (2011): 635-651.

undesirable. In a fully compliant tax system, taxpayers declare their income accurately $I_c = I - tR$, thereby paying taxes on their entire taxable income (R) at the prescribed rate (t), without underreporting.

The deterrence model offers a modern approach to punishment within legal systems, focusing on its dual purpose of prevention and retribution. Deterrence aims to protect society by discouraging potential offenders through the threat of penalties, while retribution, an older justification for punishment, argues that offenders deserve punishment for their actions, prioritizing justice over rehabilitation. This retributive concept was notably applied in *R v Swanepoel*[44], where punishment was seen as a necessary response to past wrongdoing that required expiation. In contrast, reformative, preventative, and deterrent theories focus on the future, emphasizing the societal benefits of penal measures designed to correct or prevent future offenses.

II *Economic theory of Non-Threatening Regulatory (moral persuasion model)*

Wenzel[45] challenges the traditional deterrence model from the economics-of-crime framework by viewing taxpayers as moral agents who recognize the ethical importance of contributing fairly to public revenue. He argues that personal integrity and social norms play a significant role in tax compliance[46].

In contrast, Moore's[47] fraud triangle (as depicted in Figure 2) highlights three key elements of fraud: opportunity, rationalization, and pressure. Opportunity refers to the circumstances enabling undetected fraud, rationalization involves moral justification, and pressure arises from financial or societal expectations. This model explains how psychological, social, and situational factors contribute to fraudulent behaviour.

[44] R v Swanepoel 1945 AD 444

[45] Wenzel, Michael. "Misperceptions of social norms about tax compliance." Australian Journal of Psychology. Vol. 53. 1 Grattan Street, Carlton, Victoria 3053, Australia: Australian Psychological Soc, 2001. "In the survey on the cash economy (Artcraft Research, 1998) commissioned by the Australian Tax Office (Tax Office), people almost unanimously agreed that 'tax cheats unfairly shift the burden onto honest taxpayers' (97% agreed); and they disagreed with the statement that 'if you are not happy with how the government spends your taxes, it's OK to hold some of it back by not declaring everything you earn' (95% disagreed)."

[46] Wenzel, Michael. "The social side of sanctions: Personal and social norms as moderators of deterrence." Law and human behaviour 28 (2004): 547-567. Wenzel suggests that the tax compliance comes from highly honest individuals in a high integrity community that gives people an identity they value. Yet in addition the state must keep faith with high integrity citizens by deterring those with low integrity who do not pay their share. Unlike the deterrence model, which focuses on punitive measures, Wenzel suggests that strong community norms and personal morality lead individuals to voluntarily comply with tax regulations, even without strict enforcement.

[47] Moore, Jennica "Occupational fraud models: a comparative analysis and proposed expanded model." International Journal of Accounting Research 8 (2020): 203.

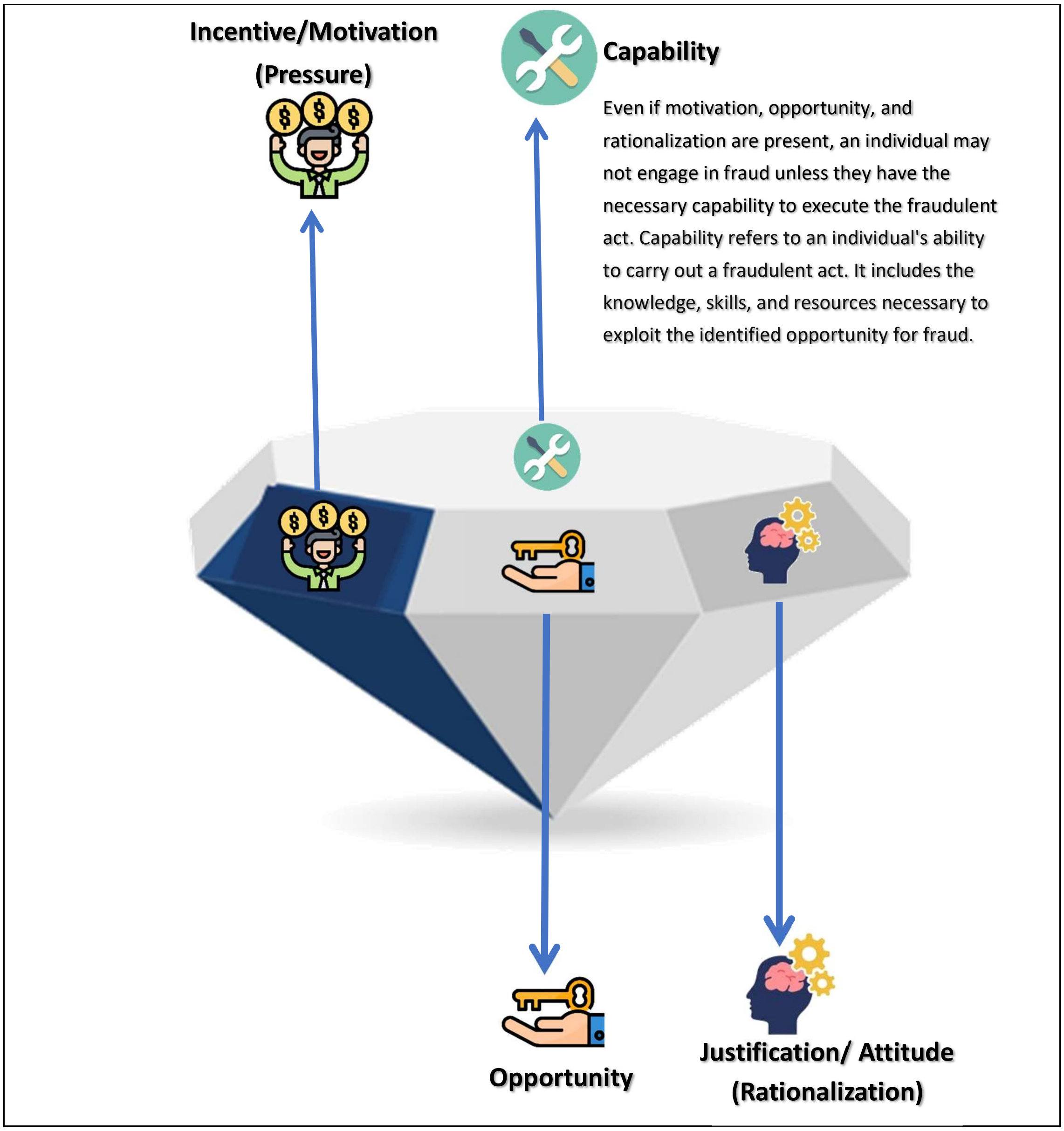
Figure 2: The Fraud Triangle[48]

Moore[49] critiques the fraud triangle model for its limited explanation of why individuals commit fraud, leading to the development of the fraud diamond model. This expanded framework (as depicted in Figure 3) retains the elements of "Opportunity" and "Rationalization" but redefines "Pressure" as "Incentive," focusing on the motivation behind fraud. It also introduces "Capability," assessing the perpetrator's ability to execute the fraud. By adding this new dimension, the fraud diamond offers a more comprehensive

[48] Poyana and Ndlovu 2024.
[49] Moore, Jennica "Occupational fraud models: a comparative analysis and proposed expanded model." International Journal of Accounting Research 8 (2020): 203.

understanding of fraud, incorporating both situational factors and personal abilities into the analysis.

Figure 3: The Fraud Diamond[50]



B *Tax fraud versus tax non-compliance: Is there a difference?*

The distinction between tax fraud and tax non-compliance is crucial, as it has significant legal and fiscal implications. Non-compliance refers to failing to meet tax obligations as defined by

[50] Diagram of Fraud Diamond created by Luvuyo Sidwell Poyana and Jane Ndlovu (2023).

laws and public notices, while tax fraud involves intentional deception to evade taxes[51]. Fraud undermines tax collection, destabilizes fiscal systems, and often leads to higher taxes for compliant taxpayers[52]. Additionally, it distorts resource allocation by allowing some individuals to avoid their tax responsibilities.

Although tax non-compliance and fraud are often conflated, they are distinct[53]. Firozabadi et al.[54] offer a comprehensive definition of fraud, highlighting intentional false representations that result in financial loss, which clarifies the distinction between fraud and non-compliance.

