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The Interrelationship Between A Tax Revolt And The Pay-Now-Argue-Later Principle

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DECLARATION

I, Denis Pokani Mitole, declare the following:

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CHAPTER ONE

PROBLEM STATEMENT, RESEARCH QUESTION(S), METHODOLOGY AND CHAPTER ORGANISATION

1.1 INTRODUCTION

Tax revolts have been in existence since time immemorial. From the Jewish tax revolt of the seventh century, against ‘an extremely harsh exaction’ of tax on the Jews by the Roman emperor Vespian,¹ to the biggest American tax revolt in 1978 over property tax amendments aimed at increasing taxes, leading to Proposition 13, which limited the taxes.² In 2019, a South African politician, Helen Zille, threatened to lead a tax revolt against the South African government’s failure to deal with corruption, the abuse, and misallocation of funds.³ From this brief history of tax revolts, it becomes apparent that a tax revolt can be defined as when taxpayers refuse to pay taxes to show unhappiness with unjustifiable harsh taxes as was the case in the Jewish revolt,⁴ exorbitant taxes experienced in the American tax revolution⁵ and abuse or failure to punish the abusers of state resources by governments noted in South Africa (“SA”).⁶ A tax revolt serves to

¹ Thompson LA 1982 *Historia: Zeitschrift fur Alter Geschichte*, Bd. 31 H.3 (3rd Qtr.).

² Smith D 1999 Howard J *Populist Entrepreneur: Re-evaluating the Causes of Proposition 13*. Social Science History, 23(2), 173-210. doi:10.1017/S0145553200018058.

³ Bhengu C *Twitter Urges Maimane to ‘deal with Zille’ after opposing her #TaxRevolt*. <https://www.timeslive.co.za/news/south-africa/2019-01-29-twitter-urges-maimane-to-deal-with-zille-after-opposing-her-taxrevolt/> Accessed on 17 April 2020.

⁴ Thompson LA 1982 *Historia: Zeitschrift fur Alter Geschichte*, Bd. 31 H.3 (3rd Qtr.).

⁵ Smith D 1999, Howard J, *Populist Entrepreneur: Re-evaluating the Causes of Proposition 13*. Social Science History, 23(2), 173-210. doi:10.1017/S0145553200018058.

⁶ Bhengu C *Twitter Urges Maimane to ‘deal with Zille’ after opposing her #TaxRevolt*. <https://www.timeslive.co.za/news/south-africa/2019-01-29-twitter-urges-maimane-to-deal-with-zille-after-opposing-her-taxrevolt/> Accessed on 17 April 2020.

send a clear message to a government of the peoples' discontent and its severity. But tax revolts are not always about high taxes, they can also arise from discontent with general administrative government policies like lack of representation as evidenced later in the chapters that follow.

It is trite that if tax revolts have been around since time immemorial, then taxes have been around even longer. The Egyptians collected taxes from inhabitants as early as 3000-2800BC which was used to finance the governance affairs of the Pharaohs.⁷ This is the model that most governments today have followed; the collection of taxes for state funding. Tax revenue is said to account for between 50 per cent and 80 per cent of total government revenues, making it the single biggest financier of governments.⁸ SA is no exception. One of the mechanisms developed in SA law to assist in the effective collection of taxes is the pay-now-argue-later principle. If a taxpayer owes money to South African Revenue Service ("SARS"), the pay-now-argue-later principle requires that they settle the amount even if the taxpayer is planning to challenge the fiscus' assessment or decision thereof in a court of law. If the claimant succeeds in a court of law, they are repaid by SARS with interest.⁹ Where a taxpayer withholds taxes due as part of a tax revolt campaign, SARS has, essentially, based on the pay-now-argue-later principle, limitless powers to collect the taxes due. Section 17 of the Constitution gives the taxpayer the right to peacefully, unarmed, demonstrate, protest, picket, and petition against such limitless powers.¹⁰ The question is: Does a

⁷ <https://almanac.upenn.edu/archive/v48/n28/AncientTaxes.html> accessed on 17 April 2020.

⁸ Ortiz-Ospina E & Rosa M Taxation <https://ourworldindata.org/taxation> accessed on 17 April 2020.

