

CHAPTER 2: THE IMPOSED TAX BURDEN

2.1 INTRODUCTION

The objective of this study is to develop a conceptual framework that can be used to evaluate the tax burden of individual taxpayers in South Africa. The tax burden can be evaluated objectively by looking at the actual taxes imposed⁷ by government on taxpayers. Taxes may consist of various imposts used by governments to raise revenue, and these imposts may be labelled differently by governments, using a variety of terms, for instance, 'tax', 'levy', 'user charge', 'duty', 'fee', etc. (Thuronyi, 2003:48-53; Weier, 2006:15-16). This raises the question of which imposts in essence constitute a real tax that must be included when the imposed tax burden is evaluated, and which of governments' imposts are in fact not a tax and should consequently be excluded from an evaluation of the imposed tax burden. The construct of the **imposed tax burden** was defined in this chapter by means of a review and an analysis of the relevant literature, in order to enhance understanding of the inherent characteristics of the imposed tax burden as a phenomenon, and to ensure that the conceptual framework developed in this study incorporates all the relevant aspects required for evaluating the tax burden of individual taxpayers.

2.2 THE IMPOSED TAX BURDEN AS A CONSTRUCT

To 'impose' is defined in the *Oxford Dictionary and Thesaurus* (2009:465) as to 'force something to be accepted'. Synonyms of the verb 'to impose' include 'to levy', 'to charge', 'to apply', 'to enforce', 'to set', 'to establish', 'to institute', 'to introduce' and 'to bring into effect'. In the context of this study, the word is used to describe a liability that is placed on a taxpayer by government, in terms of

⁷ The verb 'to impose' is defined by the *Oxford Advanced Learner's Dictionary* (1995:465) as 'to place a penalty, tax, etc officially on sb/sth'.

legislation, on a taxpayer's income, wealth, and/or consumption of goods and services.

This raises the question of what a tax is. An anonymous wit once quipped: 'A fine is a tax for doing something wrong. A tax is a fine for doing something right.' The words of this anonymous author may seem to offer a simple answer to the question of what a tax is, but unfortunately the concept of a tax is much more complicated. One useful point of departure in understanding the inherent nature and purpose of a tax is a brief overview of the historical development of taxes.

2.2.1 Historical overview of taxes

The concept of taxation goes back as far as the ancient kingdoms of Mesopotamia and Egypt, to before 3000 BC (Salanié, 2003:2; Webber & Wildavsky, 1986:38-52). '*Covée*' was the earliest form of taxation on record. It consisted of a mandatory contribution of labour to the king. The word 'labour' in the ancient Egyptian language was, in fact, synonymous with the word 'tax' (Webber & Wildavsky, 1986:68). A Sumerian tablet dating back to around 1500 BC, found in Iraq, contains an inscription that reads: 'You can have a Lord, you can have a King, but the man to fear is the tax collector' (Muller, 2010:12; Salanié, 2003:2). In those times, the King was synonymous with the State and had to provide for things such as an army, his court, priests, family and officials. To fund all this he had to levy taxes on the peasants, who constituted most of the population. Taxes were paid by the peasants in the form of physical labour and 'tithes', which were a fixed portion of their agricultural produce (Webber & Wildavsky, 1986:38-51). Merchants and artisans in Mesopotamia also had to pay one third to half of their gross receipts as tax to the ruler of their town (Adams, 1993:5-15).

In the ancient empires of the Greeks and the Romans (between 800 BC and about 500 AD), taxes were levied on the sale of land and slaves. They introduced the concept of import duties on goods and also levied tolls on the

use of infrastructure. For many centuries, the burden of these taxes was largely carried by the peasants (Coffield, 1970:4; Salanié, 2003:2). The first real direct taxes were introduced during the reign of the Emperor Diocletian, 284-305 BC (Muller, 2010:12). These taxes were levied per head and on land for the citizens of Rome. These taxes were generally regarded as symbols of oppression and disappeared with the fall of the Roman Empire (Adams, 1993:103-110). Both Greece and Rome levied taxes on wealth, but some elite groups were excluded from this burden, with the result that the commercial classes were taxed more heavily. If revenues from taxes decreased, new taxes were implemented or the tax rates were increased (Webber & Wildavsky, 1986:107-108).

Under the medieval feudal system (around the 5th to the 15th centuries), the principle was adopted that everyone, irrespective of status, must contribute to the State, either in the form of military service or labour (Salanié 2003:2; Seligman, 1914:42). For instance, in 1304, a feudal levy was implemented in France, whereby a nobleman could send armed knights for the king's service in lieu of the tax. This principle was expanded to all subjects, and even peasants had to provide between four to six soldiers for each group of 100 hearths⁸ (Adams, 1993:156; Webber & Wildavsky, 1986:180). This form of direct taxation levied on the subjects of the State during the Middle Ages was in essence a makeshift poll tax. With the development of the concept of private property and the differentiation between economic classes, this poll tax was either replaced or supplemented by a general property tax (Seligman, 1914:5-6). However, real estate during the feudal times was not really bought or sold, with the result that taxes were levied on the rent value and not on the selling value of the property (Seligman, 1914:41).

During the Middle Ages (around the 14th to 15th centuries), Italy was at the forefront of industrial development, and taxes were levied in Italy on the rental value of property (*estima*). In 1415, the earnings of wealthy merchants were subject to an income tax on gains (*catasto*). In a sense, Medieval Italy was thus

⁸ A hearth is the fireplaces of a family unit (Webber & Wildavsky, 1986:180)

responsible for the evolution from a property-based tax to an income-based tax (Seligman, 1914:47).

Toward the end of the Middle Ages, taxes on consumption were accepted more and more as an important source of revenue for governments (Seligman, 1914:47-48). One of the main reasons for this was that these consumption taxes were seen to be levied on both the rich and the poor. Consumption taxes during this time took the form of both direct and indirect imposed taxes. Direct taxes were levied in the form of taxes on trade and industry, and indirect taxes were levied in the form of excise taxes. At that time, taxes on the income of individuals generally did not really exist as a broad tax base for government revenue (Seligman, 1914:47-48).

