A research report submitted to the Faculty of Commerce, Law and Management in partial fulfilment of the requirements for the degree of Master of Commerce in the field of Taxation

An analysis: the possible consequences of a potential wealth tax on immovable property in South Africa

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Abstract

The Davis Tax Committee issued a media statement on 25 April 2017, calling for written submissions on the introduction of a possible wealth tax in South Africa (Davis Tax Committee, 2017, p 1). The discussion of a potential wealth tax came two months after an increase applying to the top income tax bracket for individuals by 4% to 45%, resulting in an effective capital gains tax rate for individuals of 18% (ENS Africa, n.d. par 2). This should be seen on the back of the capital gains tax increase of nearly five percentage points from 13.32% in the 2014 year of assessment to 18% in 2017 (ENS Africa, n.d. par 2). The Davis Tax Committee had been tasked to review South Africa's tax system and had consequently launched a public debate on one of the most controversial possible moves on its agenda, wealth tax (Reuters, 2017, par 1).

There is an ongoing debate among South Africans on whether the government should implement such a tax to lessen the glaring inequality in Africa's most industrialised economy (Reuters, 2017, par 2). South Africa is grappling with weak economic growth and unemployment of more than 25% and the minority still controls a disproportionately big share of the economy (Reuters, 2017, par 9). The public debate on wealth taxes often focuses on redistribution of land, and consequently one of the potential forms of wealth tax could be a wealth tax on property (Davis Tax Committee, 2017, p 1). As taxes on land and property have both fiscal and non-fiscal effects, it is therefore useful to analyse the possible positive and possible negative impact of the potential wealth tax on immovable property on the revenue authority, and taxpayers.

The aim of this research report is to analyse the possible consequences of the potential wealth tax specifically with a focus on immovable property. Firstly, consideration will be given to what the possible definition of immovable property could be. Secondly, the potential types of wealth tax on immovable property will be analysed together with existing wealth taxes imposed by the Income Tax Act 58 of 1962 (the Act), municipal legislation (Municipal Property Rates Act, 2004), Estate Duty Act (Estate Duty Act 45 of 1955) and Transfer Duty Act (Transfer Duty Act 40 of 1949). Thereafter the research will consist of an objective analysis of the possible positive and possible negative consequences of the potential wealth tax on immovable property.

Key words:
Wealth tax, possible, immovable property, consequences, positive, negative

Declaration

I declare that this research report is my own unaided work. It is submitted in partial fulfilment of the requirements for the degree of Master of Commerce (specialising in Taxation) at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination at any other university.

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Chapter 1: An Introduction

1.1 Background

Then President Jacob Zuma called for a radical transformation of the economy following losses in local elections in 2016 partly caused by anger over deep inequality that persisted more than two decades after apartheid, while the white minority still controls a disproportionately big share of the economy (Reuters, 2017, par 8). Treasury further struggled to meet its revenue targets amid sluggish economic growth and the tax agency fell R30 billion short of its projection in the 2016 fiscal year (City Press, 2017, par 12). Tax revenue was projected to fall short of the 2017 Budget estimate by R50.8 billion in that year, the largest under-collection since the 2009 recession (City Press, 2017, par 11). With additional shortfalls expected in 2018 and 2019, the country faces a total shortfall of R209 billion in the next three years (City Press, 2017, par 11). Government is under mounting pressure to shift its focus on taxing the wealthy minority to alleviate its predicament (Webber Wenzel, 2017, par 1).

In 2017, under instruction of Finance Minister Pravin Gordhan (Finance Minister at the time of the announcement), the Davis Tax Committee was tasked to investigate the possibility of a wealth tax (Davis Tax Committee, 2017, p 1). In light of the request, the Davis Tax Committee considered the following possible wealth taxes: a land tax; a national tax on the value of property, and an annual wealth tax (Davis Tax Committee, 2017, p 2). The Davis Tax Committee announced it was inviting submissions from South Africans on whether the government should implement such a tax (Davis Tax Committee, 2017, p 2) to lessen the glaring inequality in Africa's most industrialised economy (Reuters, 2017, par 2). At the time of this research report the Davis Tax Committee had finalised their report of findings on the feasibility of wealth tax in South Africa. These findings included, but were not limited to wealth tax on immovable property alone.

South Africa is known for its extreme income inequality, which is one of the highest in the world. Studies show that 10% of the population earn around 55%–60% of all income, compared to only 20%-35% in more advanced economies. (Orthofer, 2016, par 1.) Tax and survey data (conducted between 2010 and 2011) has suggested that 10% of the South African population owns at least 90%–95% of all assets. This share is much higher than in advanced economies, where the richest 10% own around 50%-75% of all assets. (Orthofer, 2016, par 2.)

Kloppers' view is that post-apartheid South Africa faces a variety of challenges that emanated from the injustices caused by apartheid and that one of the earliest challenges faced by the first democratically elected government was how to address the unequal distribution of land in the country. He further comments that the South African government has shown commitment to eradicate the inequalities and injustices of the past and has initiated a comprehensive land reform programme with a strong constitutional basis, a programme consisting of three pillars namely: restitution, land redistribution and tenure security. (Kloppers, 2014, par 1.)

The Davis Tax Committee also confirms that land redistribution is a pivotal element in the inequality discussion and that wealth tax is an instrument used to address the inequalities of income and wealth (Davis Tax Committee, 2018, p 14). These inequalities have resulted in the passing of the Expropriation Bill by the National Assembly, bringing to conclusion years of hard work by Parliament on this crucial draft legislation (Politicsweb, 2016, par 1). The Expropriation Bill was initially passed by the National Assembly in February 2016 and referred to the National Council of Provinces, whereby further amendments were made (Politicsweb, 2016, par 1); this Expropriation Bill has not yet been enacted by parliament. Unlike the 1975 statute, the Expropriation Bill does not provide that the State must always pay a form of compensation but rather, the Bill explicitly provides for circumstances in which it will be just and equitable to pay nil compensation (Fletcher, 2019, p 3). These circumstances include: where land is occupied or used by a labour tenant; where land is held for a purely speculative purpose; where land is owned by a state-owned entity; where the land in question has been abandoned; and where the market value of the land is equivalent to, or less than, the present value of previous state investment in the land (Fletcher, 2019, p 3). This is not a complete list, but rather a list of possible situations in which it may be permissible for the State to pay nil compensation. Each instance of expropriation must be considered on its own merits, taking into account all relevant circumstances. (Fletcher, 2019, p 4.) This demonstrates the importance of immovable property amid the South African political climate.

Consultants Agri Development Solutions recently conducted a national audit of the land ownership transactions in South Africa from 1994 to 2016 to analyse the changes in land ownership over the period. The audit processed information from deeds offices, based on the district within which the transactions were recorded, from 1994 to 2016. (Agri SA, 2017, p 11.) In 1994 previously disadvantaged farmers owned about 14.5 million hectares (14.9%) of agricultural land, but this increased to 25 million hectares (26.7%) in 2016 (Agri SA, 2017, p 17). In KwaZulu-Natal, the Eastern Cape and Gauteng, black land ownership has substantially improved since 1994 to 2016. In KwaZulu-Natal it increased from 45.4% to 73.5%, the Eastern Cape 28% to 48.3% and in Gauteng from 0% to 39.1%. (Agri SA, 2017, p 17.) It is therefore evident that there are efforts to undo the historic injustices nevertheless, immovable property is still pivotal in the wealth tax debate amongst South Africans.

As found by the International Monetary Fund (IMF) the income inequality and unemployment in South Africa remains the highest in the world (UN news, 2016, par 1). The Davis Tax Committee has identified that empirical evidence suggests that in South Africa, wealth inequality (with a Gini coefficient above 0.9) is extremely high and is, in fact, not just higher than income inequality (which has a Gini coefficient of 0.67) but also higher than global wealth inequality (Davis Tax Committee, 2018, p 4). It is also evident that 10% of the population of South Africa own more than 90% of the total wealth in the country (Davis Tax Committee, 2018, p 4). It therefore comes as no surprise that, when using wealth as a measure of living standards, the middle class is a very small minority of the population (Davis Tax Committee, 2018, p 4). This inequality has given rise to wealth tax discussions on the wealthy.

Finn has performed an analysis of the movements between income and classes in South Africa in 2013. The analysis suggested that movements between income classes can be evaluated more comprehensively by collapsing income into quintiles and evaluating the relative income mobility between the quintiles (Finn, 2013, p 2). This was done by using National Income Dynamics Study (NIDS) panel data from 2008 (Wave 1) and 2010 (Wave 2) (Finn, 2013, p 2). Table 1 illustrates which quintiles had the lowest mobility, or in other words, which quintiles individuals were most likely to remain in during the period (Finn, 2013, p 2).

Table 1: Relative Income Mobility: Quintile Transition Matrix (Finn, 2013, p 2)

Wave 1 Income Quintiles \ Wave 2 Income Quintiles	1	2	3	4	5
1	46	26	17	8	3
2	27	33	24	13	3
3	18	25	31	22	4
4	7	14	22	40	17
5	1	3	5	18	73

The highlighted diagonals illustrate the percentage of individuals in 2008 which remained in the same quintile between 2008 and 2010. This further demonstrates that the wealthiest 20% of the sample, or the fifth quintile, show a particularly strong persistence, with 73% of these individuals still in this quintile in 2010. Persistence is significantly weaker in quintiles 2, 3 and 4. Most of the movement between quintiles was restricted to relatively small distances, which is understandable given the short time period over which this data was evaluated. Overall, the inter-wave correlation of income is 61%. (Finn, 2013, p 2) This analysis therefore demonstrates the difficulty for income classes to progress into a higher income class.

Thuronyi is of the view that social problems and a wide disparity of wealth found in many developing countries exacerbates political and social problems. A further consideration is how historical legacies of colonialism and authoritarianism may lead to popular beliefs, whether justified or unjustified, that economic elites may have gained their position through illegitimate means. Countries with social problems may be of the view that certain economic elites tend to be grouped in definable religious, ethnic, or racial groups, exacerbating tensions among these groups. History has shown that a special wealth tax on these groups may work to reduce tensions among such groups and may potentially benefit the groups psychologically. (Thuronyi, 1996, p 6.)

Haffajee discusses that much of the recent advocacy for wealth tax in South Africa was driven off the work of Thomas Piketty, published in his book *Capital in the Twenty-First Century* (Haffajee, 2015, par 1). Piketty suggests that levels of wealth inequality are now returning to levels seen prior to the First World War and that the economy is dominated by inherited wealth (Monocle Research Department, 2016, par 5).

Warshawsky further analyses the debate ignited by Thomas Piketty in terms of inequality and how it has significantly impacted public perceptions and policy debates (Warshawsky, 2016, p 3). Piketty's theories are summarized as follows:

Warshawsky's research determines that Piketty had organised his argument around two thoughts, which he called fundamental laws of capitalism. Firstly, an accounting definition: the share of capital in national income equals the product of the return on capital and the second is the capital/income ratio. (Warshawsky, 2016, p 3)

Piketty defines and measures capital as all forms of real property (this includes housing) as well as financial and professional capital (for example plants, infrastructure, machinery, inventory and patents) used by companies and the government, all of which can be owned and exchanged on some market. A conclusion can therefore be made that capital is measured, to a large extent, at market prices. (Warshawsky, 2016. p 3.) Based on this discussion it is evident that Piketty considers immovable property as a measure of capital.

Warshawsky provides the following example to analyse Piketty's first theory that 'the share of capital in national income equals the product of the return on capital and the capital to income ratio' from a practical perspective. Following from this Warshawsky demonstrates that if the capital to income ratio is 600% and the return is 5%, then the share of capital in national income is 30%. (Warshawsky, 2016, p 3.)

Warshawsky further states that the second equation, or fundamental law of capitalism, is that the capital to income ratio is equal, in the long term, to the savings rate divided by the economic growth rate in inflation adjusted terms. An example of this theory is that if the savings rate is 10% and the growth rate is 2%, then in the long term, the capital to income ratio must be 500%. (Warshawsky, 2016, p 4.)

Warshawsky is however, of the view that these equations are elementary concepts in the theories of economic growth and development, their relevance to the study of inequality is that the ownership of capital is often quite concentrated among a relatively small portion of the population (Warshawsky, 2016. p 4). From Warshawsky's discussion, it can be concluded that the ownership of capital is considered essential to the study of inequality and it was Piketty's view that immovable property does form part of capital.

Piketty is also of the view that the savings rate is consistent, regardless of changes in economic conditions, owing to the fact that the savings rate is influenced by the desire of the wealthy to bequeath estates to their children. It is therefore, viewed that these behaviours lead to an increased capital growth over generations for the wealthy, and therefore more inequality arising from the increased capital growth, which is viewed by Piketty quite negatively. (Warshawsky, 2016, p 4.)

Taxes on immovable property may be imposed in a variety of different forms and have been imposed by almost every country in the world. These taxes might be in the form of a recurrent tax (for example, an annual tax on the value of land and/or improvements on land owned by the taxpayer). Alternatively, these taxes may be in the form of non-recurrent taxes (for example, taxes payable on the disposal or transfer of land). (Bird and Slack, 2004, p 1.) The commentators agree that research findings indicate such taxes are a necessary part of any balanced tax system.

As discussed in the research performed by Arendse, the different types of taxes can be classified into three main groups, the most common base being income. The next is consumption taxes, which are taxes on consumption items such as carbon omissions, fuel, imports and exports, electricity usage, plastic bags and cigarettes. Lastly, there are taxes on assets or capital, which take various forms and may be referred to as wealth taxes being taxes on the net assets of individuals and in some cases privately owned companies. (Arendse, 2017, p 2.)