⁹ Tax Administration 2361 *Pay Now Argue Later November 2014 Issue 182* https://www.saica.co.za/integritax/2014/2361_Pay_now_argue_later.htm. Section 64(7) of the TAA provides that 'if an assessment or a decision referred to in section 104(2) is altered in accordance with (a) an objection or appeal; (b) a decision of a court of law pursuant to an appeal under section 133; or (c) a decision by SARS to concede the appeal to the tax board or the tax court or other court of law, a due adjustment must be made, amounts paid in excess refunded with interest at the prescribed rate, the interest being calculated from the date that excess was received by SARS to the date the refunded tax is paid....'

¹⁰ Constitution of the Republic of South Africa, 1996.

tax revolt fall under the scope and application of the right to protest? The pay-now-argue-later principle has been the subject of many court challenges including the Constitutional court as discussed further in this study.

This study considers the scope and application of the pay-now-argue-later rule with specific reference to tax revolts. The research further delves into an analysis of a taxpayer's right to protest as provided for in section 17 of the Constitution, in order to find a balance between the duty of SARS to collect taxes, and a taxpayer's right to protest against a lack of service delivery or bad policies.

1.2 RESEARCH PROBLEM

There is little research conducted on the interrelationship between tax revolt and the pay-now-argue-later principle. This study aims at contributing to that gap of knowledge by seeking the interrelationship and how SARS can use the principle in addressing a tax revolt in South Africa. There are various sociological and psychological studies on tax revolt while only a few known legal studies exist in SA. Research on the pay-now-argue-later principle abound.

David Lowery and Sigelman present an extraction of eight theories of tax revolts from a wide selection of literature, which they claim, carry the assumption that a tax revolt is a systematic national phenomenon resulting from individual-level social, economic, and political influences.¹¹ Their study attempts to find ground on all the eight theories.

Michael Wenzel deals with the psychology of tax compliance and argues that all theory that understands tax compliance in terms of serving an individual's self-interest, misses the bigger

¹¹ Lowery D Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations*. American Political Science Review, 75(4), 963-974. doi:10.2307/1962296.

picture.¹² The author provides the psychological factors that would cause a desire to revolt over taxes and through this study the factors are dissected and an opinion on them is provided.

Regarding the pay-now-argue-later principle, Fritz argues it is time the principle was re-considered.¹³ Having compared similar provisions in the Canadian and Australian laws, she discusses what changes should be considered regarding payment obligation pending dispute resolution and taking into account South Africa's context.¹⁴ Keulder highlights shortcomings of the principle from a Constitutional point of view, stating why South Africa has to learn from other jurisdictions in finding a better balance – alternative sound, less invasive ways.¹⁵ She bases her arguments on three Constitutional rights that may be infringed by SARS, found in section 34, the right of access to courts; the right not to be arbitrarily deprived of property in section 25(1); and finally, the right to just administrative action in section 33.¹⁶

The pay-now-argue-later principle is susceptible to abuse and this study looks at some of the challenges that arise with the application of the principle. Van Zyl discusses the challenges that

¹² Wenzel M 2003 *Tax compliance and the psychology of justice: mapping the field*. In *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Aldershot, UK: Ashgate Publishing, pp. 41-70.

¹³ Fritz C 2019 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* *Journal for Juridical Science*:44(2):20-43 (An article from research done for author's LLD thesis titled *An appraisal of selected tax-enforcement powers of the South African Revenue Service in the South African constitutional context* University of Pretoria, 2017.

¹⁴ Fritz C 2019 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* *Journal for Juridical Science*:44(2): 20.

¹⁵ Fritz C 2019 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* *Journal for Juridical Science* 2019:44(2): 22.

¹⁶ Fritz C 2019 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* *Journal for Juridical Science* 2019:44(2): 23.

arise in the application of the pay-now-argue-later principle and the ripple effect it has on communities that are dependent on the financial well-being of the taxpayer.¹⁷

Croome discusses rights in the Constitution that are affected by the pay-now-argue-later principle and these are: the right to property in section 25; right to equality in section 9; right to privacy in section 15; access to information in section 32; just administrative action in section 33; and access to courts in section 34.¹⁸ He investigates the developments that have occurred in the administration of tax, looking at whether the infringement of such rights by the fiscus can ever be justified by the Constitution.¹⁹ He further notes that only the use of the law and force will make the taxpayer compliant.²⁰ Croome argues both the taxpayer and the fiscus are not fully aware of the existing procedural rights and SARS does not go out of its way to educate its staff and inform the taxpayers of their rights.²¹ This study will discuss his findings and conclusion.