In the period from 1790 to 1793, the taxing of domestic and foreign trade contributed the largest portion of government revenues (Seligman, 1914:60). Consumption taxes were imposed on numerous consumer goods, for instance, on some foods, drink, coal, candles, soap, manufacturing materials, silk, wool, leather and hats. In England, luxuries and items of pleasure such as wigs, fashion goods, tobacco and playing cards were also taxed. Of these taxes levied, the one with the most impact on consumers was the taxing of salt, which was then used extensively for the preservation of food and the seasoning of cereals such as oatmeal (which formed the staple diet of many peasants). Hence, salt taxes provided a dependable stream of income for a number of countries (Seligman, 1914:60; Webber & Wildavsky, 1986:271-272). The French Revolution and the Napoleonic Wars (1793 to 1815) brought about the first modern-style income taxes in England and other European countries. These income taxes were only temporary in nature and were abolished after the Napoleonic wars ended (Aidt & Jensen, 2009:162; Salanié, 2003:2-3; Seligman, 1914:10-11).

Income taxes in the 19th century became more and more important for governments. The liberal ideas of 'free trade' effectively lead to a reduction in the revenues to government from excise and customs duties (Salanié, 2003:3). In the 20th century, with World War I and World War II, and the emergence of

welfare states, large increases of revenue from income taxes were needed to finance welfare programmes (Salanié, 2003:3). Income taxes in the USA and the United Kingdom were basically a 'mass tax' paid by all households and were mainly collected by means of a system of pay-as-you-earn (PAYE). After World War II, a strong move towards social expenditure gave rise to an increase in the imposition of income taxes. Social expenses such as pensions and unemployment benefits were created and had to be financed (Salanié, 2003:4-5; Webber & Wildavsky, 1986:354-355, 547-548).

This brief overview of the history of the development of taxes indicates that modern taxes evolved over a long period, where the creation of each type of tax was influenced by events at specific periods in history. Modern-day taxes consist of various imposts used by government to raise revenue, and the diversity of government imposts in modern tax systems makes it possible that many taxpayers are unaware of the total amount of taxes that they pay. In this regard, Webber and Wildavsky (1986:578) refer to a 'fiscal illusion'. The doctrine of a 'fiscal illusion' or 'hidden taxes' is used to describe how the citizens of a country are misled into paying more taxes than they would ordinarily be prepared to pay if they knew how much they were really paying (Webber & Wildavsky, 1986:578).

Government imposts are labelled using various terms, of which 'taxes', 'levies', 'duties', 'user charges' and 'rates' are the ones most commonly found in the literature (Steenekamp, 2012; 162-163; Thuronyi, 2003:48-53; Weier, 2006:15-16). The term 'taxes' generally refers to compulsory impositions by governments, whereas 'levies' are compulsory, but can be imposed by either the government or by another authority (Weier, 2006:15). 'Duties' is a term commonly used to describe imposts on the consumption or importation of certain goods and services (Weier, 2006:15-16). 'User charges' generally refer to the prices charged by government for certain public goods and services, whereas 'rates' refer to specific taxes levied on property (Steenekamp, 2012:246-246; Weier, 2006:15-16).

According to Say (1821:341-342),

Whatever be the denomination it bears, whether tax, contribution, duty, excise, custom, aid, subsidy, grant, or free gift, it is virtually a burthen imposed on individuals, either in a separate or a corporate character, by the ruling power for the time being.

Say's words support the notion that a tax labelled as something else to hide its true nature (knowingly or unknowingly) is still inherently a tax, no matter what a government calls it. Similarly, Thuronyi (2003:46) indicates that the concept of a tax is somewhat malleable,⁹ suggesting that a tax can easily be disguised as something else.

However, no matter what the government labels an impost, one way or another, all imposts serve the purpose of raising revenue to fund governments' expenditure. It may therefore be helpful to discuss the concept of government revenue to provide clarity on the nature of governments' sources of revenue.

2.2.2 Government revenue

Government revenue can be classified into three main categories of revenue: **derivative revenue**, **direct revenue** and **anticipatory revenue** (Adams, 1898:219-220; Musgrave & Musgrave, 1980:229).

Derivative revenue arises from income that originally forms part of the income of a taxpayer, but is paid over to government, based on an impost created in terms of a revenue law. This type of impost is normally referred to as a tax (Adams, 1898:220; Lutz, 1936:194; Musgrave & Musgrave, 1980:229; Steenekamp, 2012:163). In South Africa, like elsewhere in the world today, a tax is regulated by legislation to enable the government to meet its

⁹ The word 'malleable' can be used to describe something that is easily changed into a new shape (*Cambridge Advanced Learner's Dictionary*, 2008:867).

constitutional obligations and fund services that the government is supposed to deliver to the public (Croome & Olivier, 2010:1).

Direct revenue refers to income that accrues directly to the government through the delivery of particular public goods or services (Adams, 1898:119-220). This revenue for the government originates from imposts in the form of prices charged by the government for providing these particular goods and services. The impost for these public goods and services is based on voluntary transactions between the government and consumers (Musgrave & Musgrave, 1980:229). The imposts by the government on these public goods and services are often referred to as user charges (Adams, 1898:119-220; Lutz, 1936:192; Musgrave & Musgrave, 1980:229; Steenekamp, 2012:162).

The category of **anticipatory revenue** refers to moneys borrowed by a government to fund its functions (Adams, 1898:220-221; Steenekamp, 2012:162). This **borrowed income** is described as 'anticipatory', because it is the first step towards a possible increase in taxes and/or user charges in future to enable government to repay the loan (Adams, 1898:220-221; Lutz, 1936:194; Musgrave & Musgrave, 1980:229). For the purposes of this study, it was not necessary to analyse revenue from borrowings, because this type of government revenue does not affect the tax burden directly. Borrowed income is accounted for inherently as part of taxes and/or user charges, in the sense that these two items are automatically adjusted by a government as part of its fiscal budget, either in the form of lower taxes and/or user charges at the stage when the money is borrowed by the government, or in the form of higher taxes and/or user charges at the stage when the government needs to repay the borrowed money.

In order to be able to classify government imposts consistently into either a tax or a user charge, it is important to formulate criteria that are linked to the inherent characteristics of each of these imposts. Hence, it is essential to clarify the inherent traits of a tax and those of a user charge.