In his research brief, Collocott discusses the rationales for wealth tax and concludes that there are eight rationales in total. These include reducing inequality, a source of funding, the views of Thomas Piketty, improved horizontal and vertical tax equity, reducing tax avoidance, encouraging efficient resource use, capital levies for special purposes and finally politics and history. (Collocott, 2018a, par 19.) In Collocott's discussion, Piketty's work focuses on wealth and income inequality and the emphasis of wealth concentration and distribution over the past 250 years (Collocott, 2018a, par 32).

Currently the Act includes existing taxes on property such as donations tax and Capital gains tax. Capital gains tax as per the Eighth Schedule of the Act is currently at a maximum effective rate of 22.4% for companies, 18% for natural persons and 36% for trusts respectively on the disposal of assets (Eighth Schedule of the Act, par 10). Donations tax is levied at a rate of 20% on the gratuitous disposal of property, increasing to 25% from 1 March 2018 for amounts over R30 million (the Act, s 64). Furthermore, existing wealth taxes include transfer duty (at a maximum rate of 13% to the extent that the purchase price exceeds R10 million (Transfer Duty Act 40 of 1949, s 2(1)(b)(vi)). Estate duty is levied at 20% on the first R30 million and at a rate of 25% above R30 million of the dutiable amount of the estate (Estate Duty Act 45 of 1955, First Schedule par 1) including any right in immovable property (Estate Duty Act 45 of 1955, s 3(2)). Municipal property rates are also charged, these are generally based on the use of property (the effective rate varies widely depending on a variety of factors) (Municipal Property Rates Act of 2004, s 8). The contribution of these existing tax mechanisms to the tax base will be analysed to determine whether they constitute existing wealth taxes in terms of South African legislation.

1.2 Objective of the research

1.2.1 Research Problem

What are the potential consequences of a wealth tax on immovable property in South Africa for both taxpayers and the revenue authority?

1.2.2 Sub-problems

A number of sub-problems will assist in attempting to address the main research problem as detailed above.

1. What may potentially be defined as immovable property for the purposes of assessing the potential consequences in this research report?

2. What is the definition of a wealth tax and what existing South African taxes meet this definition?

3. Based on existing forms of wealth tax and current wealth taxes in the Act, what are the forms of potential wealth tax on immovable property and what are the wealth tax regimes of France and India?

4. What are the potential positive and negative consequences of a potential wealth tax on immovable property?

1.2.3 Significance of the study

The findings of this study will assist to determine whether the effects of a potential wealth tax will have a possible positive or possible negative impact on immovable property on both the taxpayer and the revenue authority. The study will further determine whether there are existing wealth taxes in the Act that may have a similar tax impact to that of a potential wealth tax.

1.2.4 Delimitations of the research

This study will be limited to the impact of a potential wealth tax on immovable property only. Following from this, there will be no considerations given to a recurring wealth tax on income or other forms of wealth tax. The analysis of wealth taxes performed will be based on existing wealth taxes on immovable property for the purposes of this study, unless specific reference is made to discussions in terms of the 'potential' wealth tax in South Africa, which has not yet been implemented.

1.2.5 Research Method

This study is qualitative in nature and will be based on theoretical research of existing published literature which will include journals, dissertations and government reports. This research will consist of detailed content analysis of the existing professional and academic literature thereafter reflection will be made on the available research. The focus will therefore be on a literature review of the consequences of the potential wealth tax on immovable property.

1.2.6 Chapter Outline

Chapter 1: An Introduction

The background to the research report will be provided as well as the environment which resulted in political pressure for a potential wealth tax on immovable property to be considered. The significance of this study will be explained together with the research methodology and any limitations of this research will be discussed. Further, the research problems and research questions will be provided.

Chapter 2: Potential definition of immovable property for the purposes of this research

As this research report will focus only on the consequences of the potential wealth tax on immovable property, it is therefore vital to define immovable property and to scope the types of immovable property to be included in this research. As there is currently no definition of 'immovable property' in the Act consideration will be given to immovable property contemplated in the Eighth Schedule of the Act (Eighth Schedule of the Act, par 2(1)(b)). Furthermore, the definition of 'property' as defined in the Municipal Property Rates Act (Municipal Property Rates Act, s 1) will be analysed as well as the definition of 'immovable property' as defined in the Deeds Registries Act 47 of 1937 (Deeds Registries Act, s 102(1)). Lastly, the definition of 'immovable property' as defined in the Administration of Estates Act 66 of 1965 (Administration of Estates Act, s 1) will also be considered. Where legislation does not provide the required detail, consideration will be given to alternate sources, these include Double Tax Agreements, *CGT Guide*, the dictionary of legal phrases as well as 1906 TS 563.

Once the definition has been established, the immovable property that is excluded for the purposes of this study will be identified. Consideration of existing wealth taxes may also assist in defining immovable property.

Chapter 3: An analysis of the definition of wealth tax and what existing South African taxes meet this definition

The South African tax system currently has various forms of taxes on immovable property. Consideration needs to therefore be given as to whether these taxes would meet the definition of wealth taxes. It is therefore important for this study that the potential wealth tax is defined. In this chapter, wealth tax will therefore be defined and the existing forms of immovable property taxes will be analysed against this definition to determine whether they are wealth taxes as such.

Chapter 4: An analysis of the forms of potential wealth tax on immovable property

Currently the Davis Tax Committee has issued its report on the feasibility of wealth tax in South Africa. It concludes that the wealth tax process would need to start with a very simple form of annual net wealth tax and the decision to implement this cannot be made without further considerations to the appropriate tax base, pattern of wealth ownership and administrative considerations (Davis Tax Committee, 2018. p 67).

As the details provided by the committee have been minimal, in this chapter it is necessary to research whether other tax regimes have implemented such wealth taxes on immovable property and what form these wealth taxes have taken in countries such as France which has an existing wealth tax and India which has abolished its wealth tax system. Existing wealth taxes in the Act will also be considered in order to determine how the potential wealth taxes will integrate with existing legislation.

Chapter 5: An analysis of the positive and negative consequences of a potential wealth tax on immovable property

In this chapter, an objective analysis from the existing literature of authors for both the possible positive and possible negative consequences of the potential wealth tax on immovable property will be performed for the revenue authorities and the taxpayer. The beneficial consequences include the contribution of taxation to raising revenue which is used to finance public programmes, many of which are designed to reduce inequality (Brys, et al., 2016, p 10). Taxes on land further have the beneficial effect of reducing the extent to which society suffers from an artificial scarcity of land induced by the winner's curse (Tideman, 2017, par 40). In addition, taxes on land ameliorate the consequences of capital market imperfections (Tideman, 2017, par 40).

Consideration should be given to the negative consequences on low income households which are likely to face an increased overall tax burden if a property tax was introduced (Coleman, 2009, p 45). The timing effects of immovable property taxes on property development and land values might create further economic costs (Skaburskis et al., 2000, p 304).

Chapter 6: Conclusion

This final and concluding chapter will bring together the findings of the previous chapters and summarise them in order to appropriately address the problem statement and areas of future research will be identified. The chapter will provide concluding remarks on the consequences of the potential wealth tax on immovable property.

Chapter 2: Potential definition of immovable property for the purposes of this research

2.1 Introduction

In this chapter, an analysis will be performed of how immovable property may possibly be defined in terms of the potential wealth tax as well as for the purposes of this research report. As there is no explicit definition of immovable property in the Act, an interpretation of various sources will be performed. These sources include Double Tax Agreements, the *Capital Gains Tax Guide (CGT Guide),* Deeds Registries Act, Municipal Property Rates Act, dictionary of words as well as 1906 TS 563. It is important to define immovable property for the purposes of this report to ensure that a consistent definition is applied in all scenarios.

Under Roman-Dutch law, corporeal and incorporeal things can also be classified as movable or immovable (*CGT Guide, 2017*, p 46). As discussed by Badenhorst, the division of things into movables and immovables is not only of theoretical importance, but also practically important. The reason these are important, as far as the law is applicable, is that these two classes of things often differ substantially. (Badenhorst, 2006, p 39.)

Badenhorst considers various scenarios that demonstrate the different legal rules between movable and immovable property (Badenhorst, 2006, p 39).

> 'By way of illustration a few examples of situations where different legal rules will apply to movable and immovable things, may be mentioned:
>
> a) In terms of section 2 of the Alienation of Land Act 68 of 1981, no deed of alienation of land is valid unless it is reduced to writing and signed by the parties thereto or by their agents acting on their written authority. A contract of sale in respect of movables need not, as a general rule, be reduced to writing.
> b) For a valid transfer of ownership delivery suffices in the case of movables while registration in a deeds registry is required in respect of immovable things.
> c) Hypothecation of immovables takes place by registration of a mortgage bond in the deeds office, whilst movables are pledged by delivery or registration of a notarial bond.
> d) Unless a judgment debtor's immovable property has been specifically declared executable, his or her immovable property may be sold in execution

only if the movable property is insufficient to satisfy the judgment. Furthermore, the formalities which have to be complied with in connection with the attachment and sale in execution of immovable things differ considerably from those applying to the attachment and sale in execution of movables.

e) According to South African private law the law applicable to immovable things is the law of the place where the immovables are situated *(lex loci rei sitae*), while the law of the place where the owner of the movables is domiciled *(lex loci domicilii)* applies to movables.

f) Finally, this distinction is of significance also in the field of criminal law. Thus arson can be committed only in respect of immovable property and theft only in respect of movable property' (Badenhorst, 2006, p 39.).

Badenhorst notes that the above is not an exhaustive list of instances where different legal rules will apply to movables and immovables, but it merely demonstrates the importance of this division, not only in the law of property, but also in other branches of the law (Badenhorst, 2006, p 39).

Haupt makes recommendation on how to analyse the definition of words, if a word is not defined or not fully defined, in the Act. The recommendation made by Haupt is to refer to the Interpretation Act 33 of 1957 (Interpretation Act) for guidance on the definition of undefined words. He confirms that in circumstances where the word is not defined in the Interpretation Act either, interpretation should be made in terms of the ordinary dictionary meaning. (Haupt, 2016, p 12.)

> 'Full effect must be given to all the words used in a provision, No word must be assumed to be superfluous. Where a provision does not make sense the courts have had to (of necessity) imply words or meanings... Mbha J, in Tax Case No. 12860 ... said: It is accepted generally that the meaning of the words in a statute is derived from the common-law. The basic rule of interpretation is that the meaning must, unless it would result in an absurdity, be taken to be the ordinary meaning of the word which can now be found in a dictionary of established authority' (Haupt, 2016, p 12).

As immovable property is not defined in the Interpretation Act, consideration has been given to the meaning of immovable property in the dictionary. The ordinary dictionary meaning suggests that immovable property is defined as 'property such as land or buildings, not a person's possessions' (*Cambridge Dictionary*).

This definition aligns with Badenhorst's analysis that immovable property is land and everything which is attached to land, either by natural or artificial means. Conversely, the concept of movable property relates to things which may be readily moved from one place to another without being damaged and without losing their identity in terms of their size, nature and composition. (Badenhorst, 2006, p 35.)

2.2 Income Tax Act 58 of 1962 (the Act)

As previously mentioned, consideration is given as to whether there are any references to immovable property in the Act. Section 9(4)(a) of the Act makes reference to the term 'immovable property'. The term immovable property is found within the phrase:

> 'immovable property situated in the Republic' (the Act, s 9(4)(a)).

The disposal of an asset by a person who is a South African tax resident gives rise to a potential capital gains tax liability. In the case of a person who is not tax resident in South Africa, such disposal will only give rise to a potential liability of capital gains tax if the asset is within the scope of the capital gains tax legislation. (PwC, 2017, par 2.)

In terms of the Eighth Schedule of the Act (the Eighth Schedule), in the case of non-resident persons, paragraph 2(1)(b) refers to disposals of assets of three descriptions may lead to the taxation of capital gains:

- 'Immovable property situated in the Republic;
- Any interest or right in immovable property situated in the Republic; and
- Any asset effectively connected with a permanent establishment of that non-resident person in the Republic' (PwC, 2017, par 3).

More clarity is provided in paragraph 2(2) of the Eighth Schedule by defining the term 'interest' as it appears in 'interest in immovable property situated in the Republic' (Eighth Schedule of the Act 58 of 1962, par 2(2)).

Paragraph 2(1)(b)(i) makes application of the Eighth Schedule to the disposal on or after valuation date of:

> 'immovable property situated in the Republic held by that person or any interest or right of whatever nature of that person to or in immovable property situated in the Republic including rights to variable or fixed payments as consideration for the working of, or the right to work mineral deposits, sources and other natural resources' (the Eighth Schedule, par 2(1)(b)(i)).

Following from the above, for purposes of subparagraph (1)(b)(i), an interest in immovable property situated in the Republic includes any equity shares held by a person in a company or ownership or the right to ownership of a person in any other entity or a vested interest of a person in any assets of any trust, if:

- '80% or more of the market value of those equity shares, ownership or right to ownership or vested interest, as the case may be, at the time of disposal thereof is attributable directly or indirectly to immovable property held; and
- in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person), directly or indirectly, holds at least 20% of the equity shares in that company or ownership or right to ownership of that other entity' (the Eighth Schedule, par 2(2)(a) and (b)) .

Section 9H of the Act refers to the event of a person ceasing to be a resident of the Republic. In which case the person is deemed to have disposed of all of their assets on the day prior to ceasing to be a resident and therefore faces a potential liability to capital gains tax. (the Act, s 9H(2).) Section 9H(4)(a) further states that the provisions do not apply in respect of 'immovable property situated in the Republic that is held by that person'.