Despite legislative provisions, ambiguity remains regarding why certain acts do not consistently qualify as fraud[55]. This inconsistency complicates the legal treatment of fraudulent activities, underlining the need for clearer distinctions between deliberate fraud and unintentional breaches. Rather than providing a precise legal definition of fraud, this article focuses on evaluating regulatory strategies to address non-compliance. For this discussion, tax fraud is understood as deliberate acts such as providing false information, reckless mismanagement of tax affairs, or intentional disregard of tax laws. Such behaviours often aim to exploit tax incentives.

The article posits that strengthening tax morale, where taxpayers develop a stronger sense of duty toward compliance, raises the moral cost of engaging in fraud. As a result, this enhanced moral obligation reduces the temptation to commit tax fraud. The persistence of tax fraud, however, highlights the need for governments to allocate resources effectively to combat non-compliance. These resources are critical for implementing strong measures to deter fraud and promote a culture of compliance with tax laws.

III CORRECTIVE ACTIONS IMPLEMENTED BY SOUTH AFRICAN TAX AUTHORITIES TO FOSTER TAXPAYER COMPLIANCE

This section examines South Africa's strategies to promote tax compliance and payment[56]. Furthermore, this section evaluates the impartiality, equitability, and efficacy of the current South African tax administration penalty system in comparison to the previous regime enshrined in Sections 75 and 76 of the Income Tax Act. This analysis will incorporate a review

[51] Section 210 (2) of the Tax Administration Act 28 of 2011
[52] Torgler, Benno. "What do we know about tax fraud: an overview of recent developments." Social Research: An International Quarterly 75.4 (2008): 1239-1270.
[53] Notably, South African legislative frameworks, including the Income Tax Act No. 58 of 1962 and the Tax Administration Act No. 28 of 2011, lack specific definitions for "tax fraud" or "fraud." While the Income Tax Act defines "tax" broadly as any levy excluding penalties and interest, the absence of a clear legal definition for "tax fraud" poses conceptual and interpretative challenges. Without clear statutory definitions, legal interpretation typically relies on dictionary meanings and case law.
[54] See Firozabadi, Babak Sadighi, Yao-Hua Tan, and Ronald M. Lee. "Formal definitions of fraud." Norms, logics and information systems-new studies in Deontic logic and computer science (1998): 275-288.
[55] For instance, section 234 of the South African Tax Administration Act lists offenses involving false documents, untruthful replies, or false oaths, also punishable by fines or imprisonment up to two years. Distinctions arise when the Commissioner of SARS determines that an offense was unintentional, such as in cases where a taxpayer's inability to file a return stemmed from being abroad without internet access. This disparity prompts critical inquiries into the definitional boundaries of fraud within South African legal contexts.
[56] It specifically scrutinizes the corrective measures implemented by the SARS as outlined in Chapters 15 and 16 of the Tax Administration Act.

of Chapters 15 and 16 of the Tax Administration Act and relevant case law to provide a comprehensive understanding of the contemporary enforcement mechanisms[57]
During the 2021/2022 fiscal year, SARS collected ZAR 215.45 billion from non-compliant taxpayers[58], amounting to 13.78% of total tax revenue—an increase from ZAR 171.97 billion (10%) in 2020/2021[59]. These infractions resulted in over ZAR 14.2 million in administrative penalties, highlighting the agency's efforts to address both intentional and unintentional non-compliance[60].

This system of penalties, however, is not a recent development. South Africa's approach to taxation has evolved significantly over the centuries. Taxation can be traced back to the 1670s, with one of the earliest recorded tax agreements being a tribute of thirty cattle, as outlined in a peace treaty between colonial Governor Joan Bax and Khoikhoi leader Gonnema[61]. Over time, this basic system expanded to include a variety of taxes such as Income Tax, introduced in the early 1900s, followed by Estate Duty, Capital Gains Tax, and others that now form part of modern tax legislation.

In the past, Section 75 of the Income Tax Act outlined a range of penalties for offenses, though these were often vague and inconsistently enforced by SARS. The penalties included fines of ZAR 100 (subsequently revised to ZAR 500) and a three-month (subsequently extended to twenty-four months) imprisonment term for failing to submit returns, provide required documents, or obstructing SARS officials, but the lack of clear enforcement mechanisms often left penalties ineffective[62].

Section 75 of the South African Income Tax Act also applied to cases where individuals obstructed SARS officials[63], failed to maintain records for five years[64], or submitted false documents. SARS had the authority to impose fines, initially set at ZAR 10 and later increased to ZAR 50 for each day the offense continued, or imprisonment for up to 24 months[65]. However, the previous penalty regime allowed SARS broad discretion in imposing penalties, often leading to inconsistencies and perceived injustices[66].

[57] Taxpayer W v Commissioner for the South African Revenue Service, (No 24622), (2019)., Taxpayer S v Commissioner for the South African Revenue Service, (No 45997), (2022).
[58] Taxpayers are mandated, as per Sections 25 to 28 of the South African Tax Administration Act, to submit their tax returns along with supporting documentation within stipulated timelines . Failure to adhere to these requirements categorizes the taxpayer as non-compliant under Section 210(2) of the South African Tax Administration Act, thereby exposing them to penalties delineated in Sections 211(1) and 212 of the same legislation. Additionally, taxpayers must maintain accurate records that satisfy SARS for prescribed durations. A failure to meet these record-keeping obligations also results in non-compliance under Section 210(2) of the TAA, with associated penalties outlined in Section 211(1) of the South African Tax Administration Act. Furthermore, taxpayers are obligated to settle their tax liabilities promptly for all relevant tax categories corresponding to their taxable activities. Non-compliance with this obligation, as governed by Section 210(2) of the South African Tax Administration Act, subjects the taxpayer to penalties detailed in Sections 211(1), 222, and 223 of the South African Tax Administration Act.
[59] See SARS Annual Report 2021/2022 tax year, pages 11 and 28
[60] See SARS Annual Report 2021/2022 tax year, pages 11 and 28.
[61] The Shaping of South African Society, 1652 – 18402, by Richard Elphick and Hermann Giliomee, published by Wesleyan University Press, 15 Jan 2014, pages 646.
[62] Sections 75(1)(a)-(f) of the South African Income Tax 58 of 1962, these sections are now repealed.
[63] Section 75 (1) (e) of the Income Tax Act 58 of 1962
[64] Section 75 (1) (f) of the Income Tax Act 58 of 1962
[65] Section 75 (3) (1) of the Income Tax Act 58 of 1962
[66] Section 75 (3) (1) of the Income Tax Act 58 of 1962

This discretion[67] created challenges for taxpayers, who could face both fines and additional tax penalties for failing to submit their tax returns. Under Section 76(1) of the South African Income Tax Act, these additional taxes were not income taxes but penalties, resulting in taxpayers being penalized twice for the same infraction. This led to dissatisfaction, notably in the case of *Appellant v CSARS*[68], where the taxpayer argued that being fined and penalized for the same violation violated Section 35(3)(m) of the South African Constitution[69], which guarantees the right not to be tried or punished twice for the same offense.

Remarkably, the court ruled that a taxpayer subjected to additional tax was not considered an "accused person" under Section 35(3) of the Constitution, meaning the taxpayer was not facing criminal trial or imprisonment. As a result, the imposition of additional tax did not contravene constitutional protections against double jeopardy, since no criminal record or imprisonment was at stake[70].

The case of *S v Odendaal*[71] clarified that administrative penalties should not be equated with criminal penalties[72], as their primary purpose is to enhance the effectiveness of the tax system, not to punish[73]. However, concerns arose over the inconsistent application of non-compliance penalties and arbitrary practices observed in SARS branch offices.

For example, under Section 76 of the South African Income Tax Act, SARS could impose understatement penalties of up to twice the amount of tax owed when taxpayers failed to submit returns or omitted taxable income[74]. The Act also allowed SARS to impose a penalty equal to the difference between the erroneous tax paid and the correct tax amount[75]. While the Act provided guidelines for remission of penalties, SARS frequently imposed additional taxes—sometimes as high as 200%—deviating from these guidelines[76].