2.2.3 Inherent characteristics of a tax

The inherent characteristics of a tax were identified by exploring various definitions of the term 'tax' from different sources in the literature. The purpose was not to examine an exhaustive list of definitions, but to determine the common characteristics of a tax based on the different definitions chosen.

Almost 200 years ago, Say (1821:341) defined a tax as 'the transfer of a portion of the national products from the hands of individuals to those of government, for [the] purpose of meeting the public consumption or expenditure'.

Following on from this general definition, a valuable point of departure was to refer to definitions in some commonly used and reputable dictionaries, as well as definitions in some discipline-specific dictionaries. A tax was defined as follows by these different dictionaries:

- *Oxforddictionaries.com* (n.d.:n.p.) defines a tax as 'a compulsory contribution to state revenue, levied by the government on workers' income and business profits, or added to the cost of some goods, services, and transactions'.
- The *Oxford Dictionary & Thesaurus* (2009:952) defines a tax as 'money that must be paid to the state, charged as a proportion of income and profits or added to the cost of some goods and services'.
- *A Dictionary of Accounting* (Oxford, 2010:409) defines taxation as a 'levy on individual or corporate bodies by central or local government in order to finance the expenditure of that government and also as a means of implementing its fiscal policy. Payments for specific services rendered to or for the payer are not regarded as taxation'.
- *An International Dictionary of Accounting & Taxation* (Wanjialin, 2004:385) defines a tax as a 'charge imposed by a government body on personal and corporate income, estates, gifts or other sources to obtain revenue for the public good'.

- *Black's Law Dictionary* (Gardner, 1999:1469) defines a tax as a 'monetary charge imposed by the government on persons, entities, or property to yield public revenue'.
- *A Dictionary of Modern Legal Usage* (Gardner, 1995:868) describes a tax as follows: 'A tax generally supports improvements for the entire community.'
- *A Dictionary of Law* (Law & Martin, 2009:541) defines a tax as a 'compulsory contribution to the state's funds. It is levied either directly on a taxpayer...; or indirectly through tax on purchases of goods and services...and through various kind of duty'.

Taxation was traditionally the primary focus of public finance economists (Singer, 1976:169). Hence, the literature in that discipline contains various definitions and descriptions of a tax. For example, Steenekamp (2012:163) defines taxes as 'transfers of resources from persons or economic units to government [which] are compulsory (or legally enforceable)'.

Lutz (1936:316-321) is of the opinion that the elements of a common purpose, personal obligation and a compulsory contribution are essential to satisfy the definition of a tax. A common purpose refers to the contributions which are made by citizens and which governments then apply to finance general or common services to all citizens. Personal obligation relates to the fact that the State is an association of persons and that each of these persons is responsible for supporting the State in its functions. Compulsory contributions must be interpreted as referring to a levy that is imposed by a government and that does not take into account the taxpayer's will or pleasure.

Musgrave and Musgrave (1980:229-230) describe taxes as compulsory imposts that become a form of income that a government uses to finance public expenditure. Gildenhuis (1989:260-263) describes taxes as compulsory payments to a government, where a direct *quid pro quo* for the payment is absent, and the funds are used by the government to provide collective services to the community. Similarly, Bird and Tsiopoulos (1997:38) argue that taxes 'are mandatory levies that are not related to any specific benefit or government

service'. Jones & Rhoades-Catanach (2010:4) state that taxes are compulsory and not voluntary, and they differ from a user charge in that they do not entitle the payers to specific goods or services.

Literature from the legal discipline other than the legal dictionaries referred to above constitutes another important source of definitions of taxes. Thuronyi (2003:45) argues that a tax may be defined as a required payment to government and that the definition is both under- and over-inclusive. It is under-inclusive in the sense that not all payments are made to government itself, for example, some payments are made to government-controlled entities. It is over-inclusive in the sense that not all required payments to government take the form of a tax, for example, fines paid to government as a penalty for illegal acts. A payment to support government's expenses can be described as a tax. It is different from a fine or penalty, as the purpose of tax is not to deter or punish unacceptable behaviour, but to provide funding to government (Thuronyi, 2003:46). Taxes should also not include payments to government where the taxpayer receives something directly in return, for instance, a transfer fee on property paid in return for the registration of the property in the name of the taxpayer.

The definition of a tax has been the subject of a legal debate in Australia. The accurate classification of a government impost either as a tax, a levy, a charge, an excise or a penalty is essential for the legal validity of the impost. Traditionally, the High Court in Australia has used the 'Latham definition' of a tax from the case of *Matthews v Chicory Marketing Board*, 1938, to consider the legal classification of a government impost (Morabito & Barkoczy, 1996:47; Weier, 2006:2). The 'Latham definition' refers to a tax as 'a compulsory exaction of money by a public authority for public purposes, enforceable by law, and is not a payment for services rendered' (Morabito & Barkoczy, 1996:47). The Australian High Court has steered away from a definitive statement of the characteristics that identify a tax, and opted rather to use specific factors to decide whether a particular impost is a tax or not (Morabito & Barkoczy, 1996:43-63; Weier, 2006:2). In summary, these factors are described as follows:

- *Compulsion.* An impost is considered to be compulsory in that the taxpayer has no choice about whether to pay it.
- *Revenue-raising.* The purpose of raising revenue for the government is a significant factor to consider when deciding whether an impost is a tax or not.
- *Public purposes.* Taxes are generally imposed to be used for the common benefit of the general public.
- *Payment for services.* An impost is generally not a tax when it is an impost for goods and services rendered by a government in return for the payment.
- *Arbitrariness.* This is an important factor when deciding whether an impost is a tax. The liability for the tax must be the result of an impost based on criteria that are general and clear in their application, and not the result of an administrative decision unrelated to a test laid down by legislation.

Judge Murphy, in the Canadian case of *Lawson v. Interior Tree Fruit and Vegetables Committee of Direction*, [1931] S.C.R. 357, said: 'That they are taxes, I have no doubt. In the first place they are enforceable by law.... Then they are imposed under the authority of the legislature. They are imposed by a public body.... The levy is also made for a public purpose.' The judge's words strengthen the notion that a tax is a compulsory impost with the purpose of providing benefits to the public.

