

Taxpayer revolt: Withholding taxes due vs the right of recourse of SARS against a defaulting taxpayer*

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OPSOMMING

Belastingbetaleropstand: Weerhouding van verskuldigde belasting teenoor die SAID se regresreg teen belastingbetalers wat in versuim is

Alhoewel die Grondwet van die Republiek van Suid-Afrika, 1996 'n verpligting op die staat plaas om sosio-ekonomiese regte te verwesenlik, blyk dit die algemene persepsie te wees dat die staat tans versuim om hierdie verpligting behoorlik na te kom. Die persepsie is dat hierdie versuim toegeskryf kan word aan die feit dat die staat nie die staatsinkomste (belasting) vir die beoogde doeleindes daarvan benut nie. Dit laat die vraag ontstaan of 'n belastingbetaler die reg het om belastinggeld te weerhou in opstand teen die staat se mislukking. Om hierdie vraag te beantwoord is die eerste doel van die artikel. Die tweede doel is om te bepaal watter regresreg die Suid Afrikaanse Inkomstediens teen 'n belastingbetaler het wat in opstand teen die staat versuim om verskuldigde belasting te betaal. Die artikel toon aan dat 'n belastingbetaler geen reg het om verskuldigde belasting te weerhou in opstand teen die staat se versuim om uiting te gee aan sosio-ekonomiese regte nie. Die SAID se enorme magte sal 'n ingrypende impak hê op 'n belastingbetaler. Die gevolgtrekking is dat dit nie vir 'n gewone belastingbetaler die moeite werd sal wees om belastingbetaling te weerhou in opstand teen die staat nie.

1 INTRODUCTION

“The art of taxation consists in so plucking the goose as to procure the largest quantity of feathers with the least amount of hissing.”¹

The Constitution of the Republic of South Africa, 1996² places an express duty on the state progressively to realise socio-economic rights such as the right to

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1 Colbert quoted in McKechnie *The state and the individual: An introduction to political science, with special reference to socialistic and individualistic theories* (1896) 77.

2 Hereafter “the Constitution”.

health care, food and water,³ housing,⁴ social security,⁵ an environment that is not harmful to health and wellbeing⁶ and education.⁷ These rights are not absolute in that the fulfilment of the state's duty is subject to the availability of resources.⁸ It is well-known that taxes play an important part in enabling the state to fulfil its duties towards its citizens. The duty to pay taxes is a well-established principle in South African law as imposed by enabling legislation.

A taxpayer's sense of liability towards the state to pay taxes is affected negatively where the state fails to fulfil its duties towards its subjects. Examples of such failure may be detected in newspaper and television headlines such as "Mahikeng goes up in flames over poor service delivery" (2018);⁹ "3 500 pit toilets still at South African schools";¹⁰ and "300 complaints a month over SA's health facilities".¹¹ This negative impact is exacerbated when a general perception prevails that revenue is not appropriated for its intended purpose.¹² Again, there are ample reports to substantiate such a perception in South Africa. For instance, it was reported that the road linking former president Zuma's hometown to a neighbouring town cost the taxpayers R290 million,¹³ and there are allegations of corruption at the Passenger Rail Agency of South Africa (PRASA) worth billions of rands.¹⁴

2 OBJECTIVE, METHODOLOGY AND LIMITATIONS

In striving towards a decolonised Africa, cognisance must be taken of African indigenous values. For this purpose, the objective of the article is two-fold. The first objective is to analyse, document and evaluate whether a taxpayer has a right to withhold taxes due, and how and under what circumstances such a right may be exercised. The second objective is to measure this ostensible right against the South African Revenue Service's ("SARS") right of recourse against a defaulting taxpayer. It is not the purpose of the article to examine and evaluate the effectiveness of social tax revolt in ensuring that the state provides socio-economic rights to its subjects.

The article employs a critical textual analysis of the relevant literature contained in provisions of the Constitution and other relevant legislation in conjunction with reported judicial decisions, published articles and textbooks.

3 S 27 of the Constitution.

4 S 26 of the Constitution.

5 S 27 of the Constitution.

6 S 24 of the Constitution.

7 S 29 of the Constitution.

8 See, in general, *Soobramoney v Minister of Health* 1998 1 SA 765 (CC); *Department of Transport v Tasima (Pty) Ltd* 2017 2 SA 622 (CC); *City of Johannesburg v Mazibuko* 2009 3 SA 592 (SCA); *City of Johannesburg v Rand Properties (Pty) Ltd* 2007 6 SA 417 (SCA); *Rates Action Group v City of Cape Town* 2004 5 SA 545 (C); *Permanent Secretary, Department of Welfare, Eastern Cape v Ngxuzo* 2001 4 SA 1184 (SCA); *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC).

9 (2018) *ENCA*, available at <https://bit.ly/2A1cpg6> (accessed on 20 April 2018).

10 Marchesi (2018) *Politicsweb*, available at <https://bit.ly/2Gi0BeY> (accessed on 24 April 2018).

11 Kahn (2018) *Sunday Times*, available at <https://bit.ly/2PECqXA> (accessed on 24 April 2018).

12 Rivlin "The continuing search for a popular tax 1989 (79) *American Economic R* 113–117.

13 Seale "Road to Nkandla cost taxpayers R290m" (2013) *The Star*, available at <http://bit.ly/1kUkh1J> (accessed on 25 April 2018).

14 Dlladla "Unions demand actions for Prasa corruption" 2017 *Business Report*, available at <https://bit.ly/2GdbVsC> (accessed on 25 April 2018).

The article is divided into four parts. To fully grasp the idea of a taxpayer's ostensible right to withhold taxes due, the first part provides a brief background on the human psychology of paying taxes. The second part examines whether a taxpayer has a right to withhold taxes due, and under what circumstances such a right may be exercised. This is followed by a discussion of right of recourse that SRAS has against a defaulting taxpayer. Some recommendations are canvassed in the article's closing remarks.