Section 35A of the Act also makes reference to immovable property as it considers withholding of amounts from payments to non-resident sellers of immovable property. Immovable property in section 35A however, refers the definition of immovable property back to paragraph 2(1)(b)(i) and (2) of the Eighth Schedule of the Act.

It is therefore evident based on the above that although there is reference to immovable property in the Act, a detailed definition of immovable property is not provided. Therefore, consideration will be given to Double Tax Agreements to assist in a possible definition in this regard.

2.3 Double Tax Agreements

Consideration has also been given to Double Tax Agreements, which also make reference to immovable property. This report will refer to articles 6.1 and 13.1 of the Double Taxation Agreement between South Africa and the Netherlands (South Africa Netherlands Double Tax Agreement, 2009).

The Double Tax Agreements refer to 'immovable property' in the phrase:

'immovable property situated in the ... Contracting State' (Netherlands Double Tax Agreement , Ad Articles 5, 6, 7, 13 and 24)

Article 13.1 of the Double Tax Agreement provides that capital gains derived by a resident of one of the contracting states from the disposal of immovable property referred to in Article 6 and situated in the other contracting state may be taxed in that other contracting state (South Africa Netherlands Double Tax Agreement, 2009). Article 6.1 of the Double Tax Agreement deals with income derived from 'immovable property ... situated in the other contracting state'. The nature of this property is defined in Article 6.2.

> 'The term immovable property shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property' (South Africa Netherlands Double Tax Agreement, 2009).

The Double Tax Agreement therefore contributes to a possible immovable property definition as it includes livestock and equipment used in agriculture and forestry as well as natural resources, which are not discussed in other sources.

2.4 *Capital gains tax Guide Issue 7* (*CGT Guide)*

The South African Revenue Service has issued the *CGT Guide,* which gives guidance on the definition of 'immovable property'. The guide states that immovable things are things which cannot be moved from one place to another without damage or change of form (*CGT Guide,* p 46). The following examples of immovable property are cited in the guide:

> 'Some examples include: LAWSA lists as immovables a piece of land as indicated on a diagram in the deeds registry; geological components of the land, for instance the soil and minerals under the surface; organic products of the land, such as vegetation, trees, ungathered fruits and unharvested crops; artificial annexures to the land, such as buildings and other installations; things permanently attached to a building or other constructions, such as plumbing, heating, cooling, electrical or other installations; and certain movables, such as the keys of a house, the cover of a well and a heap of manure on the land, which are destined to serve an immovable

> indefinitely. The 'maxim quicquid plantatur solo, solo cedit' (whatever is affixed to the soil belongs to the soil) is relevant in determining whether an item forms part of the land. Thus, even though a person buys land containing a plantation or a farm containing growing crops with the intention of felling the trees or harvesting the crops, the standing timber and growing crops nevertheless attach to the land and comprise immovable property' (*CGT Guide,* p 46).

The *CGT Guide* cites *Timber Co v Celliers 1909 TS 909* which refers to immovable property as follows:

> 'by our law a forest tree growing upon the surface of the land is as much portion of the realty as the solidified coal contained beneath the surface' (*CGT Guide,* p 46).

The *CGT Guide* interprets the term 'immovable property', as it appears in the context of both section 9H and Article 13.1, 'immovable property situated in the Republic' (*CGT Guide*, 2017, p 56).

The *CGT Guide* includes a classification of assets as movable or immovable (*CGT Guide,* p 46). The guide examines the legal classification of things as immovable and concludes that immovable property encompasses:

- Land;
- Buildings with foundations in the soil;
- Trees;
- Growing crops;
- Real rights over immovable property (e.g. usufructs, registered long-term leases and servitudes);
- Life rights in a retirement complex; and
- Mineral and prospecting rights.

The CGT Guide therefore defines immovable property as land and includes the geological components of land, which form part of the immovable property itself. These classifications of immovables may therefore be included in a possible definition of immovable property.

2.5 The Deeds Registries Act 47 of 1937 (Deeds Registries Act)

The Deeds Registries Act aims to consolidate and amend the laws in force in South Africa relating to the registration of deeds (Deeds Registries Act). The Deeds Registries Act defines immovable property as follows:

‘immovable property’ includes -

(a) ....
(b) any registered lease of land which, when entered into, was for a period of not less than ten years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than ten years;
(c) a registered right of leasehold; and
(d) a registered right of initial ownership contemplated in section 62 of the Development Facilitation Act, 1995’ (Deeds Registries Act, s 102(1)).

Private Property explains that the owner of immovable property is the person in whose name the property is registered in terms of the Deeds Registries Act. A title deed is the owner of immovable property's documentary proof of such ownership. Each privately owned property has its own separate title deed, this is an important document containing all the details pertaining to a specific piece of land. (Private Property, 2015, par 1)

It can therefore be concluded that the Deeds Registries Act makes specific reference to land and includes lease of land as well as the registered right of leasehold in the definition of immovable property. Land and leasehold of land may therefore form part of a possible definition of immovable property and will be included in the definition for purposes of this report.

2.6 The Municipal Property Rates Act 6 of 2004 (Municipal Property Rates Act)

Municipal property rates are determined as a cent amount in the Rand levied on the market value of immovable property, that being land and buildings (Cooperative Governance Traditional Affairs, 2016, par 3). Municipalities have had a long history of rating property in terms of the old Provincial Ordinances (of the former Cape, Natal, Orange Free State and Transvaal provinces), especially in the formerly white urban areas (Cooperative Governance Traditional Affairs, 2016, par 4). In addition, the Constitution of the Republic of South Africa, 1996 (the Constitution) gives municipalities the power to value and rate property in their area of jurisdiction (Cooperative Governance Traditional Affairs, 2016, par 4). The Municipal Property Rates Act replaces the old system of property valuation and rating based on the old Provincial Ordinances. It does not give municipalities the original power to rate property; it merely seeks to regulate an original power vested in municipalities by the Constitution (Cooperative Governance Traditional Affairs, 2016, par 1).

The Municipal Property Rates Act defines 'property' as follows:

> 'Property is defined as-
>
> (a) immovable property registered in the name of a person, including, in the case of a sectional title scheme, a sectional title registered in the name of a person;
> (b) a right registered against immovable property in the name of a person, excluding a mortgage bond registered against the property;
> (c) a land tenure right registered in the name of a person or granted to a person in terms of legislation; or
> (d) public service infrastructure' (Municipal Properties Rates Act, s 1).

The Municipal Rates Act refers to immovable property in its definition of 'property' and includes land tenure rights and public service infrastructure. The Municipal Rates Act therefore contributes to the possible immovable property definition by including aspects such as land tenure rights, rights against immovable property as well as public service infrastructure, these will therefore be included in the possible definition of immovable property for the purposes of this report.

2.7 Dictionary of Legal Words and Phrases

Classen discusses movable and immovable property in the *Dictionary of Legal Words and Phrases*. The suggestion is that, in determining whether an object is so attached to land as to render it immovable property, the object of the enquiry in each case is to determine whether the movable property has been attached to the land with the intention that it should remain permanently attached to it. (*Dictionary of Legal Words and Phrases*, 1999.).

In order to determine whether such is the intention in this regard, consideration must be given to its physical features. These features are the nature of the movable property, the nature and degree of its attachment to the land and whether it can readily be removed without injury to itself or to the land to which it is attached. If the type of movable property is such, that is so securely attached to the land that separation would involve substantial injury either to the movable property or to the land to which it is attached. A conclusion can therefore be made that the movable property was attached with the intention of it to be permanent, for that reason, it must be held to have become immovable. (*Dictionary of Legal Words and Phrases*, 1999.)

To conclude, Classen's definition of immovable property looks at whether there is an intention for the property to remain permanent as well as the level of difficulty in separating the movable from the immovable property. Following from this, it can be said that the physical features of the property further determine the intention. Therefore, any property that is attached to the land with the intention to be permanent will also be included in the possible definition of immovable property for the purposes of this report.

2.8 Ex Parte The Master of The Supreme Court 1906 TS 563

The term 'immovable property' is considered in the Ex Parte The Master of The Supreme Court 1906 TS 563 case. The judgment discusses that all things are divided into corporeal and incorporeal however, corporeal things are further subdivided into movable and immovable, leaving non-corporeal out altogether, and making 'movable' and 'immovable' simply subdivisions of corporeal things (1906 TS, p 566).

As discussed above, the judgment discusses that incorporeal rights should, wherever possible, be divided into movable or immovable (1906 TS, p 566).

> 'There are however, circumstances such as insolvency under which very important results might follow according as an incorporeal right is regarded as movable or as immovable. The judge is of the view that South African law would favour the division of such rights into one or other of the above categories wherever possible, that being movable or immovable. Securities may also be accepted as immovable property, the security which may be accepted includes stock, debentures and other securities issued by Government, and such securities, according to the law of Holland, were regarded as immovable property. So it is evident that the legislature was dealing with both corporeal and incorporeal rights, and when it used the expression 'immovable property', it was therefore concluded that it intended the words to be taken in their wider sense so as to include incorporeal rights' (1906 TS, p 566.).

The judgment discusses that in deciding whether a right is movable or immovable, one should look to the customs and general laws of the country, and to see how the right is generally dealt. Following from this, the judge is of the view that leases are also treated as if they were immovable property. They are not merely registered against the title deeds of the land, which they affect, but are specially transferred by deed and in the Register of

Mining Rights. Furthermore, Proclamation 8 of 1902 enacts that the transfer of such leases shall be liable to transfer duty. That is some indication of the nature which these rights are regarded as possessing by the legislature and by the administrators of the statute law. (1906 TS, p 567)

To conclude it is evident in the 1906 TS 563 case that there is a significant difference between corporeal and incorporeal as well as movable and immovable. To determine movable and immovable one would need to consider the general laws of the country. The case also discusses the inclusion of securities as well as leasing and mining rights. These may therefore, also be considered in a possible definition of immovable property for the purposes of this report.

2.9 Administration of Estates Act 66 of 1965 (Administration of Estates Act)

The Administration of Estates Act defines 'immovable property' in section 1 as follows:

> 'immovable property means land and every real right in land or minerals (other than any right under a bond) which is registrable in any office in the Republic used for the registration of title to land or the right to mine' (Administration of Estates Act, s 1).

The Administration of Estates Act, in the case of a deceased estate will therefore specifically include land and minerals in immovable property. Therefore, for the purposes of this report land and minerals will be considered, in the possible definition of immovable property as such.

2.10 Conclusion

It is important to define immovable property for the purposes of this report, to ensure that a consistent definition is applied for the purposes of this report. It was of further importance to determine what a possible definition of immovable property may include, in the South African context, for the purposes of the possible wealth tax.

An analysis was performed of existing legislation in the form of the Act, Deeds Registries Act, Municipal Properties Rates Act and the Administration of Estates Act. Other sources were also analysed in order to ensure that a comprehensive possible definition of immovable property is developed. These sources included the Netherlands Double Tax Agreement, the *CGT Guide* and the *Dictionary of Legal Phrases*. Furthermore, the judgment of 1906 TS 563 was also considered.

From the sources analysed, land and buildings will form the basis of the possible immovable property definition. Furthermore, property which cannot be moved from one place to another without damage or change, will also be included in the possible definition. Natural resources such as trees, growing crops, mineral and prospecting rights are also seen as possible immovable property: these will however, not be included in the definition of immovable property for the purposes of this report. Other possible inclusions in the definition of immovable property are real rights over immovable property (for example usufructs, registered long-term leases and servitudes) as well as a registered right of leasehold. These will however, also be excluded from the possible definition of immovable for the purposes of this report. The reason for these exclusions is that land and buildings are consistently included as immovable property in all sources analysed and are likely to form the base of a possible definition however, the inclusion of other elements in the definition will be dependent on the legislator's discretion.

Chapter 3: An analysis of the definition of wealth tax and what existing South African taxes meet this definition

3.1 What is wealth tax

Arendse discusses in her research report that the essence of a wealth tax is that it is levied on a person's net wealth and therefore the debate often hinges on the potential scope of a wealth tax. The scope of the wealth tax is the assets and liabilities that should be included or excluded as well as any exemptions and rebates that may be applicable. (Arendse, 2017. p 2.)

Wolff considers what is included in 'wealth' and determines that wealth is the difference between assets and debt (Wolff, 1996, par 5). There are four major types of assets identified:

- 'Homes (technically referred to as 'owner-occupied housing');
- Liquid assets, including cash, bank deposits, money market funds, and savings in insurance and pension plans;
- Investment real estate and unincorporated businesses; and
- Corporate stock, financial securities, and personal trusts' (Wolff, 1996, par 5).

Debt consists primarily of mortgage debt (usually a home), and credit card debt as well as consumer loans (Wolff, 1996, par 6).

Evans discusses that there are three possible forms that a wealth tax (sometimes referred to as a capital tax) can take (Evans, 2013, p 1). Wealth tax on the holding of wealth, the transfer of wealth and the appreciation of wealth (Evans, 2013, p 1). The characteristics of wealth taxes are that, in principle, they relate to the whole range of assets: cash and bank balances, real property such as houses, personal property such as jewellery, pictures, furniture, cars and boats, stocks and shares, and business assets (Evans, 2013, p 1). The focus of this research report will be that of immovable porperty.

The taxes levied on wealth can be: applied sporadically or periodically on a person's wealth or applied on a transfer of wealth (transfer taxes) (Kessler et al., 1991, p 309). This is conformed by Thuronyi, who cites that net wealth taxes are typically assessed on the net value of the taxpayer's taxable assets (that is, the value of assets minus any related liability), either sporadically (often known as 'capital levies') or on an annual or other periodic basis. Thuronyi's research determined that transfer taxes, which are typically assessed on the net value of the taxable assets transferred, fall into two basic categories.