In a South African case, *Maize Board v Epol (Pty) Ltd* 2009 (3) SA 110 (D), the Maize Board wanted to recover levies from Epol (Pty) Ltd. The levies in question entailed a general and a special levy imposed in terms of the now repealed Marketing Act (59 of 1968). The Court had to decide whether the levies constituted a tax or not. Judge Tshabalala concluded that the levies in issue did not satisfy the requirements of a tax, as they were not imposed on the public as a whole, nor on a substantial portion of the public. Nor was the collected revenue used for public benefits, nor were the levies intended to raise public revenue – they were not used to support government activities in general.

The South African government literature also contains various definitions and descriptions of a tax. The main definition of taxes in the national accounts describes taxes as compulsory, unrequited revenue collected by the government under statutory provisions. It is unrequited in the sense that the taxpayer does not receive anything directly in return from the government for paying the tax (National Treasury, 2009c:38-39). This definition is similar to the definition of a tax in the System of National Accounts (2009:143), where taxes are defined as compulsory, unrequited payments, in cash or in kind, made by institutional units to government units.

The above definitions of a tax in various sources in the literature are not intended to be an exhaustive list, but it is clear that all these definitions refer, in one way or another, to a number of specific elements that are considered essential for an impost to be classified as a tax. The following broad terms were used to summarise and group the elements emerging from these definitions, as set out in Table 3:

- *Compulsory*. These elements from the definitions refer to the compulsory nature of a tax. The term 'compulsory' is defined in the *Oxford Dictionary & Thesaurus* (2009:179) as 'required by law or a rule'. Therefore the term 'compulsory', in the context of the definitions of a tax from the literature, must be read as originating from legislation, the very essence of a tax.
- *Raise revenue*. These elements indicate that the purpose of a tax is to raise revenue for government. This tax revenue is intended to fund general expenditure in the provision of public goods and services.
- *Public benefits*. These elements indicate that the government, in return for the tax that the State imposes, provides public goods and services to the shared benefit of the public.

Table 3: Common elements from the definitions of a tax

Source	Compulsory	Raise revenue	Public benefits
<i>A Dictionary of Accounting</i> (Oxford, 2010:409)	✓	✓	
<i>A Dictionary of Law</i> (Law & Martins, 2009:541)	✓	✓	
<i>A Dictionary of Modern Legal Usage</i> (Gardner, 1995:868)		✓	✓
<i>An International Dictionary of Accounting & Taxation</i> (Wanjialin, 2004:385)	✓	✓	
Bird & Tsiopoulos (1997:38)	✓		✓
<i>Black's Law Dictionary</i> (Gardner, 1999:1469)	✓	✓	
Gildenhuys (1989:260-263)	✓	✓	✓
Jones & Rhoades-Catanach (2010:4)	✓		✓
<i>Lawson v. Interior Tree Fruit and Vegetables Committee of Direction</i> , [1931] S.C.R. 357	✓	✓	✓
Lutz (1936:316-321)	✓	✓	✓
<i>Maize Board v Epol (Pty) Ltd</i> 2009 (3) SA 110 (D)	✓	✓	✓
<i>Matthews v Chicory Marketing Board</i> , 1938	✓	✓	✓
Morabito & Barkoczy (1996:43-63)	✓	✓	✓
Musgrave and Musgrave (1980:229-230)	✓	✓	
National Treasury (2009c:38-39)	✓	✓	✓
<i>Oxford Dictionary & Thesaurus</i> (2009:952)	✓		
<i>Oxforddictionaries.com</i> (n.d.:n.p.)	✓	✓	
Say (1821:341)		✓	
Steenekamp (2012:163)	✓	✓	
System of National Accounts (2009:143)	✓	✓	✓
Thuronyi (2003:45)	✓	✓	
Weier (2006:2)	✓	✓	✓

The common elements in the above definitions of a tax can be interpreted as the essential elements that characterise a tax. They therefore provide a meaningful basis from which to formulate criteria to classify a government impost as a tax (or as not a tax), irrespective of the label given to the impost by government.

In conclusion, a **compulsory impost** is in essence a **tax** when its purpose is to raise revenue for government, where the revenue is intended for **funding general expenditure** in the provision of public goods and services, to the **shared benefit** of the public as a whole.

2.2.4 Inherent characteristics of a user charge

Black's Law Dictionary (Gardner, 1999:1542) defines a user charge as a 'charge assessed for the use of a particular item or facility'.

It is not easy to distinguish between imposts that should be treated as taxes and imposts that are not taxes, but user charges (OECD, 2010:Annexure A). Therefore it was deemed helpful to clarify the inherent characteristics of a user charge, using the essential elements of a tax as a point of reference.

2.2.4.1 Compulsory

The essence of a tax is its compulsory nature.¹⁰ However, as the National Treasury (2009c:40) indicates, a user charge is also normally regulated in terms of legislation, although, as Heyns (1999:210) puts it, 'the degree of compulsion involved is not a categorical one'. The Australian High Court, cited by Morabito and Barkoczy (1996:43-63) and Weier (2006:2), has indicated that the term 'compulsory' can be interpreted to mean that a taxpayer has no choice about whether to pay an impost or not. It is nevertheless possible to argue that in some instances a taxpayer does indeed have a choice about paying the impost or not. For instance, a taxpayer can avoid paying for a fishing licence (although such a licence may be compulsory in terms of legislation), provided that the taxpayer decides not to take up fishing.¹¹ However, the decision not to take up fishing does not change the inherent character of the impost: it is still a

¹⁰ See Section 2.2.3.

¹¹ Example based on the explanation provided by the National Treasury (2009c:41).

compulsory impost in terms of legislation, although the payment thereof only becomes mandatory when a person decides to take up fishing.