3 BRIEF BACKGROUND ON THE PSYCHOLOGY OF PAYING TAXES

The great theologian and philosopher Augustine of Hippo challenged the moral legitimacy of government by considering the difference between just taxation and legal plunder.¹⁵ The similarity between government and robbers is that both extract resources (sometimes by force or coercion) from productive members of society.¹⁶ Ostensibly, the robber's behaviour is anti-social while that of the king or government constitutes public service and must be justified.¹⁷ Thomas Aquinas attempted to answer Augustine's dilemma by arguing that the distinction between robbery and just taxation hinges mainly on the government's official capacity as guardian of the public good.¹⁸ Human societies restrict the use of coercion to those in public power.¹⁹ Governments are entrusted with this public authority so that they may be guardians of justice.²⁰ Aquinas denies that governments commit robbery if they take from their subjects that which is due for the safeguarding of the common good of society, even if they use violence in doing so.²¹ This is the so-called "legal-theft" philosophy. Sloterdijk argues that this government for the greater good of society has gradually transformed into a monster that breathes and spits money.²² What surprises Sloterdijk is that despite this monster getting hungrier for money and introducing more taxes annually, the productive classes (those who bear the tax burden) do not attempt to remedy their situation with the most obvious reaction: an antitax civil rebellion.²³ This begs the question: Why do people pay taxes? Despite extensive research by economists, psychologists and other scientists, the understanding of the individual's tax compliance behaviour remains limited. Some theories developed.

The coercion theory stems from the economics-of-crime approach²⁴ in which the individual weighs the expected utility of the benefits of tax evasion with the uncertain prospect of detection and punishment, and the individual pays taxes

15 Dods Translation of Augustine of Hippo *The city of God [de civitate Dei]* (1993).

16 Meredith "The ethical basis for taxation in the thought of Thomas Aquinas" 2008 (11)(1) *J of Markets & Morality* 41–57.

17 *Ibid.*

18 See Aquinas *Summa theologica* (1485) translated by Fathers of the English Dominican Province (1947).

19 *Ibid.*

20 *Ibid.*

21 *Ibid.*

22 "The grasping hand" 2010 (20)(1) *City J*, available at <https://bit.ly/2EvJXqs> (accessed on 3 April 2018).

23 *Ibid.*

24 Allingham and Sandmo "Income tax evasion: A theoretical analysis" 1972 (Nov) *J of Public Economics* 323–338.

because he is afraid of getting caught.²⁵ While the fear of getting caught and punished affects compliance, these factors cannot explain, in most cases, why people pay taxes.²⁶ This is so because the number of tax returns subject to a thorough tax audit, in most jurisdictions, is relatively small.²⁷ It is well-known that tax authorities lack the capacity to audit low to moderate income earners.

The social influence theory stresses the importance of social interaction in forming tastes and actions.²⁸ This theory dictates that an individual's decision to pay or evade taxes is greatly influenced by the social structure or reference group of the individual.²⁹ For example, an individual who knows many people important to him who evade taxes is likely to be influenced to evade taxes. Similarly, the fear of social sanction imposed by peers once the action of tax evasion is discovered and revealed in public is likely to deter a taxpayer from evading taxes.³⁰

The public good theory suggests that individuals pay taxes voluntary because they value the goods provided by government and they appreciate that their contribution to state funds is a necessary example for others to do the same.³¹ Individual compliance is likely to increase where the return on paying taxes – the benefits derived from government – is more visible and for the greater good of the entire community.³² Fjeldstad and Semboja argue that it is safe to assume that a taxpayer's behaviour is influenced by his or her satisfaction or lack of satisfaction with the terms of trade with the government.³³ However, they further argue that this state of satisfaction influences a taxpayer's inclination towards tax evasion rather than complete tax revolt.³⁴ In other words, an unhappy taxpayer is more likely to engage in tax avoidance or tax evasions schemes than to engage in tax revolt behaviour.

25 Alm *et al* "Why do people pay taxes?" 1992 (48) *J of Public Economics* 21–38; Fjeldstad *et al* "People's views of taxation in Africa: A review of research on determinants of tax compliance" 2012 *ICTD Working Paper* 8 8; Uslander "Tax evasion, corruption, and the social contract in transition" in Alm *et al* (eds) *Tax compliance* (2010) 175.

26 Dubin and Wilde "An empirical analysis of federal income tax auditing and compliance" 1988 (41)(1) *National Tax J* 41(1) 61–74.

27 Fjeldstad *et al* 8; see also Alm *et al* "Russian attitudes toward paying taxes – Before, during and after the transition" 2005 *Int Center for Public Policy Working Paper Series* 4-9; Sandmo "The theory of tax evasion: A retrospective view" 2005 (58) *National Tax J* 633–643.

28 Hessing *et al* "Tax evasion research: Measurement strategies and theoretical models" in Van Raaij *et al* (eds) *Handbook of economic psychology* (1988) 516–537. See also Snively "Governmental policies to reduce tax evasion: Coerced behavior versus services and values development" 1990 (23) *Policy Sciences* 57–72; Vihanto "Tax evasion and the psychology of the social contract" 2003 (32) *J of Socio-Economics* 112.

29 *Ibid.*

30 Grasmick and Green "Legal punishment, social disapproval and internalization as inhibitors of illegal behaviour" 1980 (71) *J of Criminal Law and Criminology* 325–335; Grasmick and Scott "Tax evasion and mechanisms of social control: A comparison with grand and petty theft" 1982 (2) *J of Economic Psychology* 213–230.

31 Alm *et al* 21–38; Uslander 175.

32 Mcgee "Why people evade taxes in Armenia: A look at the ethical issue based on a summary of interviews" 2000 (2)(2) *J of Accounting, Ethics & Public Policy* 408–416; Fjeldstad *et al* 9–11.

33 "Why people pay taxes: The case of the development levy in Tanzania" 2001 (29)(2) *World Development* 2059–2061.

34 *Ibid.* See also Fjeldstad *et al* 9–10.

The tax affinity hypothesis suggests that individuals pay taxes as prosocial behaviour to help others without any tangible or clear benefit to oneself.³⁵ In some ways the psychological consequence of paying taxes is analogous to the psychological effect of giving money to a charitable cause.³⁶ The difference, of course, is that taxes go towards the continued function of government for the greater good of the entire community. The tax affinity hypothesis shows that the greater the social link between taxpayer and the beneficiaries of government spending, the more likely the taxpayer is to be willing to pay taxes.³⁷ For example, where a taxpayer holds prejudice against homosexuality, he is less likely to pay taxes where his tax contribution is channelled to the establishment and upkeep of a LGBTI clinic. Similarly, where a taxpayer has a passion for the elderly, he is more likely to contribute to the *fiscus* where his contribution is channelled to elderly welfare.