[67] In the case of Tafeni v S (A 282/15) [2015] ZAWCHC 150; 2016 (2) SACR 720 (WCC) (16 October 2015) , the presiding High Court Judge expounded on the notion of discretion, distinguishing between narrow discretion, sometimes denoted as "true discretion," and wide discretion, occasionally termed "discretion in the loose sense". Narrow discretion emerges when the decision maker confronts a broad spectrum of equally permissible choices, from which a decision is made, and such a decision cannot be deemed erroneous upon appeal, as an alternative decision might have been reached had the appeal functioned as the initial decision maker and selected a different choice. In contrast, wide discretion denotes a scenario wherein the decision maker lacks an array of equally permissible choices Definition of the narrow discretion "The essence of a discretion in [the true] sense is that, if the repository of the power follows any one of the available courses, he would be acting within his powers, and his exercise of power could not be set aside merely because a Court would have preferred him to have followed a different course among those available to him." Media workers Association of South Africa and Others v Press Corporation of South Africa Ltd [1992] ZASCA 149; 1992 (4) SA 791. Definition of the narrow discretion "The essence of a discretion in [the true] sense is that, if the repository of the power follows any one of the available courses, he would be acting within his powers, and his exercise of power could not be set aside merely because a Court would have preferred him to have followed a different course among those available to him." Media workers Association of South Africa and Others v Press Corporation of South Africa Ltd [1992] ZASCA 149; 1992 (4) SA 791.

[68] *ITC 11641 ZATC (2006)*

[69] Section 35(3)(m) of the Constitution of South Africa stipulates that every accused individual possesses the right to a fair trial, encompassing the right not to be tried for an offense pertaining to an act or omission for which the accused individual has previously been convicted.

[70] Furthermore, there exists no possibility of the taxpayer receiving a sentence of imprisonment or enduring any deprivation of liberty.

[71] *S v Odendaal (1995 (2) SACR 449 (T)) (1995 (2) SACR 449 (T))*

[72] *ITC 1825 (70 SATC 68):* A fundamental distinction between administrative and criminal penalties lies in their respective contexts of imposition: criminal penalties arise from criminal charges pursuant to section 35(3)(m) of the Constitution of South Africa, while administrative penalties stem from non-compliance with administrative tax regulations .

[73] Section 209 of the Tax Administration Act 28 of 2011

[74] Section 76 (1) (a) of the Income Tax Act 58 of 1962

[75] Section 76 (1) (c) of the Income Tax Act 58 of 1962

[76] *CIR v Da Costa*, 1985 (3) SA 768 (A), 47 SATC 87, 1985 *Taxpayer* 209

Before granting remission, SARS had to confirm the absence of extenuating circumstances and ensure no intent of tax evasion existed[77]. However, the provisions of Section 76 were marked by ambiguity, inconsistency, and a lack of transparency, as SARS held discretionary power in penalty imposition. This discretion led to cases like *Qwa-Qwa Cash and Carry (Pty) Ltd v CSARS*[78], where SARS imposed penalties without providing adequate or any reasoning, highlighting flaws in the enforcement process.

To address deficiencies in the previous penalty framework, a new regime was introduced through Chapters 15 and 16 of the South African Tax Administration Act, effective from 1 October 2012[79]. The updated system aims to enhance compliance by ensuring broad adherence to tax legislation and administering penalties in a fair, consistent, and proportionate manner, based on the severity and duration of non-compliance[80].

The new penalty regime corrects shortcomings in the previous system, which failed to meet key tax principles like fairness and clarity, as emphasized by Adam Smith[81]. It introduces structured penalties, including fixed amount penalties, reportable arrangement penalties, percentage-based penalties, and clear procedural guidelines for SARS and taxpayers[82]. This system also distinguishes between intentional non-compliance[83], which constitutes tax evasion and is a criminal offense, and unintentional non-compliance[84], often caused by ambiguous tax laws.

Despite improvements, concerns remain regarding SARS' discretionary power in granting relief and the potential for double penalties—fixed penalties for late returns and percentage-based penalties for unpaid tax liabilities. These challenges are further explored in the article, examining their impact on the goals of the Tax Administration Act.

The primary aim of these measures is to ensure penalties are imposed efficiently, effectively, and impartially, in proportion to the severity and duration of non-compliance. Under Chapter 15 of the South African Tax Administration Act, fixed amount penalties can be levied when taxpayers fail to meet obligations outlined in SARS' public notices. Penalties vary based on taxable income, starting at ZAR 250 for income up to ZAR 250 000 and reaching ZAR 16 000 for income exceeding ZAR 50 million[85]. Penalties accumulate monthly for up to 35 months, or 47 months if SARS lacks current taxpayer contact details[86].

For specific entities, such as stock exchange-listed companies, businesses with gross income over ZAR 500 million, or entities exempt from income tax but liable under other laws with income above ZAR 30 million, an initial penalty of ZAR 8 000 is imposed, with monthly escalations[87]. As depicted in Table 1, if a taxpayer's income is unknown, SARS can impose a

[77] Section 76 (2 (a) of the Income Tax Act 58 of 1962
[78] *Qwa-Qwa Cash and Carry (Pty) Ltd v CSARS 2005 ZAGPHC 121*. In this case, the taxpayer petitioned the Commissioner of SARS for reasons to support the assessment issued by SARS, and the court ruled in favour of the taxpayer, compelling SARS to provide a structured response that outlined the pertinent statutory provisions, the factual findings underpinning the conclusions, and the reasoning process leading to those conclusions.
[79] Section 209 of the Tax Administration Act 28 of 2011
[80] Section 76 (2 (a) of the Income Tax Act 58 of
[81] Adam Smith. "The Nature and Causes of the Wealth of Nations", (1776) pages 451 and 452, Part II.
[82] These sections emphasized the need for a penalty system that is fair, just, clear, consistent, transparent, and equitable
[83] Section 210 (2) of the Tax Administration Act 28 of 2011
[84] Section 213 of the Tax Administration Act 28 of 2011
[85] Sections 210 (1) and 211 (1) of the Tax Administration Act, 28 of 2011
[86] Section 211 (2) of the Tax Administration Act, 28 of 2011
[87] Section 211 (3)(a) - (d) of the Tax Administration Act, 28 of 2011

default ZAR 250 penalty or estimate taxable income to apply the appropriate penalty. Adjustments are made if actual taxable income differs from estimates[88].
These provisions are key to promoting compliance and fairness in tax enforcement, ensuring that penalties are aligned with income and taxpayer categories, thereby supporting a more equitable tax system in South Africa[89].

Table 1: Fixed amount penalty table[90]

Item	Assessed loss or taxable income for 'preceding' year	Penalty (ZAR)
(i)	Assessed loss	250
(ii)	R0-R250 000	250
(iii)	R250 001-R500 000	500
(iv)	R500 001-R1 000 000	1 000
(v)	R1 000 001-R5 000 000	2 000
(vi)	R5 000 001-R10 000 000	4 000
(vii)	R10 000 001-R50 000 000	8 000
(viii)	Above R50 000 000	16 000

Taxpayers who fail to disclose information about a "reportable arrangement" under Section 37 of the South African Tax Administration Act face significant penalties: ZAR 50 000 per month for participants and ZAR 100 000 per month for promoters, with a maximum duration of 12 months[91]. If the anticipated tax benefit from such an arrangement exceeds ZAR 5 million, the penalties double, and if it exceeds ZAR 10 million, they triple[92].

Another type of penalty is the "percentage-based penalty," which is applied when SARS determines that tax payments were delayed[93]. This penalty equals the amount of unpaid tax, but the specific percentage is left to the discretion of the Commissioner, raising concerns about fairness due to the lack of clear guidelines.

Part D of Chapter 15 outlines the procedural framework for imposing penalties. Penalties must be formalized through a 'penalty assessment,' and SARS is required to issue a notice that includes details of the non-compliance, the penalty amount, payment deadlines, provisions for automatic escalation, and procedures for requesting penalty remission[94].

Penalties must be paid by the deadline stated in the notice. If a penalty assessment coincides with a tax assessment, payment must be made by the specified tax deadline[95]. SARS must also inform taxpayers of any adjustments to penalties as per the relevant sections of the Tax Administration Act[96].

[88] Section 211 (4)(a) – (b) of the Tax Administration Act, 28 of 2011
[89] Section 211 (5) of the Tax Administration Act, 28 of 2011
[90] Section 211 (1) of the Tax Administration Act, 28 of 2011
[91] Section 212 (1)(a) – (b) of the Tax Administration Act, 28 of 2011
[92] Section 212 (2) of the Tax Administration Act, 28 of 2011
[93] Section 213 (2) of the Tax Administration Act, 28 of 2011
[94] Section 214 (1) of the Tax Administration Act, 28 of 2011
[95] Section 214 (2) of the Tax Administration Act, 28 of 2011
[96] Section 214 (3) of the Tax Administration Act, 28 of 2011

Taxpayers may find it inequitable to receive penalties before having a chance to explain their non-compliance. While the presumption of innocence applies to criminal offenses—such as intentionally failing to register or providing false information—not all violations fall under criminal law, including failures to disclose income or pay taxes. SARS has the burden of proof to establish a taxpayer's non-compliance and the legality of imposed penalties. However, taxpayers have the right to appeal under Section 103 of the Tax Administration Act.