1.3 RESEARCH QUESTIONS

The key question for the study, “What is the interrelationship between a tax revolt and the pay-now-argue-later principle,” brings with it, sub-questions that will be addressed as the study progresses. To order the research, these questions are divided into two sections:

Tax revolt Section

a) What is a tax revolt?

¹⁷ Van Zyl SP 2018 *The Time is Ripe to Reconsider the Pay-Now-Argue-Later Principle – Vuyisile Zamindlela Nondabula v Commissioner: South African Revenue Service*’ Journal of Contemporary Roman-Dutch Law, Vol. 81: 168-177, 2018. Available at SSRN: <https://ssrn.com/abstract=3226517> .

¹⁸ Croome B 2010 *Taxpayers’ Rights in South Africa*. Juta & Co.

¹⁹ Croome B 2010 *Taxpayers’ Rights in South Africa*. Juta & Co.

²⁰ Croome B 2010 *Taxpayers’ Rights in South Africa*: 321.

²¹ Croome B 2010 *Taxpayers’ Rights in South Africa*. Juta & Co.

- b) What is the history and development of a tax revolt?
- c) What causes a tax revolt?
- d) Why would a taxpayer revolt?
- e) What is the sociology and psychology of a tax revolt?
- f) What would a tax revolt entail?
- g) What are the characteristics of a tax revolt?

Pay-now-argue-later Section

- h) What is the pay-now-argue-later principle?
- i) What was there before the pay-now-argue-later principle?
- j) Why is the pay-now-argue-later principle important?
- k) What is the purpose of the principle?
- l) How can the pay-now-argue-later principle be applied to deal with a tax revolt?
- m) What benefits, if any, would arise from applying the pay-now-argue-later principle.?’
- n) What are the challenges with the principle?
- o) Does a genuine challenge of the pay-now-argue-later principle amount to a tax revolt by a taxpayer?
- p) How does the pay-now-argue-later principle impact the rights of a taxpayer?
- q) Does a taxpayer have a Constitutional right to protest by way of tax revolt?
- r) Does it matter whether it’s a group or individual revolting?
- s) How can SARS use the pay-now-argue-later principle to deal with a tax revolt?

The importance of the study is to understand the dynamics between tax revolt and the pay-now-argue-later principle and how they interrelate. Since there are no known studies on the

interrelationship between the tax revolt and pay-now-argue-later principle, it became important to conduct this research.

1.4 METHODOLOGY

This research uses a desk-based methodology, employing primary sources like the Constitution of the Republic of South Africa, legislation, regulations, and case law. As secondary sources, books, journals, SARS Interpretation notes, websites, and online news are utilised.

1.5 SCOPE AND LIMITATION OF THE STUDY

The limitations to the dissertation are as follows:

The study is challenged by the dearth of legal literature and case law about a tax revolt in SA and the region thus depends on general literature, online news, and other historical sources. The study will not discuss other powers of SARS, for example, search and seizure. It will also not discuss the criminality of a person participating in a tax revolt. The political dilemma caused by the tax revolt will also not be discussed. The study is limited to the interrelationship between a tax revolt and the pay-now-argue-later principle.

1.6 STRUCTURE OF CHAPTERS

This dissertation is divided into five chapters.

Chapter 1:

In the first chapter, the topic is introduced, the background and historical overview is investigated while explaining the research question and justifying the need for it. In the latter part of the chapter, research questions and sub-questions are dealt with while providing the methodology of the study, the literature review, and limitations affecting the study.

Chapter 2:

This chapter addresses a tax revolt, the brief history, and the psychology of a tax revolt. The study also looks at the theories of a tax revolt and why taxpayers revolt.

Chapter 3:

In chapter three the study considers what the pay-now-argue-later principle is, its rationale and historical development, the legislation governing the principle, case law, and a discussion by legal scholars.