It is important to note that the term 'compulsory' must be interpreted in a wider sense than is implied by its legislative underpinning. In some instances, goods and services are supplied by a government entity which has a monopoly¹² on the provision of these public goods and services, because, as Posner (1969:548) puts it, when a given institution or firm 'is the only seller of a product or service having no close substitutes [it] is said to enjoy a monopoly'. There are two types of monopoly, namely statutory monopolies and natural monopolies (Bird & Tsiopoulos, 1997:43; Black, 2012:59). A statutory monopoly refers to a situation where potential competitors are prevented (normally in terms of legislation) from supplying certain goods or services in competition with government (Bird & Tsiopoulos, 1997:43; Black, 2012:59; Rich, 1993:247-252). A natural monopoly refers to the situation where the supply of goods or services depends on a large capital outlay, for instance, the supply of water or electricity to the public (Bird & Tsiopoulos, 1997:43; Black, 2012:62; Posner, 1969:548). In these instances, taxpayers are 'practically compelled' to buy goods and services from government, as no other alternative is available (Bessell & Henderson, 2001:11; Heyns, 1999:210). Bird and Tsiopoulos (1997:43) maintain that the use of many public services, in essence, is mandatory, not optional. Therefore, the term 'compulsory' must be read to include the requirement for the payment of an impost in order to receive particular benefits, even if the specific impost can be avoided by willingly forgoing the benefit, as Weier (2006:2) explains.

In summary, if an impost is regulated in terms of legislation and the taxpayer does not have a choice about whether or not to pay the impost, even if the taxpayer willingly decides to forgo the benefit of specific goods or services, the

¹² The term 'monopoly' is defined in the *Oxford Dictionary & Thesaurus* (2009:597) as 'the complete control of the supply of a product or service by one person or organization'.

impost is in effect compulsory.¹³ Therefore, both a tax and a user charge are in essence **compulsory** imposts.

2.2.4.2 *Raise revenue*

The purpose of a tax is to raise revenue for government, with the main intention of using this revenue from the tax to fund general expenditure in providing public goods and services.¹⁴ By contrast, a user charge is also imposed with the purpose of raising revenue for government, although the main intention with the revenue raised from a user charge is to **recover the costs** (some of, or all the costs) (Adams, 1898:220; Gildenhuis, 1989:412; Thuronyi, 2003:48) incurred by the government for the **direct supply** of particular public goods or services in return for paying the impost (Cowden, 1969:67; Gildenhuis, 1989:411-431; Heyns, 1999:210; Morabito & Barkoczy, 1996:55; Musgrave & Musgrave, 1980:239-240; Singer, 1976:248). Hence, it is important to clarify the concepts of 'cost recovery' and 'direct supply'.

The concept of **cost recovery**, in the context of a user charge, means that the impost must be **less than or in proportion to the costs** incurred by the government for providing those particular public goods and services (National Treasury, 2009c:41; OECD, 2010:Annexure A; Thuronyi, 2003:48). If an impost is not in proportion¹⁵ to the cost of providing the given public goods and services, the impost is in essence a tax, rather than a user charge (Heyns, 1999:209-211; National Treasury, 2009c:41; Singer, 1976:248; Weier, 2006:4-5). The present study follows the guidelines of the national accounts in South Africa, which classify an impost as a tax receipt if the impost is out of proportion to the cost to government for providing the goods or services (National Treasury, 2009c:41¹⁶). This is in line with the practices of the IMF (2001:47) and

¹³ If the impost complies with these criteria, it is deemed to be compulsory, irrespective of whether or not it is a tax or user charge.

¹⁴ See Section 2.2.3.

¹⁵ The term 'proportion' is defined in the *Oxford Dictionary & Thesaurus* (2009:736) as 'the relationship of one thing to another in terms of quantity or size'.

¹⁶ The guidelines from National Treasury for economic reporting by government units (National Treasury, 2009c:41) state that 'for the receipt item to be recorded as a tax, it is sufficient either ... or that the sales price is out of proportion to the cost of producing the service'.

the OECD (2010:Annexure A¹⁷), which treat an impost that is out of proportion to the cost of providing a particular service as a tax and not as a user charge.

The concept of **direct supply**, in the context of a user charge, must be interpreted as indicating that a direct¹⁸ *quid pro quo*¹⁹ must be supplied by government in return for paying the impost (Gildenhuis, 1989:411). However, an impost is deemed to be a tax if it is **unrequited**, meaning that government does not provide a direct *quid pro quo* (something of a similar value) in return for the payment of the impost (National Treasury, 2009c:38-39).

However, it emerged from the literature review that imposts which the government labels 'licences' are a highly topical issue. It is frequently found that the main issue under discussion is the question of whether the intention with the licence fee is to recover the costs for a regulatory function of government, or whether the real intention with the licence is to raise revenue for government (Devas & Kelly, 2001:381-384; Gildenhuis, 1989:432, Harley, 1936:290; National Treasury, 2009c:44; Weier, 2006:4). It emerges from these debates that the classification of a licence fee as a tax or a user charge depends on the questions of whether the impost is unrequited and of whether the impost is in proportion to the cost of providing the public service. This criterion is also used in the public accounts in South Africa for classifying revenue raised from a licence fee (National Treasury, 2009c:38-44).

A licence fee is deemed to be unrequited where the issuing of the licence does not depend on some form of inspection of the goods or services by government, especially if the licence itself fails as a regulatory instrument and/or the licence application is never denied (Mikesell, cited by Devas & Kelly, 2001:383). A flat

¹⁷ The OECD's classification and interpretative guide (OECD 2010:Annexure A) states: 'Where the recipient of a service pays a fee clearly related to the cost of providing the service, the levy may be regarded as requited and under the definition of §1 would not be considered as a tax. In the following cases, however, a levy could be considered as 'unrequited':

a) where the charge greatly exceeds the cost of providing the service;

b)...

¹⁸ The term 'direct' per definition means 'without anyone or anything else being involved or between' (*Cambridge Advanced Learner's Dictionary*, 2008:395).

¹⁹ The term '*quid pro quo*' is defined in the *Cambridge Advanced Learner's Dictionary* (2008:1165) as 'something that is given to a person in return for something they have done'.

rate for the issuing of a licence is not complex to administrate, which is another indication that the purpose of the licence is regulatory and that it is not intended primarily to raise revenue for government (Devas & Kelly, 2001:383). However, it is not the purpose of this study to debate the issues around a licence fee at length. Hence, this study adopts the following criteria for classifying licence fees, based on the discussion above:

- If the issuing of a licence depends on some or other inspection-related service by government, it is interpreted as being indicative of a direct service rendered by the government. If the issuing of the licence does not require such a service from the government, the licence fee is classified as unrequited for the purposes of this study.
- If a licence fee is based on a flat rate (although it may vary by different categories of goods and services), this fact is treated as an indication that the cost to issue the licence is less than, or in proportion to, the cost of issuing the licence.