The "Procedure to request remittance of penalty" allows individuals who are dissatisfied with a penalty assessment from SARS to seek remission[97]. To initiate this process, taxpayers must fill out the designated form, detailing the circumstances that led to their non-compliance and providing any necessary supporting documentation[98].

Once SARS receives the remittance request, it must suspend any collection actions related to the penalty for 21 business days after informing the taxpayer of its decision. This suspension is waived if SARS suspects asset dissipation or fraud related to the non-compliance or if specific grounds for remittance are present[99].

Additionally, if the non-compliance relates to Sections 216 or 217 of the Tax Administration Act, SARS may extend the 21-day period for submitting the remittance request if there are reasonable grounds for its late submission or exceptional circumstances that hinder the taxpayer's ability to file the request[100].

The "Procedures to Request Remittance of Penalty" assist taxpayers who have received a penalty assessment notice from SARS and wish to seek a reduction or cancellation of the penalty. To initiate this process, taxpayers must complete a prescribed form detailing the circumstances that led to their non-compliance and provide any required supporting documentation. For 21 days after SARS decides on the remittance request, no collection actions related to the penalty can be taken, unless there is a risk of asset dissipation or suspected fraud. SARS can also extend this 21-day period if the non-compliance relates to Sections 216 or 217 of the Tax Administration Act and if there are valid reasons for a late remittance request or exceptional circumstances that hinder timely submission[101].

Furthermore, the "Remittance of penalty for failure to register" allows SARS to waive penalties, either fully or partially, if a taxpayer voluntarily submits all outstanding tax returns. Similarly, under the "Remittance of Penalty for Nominal or First Incidence of Non-Compliance," SARS has the discretion to remit penalties for initial infractions outlined in Sections 210, 212, or 213[102]. If non-compliance lasts less than five business days and valid reasons are given, penalties may be reduced by up to ZAR 2 000[103]; for penalties under Section 212, the limit is ZAR 100 000[104]. For Section 213 violations, penalties may be fully or partially remitted if they are the first instance of non-compliance or involve amounts under ZAR 2 000, provided the issue has been rectified[105].

[97] Section 215 (1) of the Tax Administration Act, 28 of 2011
[98] Section 215 (2)(a) – (b) of the Tax Administration Act, 28 of 2011
[99] Section 215 (3) of the Tax Administration Act, 28 of 2011
[100] The "Procedures to request remittance of penalty" aim to assist taxpayers who have received a penalty assessment notice and wish to request that SARS remit the penalty.
[101] Section 215 (4)- of the Tax Administration Act, 28 of 2011
[102] Section 216 (a) – (b) of the Tax Administration Act, 28 of 2011
[103] Section 217 (1) of the Tax Administration Act, 28 of 2011
[104] Section 217 (2) of the Tax Administration Act, 28 of 2011
[105] Section 217 (3) of the Tax Administration Act, 28 of 2011

SARS evaluates exceptional circumstances when reviewing remittance requests, which can include natural disasters, civil unrest, severe illness, financial hardship, or delays caused by SARS itself[106]. If deemed appropriate, SARS may remit all or part of the penalty based on these considerations.[107] SARS can issue an adjusted assessment within three years of a penalty assessment[108] if it determines that the penalty was improperly applied under Chapter 15 of the Tax Administration Act.[109]

Chapter 16 of the Tax Administration Act establishes the "understatement penalty," applicable when taxpayers intentionally or unintentionally understate their tax liabilities, contingent upon certain conditions and SARS' approval. This penalty requires taxpayers to pay an additional amount alongside the tax owed for that period, with the penalty determined by the highest applicable percentage outlined in Table 2[110].

To calculate the shortfall, the following components are considered:

1. The difference between the correct taxable amount for the period and the understated amount.
2. The difference between the correct refundable amount for the period and the understated amount.
3. The difference between the correct assessed loss or carried-forward benefits from previous periods and the understated amount, multiplied by the tax rate specified in Section 222(5).[111]

If the understatement involves both taxable and refundable amounts, overlapping figures must be adjusted in the shortfall calculation[112]. The taxpayer is liable for the maximum applicable tax rate, ignoring any assessed losses or benefits from prior periods[113].

[106] Section 218 (1) of the Tax Administration Act, 28 of 2011
[107] Section 218 (2) of the Tax Administration Act, 28 of 2011
[108] Section 219 of the Tax Administration Act, 28 of 2011
[109] Section 220 of the Tax Administration Act, 28 of 2011
[110] Section 222 (1) and (2) of the Tax Administration Act, 28 of 2011
[111] Section 222 (3) of the Tax Administration Act, 28 of 2011
[112] Section 222 (4) of the Tax Administration Act, 28 of 2011
[113] Section 222 (5) of the Tax Administration Act, 28 of 2011

Table 2: Understatement penalty percentage table[114]:

Item	Behaviour	Standard case	If obstructive, or if it is a 'repeat case'	Voluntary disclosure after notification of audit	Voluntary disclosure before notification of audit
(i)	'Substantial understatement'	25%	50%	5%	0%
(ii)	Reasonable care not taken in completing return	50%	75%	25%	0%
(iii)	No reasonable grounds for 'tax position' taken	75%	100%	35%	0%
(iv)	Gross negligence	100%	125%	50%	5%
(v)	Intentional tax evasion	150%	200%	75%	10%

An understatement penalty may be applied when an assessment is based on estimations under Section 95 of the Tax Administration Act or through an agreed assessment per Section 95(3)[115]. SARS has the discretion to remit this penalty for significant understatements if the taxpayer fully discloses the arrangement causing the prejudice to SARS or government revenue by the return's due date[116]. Additionally, the taxpayer must provide an opinion from a registered tax practitioner, assessing the specific facts and circumstances and confirming that the taxpayer's position is likely to prevail if contested in court[117].

If a taxpayer disputes SARS' decision not to remit the penalty, they can pursue objections or appeals as outlined in Chapter 9 of the Tax Administration Act. Table 2 outlines penalties based on taxpayer conduct but does not address cases where insufficient information hinders determining taxpayer behaviour. As a result, SARS can impose penalties even when there is uncertainty about taxpayer conduct, leading to the potential for double penalties. For instance, a failure to maintain necessary documents may incur a penalty under Section 210, in addition to an understatement penalty if the taxpayer's estimate falls short of SARS' determination. This highlights the critical need for taxpayers to keep accurate records and provide all required information to reduce the risk of penalties. Taxpayers can formally contest SARS' penalty decisions under Chapter 9 of the Tax Administration Act if disputes arise.

In conclusion, South Africa's previous penalty regime, established under Section 75 of the Income Tax Act of 1962, imposed fines or imprisonment for up to 24 months on taxpayers who failed to submit returns or obstructed tax officials. However, this approach was inconsistent, lacked transparency, and failed to effectively encourage voluntary compliance. Taxpayers often weighed the risks of non-compliance against the likelihood of being caught, diminishing the deterrent impact of penalties.

[114] Section 223 (1) of the Tax Administration Act, 28 of 2011
[115] Section 223 (2) of the Tax Administration Act, 28 of 2011
[116] Section 223 (3) of the Tax Administration Act, 28 of 2011
[117] Section 224 of the Tax Administration Act, 28 of 2011

To address these shortcomings, the South African Tax Administration Act 28 of 2011 introduced a new penalty framework. Penalties are now calibrated according to the severity of non-compliance, with stricter consequences for deliberate underreporting or providing inaccurate information. For instance, taxpayers who omit income or submit inaccurate returns can face penalties of up to 200% of the tax shortfall. These measures aim to deter tax evasion and promote adherence to tax obligations.

Despite these improvements, some criticisms persist. Section 213 grants SARS discretion in imposing percentage-based penalties, and the possibility of facing dual penalties for the same offense under different provisions may lead to perceptions of inequity among taxpayers and the public. The next section will compare these reforms with measures implemented in Australia and the United States to foster tax compliance.