Chapters 4:

This chapter discusses whether a genuine challenge to the pay-now-argue-later principle amounts to a tax revolt. The chapter also considers the constitutionality of both the pay-now-argue-later principle and the tax revolt. Here, the interrelationship between a tax revolt and the pay-now-argue-later principle and how SARS can use the pay-now-argue later principle to deal with a tax revolt is explored.

Chapter 5:

The chapter summarises the research, giving recommendations and concluding the study.

CHAPTER TWO

THE DYNAMICS AND PSYCHOLOGY OF A TAX REVOLT

2.1 INTRODUCTION

In this chapter, the dynamics and psychology of the tax revolt are discussed. The study further looks at the history, the theories, and psychology of a tax revolt.

2.2 TAX REVOLT: THE DEFINITION

Musgrave describes a tax revolt as ‘a sign of dissatisfaction with the expenditure side of public budgets,’ it is a fight to minimize the size of the public sector.²² He states that a tax revolt will often happen when there are high inflation and increased taxes which the populace rebel against.²³ A tax revolt, as per Lucier, is described as when taxpayers adopt limitations on government services that are funded by the populace and when masses adopt measures to curb an increase in government spending.²⁴ Du Preez and Stoman aver that a tax revolt is a resistance that arises from increased taxes, perceived perceptions of increased levels of corruption, and wasteful government spending.²⁵ In the Boston Tea Party tax revolt of 1773, Americans revolted against the colonisers, the British, for the former’s ‘under-representation’ in parliament on matters pertaining to them and

²² Musgrave RA 1979 *The Tax Revolt* Social Science Quarterly Vol. 59, No. 4 (MARCH, 1979): 701 University of Texas Press <https://www.jstor.org/stable/42860474> accessed 29 October 2020.

²³ Musgrave RA 1979 *The Tax Revolt* Social Science Quarterly Vol. 59, No. 4 (MARCH, 1979): 700 University of Texas Press <https://www.jstor.org/stable/42860474> accessed 29 October 2020.

²⁴ Lucier RL 1979 *Gauging the strength and Meaning of the 1978 Tax Revolt* Public Administration Review Vol. 39, No. 4 (Jul. - Aug. 1979): 371-379.

²⁵ Du Preez H & Stoman J 2019 *An analysis of current tax revolt factors in South Africa* <https://www.emerald.com/insight/2049-372X.htm> accessed 29 October 2020.

their interests.²⁶ From these definitions, a tax revolt involves government either overspending or underspending even wasteful spending. It involves corruption or underrepresentation of the majority. Tax revolt is not only about taxes but can be about almost anything which taxpayers are not happy about as a result they withhold their taxes from government to force government to act or stop acting in a particular way.

Ramfor argues sometimes relationships between government and its citizens break down and that a tax revolt is a mechanism to renegotiate the terms of exchange by using strategies to mobilise the association that disintegrated between taxpayers and government institutions.²⁷ The objective of a tax revolt, Ramfor opines, may not merely be based on a rejection of taxes, but to seek restorative action to improve government performance.²⁸ It is also posited that a tax revolt results from taxpayers failing to receive expected benefits in exchange for taxes paid.²⁹ In South Africa, the apartheid regime used tax to enforce their authority but inevitably, the legitimacy of such a tax system was always contested resulting in tax revolts and increased tax evasion³⁰ Again, from the observations sighted above, it becomes apparent that a tax revolt is ineffable – it has a wide range of definitions, causes, and characteristics and has evolved over the centuries, cultures, and socio-economic-political situations to mean different things for different peoples. There is no 'one size fits all' type of definition.

²⁶ Boston Tea Party <https://www.history.com/topics/american-revolution/boston-tea-party#:~:text=The%20Boston%20Tea%20Party%20was,India%20Company%20into%20the%20harbor>. Accessed 29 October 2020.

²⁷ Ramfor R 2019 *The fine line between tax compliance and tax resistance: The case of South Africa*: 4.

²⁸ Ramfor R 2019 *The fine line between tax compliance and tax resistance: The case of South Africa*: 4.

²⁹ Ramfor R 2019 *The fine line between tax compliance and tax resistance: The case of South Africa*: 4.

³⁰ Redding S 2006 *Sorcery and Sovereignty: Taxation, power, and rebellion in South Africa, 1880-1963*: 2.