In summary, when a compulsory impost is mainly intended to **recover costs** which are incurred by a government in the **direct** supply of **specific** public goods and services in return for the payment of the impost, this is an indication that the impost is a **user charge**. However, if this impost is **out of proportion to the cost** of providing the given public goods and services, or if the **impost is unrequited**, the impost is in essence a **tax**, and not a user charge.

2.2.4.3 *Public benefits*

The third important element that distinguishes a user charge from a tax is the benefit that the person paying the impost receives in return for the payment. A tax is essentially used by a government to create an indirect benefit, in the form of general public goods and services shared by the public as a whole.²⁰ However, if the payment of the impost bestows a direct **exclusive benefit** upon the person who makes the payment, the impost is classified as a user charge (Bird & Tsiopoulos, 1997:40; Cowden, 1969:67). An exclusive benefit refers to a

²⁰ See Section 2.2.3.

benefit restricted to those willing to pay the impost on those specific public goods and services (Bird & Tsiopoulos, 1997:40; Cowden, 1969:67; Heyns, 1999:210; Steenekamp, 2012:162). Thus, if others (who do not pay the imposts on these specific public goods and services) also benefit from these goods and services,²¹ the impost paid is inherently a tax on those making the payment, and not a user charge.

In summary, when a compulsory impost is mainly intended to recover costs incurred by a government in the direct supply of specific public goods and services in return for the payment of the impost, to the **exclusive benefit** of the person(s) paying the impost, this is an indication that the impost is a **user charge**. However, if the impost does **not render an exclusive benefit** in return for the payment, the impost is in essence a **tax** and not a user charge.

2.2.4.4 *Classification of user charges*

Imposts classified as user charges can be divided further into one of three sub-categories, namely **consumer tariffs**, **user levies** and **administrative fees** (Gildenhuys, 1989:412; Heyns, 1999:210). These sub-categories can be explained as follows:

- **Consumer tariffs** are charges for goods and services that are **consumed** and that need to be replaced on a continuous basis (Cowden, 1969:124; Gildenhuys, 1989:416). For example, electricity tariffs can be classified as consumer tariffs, because the electricity provided by government in return for the impost is consumed and therefore needs to be generated anew.
- **User levies** are charged for the **use** of goods and services, but these goods and services are not consumed in the process (Gildenhuys, 1989:416; Heyns, 1999:210). For instance, bus fares for using public transport can be classified as a user levy, as the bus is merely used by a traveller and it is not consumed in the process of using it.

²¹ For instance, electricity and water are provided without charge to some citizens, while others have to bear the full user charge for the consumption of these utilities.

- **Administrative fees** are levied for **services that regulate access** to a specific right or privilege granted by a government to a beneficiary (IMF, 2001:54; National Treasury, 2009c:40; Steenekamp 2012:162; Weier, 2006:4). For instance, the fee to issue an identification document is, in essence, an administration fee; for example, a licence fee that is classified as a user charge in terms of the criteria in Section 2.2.4.2 can be interpreted as an administrative fee.

2.2.4.5 *Conclusion to the section*

A **compulsory impost** that is mainly intended to **recover costs** incurred by the government in the **direct** supply of **specific** public goods and services in return for the payment of the impost, to the **exclusive benefit** of the person(s) paying the impost, is in essence **a user charge**. However, if the impost is **unrequited**, or is **out of proportion to the cost** of providing the given public goods and services, or does **not render an exclusive benefit** in return for the payment, the impost is in essence **a tax** and **not a user charge**. A user charge can be classified as a **consumer tariff**, or a **user levy**, or an **administrative fee**.

2.2.5 **Framework for classifying government imposts**

In any evaluation of a tax burden, it is important to classify imposts by government on taxpayers as either a tax or a user charge, according to each one's inherent characteristics, each of which in turn affects the taxpayer in its own unique way. The inherent characteristics of a tax and a user charge (see Section 2.2.3 and Section 2.2.4) provide an underpinning to the framework, as formulated in Table 4, for classifying government imposts into either taxes or user charges, irrespective of the label given to these imposts by the government.

Fines, penalties and forfeits are compulsory imposts in terms of legislation, but their purpose is neither to raise revenue nor to recover costs. The main purpose of these imposts by government is to deter unlawful acts by raising

assessments for the infringement of laws and regulations (IMF, 2001:61; Weier, 2006:6). Provision is therefore made in the classification structure in Table 4 to classify such imposts as penalties.

Table 4: Framework for classifying government imposts

Is the impost compulsory, regulated by legislation?							
Yes						No	
Is the purpose to raise revenue for government either to fund or recover public expenditure?							
Yes						No	
Is there a direct return of public goods and services by government?							
Yes					No		
Is the impost in proportion to the cost of the public goods and services?							
Yes				No			
Is the benefit exclusive to persons making the payment?							
Yes				No			
<i>Impost is deemed to be a user charge.</i>							
Does the user charge regulate access to a right or privilege?							
Yes		No					
Are the goods and services consumed?							
		Yes		No			
Administrative fee	Consumer tariff	User levy	Tax	Tax	Tax	Penalty	None

Source: Self-developed from sources referred to in this section

The criteria for classifying a government impost as a tax, a user charge, a penalty, or none of the aforementioned are important for the conceptual framework developed in the present study, but it is also important to clarify the construct of a (tax) 'burden' as it relates to this conceptual framework.

2.2.6 A (tax) burden as a construct

The construct of a burden is part of the central theme of this study and must be explained to provide clarity on the theoretical concepts used in the study. These

theoretical concepts have a decisive impact on the basis on which tax burdens can be evaluated, so it is essential to include them in the conceptual framework developed in this study.

The term 'burden' is defined in general as 'a duty or misfortune that causes worry, hardship, or distress' (*Oxforddictionaries.com*, n.d.:n.p.), or more specifically as 'the responsibility of paying an amount of money, especially when this is considered too much' (*Macmillandictionary.com*, n.d.:n.p.). These definitions can be used to construct a description of a tax burden for the purposes of this study, as the responsibility or duty to pay taxes.

This burden of paying taxes is affected by the concept of **stocks and flows**, and the concept of **tax incidence and shifting** (Musgrave & Musgrave, 1980:257; Poterba, 1989:325; Steenekamp, 2012:181-182). It is important to understand the theories underlying these two concepts, because they have a direct influence on the perspectives and basis from which a tax burden can be measured and evaluated.