The public good theory and the tax affinity hypothesis together are synonymous to the social contract theory. This theory posits that individuals consent to surrender some of their freedoms and submit to the authority of the ruler in exchange for the protection of their remaining rights.³⁸ It may be argued, based on the social contract theory, that an individual parts with his right to property (money) in the form of taxes in favour of the state in exchange for services from the state. This is in line with the benefit theory. This theory goes from the understanding that government must levy taxes in accordance with the benefit that the taxpayer receives from the state. Based on this theory, a taxpayer who believes that she does not receive adequate benefit from the state may argue her right to withhold taxes owed. While there is a vague correlation between taxes collected and the services intended to be delivered, there is no direct and identifiable *quid pro quo* in taxation.³⁹ Furthermore, state expenditure is for the greater good of the entire community and it is impossible to estimate the benefit of this expenditure to individual taxpayers.

The next section deals with the question whether a taxpayer has a right to withhold taxes owed to the state where she believes that the state misappropriates such funds.

4 TAXPAYER'S RIGHT TO WITHHOLD TAXES DUE

Tax revolt in the form of resistance has probably existed ever since rulers began imposing taxes on their subjects.⁴⁰

The start of the American Revolution is perhaps the most well-known historical event of taxpayer revolt. Unlike most tax revolt events, the American colonists did not object that taxes were too high.⁴¹ Instead, the central grievance of the

35 Frey and Torgler "Tax morale and conditional corporation" 2007 (35)(1) *J of Comparative Economics* 35(1) 140–141.

36 Blackman "The surprising relationship between taxes and charitable giving" (2015) *The Wall Street J*, available at <https://on.wsj.com/2SPVNi6> (accessed on 3 April 2018).

37 Frey and Torgler 140–141.

38 See, in general, Rousseau *The social contract or principles of political right* (1762) Bk I Ch VI translated by Cole (public domain).

39 *State of Rajasthan v Sajjan Lal* AIR 1975 (Supreme Court) 706 paras 40–41.

40 See, in general, Burg *A world history of tax rebellion: An encyclopedia of tax rebels, revolts and riots from antiquity to the present* (2004).

41 Allison *The American revolution: A very short introduction* (2015) 1–19.

colonists was their lack of representation in the British Government that ruled them.⁴² This led to the motto “no taxation without representation”.⁴³ On 16 December 1773, the protestors destroyed over £90 000 worth of tea in what would later be known as the Boston Tea Party.⁴⁴ The American Revolution ended in 1783 when America received independence from Britain.⁴⁵

During Apartheid South Africa, many anti-apartheid activists refused to pay taxes because they had no representation in Parliament.⁴⁶ Obviously, the Apartheid government retaliated by imposing more strict provisions and granting more rights to the revenue authority to collect taxes due.⁴⁷ This resulted in constant clashes between protestors and government.⁴⁸ The historical tax revolt events are characterised by mobilisation of the people in large numbers. It can be deduced that the success of these events lies specifically in the large number of taxpayers protesting their unhappiness with the authorities.

4 1 A state of unhappiness as ground for non-payment of taxes due

No scientific measurement of happiness exists.⁴⁹ The generally-accepted definition adopted by psychologists to measure happiness is a feeling of subjective well-being.⁵⁰ This happiness is either an immediate or long-term contentment with one’s life and surroundings.⁵¹ The question that begs to be answered is whether a taxpayer who experiences a subjective feeling of unhappiness with the way the state appropriates resources may withhold her contribution to state funding. Similarly, may a rights group acting on behalf of a group of unhappy taxpayers (as perceived by the collective subjectively) collect the taxes due and hold the amount in trust or escrow until the state complies with their reasonable demands? In the absence of international benchmark, what is considered reasonable demands must be determined on a case-by-case basis. It is argued that reasonableness must be determined having regard to, but not limited to, the political status of the country; the financial status of the country; the history of service delivery; the wealth gap; the prevalence of corruption; history and transparency of government spending; history of misappropriation of funds; and the objectives and benefits of the demands to the community. In addition, no international benchmark exists to measure the severity, sincerity or legitimacy of a state of unhappiness. For example, an individual may experience a constant state of unhappiness purely because of the nature of his personality. It is argued that the collective state of unhappiness experienced by the majority members of a particular community measured against the reasonable demands of that community must serve as benchmark.

42 *Idem* 1–37.

43 *Ibid.*

44 *Idem* 20–23.

45 *Idem* 79 84–85.

46 See, in general, the public speech by Oliver Tambo April 1964 where he encourages anti-apartheid activists to withhold taxes from the Apartheid government, available at <https://bit.ly/2TCBjdi> (accessed on 15 November 2018).

47 See, in general, the revenue amendment laws from 1964–1994.

48 See, in general, Clark and Worger *South Africa: The rise and fall of apartheid* (2016); Macqueen *Black consciousness and progressive movements under apartheid* (2018); Knuth *Burning books and leveling libraries* (2006) 43–60.

49 Harari *Homo deus: A brief history of tomorrow* (2016) 164.

50 *Idem* 30–41.

51 *Ibid.*

4.2 A legal obligation to pay taxes

Although section 77(1)(b) of the Constitution provides for the imposition of national taxes, levies, duties and surcharges, the Constitution does not impose an express duty to pay tax. Rather, this duty is imposed by the provisions of the respective Tax Acts. As discussed below, a strict interpretation of this duty as imposed by the respective Tax Acts indicates that a taxpayer may not withhold any taxes due to the state once an assessment has been issued. However, it can be argued that section 17 of the Constitution, which grants everyone the right to assemble, demonstrate, picket and present petitions peacefully and unarmed, must be given a wide interpretation to include the right to withhold taxes due to the state as a form of peaceful demonstration or petition. As there is no *quid pro quo* in taxation, it would be impossible for an individual taxpayer or even a larger group of taxpayers to demonstrate that the withholding of taxes against their demands benefits the larger community. The right to demonstrate by way of withholding taxes is more likely to be detrimental to the broader community and the overall good of the country and, as such, must be limited.

4.3 A contract between government and taxpayers

Considering the public good theory, the tax affinity hypothesis and the social contract theory as discussed above, the question arises whether or not a taxpayer is able to rely on contractual defences when she decides to withhold due taxes. More specifically, would she be able to rely on the defence of *exceptio non adimpleti contractus* (“*exceptio*”).⁵² The *exceptio* principle entitles a party to a reciprocal contract to withhold performance when the opposing party had not performed (adequately). This requires an investigation into whether or not the social contract between the state and the taxpayer(s) equates to a legal contract.