2.3 A BRIEF HISTORY OF TAX REVOLTS

According to Burg tax revolts date as far back as the Han Dynasty (AD 25 – AD220) in Asia, through the Babylonian empire (1792-1750), the Roman Empire (27BC-AD337, the Magna Carta, French revolution, right through to the Proposition 13 in California.³¹ Labour was used to replace money that the poor could not afford to pay for a variety of taxes.³² Burg opines that the tithe was the earliest form of taxation in Mesopotamia.³³ A tithe is the giving of a tenth of all of the income in the Christian faith.³⁴ Payments for taxes in 594BC begun to be made in kind in China.³⁵ Between 49BC-44BC, Burg states Rome imposed a one per cent levy on top of other duties and taxes.³⁶ This was met with resentment and the people revolted by fleeing and deserting the land so as not to pay land or crop tax.³⁷ The word labour in the ancient Egyptian language was synonymous with

³¹ Burg DF 2004 *A World History of Tax Rebellions: An Encyclopaedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* Taylor & Francis Available at https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false accessed 29 October 2020.

³² Burg DF 2004 *A World History of Tax Rebellions: An Encyclopaedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* Taylor & Francis Available at https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false accessed 29 October 2020.

³³ Burg DF 2004 *A World History of Tax Rebellions: An Encyclopaedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* Taylor & Francis Available at https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false accessed 29 October 2020.

³⁴ Leviticus 27:30 TLB Bible.

³⁵ Van Zanten 2016 *Tax Collecting Practices: A Comparison Between Antiquity and the Modern Age* (Thesis) para 3.4; In-Kind Zanten defines it as payment in the form of goods or services and not in money. 10.

³⁶ Burg DF 2004 *A World History of Tax Rebellions: An Encyclopaedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* Taylor & Francis Available at https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false accessed 29 October 2020.

³⁷ Burg DF 2004 *A World History of Tax Rebellions: An Encyclopaedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* Taylor & Francis Available at https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false accessed 29 October 2020.

taxes.³⁸ The *Corvee* is noted as the earliest and most known form of taxation which Burg describes as compulsory labour provided to the state in France before 1776.³⁹ In the Napoleonic war times, around 1815, Great Britain's introduction of income tax met some of the most notable resistance to tax, and over time, revolts transitioned from being bloody affairs to peaceful forms of protest and response.⁴⁰ Another most notable revolt is the Bambatha Tax Revolt of 1906 against the South African apartheid government-imposed poll taxes to pressure Zulu men to enter the labour market.⁴¹ Burg outlines tax revolts including, probably one of the biggest known tax revolts, the Boston Tea Party revolt in 1773, the Peasant Tax revolt of China in 1993, the Gasoline Tax revolt of Jamaica in 1999, the Fuel tax revolt of Europe in 2000, and in 2002, the Tax opposition in Ascension Island.⁴² As noted earlier in the study, the apartheid government in South Africa, Ndlovu argues, used taxes to control and manipulate Africans and were met with resistance throughout the apartheid years.⁴³ Throughout the history of mankind, there has been tax revolts

³⁸ Burg DF 2004 *A World History of Tax Rebellions: An Encyclopaedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* Taylor & Francis Available at https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false accessed 29 October 2020.

³⁹Burg DF 2004 *A World History of Tax Rebellions: An Encyclopaedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* Taylor & Francis Available at https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false accessed 29 October 2020.

⁴⁰ Burg DF 2004 *A World History of Tax Rebellions: An Encyclopaedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* Taylor & Francis Available at https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false accessed 29 October 2020.

⁴¹ Redding Sean 2000 *A Blood-Stained Tax: Poll Tax and the Bambatha Rebellion in South Africa*. African Studies Review Volume 43, Issue 2 pp29-54.

⁴² Burg DF 2004 *A World History of Tax Rebellions: An Encyclopaedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* Taylor & Francis Available at https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false accessed 29 October 2020.

⁴³ Ndlovu T 2017 *Fiscal Histories of Sub-Saharan Africa: the case of South Africa*: 28.

and they have been caused by a variety of reasons and have taken different forms. It is important to understand these theories to understand tax revolts better.