These categories are transfer taxes that are levied on the transferor or their estate (more typical in common law countries), and those levied on the recipient. (Thuronyi, 1996, p 1.)

> 'Taxes on wealth, writes the public finance economist Richard Bird, ...are among the oldest fiscal instruments in most countries.... [But] despite their antiquity, wealth taxation has been relatively neglected in recent years' (cited by Thuronyi, 1996, p 2).

It is evident that the possible benefits of wealth taxes were once of a great interest to development economists (Thuronyi, 1996, p 2).

Thuronyi states that wealth transfer taxes can also be viewed as complements to an income tax system. The income tax by itself does not tax wealth, but only taxes the accretions to wealth. Based on the income tax systems analysed by Thuronyi, gifts and bequests are not taxed as income to the recipient. The research performed demonstrates that there are a number of reasons for this exclusion, including problems of income averaging. Based on the assumption that gifts and bequests are not included in the income tax base as determined by the research, a separate wealth transfer tax can serve as a surrogate to such inclusion. (Thuronyi, 1996, p 5.)

Based on the wealth tax systems examined by Thuronyi, certain assets are often exempted from the tax base for particular taxpayers. Statutes in various jurisdictions frequently provide a zero-bracket amount to exclude taxpayers who do not have sufficient wealth to warrant a wealth tax. These different jurisdictions have enacted these various exceptions for different reasons. (Thuronyi, 1996, p 19.)

It is therefore evident that wealth is determined on a taxpayer's assets less their liabilities. Evans confirms that capital wealth includes a wide range of assets that can be included therein (Evans, 2013, p 1), The focus of this research report will however, be that of immovable property. Furthermore, wealth tax can take the form of a periodic tax on the net value of the assets or a transfer tax once the assets are transferred. Wealth taxes are however, subject to a variety of exemptions depending on the jurisdiction. From a South African perspective, the possible wealth tax may therefore take the form of a periodic wealth tax subject to certain exemptions determined by the legislators (Thuronyi, 1996, p 19).

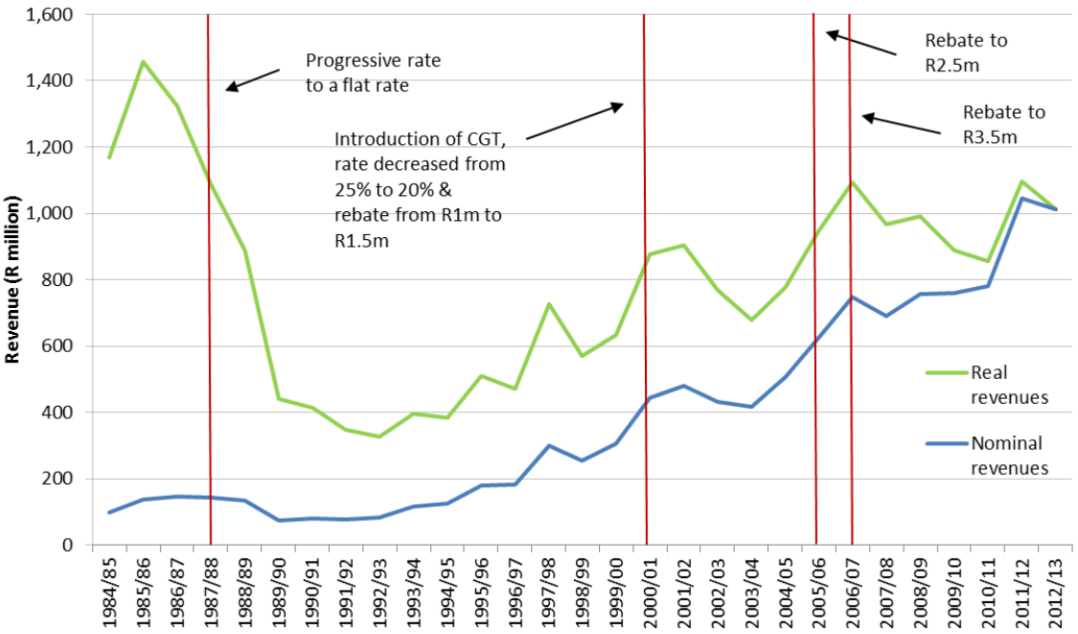
3.2 Estate Duty Act 45 of 1955 (Estate Duty Act)

Estate duty is levied against the estate of a deceased individual before the transfer of any estate assets in terms of the Estate Duty Act (Davis Tax Committee, 2016, p 10). The estate duty computation, in its briefest form, is as follows:

> 'Free residue of estate
>
> Less: Exempt bequests
>
> Less: inter-spouse bequest
>
> Less: Retirement Funds (excluded from estate)
>
> Less: general abatement
>
> = Dutiable value
>
> Subject to estate duty at 20%' (Davis Tax Committee, 2016, p 10).

As discussed by the Davis Tax Committee, South Africa abandoned a progressive rate of estate duty in 1988 in favour of a flat rate of 25% in 1988. Thereafter, capital gains tax was implemented with effect from 1 October 2001. In order to reduce the onerous consequences of both estate duty and capital gains tax being levied on death, the estate duty rate was reduced to 20%, with effect from 1 March 2001. The primary estate duty abatement of R1,5 million was increased to R2,5 million, with effect from 1 March 2006 and then to R3,5 million, effective 1 March 2007. (Davis Tax Committee, 2016, p 10.) The capital gains tax inclusion rate for personal income tax was initially established at 25% on 1 October 2001. In order to compensate for the double tax exposure created when capital gains tax was combined with estate duty or donations tax, the estate duty and donations tax rate was reduced. (Davis Tax Committee, 2016, p 11)

Estate duty collections 1985 – 2013 (Davis Tax Committee, 2016, p 11)



The National Treasury data, as analysed by the Davis Tax Committee, in the table above demonstrates that estate duty collections have, in real terms, had various periods of decline over the past 20 years (between 1993 and 2013) although nominal tax collections have steadily increased (Davis Tax Committee, 2016, p 11).

For the purposes of the Estate Duty Act, the estate of any person shall consist of all property of that person as at the date of his death and of all property which in accordance with this Act is deemed to be property of that person at that date (Estate Duty Act 45 of 1955, s 3(1)).

The Estate Duty Act defines 'property' as follows:

> 'Property means any right in or to property, movable or immovable, corporeal or incorporeal, and includes:
>
> (a) any fiduciary, usufructuary or other like interest in property (including a right to an annuity charged upon property) held by the deceased immediately prior to his death;
>
> (b) any right to an annuity (other than a right to an annuity charged upon any property) enjoyed by the deceased immediately prior to his death which accrued to some other person on the death of the deceased,
>
> (bA) so much of the amount of any contribution made by the deceased in consequence of membership or past membership of any pension fund, provident fund, or retirement annuity fund, as was not allowed as a

deduction in terms of section 11(k), section 11(n) or section 11F of the Act, or paragraph 2 of the Second Schedule to that Act or, as was not exempt in terms of section 10C of that Act in determining the taxable income as defined in section 1 of that Act, of the deceased' (Estate Duty Act, s 3(2)).

The Davis Tax Committee has classified estate duty as a form of wealth tax. South Africa's revenue streams can be summarised into three broad categories based on the tax base on to which they fall (that is income taxes, transaction axes and wealth taxes) and estate duty has been classified as a wealth tax. (Davis Tax Committee, 2018, p 8.)

A conclusion can therefore be made that, as the estate duty definition of property includes immovable property and the tax is viewed as a wealth tax by the Davis Tax Committee, it may be viewed an existing wealth tax on immovable property.

3.3 Transfer Duty Act 40 of 1949 (Transfer Duty Act)

Collocott discusses that a wealth transfer duty is levied on the passing of ownership of assets from one person (or entity) to another. Transfer duty is imposed where there is a legal requirement for registration of the transfer these transfers include the transfers of property. (Collocott, 2018a, par 6.)

Section 2(1) of the Transfer Duty Act levies transfer duty as follows:

'(1) Subject to the provisions of section 9 of the Transfer Duty Act, there shall be levied for the benefit of the National Revenue Fund a transfer duty on the value of any property (which value shall be determined in accordance with the provisions of sections 5, 6, 7 and 8 of the Transfer Duty Act) acquired by any person on or after the date of commencement of that Act by way of a transaction or in any other manner, or on the amount by which the value of any property is enhanced by the renunciation, on or after the said date, of an interest in or restriction upon the use or disposal of that property, at the rate of -

(a) ....

(b) subject to subsection (5) –

(i) 0% of so much of the said value or the said amount, as the case may be, as does not exceed R900 000; and

(ii) 3% of so much of the said value or the said amount, as the case may be, as exceeds R900 000 but does not exceed R1,25 million;

(iii) 6% of so much of the said value or the said amount, as the case may be, as exceeds R1,25 million but does not exceed R1,75 million;

(iv) 8% of so much of the said value or the said amount, as the case may be, as exceeds R1,75 million but does not exceed 2,25 million;

(v) 11% of so much of the said value or the said amount, as the case may be, as exceeds R2.25 million but does not exceed R10 million; and

(vi) 13% of so much of the said value or the said amount, as the case may be, as exceeds R10 million' (Transfer Duty Act, section 2(1)).

Transfer duty is a tax levied on the value of any property, as defined in the Transfer Duty Act, acquired by any person by way of a transaction or in any other way. Limitations are however, provided by the exemptions in section 9 of the Transfer Duty Act.

The Transfer Duty Act defines 'property' as follows:

'property means land in the Republic and any fixtures thereon, and includes

(a) any real right in land but excluding any right under a mortgage bond or a lease of property other than a lease referred to in paragraph (c);

(b) ....

(c) any right to minerals (including any right to mine for minerals) and a lease or sub-lease of such a right;

(d) a share (other than a share contemplated in paragraph (g)) or member's interest in a residential property company;

(e) a share (other than a share contemplated in paragraph (g)) or member's interest in a company which is a holding company (as defined in the Companies Act, 1973 (Act No. 61 of 1973) or as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be), if that company and all of its subsidiary companies (as defined in the Companies Act, 1973, or Close Corporations Act, 1984), would be a residential property company if all such companies were regarded as a single entity;

(f) a contingent right to any residential property or share or member's interest, contemplated in paragraph (d) or (e), held by a discretionary trust (other than a special trust as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962)), the acquisition of which is –

  (i) a consequence of or attendant upon the conclusion of any agreement for consideration with regard to property held by that trust;

(ii) accompanied by the substitution or variation of that trust's loan creditors, or by the substitution or addition of any mortgage bond or mortgage bond creditor; or

(iii) accompanied by the change of any trustee of that trust and;

(g) a share in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980)' (Transfer Duty Act 40 of 1949, s 1).

To conclude transfer duty is levied on the value of any property, as defined in the Transfer Duty Act, acquired by any person, subject to the exemptions in section 9 of the Transfer Duty Act, by way of a transaction or in any other way. For the purpose of transfer duty, property means land and fixtures and includes real rights in land, rights to minerals, a share or interest in a 'residential property company' or a share in a share-block company and may therefore be seen as an existing tax on wealth in South Africa. Furthermore, the Davis Tax Committee has considered Transfer Duty as an existing wealth tax in their research of the feasibility of the possible wealth tax in South Africa (Davis Tax Committee, 2018, p 8).

The tax on transfers of immovable property is therefore a form of wealth tax that exists in South African legislation and should be considered before implementing an additional possible wealth tax on immovable property.

3.4 Donations tax

De Koker considers that the purpose of donations tax, as a tax in the Act, is to discourage the avoidance of tax by the distribution of gifts, a practice that facilitates a reduction in the liability for income tax of the donor. The reason being that the income derived from the donated assets is spread among more taxpayers. (De Koker, 2018, par 1.)

Donations tax is levied on the value of assets transferred by donation and is most often levied against the donor however if the donor fails to pay, the donee may become liable. Donations may be seen as a form of wealth transfer. (De Koker, 2018, par 1.)

For resident individuals, donations are subject to donations tax of 20% on the first R30 million of donations made during a tax year and then at the rate of 25% on donations exceeding R30 million, with an annual exemption of up to R100,000 of the value of all donations made during the tax year (the Act, s 64).

Subject to certain exemptions, donations tax is payable on the value of property disposed of, whether directly or indirectly and whether in trust or not, under donations by any resident under section 54 (the Act, s 54).

The term 'property' is defined as any right in or to property, whether movable or immovable, corporeal or incorporeal and wherever it is situated. Donations tax is therefore not levied only on donations of property situated in the Republic, and extends to donations of intangible property, such as copyrights, patents and trade marks. (the Act, s 55(1).)

As donations tax is levied on the transferral of assets via a donation, and includes immovable property, it may be viewed as an existing wealth tax on immovable property. Furthermore, the Davis Tax Committee has also considered donations tax as wealth tax in terms of the research report on the feasibility of a potential wealth tax in South Africa (Davis Tax Committee, p 8). Therefore, as donations tax is an existing wealth tax on immovable property consideration should be given in this regard before the implementation of another possible wealth tax.

3.5 Property rates

The authority to grant regulatory power to municipalities to impose rates on property is entrenched in the Constitution of South Africa (Constitution of South Africa, s 229).

Section 229 of the Constitution of South Africa states the following:

1. 'Subject to subsections (2), (3) and (4), a municipality may impose—
    a. rates on property and surcharges on fees for services provided by or on behalf of the municipality; and
    b. if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty' (Constitution of South Africa, s 229).

Municipal property rates are based on the percentage of the market value of immovable property, calculated at a Rand amount (land and buildings for purposes of the municipal rates) and these are historic rates charged on immovable property (Cooperative Governance Traditional Affairs, 2016, par 3).