Grotius divides contracts or acts to be performed for the benefit of others (acts of kindness) and acts which are reciprocal.⁵³ All acts of benefit to others, except mere kindnesses, are contracts.⁵⁴ The doctrine of consideration or reciprocity as a requirement for the conclusion of an agreement has not been taken up in South African Law.⁵⁵ In *Conradie v Rossouw*,⁵⁶ the Appellate Division held that all that is required for a contract to be concluded is a seriously intended offer and a corresponding acceptance of that offer. Provided, of course, that performance under the contract is legal and possible.⁵⁷ Hutchison argues that a bare agreement is binding in South African law on the basis of consensus alone where that

52 See *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk* 1979 1 SA 391 (A) 415H where the court per Jansen JA confirmed that the *exceptio* forms part of South African law: “Die grondslag van hierdie verweer [the *exceptio non adimpleti contractus*] is die erkenning daarvan dat by sommige kontrakte (wederkerige kontrakte) waaruit wedersydse verpligtinge voortvloei, daar wesenlik ’n uitruiling van prestasies beoog word, met oa die gevolg dat die een party nie verplig is om sy prestasie te verrig nie alvorens die ander op sy beurt sy teenprestasie verrig . . . Gerieflikheidshalwe sal voortaan in hierdie uitspraak van die ‘wederkerigheidsbeginsel’ gepraat word, terwyl die reg om ’n prestasie as uitvloeisel daarvan terug te hou die ‘weerhoudingsreg’ genoem sal word.”

53 Grotius *De iure belli ac pacis* (transl Kelsey 1925) II xii 1–2 available at <https://bit.ly/2QyQg2X> (accessed on 30-10-2018).

54 *Ibid.*

55 See Hutchison “Reciprocity in contract law” 2013 *Stell LR* 3–10.

56 1919 AD 279.

57 *Ibid.*

consensus is given freely with the intention of creating a legally-binding agreement.⁵⁸ As the obligation to pay taxes is not a voluntary act, but rather a social duty imposed by the respective Tax Acts, the relationship between the state and a taxpayer(s) does not constitute an agreement enforceable by law. In taxation, there is no seriously intended offer by the state to deliver services to its subjects in exchange for the payment of taxes and there is no corresponding acceptance by a taxpayer.

If this conclusion is incorrect,⁵⁹ it is assumed for the argument that follows that the relationship between the state and taxpayers may be equated to an ordinary contract enforceable in law. For the *exceptio* to apply, this contract must be a reciprocal one.⁶⁰ A reciprocal contract would either envisage a concurrent exchange of performance – for instance delivery of an object of sale and the payment of the purchase price in a cash sale – or a contract where performance by the one party is required before another party can fulfil his or her obligation in terms of the contract, for example where an independent contractor first has to complete his work before the other party has to pay.⁶¹ As such, reciprocity requires “such a relationship between the obligation to be performed by the one party and that due by the other party as to indicate that one was undertaken in exchange for the performance of the other”.⁶² Alternatively, one performance must be a condition precedent for the other.⁶³ Hutchison is of the opinion that the reciprocity principle underpins the principle of fairness in contracts so that each party receives *quid pro quo*.⁶⁴

When considering whether a taxpayer’s obligation to pay taxes is undertaken in exchange for government realising socio-economic rights or *vice versa*, it is clear that there is no reciprocal relationship. Whilst tax is used to finance government expenditure associated with the realisation of socio-economic rights,⁶⁵ a concurrent exchange of performances is not envisaged as the payment of tax cannot be seen as a *quid pro quo* for government services.⁶⁶ Moreover, the

58 Hutchison 9–10.

59 In terms of the “public good theory” explained above Fjelstad *et al* 9 argue that a contractual relationship exists between taxpayers and government for the payment of taxes in exchange for the provision of public goods and services.

60 See *BK Tooling* 1979 1 SA 391 (A); *Thompson v Scholtz* 1999 1 SA 232 (SCA); *Wynms Care Care Products (Pty) Ltd v First National Bank Ltd* 1991 2 SA 754 (A).

61 *Ese Financial Services (Pty) Ltd v Cramer* 1973 2 SA 805 (C).

62 *Idem* 808A.

63 *Idem* 808A–B.

64 Hutchison 18.

65 Steenekamp “Introduction to taxation and tax equity” in Back *et al Public economics* (2015) 210.

66 See *Gildenhuys Owerheidsfinansies* (1989) 263; *Thuronyi Comparative tax law* (2003) 46; Musgrave “Progressive taxation, equity and tax design” in Slemrod (ed) *Tax progressivity and income inequality* (1996) 342–345; Hansen “Social security taxes – Regressive or progressive: A comment” 1996 (19)(2) *National Tax J* 204–206; Agrawal *Difference between tax and fee and guidelines for drafting of fiscal legislation* (2001), available at <https://bit.ly/2zYst1Y> (accessed on 31 October 2018); Kiema “The spatial approach in the identification of tax evasion on rental income: Case study of Umoja and Kileleshwa Estates in Nairobi, Kenya” 2007 (4)(1) *J of Property Valuation and Investment* 45. Interestingly, Maroun *et al* “Capital Gains Tax in South Africa: Perceptions of fairness?” 2014 (17)(2) *SAJEMS* 124–139 argue that a *quid pro quo* is an essential element in taxation to establish the perception of fairness in tax.

relationship between government and taxpayers does not require one of the parties to fulfil its obligation before the other party can perform either as simultaneous performance or condition precedent. From this it is apparent that if a contractual relationship exists between government and taxpayers – as some observers posit – it is not reciprocal in nature. Accordingly, a taxpayer may not raise the defence of *exceptio* and withhold taxes due.

4.4 Constitutional right to withhold taxes due where the state fails to fulfil its constitutional obligations

Does the mere failure of a government to fulfil its constitutional obligations progressively to realise socio-economic rights in itself not confer a withholding right on a taxpayer? In *Soobramoney v Minister of Health*⁶⁷ the Constitutional Court ruled that socio-economic rights are limited to the extent that they can be enforced in so far as state resources permit. While it is acknowledged that state resources may be limited, the state cannot be absolved from fulfilling its obligation when the lack of adequate resources is due to the corrupt activities and mismanagement of government administration, organs of state and public enterprises. The Constitution itself does not allow government to be absolved as section 195(1) provides that government administration, organs of state and public enterprises must be accountable⁶⁸ and resources must be used in an efficient, economic and effective manner.⁶⁹

That said, it would not suffice for a taxpayer to rely on section 195(1) of the Constitution to confer a right on her to withhold the payment of due taxes. This is so because the court in *Institute for Democracy in South Africa v African National Congress*⁷⁰ ruled that section 195(1) does not award a litigant a justiciable enforceable right. Rather, the values contained in section 195(1) of the Constitution serves an interpretative purpose,⁷¹ and when public administration fails to exercise its powers in line with section 195(1), an affected person may take the matter on review.⁷² This would have time and cost implications for the taxpayer, which could be used better to realise socio-economic rights.