IV CORRECTIVE ACTIONS IMPLEMENTED BY AUSTRALIAN TAX AUTHORITIES TO FOSTER TAXPAYER COMPLIANCE

This section provides an in-depth examination of the strategies employed by tax authorities in Australia to promote taxpayer compliance and ensure the fulfillment of tax obligations. Specifically, it focuses on the Australian *Tax Administration Act*, Sections 8B to 8W.
The date 1 January 1901 holds significant importance in Australian history, marking the Federation of the Commonwealth of Australia. On this day, the Commonwealth Constitution[118] came into effect, with section 51 conferring upon the Federal Government the power to impose taxes[119]. Before 1901, the revenue of Australia's colonies was predominantly derived from indirect taxes, such as customs and excise duties[120]. These forms of taxation were favoured for their administrative simplicity and the relatively low level of public scrutiny they attracted. However, reliance on regressive taxation prompted concerns about equity and economic sustainability within the colonies. Revenue was also collected through fees for wharfage, port entry and exit, and levies on alcohol. Customs duties, particularly on major exports, provided a reliable source of income for colonial governments.

By the turn of the century, Australia had evolved into a modern economy with growing urban and rural populations, necessitating increased government intervention. The social and demographic transformations of the time prompted changes in taxation policy, shifting from the predominantly indirect taxes to more direct, progressive forms of taxation, such as land

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[118] The Australian Constitution is modelled partly on the United States Constitution and partly on the constitutional and parliamentary traditions of the United Kingdom. It establishes the federal (Commonwealth) government while recognizing the sovereignty of the State governments, which were self-governing colonies of the British Empire prior to federation—namely, New South Wales, Queensland, Victoria, South Australia, Tasmania, and Western Australia. The Australian Capital Territory and the Northern Territory, however, remain subject to federal legislative control, with delegated powers over taxation and administration.

[119] Australia operates as a dual federation, as local government is not formally recognized in the Constitution. However, in practice, governance occurs at three levels: federal, state, and local. The Constitution itself is entrenched, meaning it can only be amended through a referendum that achieves a majority of votes in a majority of States. This stringent requirement is seldom met, making constitutional amendments, including those aimed at reforming Australia's fiscal federal system, exceptionally difficult to achieve.

[120] Sam Reinhardt and Lee Steel1 A brief history of Australia's tax system https://treasury.gov.au/publication/economic-roundup-winter-2006/a-brief-history-of-australias-tax-system#P8_113

and income taxes. The pace and nature of this transition varied among the colonies, reflecting their respective stages of economic development. In general, the evolution of Australia's tax system mirrored broader economic and social changes, adapting to meet the shifting needs of both society and government intervention. A detailed examination of the historical evolution of Australia's taxation system, however, lies beyond the scope of this paper.
In 2021, Australia marked 40 years[121] since the introduction of its GAAR under Part IVA of the *Income Tax Assessment Act 1936*[122]. Australia was among the first countries to adopt a GAAR that segmented the analysis into distinct elements: a scheme, a tax benefit[123], and an objective sole or dominant purpose test. When a tax benefit is determined to be linked to a scheme subject to the GAAR, and the purpose threshold is satisfied, the Commissioner of Taxation has the authority to issue a determination cancelling all or part of the tax benefit. The Commissioner is also empowered to take any necessary actions to give effect to that determination. To implement this determination, the Commissioner must issue an amended assessment. Additionally, the Commissioner may make compensatory adjustments affecting other taxpayers.

Despite the presence of a GAAR in Australia's income tax law for over a century, and in its current form under Part IVA, the precise definition of 'tax avoidance' remains elusive. A persistent challenge is the uncertainty and risk inherent in the interactions between taxpayers and the ATO. One perspective holds that "tax avoidance" is, at its core, an indeterminate term, with its meaning derived solely from the operation of the statutory GAAR[124].

Conversely, another view, advanced by John Prebble[125], suggests that 'tax avoidance" can be identified independently of the GAAR. This interpretation focuses on the purpose or intent behind the statutory regime, identifying "use, misuse, or abuse" of the law to minimize tax liabilities as the defining characteristic of tax avoidance. Prebble has also acknowledged the difficulty in defining tax avoidance comprehensively or in terms of specific legal rules, highlighting the complexity of this ongoing debate.

In Australia, penalties are imposed when a taxpayer's actions cross the line from avoidance to evasion under the Tax Administration Act. This Act serves as a model for South Africa and other jurisdictions aiming to enhance their tax administration frameworks. It allows for the imposition of non-compliance penalties based on a statutory formula or a penalty unit table as depicted in Table 3. Penalties start at one penalty unit, valued at AUD 222, with a maximum of 75 penalty units, equating to AUD 16,650. In certain circumstances, penalties may exceed this maximum.

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[121] Since its inception in 1981, the GAAR has been the subject of extensive judicial scrutiny.
[122] The introduction of Part IVA, which replaced section 260 of the Income Tax Assessment Act 1936, aimed to target the most egregious instances of tax avoidance. The replacement was implemented by the Liberal-National (conservative) government, reflecting a broader policy shift toward stricter anti-avoidance measures.
[123] Amendments introduced in 2013 sought to reinforce the GAAR and counteract judicial interpretations of the term "tax benefit"; however, these amendments have not yet been tested in the courts. Additionally, as part of Australia's unilateral efforts aligned with the G20-OECD Base Erosion and Profit Shifting (BEPS) initiative, the GAAR was further amended to address tax avoidance by large multinational enterprises (MNEs). This was achieved through the introduction of the Multinational Anti-Avoidance Law (MAAL) and the Diverted Profits Tax (DPT), both of which were incorporated into Part IVA.
[124] This viewpoint was articulated by David Bloom QC, who asserted that "tax avoidance is that which is struck down by the GAAR and the Targeted Anti-Avoidance Rules (TAARs); axiomatically, it is always unsuccessful and always ineffective."
[125] Rebecca Prebble and John Prebble "*Does the Use of General Anti-Avoidance Rules to Combat Tax Avoidance Breach Principles of the Rule of Law? A Comparative Study*" (2010) 55 SLU 21 at 24. "The concept of tax avoidance is well-known ... we mean, broadly, the form of tax minimisation that involves the creation or deployment of commercial arrangements that specifically seek to use (or misuse, or abuse) the law to minimise tax that would otherwise be payable."

The penalty amount is calculated by multiplying the penalty unit's value by the number of units, rounded down to the nearest dollar. This system reflects Australia's commitment to maintaining a structured penalty framework that balances deterrence with fairness, promoting effective tax administration and encouraging taxpayer compliance.

The penalty unit serves as a standard measure for assessing penalties across various legislative frameworks, including national and local government statutes and penalty infringement notices. Additionally, the Penalties and Sentences Act 1992 (PS) mandates annual indexation of the monetary value assigned to each penalty unit, which takes effect on 1 July each year.

Table 3: The penalty unit value in terms of the Australian tax authorities is based on when the offence occurred

When transgression occurred	Penalty unit amount (AUD)
1 July 2020 to 31 December 2022	222
1 July 2017 to 30 June 2020	210
31 July 2015 to 30 June 2017	180
28 December 2012 to 30 July 2015	170
Up to 27 December 2012	110

In Australia, penalties are determined through judicial proceedings, where courts assess all relevant evidence to establish an appropriate penalty for the offense committed[126]. The Australian Taxation Office (ATO) is responsible for administering and enforcing tax laws, acting as the primary custodian of the Australian Tax Administration Act.

The ATO's main goal in imposing penalties is to encourage compliance with tax obligations among individuals and entities. Section 8C of the Australian Tax Administration Act specifies circumstances that may constitute an offense, including when a taxpayer:

- Refuses or fails to provide necessary information or documents to the Commissioner or authorized entities.
- Neglects to submit information or instruments for assessment in the prescribed manner.
- Fails to notify the Commissioner of relevant issues.
- Omits to produce required books, papers, records, or other documents.
- Neglects to attend before the Commissioner or comply with educational directives related to superannuation[127].
- Fails to file applications for registration or cancellation under the 'A New Tax System Act 1999'.
- Fails to comply with provisions of other relevant legislation[128].