In conclusion, municipal rates are charged on the market value of immovable property as imposed by the Constitution of South Africa (Constitution of South Africa, s 229) together with municipal regulation and may be viewed as periodic wealth taxes on immovable property by taxpayers.

3.6 Capital gains tax

The Davis Tax Commission does not consider capital gains tax as a wealth tax as it regards it as an income tax on capital income rather than a wealth tax (Davis Tax Committee, 2018, p 79). Nevertheless, it may be viewed by the taxpayer as a wealth tax, as it is a tax on the disposal of immovable property and the introduction of an additional potential wealth tax will add on to the tax burden on immovable property.

The idea of taxing capital gains is not new in South Africa. In 1969, the Franzsen Commission, as cited in the *CGT Guide*, proposed a limited form of capital gains tax on immovable property, while in 1986 the Margo Commission recommended that capital gains should not be taxed. Thereafter, in 1995, the Katz Commission in its third report considered the merits and demerits of a capital gains tax in South Africa. The Katz Commission however, declined to make firm recommendations because of the complexity of capital gains tax administration and the lack of capacity of the Inland Revenue at that time. (Capital Tax Guide, 2017, p 3.)

The Eighth Schedule of the Act defines an 'asset' as follows:

> 'asset includes-
>
> (a) property of whatever nature, whether movable or immovable, corporeal or incorporeal, excluding any currency, but including any coin made mainly from gold or platinum; and
> (b) a right or interest of whatever nature to or in such property' (Eighth schedule of the Act, par 1).

The first step in calculating the taxable capital gain or assessed capital loss is to determine the capital gain or loss. In order to determine a capital gain or loss, the Eighth Schedule provides for four key definitions that form the basic building blocks in determining that capital gain or loss. These four definitions are 'asset', 'disposal', 'proceeds' and 'base cost'. (Capital gains tax Guide, 2017, p 33.) Capital gains tax as per the Eighth Schedule of the Act is currently at a maximum effective rate of 22.4% for companies, 18% for natural persons and 36% for trusts respectively on the disposal of assets (Eighth Schedule of the Act, par 10).

Furthermore, it is worth noting that capital gains tax will be levied on the growth in the value of assets of a deceased estate (Capital gains tax Guide, 2017, p 599). Therefore, tax has to be paid even though no disposal has in reality taken place, and hence no proceeds have actually been received.

It is therefore evident that even though the Davis Tax Committee may not consider capital gains tax to be a wealth tax (Davis Tax Committee, 2018, p 79), capital gains tax will definitely create a tax burden on the taxpayer on the disposal of immovable property. This tax burden, coupled with an additional possible wealth tax may be viewed by taxpayers as a double tax on immovable property.

3.7 Conclusion

The research analysed demonstrates that a wealth tax system may be a compliment to an income tax system, as an income tax system does not tax wealth as such (Thuronyi, 1996, p 5).

There are however, various existing forms of taxes on wealth in South African legislation (Davis Tax Committee, 2018, p 8). These taxes on wealth also tax immovable property and range from taxes on the transfer of property, whether it be transfer duty, donations tax or capital gains tax on disposals as well as taxes on the death of a taxpayer in the form of estate duty. These taxes will therefore be seen as existing wealth taxes on immovable property by taxpayers, so the imposition of an additional possible wealth tax may also be seen as a double tax on immovable property.

It is therefore, recommended, that the existing wealth taxes in South African legislation be considered in depth before the implementation of another wealth tax on immovable property is legislated.

Chapter 4: An analysis of the forms of potential wealth tax on immovable property

4.1 Introduction

It is currently not evident whether the potential wealth tax on immovable property will be in the form of a local government or central government tax. From Bird's research, property tax has been historically been associated with local government in most countries. One reason that taxes on land and property have been considered to be especially appropriate as a local revenue source is that real property is immovable and therefore it is unable to shift location in response to the tax. (Bird and Slack, 2002, p 8.)

The OECD's *Tax and Economic Growth Report* analyses a range of property taxes imposed by OECD countries. The research shows that the most prominent taxes are recurrent taxes on immovable property, which are typically key sources of revenue for local governments. The analysis in the report determined that recurrent taxes on immovable property to be the least damaging tax to long term economic growth, as compared to consumption taxes, other property taxes, personal income taxes and corporate income taxes. It should also be noted, that recurrent taxes levied on households were found to have less adverse effects than those levied on businesses. Brys also determined that these findings are consistent with the strong theoretical case for certain recurrent immovable property taxes. Recurrent taxes on immovable property of households can be an efficient form of taxation because the tax base (typically land and improvements) is highly stable and consequently there is limited behavioural response to the tax. This is particularly the case for land, which is in fixed supply. (Brys et al., 2016, p 17)

This chapter will analyse the various bases upon which the potential wealth tax may be levied. As the intention of the South African Revenue Services has not been made public, it is relevant for the purposes of this report to establish what form these bases may take. Consideration has been given in this research report to local property taxes which have been prevalent in most countries, these are methods commonly used by other revenue authorities.

Furthermore, the wealth tax system in France will be analysed in this chapter as it has a well-established wealth tax system as well as a long history of wealth taxes. India has also been selected, as it has abolished its wealth tax system and the reasons for abolition by the Indian revenue authority may be beneficial in the South African context.

4.2 Forms of a potential wealth tax

4.2.1 Area-based Assessment

An area-based assessment is one of the potential assessments that may be used upon which to base a wealth tax on immovable property. Bird's research discusses that under an area-based assessment system, a charge is levied per square meter of land area, per square meter of building, or some combination of the two. Where an areas based assessment is used for both land and buildings, the assessment of the property is the sum of an assessment rate per square meter multiplied by the size of the land and an assessment rate per square meter multiplied by the size of the building. These rates may be the same for land and buildings, or they may be different. An example of this may be, a lower unit value per square meter applied to buildings to encourage development. (Bird and Slack, 2002, p 15.)

The use of a per unit assessment results in a tax liability that is directly related to the size of the land and buildings, which may be beneficial. Bird's research demonstrates that with unit value assessment, the assessment rate per square meter may be adjusted to reflect location, quality of the structure, or other factors. It has been determined that market value may have an indirect influence on the assessment base through the application of adjustment factors. Such an adjustment factor may be that the assessment rate per square meter is adjusted to reflect the location of the property within a particular zone in the city. (Bird and Slack, 2002, p 15.)

Bird's research shows that the adjustment factors are often derived from average values for groups of properties within each zone and do not reflect the characteristics of each individual property however, should the groups be defined narrowly enough the unit value may begin to approximate market value. (Bird and Slack, 2002, p 15.)

4.2.2 Market Value Assessment

Another possible measure upon which to base a wealth tax on immovable property is a market value assessment. The market value assessment estimates the value that the market places on individual properties and is defined as the price that would be agreed upon between a willing buyer and a willing seller in an arm's length transaction. (Bird and Slack, 2002, p 16.)

Bird demonstrates that the following methods may be used to estimate market value:

- 'The comparable sales approach looks at valid sales of properties that are similar to the property being assessed. It is used when the market is active and similar properties are being sold.
- The depreciated cost approach values the property by estimating the land value as if it were vacant and adding the cost of replacing the buildings and other improvements to that value. The cost approach is used when the property is relatively new, there are no comparable sales, and the improvements are relatively unique. The cost approach is also normally used to assess industrial properties.
- Under the income approach, the assessor estimates the potential gross rental income the property could produce and deducts operating expenditures. The resulting annual net operating income is converted to a capital value using a capitalization rate. This approach is used mainly for properties with actual rental income' (Bird and Slack, 2002, p 16).

Although these bases are used as property rates measures, they are potential measures on which to base wealth taxes on immovable property. Bird discusses that market value assessment is used in all the OECD countries in his study, as well as a number of others including Indonesia, Philippines, South Africa, Latvia, Argentina, and Mexico as well as a variation of the market value approach, which is used in the United Kingdom. Bird further notes that the value assigned to each property only indicates the valuation band and not the actual value of the property. (Bird and Slack, 2002, p 17.)

4.2.3 Rental Value Assessment

A further valuation method that may be used is the rental value assessment. In terms of the rental value approach, property is assessed according to an estimate, not the actual, rental value. This method may be viewed as appropriate as taxes are paid from income rather than from wealth and thus it may be appropriate to tax the rental value of real property. Following from this, Bird's research demonstrates that there should however be no difference between a tax on market value and a tax on rental value. When a property is utilised most productively the rental value of the property will bear a corresponding relationship to market value and the rental payments will therefore approximate the market value of the property. (Bird and Slack, 2002, p 17.)

Bird discusses that most countries in his research tend to assess rental value on the basis of current use therefore, there can be a significant difference between market value and rental value. An example of this is if a property that is under-utilised is assessed, the assessment would be much lower under the rental value approach than under the market value approach. (Bird and Slack, 2002, p 17.)

Research does demonstrate that there are however, some difficulties with the use of rental value assessment. Difficulties arise in the estimation of rental value when there are controlled or subsidized rentals which cannot be directly used to assess market rentals, unless the majority of properties are rent controlled. Bird's finding show that this has been particularly problematic in India. Furthermore as vacant land is not taxable under a rental assessment method, as it is not currently in use, there is an incentive to favour low return uses over high return uses or to withhold rental properties from the market altogether. Following from this, these higher taxes may discourage investment. (Bird and Slack, 2002, p 18.)

Bird's research also demonstrates administrative difficulties in using the rental assessment method owing to the difficulties of limited information on the annual rent of comparable properties for unique commercial and industrial properties such as steel mills. It is further difficult to calculate net rents because the distribution of expenses between property owners and tenants are different for different properties. Lastly, assessors may not be able to access rental income information, because rental income is not always in the public domain in the same way as are sales prices. (Bird and Slack, 2002, p 18.)

Even though these problems exist, the rental value assessment method is used in various countries which include, Australia, United Kingdom (for non-residential property), China, India, Thailand, Guinea, and Tunisia (Bird and Slack, 2002, p 18).

4.2.4 Self-Assessment

The last assessment method that will be analysed as part of this research report is the self-assessment method. This assessment method requires property owners to place an assessed value on their own property. It has been seen in Hungary that the current local tax system is based on the principle of self-assessment. There is an obligation for taxpayers to register and report their tax obligations to the local tax revenue authorities. The Hungarian authorities then verify the tax on buildings and the tax on idle land, this requires verification only of the property size and not its market value. Practically, the responsibility of self-registration is not very effective as not all owners comply. This results in the number of potential taxpayers or taxable assets to be generally unknown. (Bird and Slack, 2002, p 20.)

In order to determine the tax liabilities, verification is also required in terms of the self-assessment submitted by the taxpayer. Another difficulty is that personnel in revenue authorities are limited and would be unable to make field inspections of each property, which makes verification difficult. (Bird and Slack, 2002, p 20.)

The table below demonstrates the methods used in the Organisation for Economic Co-operation and Development (OECD) countries.

Table: Tax assessment methods in OECD countries (Bird and Slack, 2004)

OECD:	Tax Base	Basis of assessment
Australia	Land or land and improvements	Market value or rental value or combination
Canada	Land and improvements (sometimes machinery included)	Market value
Germany	Land and improvements; farm properties also include machinery and livestock	Market value (rental income/construction costs);
Japan	Land, houses, buildings and tangible business assets	Market value
United Kingdom	Land and improvements; some plant and machinery	Market value for residential; rental value for non-residential
Central & Eastern Europe:		
Hungary	Unimproved value (plot tax); buildings (building tax)	Area or adjusted market value
Latvia	Land and buildings	Market value
Poland	Land, buildings, and structures	Area
Russia	Land for land tax; structures for property tax;	Area; inventory value of structures; value of assets

	assets for enterprise property tax	
Ukraine	Land	Area
Latin America:		
Argentina	Land and buildings	Market value
Chile	Land and improvements	Area by location for land; construction value for buildings
Colombia	Land and buildings	Market value
Mexico	Land and buildings	Market value
Nicaragua	Land, buildings and permanent improvement	Cadastral value
Asia:		
China	Occupied land; land and improvements	Area; market value or rental value
India	Land and improvements	Mostly annual rental value; limited use of area and market value
Indonesia	Land and buildings	Market value
Philippines	Land, building, improvements and machinery	Market value
Thailand	Land and improvements (buildings and land tax); land (land development tax)	Rental value; market value
Africa:		
Guinea	Land and buildings	Rental value
Kenya	Land (but can use land and improvements)	Area; market value; or a combination

Tanzania	Buildings, structures or limited development[1]	Market value (or replacement cost, if market value not available)
Tunisia	Land and improvements (rental housing tax); land only (tax on unbuilt land)	Area; rental value
Source: Bird and Slack (2004).		

From the above table it is evident that the predominant methods of assessment in the OECD territories reviewed is area and market value. Furthermore, the tax base in these territories includes mainly land and buildings as well as improvements in certain territories. Based on the above, the market value of the immovable property would seem to be the most widely accepted method on which to levy a wealth tax in South Africa. This is also owing to the fact that valuations are already performed for municipal rates purposes by the municipalities (IOL Property, 2017, par 6).

4.2.5 Considerations of the rate

The discussion of rates below will focus on local or central property rates as a method of determining a possible rate for the potential wealth tax. The reason being that local or central authorities are often tasked with determining rates for property levies. These methods of determining rates should therefore be analysed as the rates applied to the potential South African wealth tax may be based on these methods.

Bird discusses that as the tax liability is determined by multiplying the value assessed by the tax rate. Therefore, a conclusion can be reached that the size of the tax base as well as the tax rate determine the value of the revenue that the property tax will generate for the tax authority. (Bird and Slack, 2002, p 21.)