*Concerned Citizens of Tswaing/SIBU v the Local Municipality of Tswaing*⁷³ serves as an example of taxpayers who felt that they were not receiving adequate benefit and, accordingly, withheld the payment of taxes from government. The taxpayers' unhappiness originated from the municipality's failure to supply potable water and an operational sewage disposal system. Unfortunately, the court did not consider whether the taxpayers had a right to withhold the payment of taxes as the application before the court was brought by the taxpayers to compel the municipality to draft a plan on how it will provide the required services and give priority to the basic needs of the community as envisaged in sections 152 and 153 of the Constitution.

The municipality argued that the taxpayers could not be successful in this application as they stood before court with "dirty hands". The court had to

67 1998 1 SA 765 (CC).

68 S 195(1)(b).

69 S 195(1)(f).

70 2005 5 SA 39 (C).

71 *Chirwa v Transnet Ltd* 2008 3 BCLR 251 (CC).

72 *Joseph v City of Johannesburg* 2010 3 BCLR 212 (CC).

73 [2009] ZANWHC 17.

consider whether the taxpayers' failure to pay due taxes, thus failure to comply with the law, prevents them from approaching the court for relief associated with this matter. This is based on the doctrine of unclean hands, which states that a person who approaches a court with fraud, dishonesty or *mala fides* should be barred from relief.⁷⁴ The court held that the taxpayers were not automatically barred from seeking relief from a court when they have withheld the payment of taxes. Equity and policy considerations dictate that all relevant considerations, such as the nature of the claimed relief and the rights infringed, must be considered. Although the court did not deal with whether the taxpayers could withhold their taxes, the court appeared to be sympathetic to the plight of taxpayers who were not receiving adequate benefit.

5 RIGHT OF RECOURSE OF SARS AGAINST A DEFAULTING TAXPAYER

Section 169(1) of the Tax Administration Act⁷⁵ provides that “[a]n amount of tax due or payable in terms of a tax act is a tax debt due to SARS for the benefit of the National Revenue Fund”. Accordingly, SARS is empowered to administer and collect tax in South Africa⁷⁶ and to do so in an effective and efficient manner. In order to fulfil this obligation, SARS is afforded “tremendous” or “extensive” powers by the legislature.⁷⁷ These powers are considered to be “tremendous” or “extensive” because they are afforded to SARS in addition to the ordinary recourse that is available to creditors and it has been questioned whether these powers muster constitutional scrutiny.

Before discussing the powers that SARS has at its disposal when a taxpayer fails to pay taxes due, it is important to highlight the parameters within which SARS should exercise these powers. SARS, as an organ of state,⁷⁸ is bound by the Bill of Rights contained in Chapter 2 of the Constitution. The Bill of Rights affords rights such as the right to equality,⁷⁹ the right to privacy,⁸⁰ the right to property,⁸¹ the right to just administrative action⁸² and the right of access to courts.⁸³

These rights are limited in certain instances. First, the nature of a right may prevent a juristic person from enjoying such a right.⁸⁴ Rights contained in the Bill of Rights are also not afforded to everyone when the wording of the specific

74 *Tullen Industries Ltd v A De Sousa Costa (Pty) Ltd* [1976] 2 All SA 472 (T); *Carospan (Pty) Ltd t/a Nashua Free State and Northern Cape v Oelofse* [2015] ZAFSHC 100; see also Goldswain “‘Clean hands’ – Is this or a similar concept used by the courts to determine a taxpayer’s right to just administrative action?” 2017 *SA Business R* 56–84.

75 28 of 2011 (“TAA”).

76 Ss 3 and 4 of the South African Revenue Service Act 34 of 1997.

77 *Commissioner for South African Revenue Service v Hawker Air Services (PTY) LTD and Hawker Aviation Partnership and Others* [2004] 67 SATC 107 135. *C: SARS v Hawker Air Services; Metcash Trading Limited v CSARS and the Minister of Finance* 2001 1 BCLR 1 (CC) para 23.

78 S 2 of the South African Revenue Service Act.

79 S 9 of the Constitution.

80 S 14 of the Constitution.

81 S 25(1) of the Constitution.

82 S 33 of the Constitution.

83 S 34 of the Constitution.

84 S 8(4) of the Constitution. An example of such a right is the right to life. See also Currie and De Waal *The Bill of Rights handbook* (2013) 36.

section restricts the application of that right to a narrower group of beneficiaries.⁸⁵ A right contained in the Bill of Rights may also be limited if the limitation is in terms of law of general application that is reasonable and justifiable.⁸⁶ The reasonability and justifiability of restricting a person's rights are established by considering the nature of the right; how important the purpose of the limitation is; the nature and extent of the limitation; the relationship between the limitation and its purpose; and whether there are less restrictive means available to accomplish the purpose of the limitation.⁸⁷

Goldswain, reflecting on matters where taxpayers challenged the constitutionality of SARS powers based on the legislative provisions itself, remarks that taxpayers are seldom successful.⁸⁸ He points out that taxpayers, thus far, have had a better chance of being successful if they challenge the powers of SARS based on the conduct of SARS in a specific situation.⁸⁹ This is because the conduct of SARS cannot be seen as "law of general application" in order for the limitation of a taxpayer's rights to be reasonable and justifiable in terms of section 36 of the Constitution. Instead, SARS conduct can be challenged by relying on section 6 of the Promotion of Administrative Justice Act.⁹⁰ A SARS official's conduct may be taken on review *inter alia* when the prescribed procedure indicated in the empowering provision was not complied with;⁹¹ an error in law was made;⁹² the decision was taken for an ulterior motive;⁹³ the decision was taken arbitrarily;⁹⁴ and irrelevant factors were taken into account or relevant factors were not taken into account.⁹⁵ Thus, when a taxpayer fails to pay taxes due she would face an uphill battle using the unconstitutionality of SARS "tremendous" and "extensive" powers to prevent SARS from collecting the taxes due.