[126] Section 8E of the Tax Administration Act 1953
[127] Subsection 384-17(1) of Schedule 1
[128] Subsection 45A(2) of the 'Product Grants and Benefits Administration Act 2000', or Subsection 82-10F(4) of the 'Income Tax (Transitional Provisions) Act 1997'

These provisions establish a structured framework for enforcing tax compliance, ensuring taxpayers understand their obligations and face penalties for non-compliance.
Section 8C of the Australian Tax Administration Act imposes strict obligations on taxpayers, with legal consequences governed by the Criminal Code[129]. Specifically, Section 6.2 of the Criminal Code introduces an absolute liability framework, where the prosecution does not need to prove intent, knowledge, recklessness, or negligence. However, this strict rule can be waived if the taxpayer demonstrates they were incapable of complying with the relevant taxation law[130].

This absolute liability system places a heavy burden on taxpayers, requiring them to prove their ability to comply, which may be viewed as overly harsh or confusing. Section 8D of the Act similarly applies strict liability for failing to respond to Commissioner inquiries, as outlined in Section 6.1 of the Criminal Code. Unlike absolute liability, strict liability allows for a "reasonable mistake" defence under Section 9.2 if the taxpayer can prove their incapacity to comply with tax law[131].

Overall, these provisions establish a compliance framework that uses both absolute and strict liability to ensure adherence to tax laws, while providing limited defences for genuine incapacity. Section 8E of the Australian Tax Administration Act outlines penalties for non-compliance with taxation law, specifically for offenses under Section 8C or Subsections 8D(1) and 8D(2). According to Subsection 8E(1), individuals convicted of these offenses may face fines of up to 20 penalty units.

If the court determines that the individual has prior convictions for similar offenses, as stated in Subsection 8E(2), the penalty can increase to a maximum of 40 penalty units. Furthermore, Subsection 8E(3) specifies that if a natural person is convicted and the Commissioner chooses to treat the offense differently from typical taxation violations—especially in cases involving multiple prior convictions—the penalty may rise to a maximum of 50 penalty units, along with the possibility of up to 12 months of imprisonment or both.

The statutory provisions in the Australian Tax Administration Act create a graduated penalty framework to deter non-compliance with tax laws by escalating penalties based on the severity and frequency of offenses. Section 8F allows the Commissioner to treat certain offenses differently from typical tax violations, offering flexibility in legal proceedings.
In addition to penalties, Section 8G enables courts to impose compliance requirements after a conviction for offenses under Section 8C or Subsections 8D(1) or 8D(2). Non-compliance with these requirements constitutes a separate offense, punishable by fines of up to 50 penalty units.

Furthermore, Section 8HA outlines additional penalties for non-compliance if the court finds that the actions were intended to facilitate tax avoidance. If intentional tax avoidance is proven, penalties can reach 300% of the tax liability avoided, or 200% in other cases. Overall, these provisions emphasize the Australian tax administration's commitment to enforcing

[129] Section 8C of the Tax Administration Act 1953
[130] Section 6.2 (1) of Criminal Code; "If a law that creates an offence provides that the offence is an offence of absolute liability: (a) there are no fault elements for any of the physical elements of the offence; and (b) the defence of mistake of fact under Section 9.2 is unavailable." Section 6.2 (2) of the Criminal Code; "If a law that creates an offence provides that absolute liability applies to a particular physical element of the offence: (a) there are no fault elements for that physical elements; and (b) the defence of mistake of fact under Section 9.2 is unavailable in relation to that physical element.".
[131] Ibid. supra n. 145

compliance and discouraging tax avoidance through both punitive measures and added compliance obligations.

Committing false or misleading statements[132] or improperly maintaining records[133] constitutes serious non-compliance under Australian tax law, punishable by penalties in penalty units or imprisonment[134]. Recklessly making false statements[135] or negligently mishandling records also falls under non-compliance[136], attracting penalties in penalty units or imprisonment[137]. The Commissioner retains discretion to categorize offenses outlined in preceding sections differently than as prescribed taxation offenses[138].

Serious non-compliance includes intentionally misleading record-keeping or falsifying identities to deceive[139], which carry severe penalties in penalty units or imprisonment[140]. These provisions reflect the stringent measures aimed at maintaining integrity within Australia's tax system, ensuring compliance with legal requirements, and deterring fraudulent activities - see Table 4.

Table 4: The summary of the other penalties imposed to non-compliance in Australia

Tax Obligation	**Penalty for non-compliance**
Records must be kept or retained as required	20 penalty units
Declaration must be retained and/or produced as required	20 penalty units
Authorized tax officer must be granted access and reasonable facilities	20 penalty units
Application for or cancellation of goods and services tax registration when required	20 penalty units
Issuing a required tax invoice or adjustment note	20 penalty units
Both principal and agent cannot issue tax invoice or adjustment note for the same taxable supply or adjustment event	20 penalty units
Required to register as a pay as you go (PAYG) withholder	5 penalty units
Required to Submit an electronic activity statement	5 penalty units
Required to pay an amount electronically	5 penalty units

Table 5 highlights that under the Australian Tax Administration Act, understatement penalties are determined by the taxpayer's behaviour that led to the understatement. Australian authorities impose a base rate penalty, expressed as a percentage of the understatement

[132] Section 8K of the Tax Administration Act 1953
[133] Section 8L of the Tax Administration Act 1953
[134] Section 8M of the Tax Administration Act 1953
[135] Section 8N of the Tax Administration Act 1953
[136] Section 8Q of the Tax Administration Act 1953
[137] Section 8R of the Tax Administration Act 1953
[138] Section 8S of the Tax Administration Act 1953
[139] Section 8U of the Tax Administration Act 1953
[140] Section 8V of the Tax Administration Act 1953

amount, which ranges from 25% to a maximum of 75%, depending on the severity and intent behind the non-compliance.

Table 5: Base rate penalty and behaviour leading to an understatement in Australia

Behaviour	**Base rate percentage**
Refuse or neglect to take reasonable care.[141]	25% of an understatement
Recklessness[142]	50% of an understatement
Intentional disregard[143]	75% of an understatement

Australia's penalty framework under the Tax Administration Act covers various non-compliance scenarios but has been criticized for its lack of fairness and transparency. One concern is the Commissioner's authority to reclassify offenses as prescribed taxation offenses, potentially weakening the regime's clarity. This issue was highlighted in *Commissioner of Taxation v White*[144], where the court upheld a 50% penalty for recklessness, despite the taxpayer's appeal. Additionally, Australia's regime includes administrative penalties, such as those for failure to withhold Pay As You Go (PAYG) taxes, which apply to companies and their directors.

V CORRECTIVE ACTIONS IMPLEMENTED BY THE UNITED STATES TAX AUTHORITIES TO FOSTER TAXPAYER COMPLIANCE

This section provides an in-depth examination of the strategies employed by tax authorities in the United States to promote taxpayer compliance and ensure the fulfillment of tax obligations. Specifically, it focuses on the U.S. Code 6651, Title 26, Subtitle F, Chapters 61 and 68, Subchapter A, Part I, along with pertinent case law. Through a detailed review and analysis of these legislative provisions, this section aims to offer a comprehensive understanding of the diverse corrective actions available to tax authorities and their practical application in encouraging adherence to tax laws.

Early American history was deeply intertwined with taxation, although it lacked a significant revenue source like the modern income tax[145]. In the 17th century, original colonists and traders often enjoyed exemption from tax collection by their parent countries for extended periods, sometimes up to two decades. While the American colonies did impose property taxes, excise taxes, poll taxes, and early forms of income taxes, these levies were much lighter compared to those in Great Britain. Meanwhile, the British government, burdened by debt from various global conflicts, sought additional revenue from the American colonies, sparking the tax struggles that eventually led to the American Revolution.

The British government's imposition of several key taxation measures further strained relations with the American colonies. These included the Sugar Act of 1764, which taxed

[141] Section 8K of the Tax Administration Act 1953
[142] Sections 8N and 8Q of the Tax Administration Act 1953
[143] Sections 8C and 8K of the Tax Administration Act 1953
[144] Commissioner of Taxation v White (No 2), [2010] FCA 730, 2010 ATC 20-195.
[145] Tax Foundation. History of Taxes Available https://taxfoundation.org/taxedu/educational-resources/primer history-of-taxes/

molasses, sugar, and wine, the Stamp Act of 1765, which taxed essential printed materials like legal documents and newspapers, and the Townshend Acts of 1767, which taxed 72 items, including tea—a tax that famously triggered the Boston Tea Party. The concept of "taxation without representation" emerged as a central grievance, shaping the formation of the American legislative system. This sentiment found expression in Article I, Section 2 of the U.S. Constitution, granting elected representatives in Congress the sole authority to levy taxes on all citizens. Despite lower tax rates compared to England, the colonies lacked a formal representative body, influencing the development of state and local tax systems.