2.2.6.1 Stocks and flows

The responsibility or duty, and perhaps the misfortune, of having to pay tax is imposed on the citizen of a country from the day that person is born and ends on the day that the person dies. A tax burden effectively starts from the day on which the first tax is imposed on a person; the burden usually increases with each and every subsequent tax imposed on the person; and it ends with the last tax imposed on the person. This phenomenon is generally used to underpin evaluations of tax burdens, either from an ongoing perspective or from a lifetime perspective (Fullerton & Rogers, 1991:1; Poterba, 1989:325).

Some taxes are levied on the cumulative results of an ongoing activity over a given period, for instance, a tax year. The characteristics of being linked to a time dimension and measured over a specific period are referred to as **flows** (Jones & Rhoades-Catanach, 2010:6; Miller, 1991:189; Musgrave & Musgrave,

1980:233; Steenekamp, 2012:164). Taxes with flow characteristics are classified as **activity-based taxes** (Jones & Rhoades-Catanach, 2010:6). Income and consumption taxes are normally considered to be flows, because both are measured cumulatively over a given period (Musgrave & Musgrave, 1980:248; Steenekamp, 2012:164).

Other taxes require the occurrence of specific transactions or events at a particular point in time. The characteristics of not being linked to a specific extended time dimension and being measured only at a particular point in time are referred to as **stocks** (Jones & Rhoades-Catanach, 2010:6; Miller, 1991:189, Musgrave & Musgrave, 1980:233; Steenekamp, 2012:164). Taxes with stocks characteristics are classified as **transaction-based taxes** (Jones & Rhoades-Catanach, 2010:6). Wealth taxes are normally considered to be stocks, because they are measured at a particular point in time upon the occurrence of specific transactions or events (Musgrave & Musgrave, 1980:248; Steenekamp, 2012:164).

The characteristics of stocks and flows are relevant to this study, because they are used to classify taxes into those that affect the tax burden on an ongoing basis over a given period (activity-based taxes), and those that affect the tax burden only at particular times during the lifetime of an individual taxpayer (transaction-based taxes). Tax burdens affected by activity-based taxes are referred to as **recurrent²² tax burdens** for the purposes of this study, and tax burdens affected by transaction-based taxes are referred to as **random²³ tax burdens** for the purposes of this study.

2.2.6.2 *Tax incidence and shifting*

The phenomenon of tax incidence involves the final resting place of the economic burden of a tax. The incidence of a tax fundamentally revolves

²² The term 'recurrent' is described in the *Oxford Dictionary and Thesaurus* (2009:770) as 'happening often or repeatedly'.

²³ The term 'random' is described in the *Oxford Dictionary and Thesaurus* (2009:759) as 'done or happening without any plan, purpose, or regular pattern'. This study uses the term 'random' as it relates to the words 'without regular pattern'.

around the question of who really pays the tax in the end, effectively reducing that person's economic spending ability (Steenekamp, 2012:170-171). Incidence may be described as the way in which the tax burden is shared and transferred between individual households. This transfer of a tax is commonly referred to as 'tax shifting' (Adams, 1898:388; Lutz, 1936:381-383; Musgrave & Musgrave, 1980:257-262; Seligman, 1921:1; Steenekamp, 2012:166).

Tax incidence can be classified into statutory incidence and effective incidence (Musgrave & Musgrave, 1980:259). Statutory incidence refers to a person's legal liability to pay the tax to the government, whereas effective incidence refers to the final resting place of the tax, in other words, the person or entity that bears the economic burden of the tax. For instance, a company may bear the statutory burden of paying a tax on its profits, but then effectively shifts the economic burden of the tax onto somebody else (Phares, 1985:35-42; Seligman, 1921:1-2; Steenekamp, 2012:166; Vermeend, Van der Ploeg & Timmer, 2008:41).

In determining the final resting place of a tax, the argument that all taxes are eventually paid by natural persons must be acknowledged (Musgrave & Musgrave, 1980:259). Companies may remit taxes to government (bearing the legal liability), but do not ultimately bear the economic burden of the tax, because they shift it onto a natural person. Taxes can be shifted forward, backward and onward to natural persons (Lutz, 1936:381; Steenekamp, 2012:171). Forward shifting refers to the situation where, for instance, a tax is levied on the producer of goods or the supplier of particular services, and then this tax is shifted forward onto the **consumer** as part of the price of the goods and services.²⁴ Backward shifting of taxes refers to the situation where, for instance, a tax is levied on an entity and then shifted back onto the **employees**, in the form of reduced wages and/or employment.²⁵ Onward shifting refers to the situation where, for instance, the tax is levied on the producer of goods, who then shifts the tax onto the middleman, using price shifting. The middleman in turn shifts the tax onto the next person in the line, also using price shifting. This

²⁴ Referred to in this study as 'price shifting'.

²⁵ Referred to in this study as 'payroll shifting'.

repeated until it the tax is ultimately paid by the consumer, who then bears the economic burden of the original tax (Gildenhuys, 1989:283; Steenekamp, 2012:171). Taxes can also be shifted forward onto the **shareholders** of a company in the form of reduced dividends,²⁶ effectively reducing shareholders' economic spending power (Musgrave & Musgrave, 1980:259; Seligman, 1921:3; Steenekamp, 2012:171).

The effects of tax shifting and methods to determine the ultimate bearer of the economic burden are long-standing topics for debate in the economic and public finance disciplines, and are topics for theoretical discourse based on empirical evidence (Adams, 1898:388; Seligman, 1921:1; Slemrod & Bakija, 1996:62; Steenekamp, 2012:170-171). The debate on the effects of tax shifting and methods of determining the final resting place of a tax falls beyond the scope of this study. For the purposes of this study, it suffices to say that it is assumed that all taxes levied on, and paid by, companies and business enterprises, are eventually shifted onto natural persons, either in the form of price, payroll and/or shareholder shifting. This assumption accounts for the effect(s) that tax shifting may have on the evaluation of a tax burden. The reasoning behind this assumption is that tax shifting inherently affects the tax burden of individual taxpayers, either by reduced direct taxes on income (wages and dividends), and/or by increased indirect taxes on goods and services (prices).