5.1 Pay-now-argue-later principle

Section 172 read together with section 164 of the TAA constitutes the pay-now-argue-later principle. First, section 164 confirms that a taxpayer who disputes an amount payable to SARS is still obliged to pay this amount even though the taxpayer utilises a dispute-resolution procedure, namely, objection or appeal. Second, section 172 empowers SARS to file a statement, indicating the outstanding tax, as well as any interest and/or penalty payable, with the clerk or registrar of a competent court. As the filing of the statement has the effect of a civil judgment,⁹⁶ a taxpayer must receive at least ten business days' notice before this statement is filed, unless SARS is satisfied that such a notice would negatively influence the recovery of the tax. Once the statement is filed, SARS may obtain a writ to attach and sell the property of the taxpayer.⁹⁷

85 Eg, the right to vote in elections is conferred on adult citizens in terms of s 19(3)(a) of the Constitution.

86 S 36(1) of the Constitution.

87 *Ibid.*

88 Goldswain 2017 *SA Business R* 56–84.

89 *Ibid.*

90 3 of 2000 ("PAJA").

91 S 6(2)(b) of PAJA.

92 S 6(2)(d) of PAJA.

93 S 6(2)(e)(ii) of PAJA.

94 S (6)(2)(e)(vi) of PAJA.

95 S (6)(2)(e)(iii) of PAJA.

96 S 174 of the TAA.

97 *Capstone 556 (Pty) Ltd v Commissioner of the South African Revenue Service* [2011] ZWCHC 297.

Strictly speaking, the pay-now-argue-later principle finds application in cases where the taxpayer has raised a dispute against an assessment issued by SARS and has the effect that the adjudication of the merits is separated from the payment of the tax debt.⁹⁸

This principle has been adopted in various jurisdictions associated with an open and democratic society.⁹⁹ It is also a well-established principle in the South African tax law that has passed constitutional muster.¹⁰⁰ In the main, the courts are of the view that:

“The considerations underpinning the ‘pay now, argue later’ concept include the public interest in obtaining full and speedy settlement of tax debts and the need to limit the ability of recalcitrant taxpayers to use objection and appeal procedures strategically to defer payment of their taxes.”¹⁰¹

Although it is clear that public interest takes preference over a taxpayer’s rights, a taxpayer may request for the payment obligation to be suspended if she intends to dispute or disputes the tax liability.¹⁰² However, where a taxpayer withholds taxes due in the form of tax revolt, and in the absence of an objection or appeal against an assessment, the pay-now-argue-later principle (and the possibility of suspending the payment obligation) finds no application and SARS may proceed with enforcement of outstanding tax debt.

Similarly, when a taxpayer lodges an objection or an appeal to qualify for a suspension of her payment obligation, she should not succeed in having the payment obligation suspended if there are no merits to her objection or appeal. The reason for this is that a request for suspension of the payment obligation may be denied if the objection or appeal is frivolous or vexatious.¹⁰³ Consequently, if a taxpayer disputes her payment obligation solely as part of a tax revolt, it would be a frivolous objection or appeal and no suspension of her payment obligation should be granted.

From the above it is clear that irrespective of whether the pay-now-argue-later principle (and the possibility of suspending the payment obligation) applies or not SARS would be able to employ its enforcement powers in the case of a tax revolt.

5.2 Powers in relation to third parties

In addition to SARS power in terms of section 172 of the TAA to enforce the payment of taxes by way of filing a statement at court and obtaining a writ of execution, SARS may issue a third-party notice in terms of section 179(1) of the TAA. This appointed third party is required to pay a taxpayer’s tax debt from

98 Standing Committee on Finance: Report back hearings *Draft Taxation Laws Amendment Bill, 2014 and Tax Administration Laws Amendment Bill, 2014 – Draft response document from National Treasury and SARS, as presented to SCOF* (15 October 2014) 41.

99 See *Phillips et al, Executors v Commissioner of Internal Revenue* 283 US 589 (1931); *Deputy Commissioner of Taxation v Richard Walter (Pty) Ltd* 127 ALR 21; *Lambert v The Queen* (1975) 58 DLR (3d) 74.

100 *Metcash Trading Ltd v CSARS* 63 SATC 13, 2001 1 BCLR 1 (CC).

101 *Capstone 556 (Pty) Ltd v Commissioner for SARS* 2011 6 SA 65 (WCC) para 9.

102 S 164(2) of the TAA. In terms of s 164(3) a senior SARS official will consider aspects such as the taxpayer’s compliance history, whether there is a risk of assets being dissipated and whether fraud is involved in the dispute.

103 S 164(5) of the TAA.

money he or she is holding on behalf or owed to the taxpayer now or in the future. If the third party fails to act in accordance with the notice, the third party will be held personally liable for the money due in terms of the third-party appointment.¹⁰⁴ Furthermore, a third party who fails to comply with the appointment notice without just cause is guilty of an offence which could lead to a fine or imprisonment for a maximum period of 24 months.¹⁰⁵ Whilst this appointed third party must pay over money that he or she is holding on behalf of the taxpayer, it is not the appointed person's responsibility to do anything to obtain the taxpayer's money, such as reversing credit transactions, if the third party was not holding money on behalf of the taxpayer.¹⁰⁶

In *Hindry v Nedcor*¹⁰⁷ the power to make third party appointments was found to be a reasonable and justifiable limitation of a taxpayer's right to just administrative action, even though the taxpayer did not receive any notice of the intended administrative action or the opportunity to make representations in this regard.¹⁰⁸ In support of its decision, the court relied on similar provisions in the United States,¹⁰⁹ Canada,¹¹⁰ India¹¹¹ and Australia.¹¹² The court summarised the position in these countries as follows:

"In none of these statutes is the taxing officer required to give the taxpayer advance notice of an attachment to enable him to make representations to avoid it. Once the notice is served the garnishee is at risk (even in the USA) unless the notice is withdrawn or set aside. It is of the essence of proceedings of this nature that a direction be served on the garnishee before notice is given to the defaulting taxpayer. If the taxpayer were to receive prior warning, he or she could frustrate the tax collector's ability to recover the amounts due from his/her assets in the hands of a third party, for example by instructing the third party to pay the money to someone else or to the taxpayer him/herself or by ceding his/her claims to another."¹¹³

Accordingly, a taxpayer who has failed to pay taxes due will not be informed of the third-party appointment as notification would negate this specific power.¹¹⁴

For purposes of the current discussion, the fact that a taxpayer did not pay due taxes in revolt would not prevent SARS from executing the third-party appointment

104 S 179(3) of the TAA.

105 S 234(n) of the TAA; see also Le Roux and Van der Walt "Third party appointments by SARS under the Tax Administration Act" 2013 (38) *Taxtalk* 16.