In the United States, corrective actions against non-compliance are detailed in Chapter 68 of the Internal Revenue Code, specifically Sections 6651 to 6658, Subchapter A. The Internal Revenue Service (IRS) was established to execute the duties of the Secretary of the Treasury as per Section 7801 of the Internal Revenue Code, with authority to administer and enforce internal revenue laws, delegating enforcement as necessary.

Key non-compliance actions and corresponding penalties outlined in Subchapter A of Chapter 68 of the Internal Revenue Code include:

- Failure to file tax returns[146]
- Failure to file certain information returns[147]
- Failure to pay tax[148]
- Failure of individuals to pay estimated income tax[149]
- Failure of entities to pay estimated income tax[150]
- Failure to make tax deposits[151]
- Submission of bad checks[152]
- Additional tax in cases of jeopardy[153]

These provisions delineate the IRS's approach to enforcing compliance and administering penalties for various forms of tax non-compliance.

Taxpayers may face additional financial burdens beyond their tax liabilities due to non-compliance. For instance, under Subchapter A of Chapter 61 of the Internal Revenue Code, failing to file tax returns on time incurs a penalty of 5% of the required tax amount per month, capping at 25% of the total tax owed[154]. This penalty is calculated on the net amount due, factoring in any prior payments or applicable tax credits[155], and excludes failures related to estimated tax declarations under Sections 6015 or 6016[156]. Additionally, the Secretary of the Treasury can impose a USD 1 penalty for each statement not filed, with a maximum of USD 1 000 per year[157]. For underpayments due to negligence, a 5% penalty applies; however, if the

[146] Section 6651 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.
[147] Section 6652 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.
[148] Section 6653 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.
[149] Section 6654 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.
[150] Section 6655 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.
[151] Section 6656 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.
[152] Section 6657 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.
[153] Section 6658 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.
[154] Section 6651 (a) of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.
[155] Section 6651 (b) of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.
[156] Section 6651 (c) of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.
[157] Section 6652 (a) of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F. As mandated by Section 6041 (information at source), Section 6042 (payments of corporate dividends), Section 6044 (patronage dividends), Section

underpayment results from intentional tax evasion[158], the penalty escalates to 50%, with no additional failure-to-pay penalty incurred[159]. Interest on any underpayment accrues at a rate of 6% per annum for both individuals[160] and corporations[161] that fail to pay estimated income tax.

Under Title 26, individuals required to deposit tax payments into designated government accounts must comply by the specified deadline. Failure to do so, unless justified by reasonable cause and not wilful neglect, results in a penalty of 1% of the underpayment for delays of up to one month, increasing by an additional 1% for each subsequent month, capping at a total of 6%. If a cheque or money order is dishonoured, an additional penalty of 1% of the payment amount is imposed, with a minimum penalty of USD 5 if the cheque is under USD 500, unless the issuer had reasonable grounds to believe it would be honoured[162]. Additionally, a 25% penalty is applied to taxpayers violating Section 6851 of the Internal Revenue Code regarding premature termination of a taxable year. Both Australia and the U.S. have distinct penalty structures targeting specific taxpayer behaviours, such as negligence and intentional disregard, clearly defined in their respective tax administration acts.

In the case of *CIC Services, LLC v IRS*[163], where the IRS issued a notice requiring certain information from taxpayers and advisors, the courts upheld the validity of the IRS notice, aligning with the tax penalty provisions established by the IRS. This decision highlights the persistent challenge taxpayers face in comprehending their tax obligations, necessitating proactive education efforts by tax authorities. Taxpayers often seek to minimize their tax liabilities and may exploit regulatory loopholes to evade compliance.

In summary, both Australia's and the United States' penalty frameworks are nuanced and tailored to specific types of offenses, addressing overlaps where multiple provisions may apply. The subsequent section examines a comparative analysis of South Africa's penalty regime, delineated in Chapters 15 and 16 of the South African Tax Administration Act, against the administrative penalty systems of the United States and Australia.

VI A COMPARISON OF THE ENFORCEMENT OF SOUTH AFRICA'S PENALTY REGIME TO THE ADMINISTRATIVE PENALTY REGIMES OF AUSTRALIA AND UNITED STATES

6045 (returns of brokers), or Section 6051(d) (information returns regarding income tax withheld). This penalty can be waived if reasonable cause is demonstrated, and the failure is not attributable to wilful or negligent conduct on the part of the taxpayer

[158] Section 6653 (a) and (b) of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.

[159] Section 6653 (d) and (b) of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.

[160] Section 6654 (a) to (e) of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.

[161] Section 6654 (a) to (e) of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.

[162] Section 6657 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.

[163] CIC Services, LLC v Internal Revenue Service, (No 19/930), (2020).

This section critically examines South Africa's penalty regime in comparison to those of Australia and the United States concerning non-compliance and failure to pay taxes[164]. The objective is to assess the alignment of South Africa's penalties with international standards and to identify potential areas for enhancement.

A *Comparison of the enforcement of South Africa's penalty regime to the administrative penalty regime of Australia*

South Africa's penalty regime shares key similarities with Australia's, as both systems employ graduated fixed penalties that escalate based on the severity of the offense. In Australia, penalties are structured around a penalty unit system, where one unit equals AUD 222, with penalties reaching up to 75 units (AUD 16 650). In contrast, South Africa uses a fixed penalty schedule, starting at ZAR 250 for taxable incomes between ZAR 0 and ZAR 250 000. This structured approach enhances transparency, allowing taxpayers to understand how penalties are calculated based on the offense.

A notable difference between the two regimes lies in their structural mechanisms. Australia's penalty unit system undergoes regular adjustments to reflect economic changes, while South Africa's fixed penalties have remained unchanged since 2012. Additionally, Australia's framework includes specific penalties, like those for businesses failing to withhold "pay as you go" taxes, which are absent in South Africa's system.

There are also significant legal similarities, as Sections 8C, 8D, 8K, and 8L of the Australian Tax Administration Act align with sections 22 to 29 in South Africa's Tax Administration Act, providing exemptions when offenses were not deliberate. Both regimes place the burden of proof on the taxpayer to demonstrate non-deliberate non-compliance.

However, key distinctions exist. In Australia, penalties can be imposed for false or misleading statements, regardless of direct tax loss to the government, a provision not found in South Africa. Moreover, South Africa imposes a maximum understatement penalty of 200%, whereas Australia's cap is 75%.

B *Comparison of the enforcement of South Africa's penalty regime to the administrative penalty regime of the United States of America*

The penalty regimes for non-compliance in South Africa and the United States exhibit key similarities and differences. Both countries impose penalties on taxpayers for failing to file tax returns[165], pay taxes[166], submit required documentation[167], and fulfil estimated income tax

[164] Specifically, Chapter 15 and Chapter 16 of the Tax Administration Act 28 of 2011 in South Africa are compared with Sections 8B to 8HA of the Australian Tax Administration Act and Chapters 61 and 68 of Subchapter A of the U.S. Code 6651, focusing on analogous provisions related to offenses and penalties.

[165] Section 6651 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F. Section 25 of the Tax Administration Act 28 of 2011

[166] Section 6653 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F. Section 151 of the Tax Administration Act 28 of 2011

[167] Section 6652 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F. Sections 25 and 28 of the Tax Administration Act 28 of 2011

payment obligations. However, the structure and severity of penalties differ significantly between the two jurisdictions[168].

In South Africa, penalties are determined using a fixed amount penalty table. For instance, the penalty for failing to file returns or pay taxes ranges from ZAR 250 for individuals with taxable incomes or assessed losses between ZAR 0 and ZAR 250 000, to a maximum of ZAR 16 000 for taxable incomes exceeding ZAR 50 million. In contrast, the penalty framework in the United States applies varying percentages based on the nature of non-compliance. For example, failing to file a tax return incurs an initial penalty of 5%, increasing by an additional 5% for each subsequent month of non-compliance, capped at a maximum of 25% of the tax liability.