Local or central government is often tasked with the determination of the tax rates applied to immovable property. Bird's research demonstrates that countries vary significantly with respect to the extent to which local governments are free to determine tax rates. The rates of countries such as Japan, Ukraine, Chile, Thailand, Tunisia are

[1] Land belongs to the state (Tanzania) and is not taxed; land rents are paid to the national government.

essentially set by the central government. The rates of countries such as Hungary, Colombia, Philippines are subject to some local discretion when the tax rates are determined. (Bird and Slack, 2002, p 21.) In Canada, Argentina and Kenya there is complete local discretion. (Bird and Slack, 2002, p 22.)

Bird's research demonstrates that many local governments levy rates that differ by property classes, which include residential, commercial, and industrial. This system gives authorities the power to manage the distribution of the tax burden across various property classes within their jurisdiction in addition to determining the size of the overall tax burden on taxpayers. (Bird and Slack, 2002, p 22.)

It is evident from Bird's research that one of the features of land and property taxation in many developing countries is a very low tax rate. One such example is Argentina where progressive rates are imposed and the top rate seldom exceeds more than 1%, but is often lower. Furthermore, in Indonesia the land tax rate is only 0.5%. (Bird and Slack, 2002, p 24.)

4.3 Wealth tax in France

As France has a well-established wealth tax system as well as a long history of wealth taxes, with income tax only being introduced during the First World War as noted by Piketty and cited in the Davis Tax Committee's report on wealth tax (Davis Tax Committee, 2018, p 38). France's system will be examined in this report in order to determine what valuable lessons may be learned from a South Africa perfective.

As discussed by Alain Trannoy, in the European Commission report on taxing wealth, President François Mitterand launched the 'Impôt sur les grandes fortunes' (tax on great fortunes) in 1982. It was thereafter abolished by Jacques Chirac for the period between 1987-1989 and re-established by François Mitterand in 1989 with a slight change of name, 'Impôt de solidarité sur la fortune' (ISF, the solidarity tax on wealth). (Astarita, 2015, p 32.)

Consideration has been given as to why France is still one of the very rare European countries with a wealth tax, whereas many European countries have given it up in the recent years. If this tax is placed into a historical perspective, one realises that France has always been quite reluctant to introduce income taxes into its legislation. It was not until the First World War that an income tax was first introduced in France, as historically wealth was viewed as the favoured tax base. The main form of finance for the central French government from 1791 to 1914 was proportional property tax (on land, housing and gradually on physical capital). (Astarita, 2015, p 32.)

Astarita discusses that the 'Impôt de solidarité sur la fortune' tax base was made up of worldwide wealth held by the French resident, whatever the country (except for countries that have signed an agreement with France). Wealth was assessed based on the market values reduced by deductible debts. There were however, special deductions of 30% for the main home. Regardless of the marital status of the taxpayer, the tax was the same and there were no deductions for minors. (Astarita, 2015, p 32.)

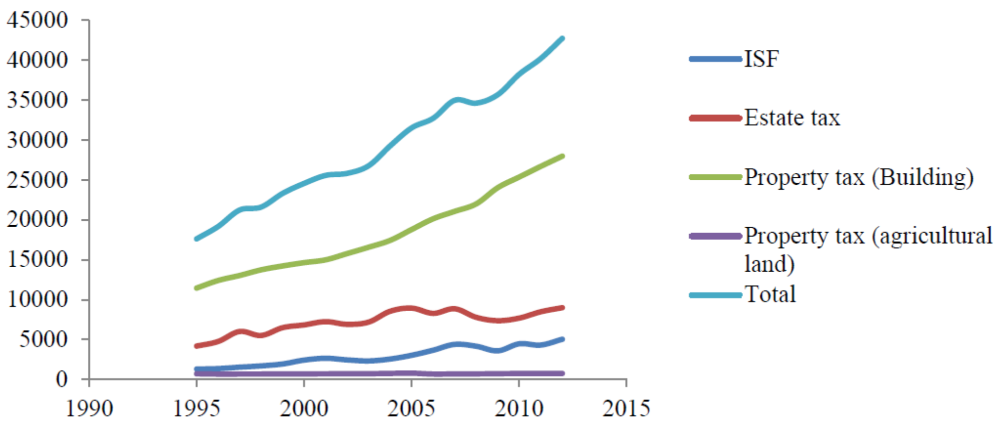
The list of exemptions included the following:

- 'Professional goods such as businesses (depending on the percentage owned),
- Vintage (more than one century old) and collection objects,
- Artistic, literature, or industrial rights,
- Woods and participation in forestry plantations (for 75% of their value),
- Capital value of pensions and retirement plans,
- Capital obtained as compensation for physical injury in accidents or due to illness' (Astarita, 2015, p 32).

Owing to the high tax rate, there has always been a concern by the French revenue authority that some taxpayers may not be able pay the 'impôt de solidarité sur la fortune' because of the tax burden of the other taxes, specifically income tax. A tax limit ('bouclier fiscal') was introduced early in the regime. An example of the tax limit was demonstrated in 2014, whereby the tax on capital income for the social security system (15,5%) plus the 'impôt de solidarité sur la fortune' could not be larger than 75% of the annual income. There have been many variations of the tax limit over the years. An example of this is when Nicolas Sarkozy came to power, he lowered the tax cap to 50%. In 2013, the 'impôt de solidarité sur la fortune' tax receipts represented 0.5% of the tax base (EUR 4.5 billion) and therefore 0.04% of the total wealth. (Astarita, 2015, p 33.)

The 'impôt de solidarité sur la fortune' is only one of many taxes on wealth in France, which include the estate tax (tax on inheritance, 'impôt sur les successions') and the property tax ('taxe foncière'). The graph below demonstrates the 'impôt de solidarité sur la fortune' represents approximately 10% of the total of tax revenues collected on wealth as shown in the table below. (Astarita, 2015, p 34.)

<u>Graph: net outflow of ISF from taxpayers (Astarita, 2015, p 34)</u>



Gabriel Zucman, as cited by Astarita, warns that the large migration (between 1996 and 2006) as well as the missing taxpayers in the tax files for 'impôt de solidarité sur la fortune' may have been because of the high marginal tax rate of the wealth tax system (Astarita, 2015, p 35).

The French government's draft Finance Bill 2018 has proposed to replace the existing wealth tax ('impôt de solidarité sur la fortune') with a 'real property wealth tax' (Step, 2018, par 1). The new 'impôt sur la fortune immobilière' (IFI) tax will apply only to real estate held directly by the individual, along with shares in property-owning companies wherever the companies or the properties are located (Step, 2018, par 3).

Other assets, including financial assets, will no longer be subject in terms of the new wealth tax system. Certain real estate or real estate rights (those deemed used for professional purposes, under very strict conditions and criteria) of the taxpayer will also be excluded from this new 'Impôt sur la Fortune Immobilière'. (Ernst &Young, 2017, par 6.)

Cabinet Gregory also confirms that 'Impôt sur la Fortune Immobilière' wealth tax is limited to property assets (net of associated loans). This change in wealth tax systems will bring a very significant reduction in wealth tax for a number of French residents. (Cabinet Gregory, 2018, par 3.)

French residents will be liable for that 'Impôt sur la Fortune Immobilière' on their worldwide properties, being their main home, second homes and rented properties among others. French non-residents will also be liable for wealth tax, being assets physically situated in France. A partial exemption will also be available for people moving to France, this exemption will only apply to assets outside France for a period of five years. (Cabinet Gregory, 2018, par 6.)

From a South African perspective, a valuable lesson to learn from France's wealth tax system is that, as demonstrated by the previous French system, wealth tax can cause a heavy burden on the taxpayer and raise the overall tax liability on the taxpayer to an unreasonable level. It is also evident that many French taxpayers may have gone abroad to avoid the tax burden. Should that occur in South Africa the revenue collections may reduce significantly, resulting in the opposite intended effect. Lastly, should the South African Revenue Services implement a wealth tax on immovable property, it should be considered in conjunction with other existing wealth taxes as well as the introduction of overall tax limits and exemptions to manage the burden on taxpayers.

4.4 Wealth tax in India

The Wealth Tax Act of 1957 (the Wealth Tax Act) is an act of the Parliament of India which provided for levying of wealth tax on an individual, Hindu Undivided Family (HUF) or company, on the corresponding valuation date (the Wealth Tax Act 1957, s 3). The Wealth Tax Act applied to the whole of India including the state of Jammu and Kashmir and the Union Territories (The Wealth Tax Act 1957, s 2). The application of the Wealth Act was abolished from 1 April 2016. Although only a nominal amount of revenue was collected from the levy of wealth tax, this levy created a significant amount of compliance burden on the taxpayers as well as administrative burden on the revenue authority. (the Finance Bill, 2015, clause 79.)

The Wealth Tax Act was introduced on the recommendation of Professor Nicholas Kaldor for achieving two major objectives being: the reduction of inequalities and helping the enforcement of Income Tax Act 1961. All the assets of the taxpayers were taken into account for computation of net wealth. The levy of wealth tax was thoroughly revised on the recommendation of Tax Reform Committee headed by Raja J. Chelliah vide Finance Act, 1992 with effect from 1 April 1993. Furthermore, the Chelliah Committee had recommended abolition of wealth tax in respect of all items of wealth, other than those which can be regarded as unproductive forms of wealth, or other items whose possession could legitimately be discouraged in the social interest. (the Finance Bill, 2015, clause 79.)

In terms of the previous wealth tax regime, assets in relation to the assessment year commencing on the 1 April 1993, or any subsequent assessment year, meant:

(i) 'any building or land appurtenant thereto (hereinafter referred to as 'house'), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometres from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board, but does not include;

(a) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than five lakh[2] rupees;

(b) any house for residential or commercial purposes which forms part of stock-in-trade;

(c) any house which the assessee may occupy for the purposes of any business or profession carried on by him;

(d) any residential property that has been let-out for a minimum period of three hundred days in the previous year;

(e) any property in the nature of commercial establishments or complexes' (the Wealth Tax Act 1957, s 2(ea)).

Assets included property of every description, movable or immovable, but did not include:

(1) 'in relation to the assessment year commencing on the 1st day of April, 1969, or any earlier assessment year

(i) agricultural land and growing crops, grass or standing trees on such land;

(ii) any building owned or occupied by a cultivator of, or receiver of rent revenue out of, agricultural land: Provided that the building is on or in the immediate vicinity of the land and is a building which the cultivator or the receiver of rent or revenue by reason of his connection with the land requires as a dwelling-house or a store-house or an outhouse;

(iii) animals;

(iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant;

(v) any interest in property where the interest is available to an assessee for a period not exceeding six years from the date the interest vests in the assessee' (the Wealth Tax Act 1957, s 2 (e)).

[2] Indian numbering system meaning 100,000

The finance minister announced the abolishment of wealth tax and instead levied an additional surcharge of 2% on individuals with taxable income of Rs 1 crore[3] and above. The change from the previous wealth tax system will not only make it easier for wealthy individuals to file their tax returns but will also result in widening of the tax base and help the government raise their tax collections significantly. (Singh, 2015, par 1.)

The compliance burden on the taxpayer and administrative burden on the revenue authority, in terms of the previous wealth tax regime, was mainly as a result of the taxpayers being required to obtain valuation reports (from a registered valuator) on certain assets. Another constraint of the wealth tax system was that the assets specified for the levy of wealth tax were difficult to track and this gives an opportunity to the taxpayer to under report or under value the assets which are liable for wealth tax. This resulted in the collection of wealth tax over the years becoming stagnant resulting in the disproportionate compliance burden on the taxpayer and administrative burden on the authority. (the Finance Bill, 2015, clause 79.)

Furthermore, the previous wealth tax amounted to 1% on assets of Rs 30 lakh and above (excluding equities, bonds and first house), the Finance Minister noted that total wealth collection between 2013 and 2014 stood at only Rs 1,008 crore. The Finance Minister further stated that the new additional surcharge (in terms of the new proposed system) of 2% over the existing 10% for individuals earning a net taxable income of Rs 1 crore will lead to collections of Rs 9,000 crore. (Singh, 2015, par 2.)

> 'This will lead to tax simplification and enable the department to focus more on ensuring tax compliance and widening the tax base, said the finance minister' (Singh, 2015, par 3).

From a practical perspective, financial planners welcomed the change as it simplifies the process of filing a return significantly. (Singh, 2015, par 4.)

The legislators of the South African proposed wealth tax on immovable property should consider the valuable lessons learned from the Indian scenario. The previous Indian wealth tax system has demonstrated that the wealth tax system can cause an administration burden that is not substantiated with a considerably higher revenue collection (Singh, 2015, par 2.). The Indian wealth tax system had to be simplified in order to widen the tax base and reduce the compliance and administrative burdens (the Finance Bill, 2015, clause 79). These are important considerations for the South African

[3] Indian numbering system meaning 10,000,000

potential wealth tax system because if the legislation is not drafted with these key characteristics in mind, it will not be successful in meeting its objective of significant revenue collection.

4.5 Conclusion

The potential wealth tax may be based on various assessment methods, including an area based, market related, rental assessment or self-assessment. An assessment would need to be performed by the South African Revenue Services to determine the most efficient and effective method. It would however seem that the market value assessment method may be the most practical from a South African perspective based on the current municipal valuations.

Currently in South Africa, the property rates that the homeowner is charged is based on the market value of the property as determined by a town-appointed property valuator. The current legislation required municipalities to appoint an evaluator and compile a valuation roll with the services of professional property valuators. The data was collected around the country to determine market-related property values. Through research and market analysis, property valuators assessed and verified the value of each property based on what buyers were prepared to pay for the home. Although property inspectors did not visit each home, they looked at the average sales values in and around a particular area. Once the valuation roll was certified and handed to the city manager, it was publicly advertised for a period of time so that the people were able to put in any objections they may have had regarding the valuations. After the prescribed period, the valuation roll was finalised and the rates implemented. (IOL property, 2017, par 6 – 10.)