106 Sonnekus "Eensydige terugskryf van kliënt se krediet deur bank onregmatig" 2008 *TSAR* 348–351; see also *Nedbank v Pestana* (142/08) [2008] ZASCA 140 (27 November 2008); Schulze "Electronic fund transfers and the bank's right to reverse a credit transfer: One big step (backwards) for banking law, one huge leap (forward) for potential fraud: *Nedbank v Pestana* (act one, scene two)" 2008 *SA Merc LJ* 296; Schulze "A final curtain call, but perhaps not the last word on the reversal of credit transfers: *Nedbank Ltd v Pestana*" 2009 *SA Merc LJ* 400.

107 *Hindry v Nedcor Bank* [1999] 2 All SA 38 (W).

108 See also Croome *The taxpayer's rights in South Africa* (2010) 42–44. For a complete discussion on the constitutionality of the appointment of third party agents, see Keulder and Legwaila "The constitutionality of third party appointments – Before and after the Tax Administration Act" 2014 *THRHR* 53–71.

109 S 6631 of the 1986 US Internal Revenue Code.

110 S 224(1) of the Income Tax Act RSC 1985, c 1 (5th Supp).

111 S 226(3) of the Income Tax Act 1961.

112 S 218(1) of the Income Tax Assessment Act 1997.

113 *Hindry v Nedcor* 63.

114 See, in general, *Nedbank v Pestana* (142/08) [2008] ZASCA 140 (27 November 2008).

notice. SARS would only amend the appointment notice to accommodate the taxpayer by extending the period over which the money must be paid so that the taxpayer is able to afford her and her dependants' basic living expenses.¹¹⁵

It is not only third parties who have received a third-party appointment that are responsible for the outstanding tax debt of a taxpayer. Third parties within a specified relationship of the taxpayer may also become personally liable when the taxpayer fails to satisfy the outstanding tax debt. Examples of this would be where a person who is involved with the management of the taxpayer's financial affairs negligently or fraudulently causes the taxpayer not to pay the outstanding debt;¹¹⁶ a person who was a shareholder of a taxpayer company within a year of that company being wound up;¹¹⁷ and a person (connected to the taxpayer) who received assets from a taxpayer with an outstanding tax debt for no consideration or not for a fair market value.¹¹⁸

In all of these instances, the reason why a taxpayer has failed to pay the due taxes would be irrelevant. Thus, these third parties would have to satisfy the debt, even if the non-payment is part of a tax revolt, failing which the third party would be personally liable.

5.3 Powers in relation to assets

When a taxpayer fails to pay due taxes, SARS also has powers pertaining to the taxpayer's assets. In terms of section 163 of the TAA, SARS may apply for a preservation order to prevent a taxpayer from disposing a realisable asset where the disposition is believed to be done in order to frustrate the collection of an outstanding tax debt. The assets, subject to this preservation order, will be seized and will vest in a *curator bonis*. Consequently, the preservation order will result in a taxpayer being left without the relevant assets. If the assets are of great importance to the taxpayer, for instance that they are used to generate an income, the taxpayer will be prompted to pay the outstanding tax debt in order to recover the assets.

In considering whether the granting of such an order would be necessary to collect taxes, a court must be satisfied that, on the facts before it, there is an "appropriate connection between the evidence available and the nature and purpose of the order sought".¹¹⁹ Consequently, the granting of a preservation order requires more than simply SARS opinion that the order is necessary to ensure the collection of taxes.¹²⁰ In this regard, section 163(4) of the TAA provides that the court may grant a provisional preservation order together with an order that the taxpayer should provide reasons why this order should not be confirmed as a final order.

As preservation orders aim to prevent taxpayers from taking steps to avoid paying taxes, such as transferring assets,¹²¹ the court will only be concerned with

115 S 179(4) of the TAA.

116 S 180 of the TAA.

117 S 181 of the TAA.

118 S 182 of the TAA.

119 *Commissioner for the South African Revenue Service v Van der Merwe; In Re: Commissioner for the South African Revenue Service v Van der Merwe* [2014] ZAWCHC 59 para 43.

120 *Ibid.*

121 National Treasury *Draft memorandum on the objects of the Tax Administration Laws Amendment Bill, 2013* (5 July 2013) 10.

whether or not SARS has provided evidence that the taxpayer is dealing with her assets in a manner that could frustrate the collection of taxes.¹²² Similarly, the taxpayer would need to provide reasons on the return date that there are no grounds to believe that she would dissipate assets to frustrate the collection of taxes. Consequently, the fact that the taxpayer's non-payment is due to government not using revenue for the intended purposes would be insignificant and a preservation order would be granted if the taxpayer is handling her assets in a manner that could frustrate the collection of taxes.

5.4 Withholding of tax clearance certificate

Section 256(3)(a) provides that SARS may only provide a tax clearance certificate if the taxpayer does not have an outstanding tax debt, unless the tax debt is subject to an instalment payment agreement,¹²³ has been compromised¹²⁴ or has been suspended.¹²⁵ Modern business ethics practice requires businesses to produce a tax clearance certificate in order to trade in goods and services.¹²⁶ This is particularly so for any entity dealing with the State. Accordingly, the business of a taxpayer who withholds taxes due may be severely impacted negatively where SARS withdraws and withholds a tax clearance certificate.

A taxpayer would not be able to fall within one of the exceptions of obtaining a tax clearance certificate despite having an outstanding tax debt.¹²⁷ In order for an instalment payment agreement and compromise to remain in force, the taxpayer must pay taxes in accordance therewith.¹²⁸ When a taxpayer withholds due taxes as a form of social revolt and therefore defaults on her arrangement with SARS, her tax status will be changed to non-compliant. Furthermore, a suspended payment obligation in terms of section 164(2) rests on a taxpayer lodging a *bona fide* objection or appeal.¹²⁹ As such, the request for suspension can be rejected or revoked if a taxpayer lodged a frivolous objection or appeal¹³⁰ or lodged the objection or appeal to delay the collection of taxes.¹³¹ Thus, as a revolt against revenue not being appropriated for its intended purpose cannot be seen as a *bona fide* objection or appeal against the taxes due. The taxpayer's payment obligations will not be suspended nor will they remain suspended.

5.5 Non-compliance penalties and interest

When a taxpayer fails to pay taxes due, the TAA empowers SARS to impose sanctions by way of penalties. This is aimed at deterring non-compliance and tax evasion.¹³² A taxpayer who defaults in paying taxes due may be subject to an

122 Croome and Olivier *Tax administration* (2015) 364.

123 S 167 of the TAA.

124 S 204 of the TAA.

125 S 164(2) of the TAA.

126 Aucamp Scholtz Lubbe Chartered Accountants *Tax clearance certificates* (2013), available at <http://bit.ly/2vk5Znu> (accessed on 7 April 2018).