Direct taxes are taxes levied directly on the income or wealth of people and companies, whereas **indirect taxes** are levied on goods and services (Gildenhuys, 1989:284; Steenekamp, 2012:166). The statutory and effective incidence of direct taxes on natural persons usually vests in the same person, and therefore these taxes cannot be readily shifted. Thus the person on whom these taxes are levied is normally the intended bearer of the tax (Steenekamp, 2012:166). Tax burdens consisting of these types of taxes are referred to as **direct tax burdens** for the purposes of this study. In contrast to direct taxes, the statutory and effective incidence of indirect taxes normally does not vest in

²⁶ Referred to in this study as 'shareholder shifting'.

the same persons. The economic burden of indirect taxes can be readily shifted onto the consumers, usually as part of the cost of production or the price of the goods and services (Gildenhuys, 1989:285; Musgrave & Musgrave, 1980:259; Steenekamp, 2012:166). In this study, tax burdens comprising of indirect imposts through goods and services are referred to as **indirect tax burdens**.

In conclusion, a tax can be imposed directly on the income or wealth of a taxpayer (**direct tax burden**), or indirectly on the consumptions of goods and services by the taxpayer (**indirect tax burden**).

2.2.6.3 Framework for classifying the tax burden

The criteria to classify a tax according to the theoretical concepts as a recurrent tax burden or a random tax burden, and as a direct or indirect tax burden, are set out in Table 5. The criteria in this table are used as a platform for the conceptual framework developed in this study to classify imposts by government according to their inherent characteristics as they relate to the tax burdens of individuals as taxpayers.

Table 5: Framework for classifying the (tax) burden

Is it an activity-based tax, imposed on a recurrent basis?			
Yes		No	
Is the tax directly imposed on income or wealth?		Is the tax directly imposed on income or wealth?	
Yes	No	Yes	No
Direct recurrent tax burden	Indirect recurrent tax burden	Direct random tax burden	Indirect random tax burden

Source: Self-developed from sources referred to in this section

2.2.7 Framework for classifying the imposed tax burden

In summary, the framework for classifying government imposts in Table 4²⁷ and the framework for classifying the tax burden in Table 5²⁸ were used as a basis to compile a consolidated framework, as set out in Table 6, that can be used as a complete set of criteria to classify all South African government imposts, according to their substance, into either a tax, a user charge, or a penalty. The criteria in Table 6 can also be used as indication of the (tax) burden, either a recurrent (direct or indirect), or a random tax burden (direct or indirect), placed on the taxpayer by the imposts, classified as taxes.

²⁷ See Section 2.2.5

²⁸ See Section 2.2.6.3

Table 6: Framework for classifying the imposed tax burden

Government ment Impost	Is the impost compulsory, regulated by legislation?								
	Yes							No	
	Is the purpose to raise revenue for government either to fund or recover public expenditure?								
	Yes						No		
	Is there a direct return of public goods and services by government?								
	Yes					No			
	Is the impost in proportion to the cost of the goods and services?								
	Yes						No		
	Is the benefit exclusive to persons making the payment?								
	Yes				No				
	<i>Impost is deemed to be as a user charge.</i>								
	Does the user charge regulate access to a right or privilege?								
	Yes		No						
			Are the goods and services consumed?						
		Yes		No					
				Tax		Tax	Tax	Penalty	None

For all imposts classified as a tax, the tax burden must be determined using the criteria below.

Is it an activity-based tax, imposed on a recurrent basis?			
Yes		No	
Is it imposed on income or wealth?		Is it imposed on income or wealth?	
Yes	No	Yes	No
Direct recurrent tax burden	Indirect recurrent tax burden	Direct random tax burden	Indirect random tax burden

Sources: Table 4 and Table 5 of the current study

2.3 CONCLUSION

The imposed tax burden consists of government imposts classified as taxes using the combined framework for classifying the imposed tax burden set out in Table 6. This framework uses definitions of a tax, a user charge, and a penalty as an underpinning to provide criteria for classifying government imposts as a tax, a user charge or a penalty. A **tax**, for the purposes of this study, is defined as a compulsory impost by government, with the purpose of raising revenue to fund general expenditure in the provision of public goods and services, to the shared benefit of the public as a whole. A **user charge**, for the purposes of this study, is defined as a government impost on the direct supply of specific public goods and services. The purpose of the impost is to raise revenue for recovering costs; the impost is below or in proportion to the cost of providing the goods and services, and the person paying the impost receives an exclusive benefit in return for the payment. A **penalty**, for the purposes of this study, is a compulsory impost in terms of legislation, where the purpose of the impost is neither to raise revenue nor to recover costs for government, and it includes fines, penalties and forfeits.

To evaluate the tax burden of individual taxpayers, it is important to understand that the phenomenon consists of taxes imposed on the taxpayer, either on a recurrent basis over a given period, or randomly at specific times during the lifetime of the taxpayer. A tax that affects the tax burden on a recurrent basis is referred to in this study as a **recurrent tax**, and a tax that affects the tax burden only at specific times is referred to in this study as a **random tax**.

A **recurrent tax** affects the tax burden of a taxpayer either directly or indirectly. It affects the tax burden directly if it is imposed on the income or wealth of the taxpayer, and it affects the tax burden indirectly if it is imposed on the use or consumption of goods or services by the taxpayer. A recurrent tax that affects the tax burden directly is classified, for the purposes of this study, in the category of a **direct recurrent tax burden**, using Table 6 as a basis for this classification. A recurrent tax that affects the tax burden indirectly is classified,

for the purposes of this study, in the category of an **indirect recurrent tax burden**, using Table 6 as a basis for this classification.

A tax that only affects the tax burden at specific times is referred to as a **random tax**, and is classified as a **random tax burden** for the purposes of this study, using Table 6 as a basis for this classification. Similar to a recurrent tax, a random tax can also be imposed directly on the income or wealth of a taxpayer, or indirectly on the use or consumption of goods and services by the taxpayer.

The focus of this study is the individual taxpayer in South Africa. Therefore it is essential to analyse the imposed tax burden in the country using the theoretical construct of the imposed tax burden from the current chapter as an underpinning. An analysis of the imposed tax burden in South Africa is set out in Chapter 3.