It is further evident from the wealth tax experiences of France and India that the revenue collected from such wealth taxes has been nominal with a large administrative burden if the wealth tax system be unnecessarily complicated. The wealth tax in India was not effective and was therefore abolished and replaced with a surcharge, which is much easier to administer leading to an increased tax base (Singh, 2015, par 2). In France, there was a concern that taxpayers went abroad because they were over burdened with the high marginal tax rates, which included wealth taxes (Astarita, 2015, p 35). It is further evident that the French wealth tax needed to be reformed in such a way as to make it an efficient revenue generator for the French revenue authority.

Based on this analysis, South Africa will need to determine the wealth tax method (should it choose to impose such a tax) that limits the compliance burden on the taxpayer to avoid taxpayers migrating from South Africa as well as limiting the administrative burden from the perspective of the South African Revenue Services. Lastly, an analysis should be performed to determine on what basis as well as at what rate would be the most advantageous for the South African taxpayer as well as the South African Revenue Services.

Chapter 5: An analysis of the possible positive and negative consequences of a potential wealth tax on immovable property

5.1 Introduction

This chapter will analyse the possible positive and negative consequences that a potential wealth tax may have on immovable property as well as the fiscus. In terms of positive consequences, consideration will be given to why wealth tax was historically favoured by economist, additional funds for local public service, unproductive land speculation, wealth tax as a revenue raiser for revenue authorities, efficiency and land price bubbles. In terms of possible negative consequences consideration will be given to the issue of valuation, compliance burden, impact on economic growth and the indebtedness of the taxpayer.

5.2 Possible positive consequences of a potential wealth tax on immovable property

5.2.1 Historically favoured by economists

Land taxes are an ancient form of taxation (Dye, 2009, p 3) and have often been recognised as meeting at least some of the tests for a good tax system. Coleman cites Mill (Mill, 1865) who supported the adoption of a land tax, specifically one levied on the increment to land values over and above those at a fixed point in time. Mill's reasoning was that the increment in land values was as a result of general societal influences and that this increment should therefore form the basis for government revenues required for the upkeep of society. Coleman continues to cite George (George, 1880) expanded on Mill's reasoning, and favoured a land tax as a form of taxation that does not diminish effort or investment while at the same time taxing private value earned from community efforts. The analytical basis for Mill's and George's approach was rooted in the insights of physiocrats before them, that land values impound the rents available to land-owners arising from location-specific factors. Modern spatial economics analyses of urban development and the impacts of new infrastructure investments on land values embody a related analytical approach. (Coleman, 2009, p 4.)

5.2.2 Additional funds for local public service

Brys' research considers that taxes affect inequality through many different channels. One of the most direct ways in which taxes redistribute income is by narrowing the distribution of disposable income. Brys discusses that taxes can also more indirectly reduce market income inequality, for instance by encouraging labour market participation and stimulating individuals to invest in their human capital and skills or by limiting the perpetuation of income inequality across generations. These taxes may also contribute to redistributing income across individuals' lifecycles, for example by providing incentives for them to save for their retirement. More generally, wealth taxes raise revenues which are used to finance public programmes, many of which are designed to reduce inequality. (Brys et al., 2016, p 10.)

Additionally, Brys cites that, a recurrent immovable property tax can act to some extent as a 'benefits tax', which means that there is a strong link between the tax paid and the public services received. In the extreme, where taxes are directly linked to local public good provision, they effectively become a payment for services (that is, they are no longer a tax according to the OECD's definition of a tax), and so are expected to have a smaller distortive impact on behaviour. Furthermore, when used to fund local public services, they may increase the accountability of local governments. Recurrent immovable property taxes are also difficult to evade owing to the highly visible nature of immovable property (except for evasion by hiding immovable property improvements). (Brys et al., 2016, p 17.)

Bird cites Fischel, who has argued that the property tax in the United States is like a benefit tax because taxes approximate the benefits received from local services. Should this be the case, local property tax finance of local services will promote efficient public decisions since taxpayers will support those measures for which the benefits exceed the taxes. Both the benefits derived from such local services as good schools and better access to roads and transit, among others. Furthermore, the wealth taxes used to finance such services will be capitalised into property values. Since taxpayers are willing to pay more for better services and lower tax rates, either will translate into higher property values. (Bird and Slack, 2002, p 9.)

5.2.3 Unproductive land speculation

Tideman considers that there are both speculative and land management reasons for spending resources on foreseeing changes in the opportunities to use land. The speculative reason can be seen as purely private, while the land management reason can be seen as both private and social. The taxation of land can reduce the speculative reason for foreseeing land use opportunities, and thereby eliminates the waste of resources in seeking such opportunities. Without the speculative reason for foreseeing changes in land use opportunities, a market might reduce land management losses. (Tideman,n.d, par 38.)

Tideman discusses four types of land taxes in his research report namely taxes on: the rental value of land, sale value of land, income from land and realized gains from the sale of land. The research determined that all four taxes analysed have the beneficial effect of reducing the waste of resources involved when people seek to be the ones who own land, when its improved prospects become known. (Tideman,n.d, par 38.) Taxes on land also have the beneficial effect of reducing the extent to which society suffers from an artificial scarcity of land induced by the winner's curse, being the overpayment for an item owing to the incomplete information making the intrinsic value unknown (Tideman,n.d, par 18). In addition, taxes on land ameliorate the consequences of capital market imperfections (Tideman,n.d, par 38).

5.2.4 Revenue for tax authorities

The discussion to follow is not specific to South African authorities but rather aims to analyse what impact property taxes have had on the revenue of foreign revenue authorities, the results of studies performed in New Zealand have been analysed. This is beneficial in the South African context, as it will demonstrate the revenue raising ability of the potential wealth tax.

Coleman's research demonstrates that a tax on land could have significant effects both on aggregate fiscal revenues. In terms of fiscal revenue, using 2006 figures in New Zealand, Coleman demonstrates that a 1% per annum tax on all non-government land could raise approximately $4.6 billion annually (rising to $6.7 billion annually by 2030 with 2% per annum land inflation). This has been placed into perspective as $4.6 billion represents 20% of all income tax revenue that was forecast for 2009 and 2010. The top personal tax is at a rate of 38%, which applies above an income threshold of $70,000 per annum. Total income tax revenue raised on those earning above this figure is forecast to be $9.8 billion for 2009 and 2010. If the top personal tax rate were reduced to 33%, the direct loss in income tax would be $491 million, which represents only 11% of the revenue. (Coleman, 2009, p 43.)

Following from this it is evident that a 1% per annum land tax could result in significant fiscal revenues, so enabling material reductions in other tax rates (Coleman, 2009, p 43). Consideration should however, be given to the critical issue of fall in prices which might accompany the introduction of a land tax. This will adversely impact revenue raising, as well as giving rise to other significant issues. (Victoria University of Wellington Tax Working Group, 2009, p 4.)

5.2.5 Property price bubbles

Price bubbles occur frequently in property markets. Price bubbles refers to the fact that an asset has a significant and always incorrect price. Historical data demonstrates these high prices are repetitive patterns whereby the prices increase and the bubbles burst. Berk notes that the main indicators for the existence of a bubble are the deterioration of the real economy, as a result of overcrowding mortgage credit and construction activity. (Berk et al., 2017, p 337.)

Gray explains that when land prices increase substantially, residential real estate becomes a more attractive investment opportunity for investors than productive businesses. Gray discusses that land bubbles tend to produce two contradictory effects. The first is that it produces urban sprawl as businesses and families are forced to seek cheaper land outside of the urban centres. Thereafter, the owners become more interested in expected capital gains than any productive activities, the land become idle. (Gray, 2015, par 5 – 9.)

Eventually, the burden of debt, lack of affordable land and investments based start affecting the real economy. Workers may become unemployed and become unable to repay their debts and are forced to sell their land. Subsequently land prices will stagnate and then fall. A land tax may therefore be beneficial in this regard. As the supply of land is fixed, the land value tax becomes a cost of owning it and can bring in a decrease in prices as the owners of inefficiently used sites might feel compelled to sell or lease them to those willing to use them productively. The increase in cost of owning land would drastically reduce the incentives for speculation and reduce price bubbles. (Gray, 2015, par 5 – 9.)

5.2.6 Efficiency

Research has demonstrated that a tax on land does not distort investment behaviour as it applies to land which is in fixed supply and therefore, creates a tax liability regardless of whether or how well the land is utilised. As a result of the supply of land being perfectly inelastic (fixed in supply), market prices depend on what purchasers are prepared to pay rather than on the expenses of land owners. As land taxes cannot be passed on and would be borne by landowners at the time the tax is announced. The land tax is not expected to have an effect on those who purchase land as the tax effect will be compensated for in the purchase price. (Victoria University of Wellington Tax Working Group, 2009, p 2.)

Coleman discusses that a central government land or property tax may perform very well in terms of administrative efficiency. Coleman notes that the valuations required to provide the tax base are often already performed (this is also the case in South Africa in terms of local municipal rates (IOL Property, 2017, par 6)) and rates are already levied comprehensively on property owners. His view is that a central government land or property tax could also be added as an adjunct to the current system with minimal administrative cost. Colemen continues to say that in these authorities the ability to avoid (or evade) the tax is virtually non-existent. The reason for this is that since the land or property is valued by independent agencies (whereby in South Africa the city valuator makes use of a computer modelling programme to determine values (Chambers, 2019, par 9)) and the land or property is available as collateral in cases of non-payment of tax. (Coleman, 2009, p 5.)

5.3 Possible negative consequences of a potential wealth tax on immovable property

5.3.1 Poor revenue raiser

Ingles' research indicates that wealth taxes have a poor history as revenue raisers due political pressures that lead to system design flaws or poor valuation methods. Furthermore, numerous thresholds and exemptions exacerbate the problem. Poor revenue is also as a result of wealth tax clashing with existing taxes on capital income and creating effective tax rate problems. (Ingles, 2016, p 20)

Hansson considers research performed in 2002, whereby eight OECD countries taxed accumulated net wealth was analysed (see Table below). The eight countries exempt some level of wealth from the tax, with the size of the allowance in the jurisdictions ranging from EUR 15,000 in Norway to EUR 720,000 in France. Iceland, Luxembourg, Norway, and Switzerland have considerably low allowances as they are below EUR 50,000, while Spain and Sweden begin taxing at approximately EUR 100,000 and Finland at EUR 180,000. Three of the countries Finland, Luxembourg, and Sweden employ flat rates, while the tax rates in the other countries rise progressively as the wealth increases. The rates range from 0.05% of wealth between EUR 45,900 and EUR 183,700 in Zurich, Switzerland to 2.5 % of wealth exceeding EUR 10.7 million in Spain. (Hansson, 2002, p 3.)

Table: OECD countries wealth revenue percentage (Hansson, 2002, p 3)

	Tax rate, In percent	Allowance, in Euros	Wealth-tax revenues as percent of total tax revenues in 1999	Wealth tax revenue as percent of GDP in 1999
Finland	0.9	185 000	0.15	0.07
France	0.55 - 1.8	720 000	0.32	0.15
Iceland	1.2 - 1.45	43 500	0.86	0.30
Luxemburg	0.5	37 500	2.10	0.88
Norway	0.6 - 1.1	15 078	1.15	0.48
Spain	0.2 - 2.5	108 182	0.48	0.002
Sweden	1.5	110 380	0.56	0.29
Switzerland	0.05 - 0.3	45 900	2.89	1.01

This research indicates that wealth taxes contribute relatively little to the total tax revenues in these countries. Finland, for example, collects barely 0.15% of its total tax revenues from its wealth tax, while Luxembourg and Switzerland, which have the highest percentages coming from wealth taxes, collect less than 3% in this way. The long-term trend in wealth tax receipts as a share of total taxes and of Gross Domestic Product has generally been downward or constant in many of these countries. (Hansson, 2002, p 3.)

5.3.2 The valuation issue

Ingles considers the Australian tax policy institutes position on wealth tax. Ingles notes that valuation has always been held to be an important obstacle to implementing a practical wealth tax as identified by the Australian tax policy institute. (Ingles, 2016, p 23.)

Evans also considers valuation to be a major concern, especially where an actual sale of the asset does not take place to give an independent market value. In addition, if a wealth tax is to have any consistency of meaning, assets such as the capitalised value of future pension rights, or of future earning power, may need to be included in the tax base. There is currently no consensus on whether they should be included, and if so, how they should be measured. (Evans, 2013, p 4.)

Per the South African Institute of Tax Professional's (SAIT) submission to the Davis Tax Committee on possible wealth taxes in South Africa, it is stated that the administration of these wealth taxes will be dependent on annual or periodic valuations of the relevant assets and liabilities. SAIT notes that the valuation of many assets (such as land and property) is complex and subject to judgment. The valuations will therefore, be open to manipulation and dispute and the cost of administration, including valuations, may be inefficiently spent. (Engel. 2017, p 2.)

Certain assets such as bank accounts and publicly-traded stocks and bonds are easy to value however, assets that are not publicly-traded, on the other hand, can be very difficult and expensive to value. There is evidence of this disparity in values even when professional appraisers are involved, which may be the case for immovable property such as and building. Revenue authorities routinely audit large estates and hire professional appraisers who often have very different perceptions than the appraisers hired by the taxpayers for the value of assets. The cost of preparing annual wealth tax returns supported by professional appraisers would be onerous, as would the cost of dispute resolution with the revenue authorities on the valuation differences of assets. While the appraisal business will benefit, it is doubtful that this economic activity will be beneficial for the economy. (Kent, 2012, par 2.)