2.4 EIGHT THEORIES OF A TAX REVOLT

Many theories are advanced to help explain why taxpayers revolt, but for the purposes of this study only eight of some of the theories are explained. Lowery and Sigelman, identify eight reasons why people revolt:⁴⁴

First, is the *Self-interest Explanation*: It is based on a rationality model that stresses the fact that an individual's expectations from the government's collection of taxes and its expenditure are due to the self-interest that the taxpayer has as informed by their demographics e.g. race, income, or status.⁴⁵ In other words, this theory focuses on the individual taxpayer's self-interest on how government revenue is raised, and how government expenditure serves the individual's self-interest.⁴⁶ When the individual's self-interest is not met, it is argued, the taxpayer will revolt.⁴⁷ This according to Lowery and Sigelman is the most familiar theory of a tax revolt.⁴⁸

⁴⁴ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Volume 75, Issue 4, December 1981: 963 – 974.

⁴⁵ Lowery, D & Sigelman, L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 964.

⁴⁶ Lowery, D & Sigelman, L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Volume 75, Issue 4, December 1981: 963 – 974.

⁴⁷ Lowery, D & Sigelman, L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Volume 75, Issue 4, December 1981: 963 – 974.

⁴⁸ Lowery, D & Sigelman, L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Volume 75, Issue 4, December 1981: 963 – 974.

Secondly, the ***Tax-level Explanation***: In this theory, taxpayers will revolt against a bloated government by withholding payment of taxes.⁴⁹ Lowery and Sigelman argue that the taxpayer feels, the bigger the government, the bigger the wage bill, as a result, taxes will be spent on a wage bill as opposed to service delivery.⁵⁰ The direct consequence of this is the taxpayers will participate in initiatives that will lead to a reduced tax e.g. a tax revolt.⁵¹

Third, the ***Tax-Efficiency Theory***: Focuses on the assertion that a tax revolt results from a perception of 'rampart waste and inefficiency' by the government.⁵² Exorbitant taxes do not justify the benefits received and so the reason for a tax revolt is to stop government wasteful spending and inefficiencies.⁵³ Nobody can predict human behaviour with certainty thus the outcome is calculated anticipation.

The fourth theory is the ***Tax Distribution Explanation***: It is not the most popular, according to Lowery and Sigelman.⁵⁴ The tax distribution explanation is based on the perceived inequities of the tax system, the impact of the distribution of the tax revenue which leads other taxpayers to feel they contribute unfairly more than others to the government purse.⁵⁵ Some taxpayers feel like they

⁴⁹ Buchanan JM 1979 *The Potential for Tax-payer Revolt in American Democracy* Social Science Quarterly 59: 691–96.

⁵⁰ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 964.

⁵¹ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 964.

⁵² Lucier RL (1980). *Gauging the Strength and Meaning of the 1978 Tax Revolt*. In Levine, Charles (ed.), *Managing Fiscal Stress*. Chatham, N.J.: Chatham House.

⁵³ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 965.

⁵⁴ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Volume 75, Issue 4, December 1981: 963 – 974.

⁵⁵ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 965.

are bearing a greater financial responsibility towards tax than the rest of the population and find this to be unfair and they will, in turn, also revolt.⁵⁶ It is a concern premised on the distributive impact of taxes and which analysts have argued that it is a reaction against taxes in general.⁵⁷ Lowery and Sigelman argue, the tax distribution explanation is yet to be put to the test.⁵⁸

The difference between the tax-efficiency and tax distribution theories are: in the former theory, taxpayers will assess government delivery and revolt where there are inefficiencies, while in the latter theory, a group of taxpayers will feel that they are taxed more than others for whatever reason as a result, they too revolt.

Central to the fifth theory is the *Economic Pinch Explanation*: According to Lowery and Sigelman, it is the anxiety over economic conditions and specifically personal finances and not issues to do with how government spends and taxation.⁵⁹ Boskin, argues inflation and recession are the biggest triggers and causes of a tax revolt but anxiety over personal finances remains the main cause.⁶⁰ Research by Courant et al opines that economic pessimists are more likely to revolt than optimists.⁶¹

⁵⁶ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 964.

⁵⁷ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Volume 75, Issue 4, December 1981, pp. 963 – 974

⁵⁸ Lowery, D & Sigelman, L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 965.