127 See, eg, *Zikhulise Cleaning Maintenance and Transport CC v Commissioner for South African Revenue Services* [2016] JOL 36426 (GNP).

128 Ss 256(7) and 205(c) of the TAA.

129 See § 5.1 above.

130 S 164(5)(a) of the TAA.

131 S 164(5)(b) of the TAA.

132 SARS *Draft guide to understatement penalties* (18 August 2018) 3.

understatement penalty.¹³³ This penalty is triggered when there was prejudice to SARS or the *fiscus* (referred to as an “understatement”). Also, this understatement must be the result of a taxpayer failing to submit a return, omitting information from a return or making an incorrect statement in a return. There will also be an understatement where a return is not required but the taxpayer fails to pay the correct amount of tax or where there has been an impermissible avoidance arrangement. Moreover, there would be an understatement when a taxpayer has failed to submit a required return and SARS issues an estimated assessment in terms of section 95 of the TAA.¹³⁴

The understatement penalty is levied on the amount of the shortfall to the fiscus, which is calculated as the difference between the tax that is properly chargeable and the amount of tax had the “understatement” been accepted.¹³⁵ This shortfall is multiplied by the highest relevant understatement penalty percentage as provided for in the understatement penalty percentage table contained in section 223.

In our view, if a taxpayer has made an understatement (in the form of failure to submit a tax return) in order to evade the payment of taxes due, even if it is in resistance against corruption, she would fall within the most egregious behaviour in the penalty table, namely, intentional tax evasion. SARS indicates that “intention” can be inferred when a “taxpayer must have known or suspected that their act or omission was a breach of a tax obligation and have made a conscious decision to ignore such knowledge”.¹³⁶ When intentional tax avoidance cannot be inferred on a balance of probabilities, a taxpayer could be liable for an understatement penalty based on other less egregious behaviours provided for in understatement penalty table.¹³⁷ As such, a taxpayer who has understated tax as part of social revolt would be subject to a penalty of between ten and 200 per cent of the understated amount, depending on the type of behaviour.¹³⁸

In the event of the taxpayer not making an understatement, meaning she did not submit a return and SARS has not issued an estimated assessment, she would be liable to a percentage-based penalty.¹³⁹ This penalty is levied in accordance with the percentage indicated in the specific levying tax Act for when a taxpayer fails to pay taxes due. For instance, a ten per cent penalty is levied for the late payment of employees’ tax¹⁴⁰ and for the late payment of provisional tax.¹⁴¹

A taxpayer would not be able to have this penalty remitted based on non-compliance in response to government’s non-compliance as this penalty can only be remitted in exceptional circumstance such a natural or human-made disaster, a serious illness, a capturing mistake by SARS or circumstances with comparable seriousness.¹⁴² A deliberate failure to pay taxes due as part of a social revolt would not constitute circumstances of comparable seriousness and therefore would not qualify for remittance.

133 Ss 221–222 of the TAA.

134 S 223(2) of the TAA.

135 S 222(3) of the TAA.

136 SARS *Draft guide* 15–16.

137 *Ibid.*

138 S 223(1) of the TAA.

139 S 213(1) read with s 208 of the TAA.

140 Para 6(1) of the Fourth Schedule to the Income Tax Act 58 of 1962.

141 Para 27(1) of the Fourth Schedule.

142 S 218(2) of the TAA.

Moreover, the taxpayer would have to pay interest on the outstanding taxes.¹⁴³ When considering for example outstanding income tax that does not relate to employee's or provisional tax, interest would start accruing from either the date indicated in the notice of assessment or when the tax became payable in terms of the Income Tax Act until the tax liability has been extinguished.¹⁴⁴ As from 1 September 2017, the prescribed rate of interest pertaining to debt owed to the South African Revenue fund is 10.25 per cent per annum.¹⁴⁵ Importantly, once the relevant provision in the TAA, section 187(2), comes into operation, the interest will be determined on a daily balance owing and compounded monthly, as opposed to the current situation where interest is calculated on a simple basis.¹⁴⁶ As such, a taxpayer who has an outstanding tax debt would pay more interest once section 187(2) becomes applicable.

Interest reflects the time-value of money and, therefore, compensates a person, in this instance SARS, for not receiving timely payment.¹⁴⁷ For that reason, SARS does not have a general discretion to waive interest that has accrued on an outstanding tax payment.¹⁴⁸ SARS may only waive interest in circumstances beyond a taxpayer's control¹⁴⁹ and these circumstances are specifically restricted to a natural or human-made disaster, a serious illness or accident or a civil disturbance in services.¹⁵⁰ Non-payment of taxes as part of a social revolt would not amount to any one of these specific circumstances. For that reason, the taxpayer will have to pay interest on the outstanding tax as well.

6 CONCLUSION

The article has shown that a taxpayer does not have any right in law to withhold due taxes and once a taxpayer has failed to pay due taxes, SARS has "tremendous" power to ensure the effective and efficient collection of taxes. These powers go beyond merely collecting the due taxes and could severely impact a taxpayer's ability to trade. Considering this impact, in addition to the relevant penalties and interest, it would simply not be worth an ordinary taxpayer's while to withhold the payment of taxes as part of a social revolt.

Although the state's failure progressively to realise socio-economic rights must be addressed, it is unlikely that an individual taxpayer or a small group of taxpayers will be successful in expressing their unhappiness with the state by withholding taxes due. In the absence of any international benchmark, taxpayer unhappiness remains a subjective state of mind. It is impossible to judge the severity, legitimacy and authenticity of a taxpayer's state of unhappiness to warrant or make good the withholding of taxes due. As taxes are intended for the greater good of the entire community, the withholding of taxes is detrimental to

143 Certain of the provisions in the TAA pertaining to interest payable are not yet in operation and until they become operational the interest provisions contained in the other tax Acts should be applied.

144 S 89(2) of the Income Tax Act.

145 S 189 of the TAA read with s 80(1)(b) of the Public Finance Management Act 1 of 1999 and GN 651 in GG 41082 of 1 September 2017.

146 Croome and Olivier 437.

147 *Idem* 419.

148 *Idem* 423.

149 S 187(6) of the TAA.

150 S 187(7) of the TAA.

that same community. However, where taxes are misappropriated, it is the community's duty to act. If history has taught us anything, it is that the power of the people lies in mobilisation *en masse*. A complete tax revolt by a larger and more influential group of taxpayers is more likely to yield positive results.