5.3.3 Compliance burden

As discussed in the feasibility research by the Davis Tax Committee, wealth taxes are comprehensive and it makes their compliance costs high, which may lead to unequal treatment of taxpayers (Davis Tax Committee, 2018. p 4). Wealthy individuals will have the resources to seek advice from tax experts on how to reduce their tax burden or how to avoid wealth taxation completely. Following from this, the burden of the tax falls on the less wealthy who do not have the resources to seek expensive tax advice. Therefore, the administrative costs associated with tax collection can be high for wealth and wealth transfer taxes and collection costs are generally high because of the required inspection and valuation of assets. (Davis Tax Committee, 2018. p 36.)

As discussed in the research report by Arendse, it is evident that wealth tax systems are inherently complex (Arendse, 2017, p 73). The Design and drafting of legislation as well as obtaining appropriate valuations of assets followed by the compliance process of declaring wealth and determining the wealth tax liability has proven to involve substantial administrative costs in many countries. The research demonstrates that for some countries, the costs have proved so punitive that they have abandoned the system of wealth tax altogether (Arendse, 2017, p 158).

5.3.4 Harmful effect on Economic Growth

Wealth tax has been considered to negatively impact economic growth in a number of ways. One way is through its effect on the level of investment, which is one of the forces driving economic growth. This is owing to the fact that, wealth tax can affect the net return of assets. It should be noted that whether a lower net return affects the tendency to save, depends on the interest elasticity of savings in the economy. (Hansson, 2002, p 6.)

Hansson discusses that wealth tax may also affect economic growth via its impact on risk bearing, which is thought to play an important role in determining economic growth rates. This is evident in product and technology development, for instance, whereby the development depends on a willing supply of domestic risk capital. The wealth tax can affect the propensity to bear risk both because it lowers the net return and because it affects uncertainty in the economy. (Hansson, 2002, p 6.)

Hansson notes that the relationship between taxation and risk-taking is complicated however, his research indicates that there are two competing views. The first view suggests that tax discourages risk-taking by reducing the net return on risky investments, which will increase the cost of risk capital and therefore decrease a country's capital stock and growth rate. The second view suggests that tax encourages risk-taking by decreasing risk along with the net return, thereby increasing the demand for higher returns which in turn will decrease the cost of risk capital and increase the capital stock and growth rate. As a result, the government takes a share of the expected return but also bears a share of the risk, which encourages risk averse individuals to bear more risk. (Hansson, 2002, p 6.)

5.3.5 Indebtedness of the taxpayer

It is evident that property owners often borrow some of the purchase price of land and building, but fund costs such as tax out of current income. This point is of importance because annual wealth tax liability may increase the time it takes borrowers to repay their loans, and lower land prices may encourage new borrowers to enter the market. (Victoria University of Wellington Tax Working Group, 2009, p 9.)

There could also be inefficiencies if the imposition of a wealth tax on immovable property can lead to fears in investors that its rate may be increased in the future. This risk may discourage people from investing in land intensive investments. Victoria University of Wellington Tax Working Group, 2009, p 9.) This will result in the decrease of property prices, as a land tax would cause an immediate fall in the value of land by the net present value of the future land tax liabilities (Victoria University of Wellington Tax Working Group, 2009, p 3). Lenders typically restrict their lending to a proportion of the property value, so that if the borrower defaults then the lender can sell the property and be reasonably confident of recovering the debt, accrued interest and sale costs however, a material reduction in property values would substantially erode the value of lenders' security. (Victoria University of Wellington Tax Working Group, 2009, p 9.)

5.4 Conclusion

This chapter has analysed the possible positive and negative consequences of a potential wealth tax on immovable property. Arguments have been made in terms of the positive consequences including that a central government land or property wealth tax may perform very well in terms of administrative efficiency (Coleman, 2009, p 5). Brys further discussed that recurrent taxes on immovable property are the least damaging tax to long-run economic growth, as compared to consumption taxes, other property taxes, personal income taxes and corporate income taxes (Brys et al., 2016, p 17). Gray discussed that wealth taxes on immovable property can bring in a decrease in prices of property as the owners of inefficiently used property might feel compelled to sell or lease them to those willing to use them productively (Gray, 2015, par 9). Considerations have also been made regarding the efficiency of a wealth tax on immovable property (Victoria University of Wellington Tax Working Group, 2009, p 3).

Following from this, the possible negative consequences have also been considered. Wealth taxes, including wealth taxes on immovable property, contribute relatively little to the total tax revenues in these countries; this was evident from the European countries that were studied (Hansson, 2002, p 3). Furthermore, the administrative costs associated with tax collection can be high for wealth and wealth transfer taxes and collection costs are generally high because of the required inspection and valuation of assets (Davis Tax Committee, 2018. p 36). Lastly, wealth taxes on are seen to negatively impact economic growth, one of the ways is through its effect on the level of investment, one of the forces driving growth, owing to the effect of wealth tax on the net return from investments (Hansson, 2002, p 6). Therefore, the potential wealth tax on immovable property may have the same effect of reducing investment in property as a result of the onerous tax consequences. Based on the research performed, the revenue generated from a wealth tax on immovable property is not likely to generate substantial revenue for the South African Revenue Services as may be anticipated.

Chapter 6: Conclusion

Land restitution is viewed as one of the key issues since South Africa achieved democracy in 1994 (South African History Online, 2014, par 1). Due to the slow process of handling claims the Restitution Act 22 of 1994 was amended in 1997 to bring it in line with the 1996 Constitution shifting the approach from a judicial one to an administrative one in 1999 (South African History Online, 2014, par 3). Following from this, the Department of Rural Development and Land Reform released what it called the 2017 Land Audit Report and within the Report was a proposal for a land tax in order to finance a new land reform fund. Land tax has been advocated by some of history's most celebrated economists, from Adam Smith to Henry George (Collocott, 2018b, par 3). These land considerations have further contributed to the wealth tax discussion on immovable property in South Africa.

It has been established that although immovable property has not been explicitly defined in the Act there are various sources which may be used to determine a possible definition of immovable property for the purposes of a proposed wealth tax. Badenhorst discussed the importance of the differences between movables and immovable and determined that there are different legal principles that apply (Badenhorst, 2006, p 39). Double tax agreements also make reference to immovable property, as well as which state has the taxing rights in this regard (South Africa Netherlands Double Tax Agreement, 2009). SARS has further given guidance in the *CGT Guide*, citing CG Van Der Merwe, that immovable things are things which cannot be moved from one place to another without damage or change of form (*CGT Guide*, 2017, p 46). The Deeds Registries Act includes any registered lease of land and registered right of leasehold in the definition of immovable property (the Deeds Registries Act, s 102).

The Municipal Rates Act does not define immovable property however, it includes a definition of 'property' which makes specific reference to immovable property. Classen states in The *Dictionary of Legal Words and Phrases* that whether an object is immovable is determined on whether the object is attached to the land in such a way, to render it immovable. Consideration should be made as to whether the movable object has been attached to the land with the intention to remain permanently attached (Dictionary of Legal Words and Phrases, 1999). In terms of the *1906 TS 563 case*, it is evident that in order to determine movable and immovable property consideration is given to the general laws of the country. The case also discusses the inclusion of securities as well as leasing and mining rights in immovable property (1906 TS, p 566).

Furthermore, the Administration of Estates Act defines immovable property in section 1 as land and real rights in land or minerals (other than any right under a bond) which is registrable in any office in the Republic used for the registration of title to land or the right to mine (Administration of Estates Act, s 1).

Land and buildings have formed the basis of the possible immovable property definition for the purposes of this report. Furthermore, property which cannot be moved from one place to another without damage or change, has also been included in the possible definition. Natural resources such as trees, growing crops, mineral and prospecting rights are also seen as possible immovable property: these were however, excluded from the definition.. Other possible inclusions in the definition of immovable property are real rights over immovable property (for example usufructs, registered long-term leases and servitudes) as well as a registered right of leasehold. These were however, excluded from the possible definition of immovable for the purposes of this report. The reason for this exclusion is that land and buildings are consistently included as immovable property in all sources analysed and are likely to form the base of a possible definition however, the inclusion of other elements in the definition will be dependent on the legislator's discretion.

Thereafter it was important to determine what wealth tax is. It was determined that there are three possible forms that a wealth tax (sometimes referred to as a capital tax) can take. These are the holding of wealth, the transfer of wealth and the appreciation of wealth. (Evans, 2013, p 1.) Based on this, an analysis was required to determine whether there are any existing wealth taxes in the Act, or any other acts including the Administration of Estates Act, the Deeds Registries Act, Estate Duty Act, Municipal Rates Act and Transfer Duty Act. Estate Duty was identified as a wealth tax as property for the purposes of Estate Duty includes all property, or any right to property, including immovable or movable, corporeal or incorporeal that is registered in the deceased's name at the time of their death (Estate Duty Act, s 3(2)).

Transfer duty and Donations Tax were also be considered as part of the analysis as a wealth transfer tax is levied on the passing of ownership of assets from one person (or entity) to another (Collocott, 2018a, par 7) and donations tax is levied on the value of assets transferred by donation. Property rates were also considered as these are levied on the market value of immovable property (that is, land and buildings) (Municipal Rates Act, s 1). Consideration was given as to whether capital gains tax in the Act is a tax on wealth. Although the Davis Tax Committee does not consider capital gains tax to be a wealth tax (Davis Tax Committee, 2018, p 79), capital gains tax will definitely create a tax burden on the taxpayer on the disposal of immovable property. This tax burden coupled with an additional possible wealth tax, may be viewed by taxpayers as a double tax on immovable property.

As the wealth tax in this report is a potential form of wealth tax on immovable property consideration has been given to the potential form the wealth tax may take. As per the research of Bird and Slack there can be an area based assessment (which is a strict per unit assessment) which results in a tax liability that is directly related to the size of the land and buildings (Bird and Slack, 2002, p 15). A further option is a market value assessment, which is defined as the price that would be struck between a willing buyer and a willing seller in an arm's length transaction (Bird and Slack, 2002, p 16). Another method is the rental value assessment, the rationale for using rental value is that taxes are paid from income rather than from wealth and thus it is appropriate to tax the net rental value of real property (Bird and Slack, 2002, p 17). Lastly, consideration was given to the theory of self-assessment, which requires property owners to place an assessed value on their own property (Bird and Slack, 2002, p 20). The most common method used by countries is the market value assessment, which may be a viable assessment base for the South African proposed wealth tax.

This research report has selected two countries that have either had a wealth tax system or have abolished their wealth tax system, that being France and India respectively. France had the 'impôt de solidarité sur la fortune' wealth tax system whereby the tax base is made of global wealth, whatever the country (except for countries that have signed an agreement with France). Wealth should be assessed to market values minus deductible debts, however the aspects of this system are being reviewed by the French government (Astarita, 2015, p 32). Owing to concerns about the high burden of the previous wealth tax system, a 'real property wealth tax' was introduced (Step, 2018, par 1). The tax applies only to real estate held directly by the individual, along with shares in property-owning companies in proportion to the value of the property rights they own, wherever the companies or the properties are located (Step, 2018, par 3). In India, the Wealth Tax Act was introduced for achieving two major objectives being reducing inequalities and helping the enforcement of Income-tax Act. All the assets of the taxpayers were taken into account for computation of. The levy of wealth tax was abolished and substituted with a simplified surcharge system. (Finance Bill, 2015, clause 79.) It was evident that both the wealth tax systems that complexity in the legislation resulted in compliance burdens for taxpayers and administrative burdens for the revenue authorities. The tax systems needed to be simplified in order to ensure the onerous provisions were minimised. These are valuable lessons to be considered by legislators in implementing the potential wealth tax system.

Lastly, the advantages and disadvantages of a potential wealth tax on immovable property were analysed. In terms of advantages Brys argues that wealth tax is the most direct way in which taxes redistribute income by narrowing the distribution of (post-tax) disposable income (Brys et al., 2016, p 10). Tideman further considers the argument that the taxation of land reduces (in the limit, eliminates) the speculative reason for foreseeing land use opportunities, and thereby eliminates the waste of resources in seeking to be first to perceive such opportunities (Tideman,2004, p 38). There is further a perception that wealth tax may bring in significant revenue for authorities by being a simple, efficient way to collect revenue that does not distort investment behaviour as it applies to land which is in fixed supply (Victoria University of Wellington Tax Working Group, 2009, p 2).

There are however, also many disadvantages and impracticalities of wealth tax. Despite the perception of wealth tax on immovable property, wealth taxes are poor revenue raisers for example Finland collects barely 0.15% of its total tax revenues from its wealth tax, while Luxembourg and Switzerland, which have the highest percentages coming from wealth taxes, collect less than 3% in this way (Hansson, 2001, p 3). Furthermore, the issue of the difficulty of valuation poses a practical problem which may be difficult from an administrative perspective for revenue authorities. The Davis Tax Committee has highlighted the administrative costs associated with tax collection can be high for wealth and wealth transfer taxes and collection costs are generally high because of the required inspection and valuation of assets (Davis Tax Committee, 2018, p 36). Lastly, the economic growth impact of wealth tax cannot be ignored The wealth tax may also affect economic growth via its impact on risk bearing, which is thought to play an important role in determining growth rates. The wealth tax can affect the propensity to bear risk both because it lowers the net return and because it affects uncertainty. (Hansson, 2002, p 6.)

To conclude, although there are arguments towards the potential advantages of a possible wealth tax, the existence of wealth taxes in the Act, as well as other legislation analysed in this report, the practical difficulties of a potential wealth tax and the negative impact thereof cannot be ignored. Therefore, more research should be performed on the overall economic impact before any implementation of a wealth tax.

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