⁵⁹Lowery, D & Sigelman, L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 965.

⁶⁰ Boskin J 1979 *Some Neglected Economic Factors Behind Recent Tax and Spending Limitation Movements* National Tax Journal: 42

⁶¹ Courant P Gramlich E & Rubinfeld D 1979 *Tax Limitation and the Demand for Public Services in Michigan* National Tax Journal 32: 1980: 147–58.

Sixth, the ***Political Ideology Interpretation***: Ideology – the political values dictate whether a taxpayer will support a tax revolt and not economics or the statistical characteristics of human populations e.g. gender, race, income, and education.⁶² This theory does overlap with other theories as per Lowery and Sigelman in as far as government is considered wasteful on expenditure and inefficient in service delivery.⁶³

The seventh theory is the ***Political Disaffection Explanation***: This theory suggests that a tax revolt is a sign that a government has lost popularity but it is not about questions regarding what the role of government is.⁶⁴ Causes of the loss of confidence in the government could include poor maintenance of roads, mismanagement of welfare, high levels of corruption, and goes beyond the revolt against high taxes and inefficiency in service delivery.⁶⁵ The taxpayer begins to alienate themselves from the government and negativity about government sets in.⁶⁶ Once again, this theory has not been tested according to Lowery and Sigelman.⁶⁷

Mariono Torcal and Jose Ramon Montero describe political disaffection as when citizens have critical attitudes towards politics and representative institutions or when they feel estranged and

⁶² Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 965.

⁶³ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 965.

⁶⁴ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 965.

⁶⁵ Musgrave RA. 1979 *The Tax Revolt* Social Science Quarterly, 701.

⁶⁶ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 965.

⁶⁷ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Dec, Vol 75, No. 4: 965.

detached from politics.⁶⁸ These are some of the symptoms, personal inefficacy, cynicism, distrust, and lack of confidence in representative institutions and their elected representatives.⁶⁹ Mariono and Jose suggest, worth exploring is the possibility that political disaffection may not have the same consequences on all democracies and that it might have different influences on behaviour, depending on the political context.⁷⁰

Wright argues the political disaffection theory views a tax revolt as a result of taxpayers feeling political powerlessness, as a result, they begin to feel unable to influence government decisions and political distrust starts to set in where people feel the government and the people running it are dishonest, corrupt and not to be trusted.⁷¹ These, Wright states, feature prominently in all theories of citizens revolting.⁷²

Finally, the eighth theory is the ***Information Explanation***: The theory provides that a revolt will occur where there is a lack of information about government due to the divergence between what taxpayers are promised by those at the helm of the revolt activity and the policies that result from the revolt action.⁷³ Siahaan argues that there is a connection between the taxes collected by the government and the actual spending government does i.e. where there is greater transparency from

⁶⁸ Mariono T & Jose RM 2006 *Political Disaffection in Contemporary Democracies: Social Capital, Institutions and Politics* Routledge: 5

⁶⁹ Mariono T & Jose RM 2006 *Political Disaffection in Contemporary Democracies: Social Capital, Institutions and Politics* Routledge: 5

⁷⁰ Mariono T & Jose RM 2006 *Political Disaffection in Contemporary Democracies: Social Capital, Institutions and Politics* Routledge: 14.

⁷¹ Wright JD 1981 *Political Disaffection*. In: Long S.L. (Eds) *The Handbook of Political Behaviour*. Springer, Boston, MA. https://doi.org/10.1007/978-1-4684-3878-9_1: 2.

⁷² Wright JD 1981 *Political Disaffection*. In: Long S.L. (Eds) *The Handbook of Political Behaviour*. Springer, Boston, MA. https://doi.org/10.1007/978-1-4684-3878-9_1: 2.

⁷³ Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* 9IPJO American Political Science Review, Dec, Vol 75, No. 4: 966.

a government on how taxes that are collected are utilised, the taxpayer is satisfied, leading to high compliance for paying of tax, and further leading to the taxpayer not being involved in a revolt.⁷⁴

In Lowery and Sigelman's findings, they argued that a tax revolt is best supported when taxpayers are feeling left out when decisions are being made by the policy-makers.⁷⁵ This was the case in the Boston Tea Party revolt or the anti-apartheid tax revolts.