The methods of calculating penalties also differ. The U.S. system levies penalties as a percentage of the tax owed, incrementally increasing for persistent non-compliance, particularly targeting more substantial offenses with higher rates[169]. South Africa, on the other hand, employs fixed amounts based on assessed losses or taxable income. Furthermore, the U.S. penalty regime encompasses specific penalties not found in South Africa, such as those for failure to make tax deposits or submitting inadequate checks. While South Africa may address these issues under Section 223 of the Tax Administration Act, the structure and application differ.

In terms of understatement penalties, South Africa allows for penalties of up to 200% of the understatement amount, whereas in the United States, penalties can reach 50% when tax evasion is evident. Additionally, the U.S. framework addresses instances where an offense falls under multiple penalty provisions, ensuring that the higher penalty is applied[170]. In contrast, the South African regime lacks explicit provisions to prevent taxpayers from facing penalties for the same offense under different sections of the Tax Administration Act. For instance, a taxpayer could potentially incur penalties for both failure to pay taxes[171] and for understatement[172].

Overall, while both jurisdictions have established frameworks for imposing penalties on non-compliance, the differences in structure, calculation, and enforcement mechanisms reflect distinct approaches to promoting tax compliance. Tables 6 and 7 provide a comparative overview of the penalties imposed in these jurisdictions, but it is crucial to acknowledge potential variations in how these penalties are administered across different countries.

[168] Section 6654 of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F. Section 95 of the Tax Administration Act 28 of 2011

[169] Section 6657 of the Internal Revenue Code, Chapter 68, subchapter A, Title 26, Subtitle F.

[170] Sections 6653 (b) and (d) of the Internal Revenue Code, Chapter 68, Subchapter A, Title 26, Subtitle F.

[171] Section 211 of the Tax Administration Act.

[172] Section 223 of the Tax Administration Act.

Table 6: Non-Compliance comparison

Taxpayer Behaviour	**South Africa** [1]	**Australia**		**United States**	
Currency	**ZAR**	**AUD**	**AUD Converted to ZAR**	**USD**	**USD Converted to ZAR**
Intentional non-compliance	250 – 16 000	222 – 16 650	2 850 – 213 786	1 – 1 000	18 – 18 000
Gross negligence	250 – 16 000	222 – 16 650	2 850 – 213 786	1 – 1 000	18 – 18 000
No reasonable care taken	250 – 16 000	222 – 16 650	2 850 – 213 786	1 – 1 000	18 – 18 000
Relevant legislation	Section 211 of Tax Administration Act	Sections 8C to 8W of Australian Tax Administration Act and ATO (a)		Sections 6651, 6652, 6653, 6654, 6655, 6656, 6657, 6658 of the IRS code	
Note 1: Failure to disclose "reportable arrangement" either ZAR 50 000 or ZAR 100 000 for every month up to 12 months					

Table 6 highlights that all three countries evaluate taxpayer behaviours leading to non-compliance and impose penalties based on the severity of the offenses. This comparison shows that each jurisdiction considers mitigating factors that may indicate whether non-compliance was intentional or an instance of tax evasion.

Australia enforces the strictest penalty, reaching AUD 16 650 (approximately ZAR 213 786), which is influenced by annual adjustments in the penalty unit value. This reflects Australia's stringent approach to addressing non-compliance. In contrast, the United States imposes the lowest penalty among the three jurisdictions, at USD 1 000 (approximately ZAR 18 000). However, the U.S. regime stands out due to its precise and detailed penalties tailored to specific offenses, while South Africa utilizes a fixed penalty schedule.

Table 7: Understatement comparison

Taxpayer behaviour	South Africa	Australia	United States
Intentional non-compliance	75% - 200%	75%	50%
Gross negligence	50% - 125%	50%	5% - 25%
No reasonable care taken	25% - 100%	25%	1% - 25%
Relevant legislation	Section 223 of Tax Administration Act	Sections 8C, 8K and 8N of Australian Tax Administration Act and ATO	Sections 6651 – 6658 of the IRS code

Table 7 shows that South Africa enforces the highest penalties for understatement, reaching up to 200%, compared to Australia's 75% and the United States' 50%. This stark difference highlights the higher prevalence of non-compliance in South Africa. All three countries assess penalties based on similar factors, including substantial understatement of income, the potential loss of government revenue if undetected, the level of care taken in filing returns, lack of reasonable grounds for the tax position, gross negligence, and intent to evade taxes.

The next section will evaluate how South Africa's penalty regime aligns with global best practices, noting its strengths and areas for improvement.

VII CONCLUSION AND RECOMMENDATIONS

South Africa, Australia, and the United States implement similar penalty frameworks aimed at promoting voluntary compliance and deterring tax evasion. South Africa, facing significant compliance challenges, imposes the second-highest penalties for non-compliance and the highest penalty rate for underpayment at 200%. Lombard (2008) supports retaining this high rate due to South Africa's status as a developing country, where tax evasion remains prevalent. In contrast, the South African Institute of Tax Practitioners (SAIT) advocates for a reduction in the penalty rate.

Despite efforts to foster voluntary compliance, all three countries face ongoing challenges in interpreting and applying tax legislation. In response, SARS has outlined nine strategic objectives, focusing on taxpayer education and awareness to address these challenges and align with international best practices.

This article critically examined South Africa's penalty regime, as detailed in Chapters 15 and 16 of the Tax Administration Act, comparing it to the systems of Australia and the United States. The study traces the deep-rooted origins of tax non-compliance and reveals that contemporary issues persist, often stemming from taxpayers' perceptions of insufficient value in government services funded by taxes.

South Africa has taken steps to address non-compliance, with SARS implementing strategies to promote fairness, monitor taxpayer behaviour, and impose equitable penalties. These measures are part of a broader effort to foster voluntary compliance and enhance the administration of tax laws. The article concludes with recommendations for improving South Africa's penalty regime in line with international best practices.

The new South African penalty regime shows improvement in clarity and fairness but also reveals some shortcomings, particularly in the lack of specific guidelines for percentage-based penalties under the "Imposition of percentage-based penalty" clause[173]. This discretion given to SARS may lead to inconsistencies in penalty application. Despite this, the revised framework offers clearer procedures for imposing penalties and allows taxpayers to lodge objections and apply for penalty remissions with well-defined requirements.

The article also examined enforcement strategies in Australia and the United States, noting that these countries have more nuanced approaches, with penalties tailored to specific types of offenses. Their legislation addresses instances where offenses overlap with other penalty provisions, providing clarity in enforcement. While South Africa's penalty regime aligns with those of Australia and the United States in many respects, key differences remain. Australia imposes penalties for business failures to withhold Pay-as-you-go (PAYG) and non-deposit of taxes, while the United States penalizes bad checks. South Africa, however, has the highest penalty for understatement, up to 200%, whereas Australia holds the highest non-compliance penalty at AUD 16 650 (about ZAR 215 000).

In comparing the penalty regimes of South Africa, Australia, and the United States, South Africa's framework is relatively clear but lacks the detailed specificity found in the U.S. regime, which simplifies enforcement. Australia and the United States offer more precise guidance on penalties tailored to specific offenses, contributing to lower overall penalties in the U.S. Several recommendations for improving South Africa’s penalty regime were proposed based on this comparative analysis.

To improve South Africa's penalty regime under the Tax Administration Act, several key changes are recommended. Firstly, Section 213 should specify exact percentage-based penalties, eliminating ambiguity and ensuring consistency in how SARS imposes penalties. Secondly, similar to the United States IRS model, each provision should outline penalties for specific offenses. For example, Section 22 could specify penalties for failing to register while accounting for mitigating circumstances.

Additionally, the Act should clarify precedence when multiple penalties may apply to avoid overlapping penalties, an area where the U.S. system offers clearer guidance. A shift towards a behavioural change approach, where penalties are seen as tools to encourage compliance rather than simply as punishment, is also recommended[174]. Introducing more stringent penalties for repeat offenders, as in the IRS model, would help address recurring non-compliance. Furthermore, while penalties for failing to submit tax returns are necessary, the Act should avoid excessive duplication of penalties, striking a balance between revenue collection and fairness in line with South Africa’s constitutional rights.

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[173] Section 213 of the Tax Administration Act 28 of 2011.
[174] James, Simon, and Clinton Alley. "Tax compliance, self-assessment and tax administration." (2002).

In conclusion, aligning South Africa's penalty regime with international best practices, particularly the specificity and clarity of the U.S. system, would enhance its fairness and effectiveness. Clearly defining penalties for each offense and addressing overlaps between provisions would streamline implementation for SARS and foster greater taxpayer compliance.