The Boston Tea Party was an American revolt in 1773 against a Tea Act of the same year which exempted the British East India Company from paying taxes on the tea they brought to America.⁷⁶ Americans revolted against taxes as they deemed it a violation of their rights to the extent of destroying an entire shipment of tea sent by the East India company.⁷⁷ Important to note that the Boston Tea Party was never about high taxes but decisions being made for the Americans, by the British without the former's representation hence the 'no taxation without representation' mantra.⁷⁸ The Boston Tea Party led to the Intolerable Acts which criminalised such revolts, made

⁷⁴ Siahhan FOP *The effect of Tax Transparency and Trust on Taxpayers' Voluntary Compliance* GSTF Journal on Business Review (GBR) Vol 2 No 3, March 2013 <http://dl6.globalstf.org/index.php/gbr/article/viewFile/1264/1280> accessed 31 October 2020.

⁷⁵ McCaffrey J & Bowman JH. 1978 *Participatory Democracy and Budgeting: The Effects of Proposition 13* Public Administration Review 38: 530–38.

⁷⁶ Gunderson C 2004 *The Boston Tea Party* ABDO Publishing Company Minnesota: 26.

⁷⁷ Gunderson C 2004 *Boston Tea Party* Available at https://books.google.co.za/books?hl=en&lr=&id=XP96AgAAQBAJ&oi=fnd&pg=PP1&dq=BOSTON+TEA+PARTY+TAX+REVOLT&ots=8YsH8jFHQC&sig=d5j9uSaC389fGVvByBoNfsDBVEI&redir_esc=y#v=onepage&q=BOSTON%20TEA%20PARTY%20TAX%20REVOLT&f=false accessed on 31 January 2021.

⁷⁸ Gunderson C 2004 *Boston Tea Party* Available at https://books.google.co.za/books?hl=en&lr=&id=XP96AgAAQBAJ&oi=fnd&pg=PP1&dq=BOSTON+TEA+PARTY+TAX+REVOLT&ots=8YsH8jFHQC&sig=d5j9uSaC389fGVvByBoNfsDBVEI&redir_esc=y#v=onepage&q=BOSTON%20TEA%20PARTY%20TAX%20REVOLT&f=false accessed on 31 January 2021.

the oppression more pronounced and also led to the closure of the Boston port until the lost tea was paid for.⁷⁹

The Pondoland revolt of 1960-1961 is considered the most important and most organised rural tax revolts that took place in apartheid, South Africa.⁸⁰ Eastern Cape's Mpondo tribe revolted against the imposition of the Bantustan system which confined tribes to a locality.⁸¹ They also opposed increased taxes leading to many deadly crashes.⁸² By the end of November 1960, there was a declaration of a state of emergency, suppression of the revolt, thousands were said to have been jailed without being charged and 21 people were executed.⁸³ The revolt led to the boycotters being suppressed forcing the tax evaders, to start paying their taxes and by 1961 many of the protesters remained in police detention.⁸⁴ Wilson-Smith argues that most Canadians would agree that to curb a tax revolt, wasteful spending would have to be cut, tax loopholes closed and the tax system made fairer.⁸⁵ However, the research shows that Canadians cannot agree on what constitutes 'wasteful' spending, tax 'loopholes' and 'fairer' taxes.⁸⁶

⁷⁹ Boston Tea Party: A Brewing Cup of Rebellion https://academy4sc.org/video/boston-tea-party-a-brewing-cup-of-rebellion/?hsa_ver=3&hsa_ad=469734792936&hsa_acc=2755491261&hsa_src=g&hsa_mt=b&hsa_kw=boston%20tea%20party%20location&hsa_tgt=kwd-299301299947&hsa_grp=112087940764&hsa_net=adwords&hsa_cam=11251868603&utm_campaign. Accessed on 23 July 2021.

⁸⁰ Saunders C & Limb P 2021 *Historical Dictionary of South Africa* (3ed) Rowman and Littlefield, London: 293.

⁸¹ Saunders C & Limb P 2021 *Historical Dictionary of South Africa* (3ed) Rowman and Littlefield, London: 293.

⁸² Saunders C & Limb P 2021 *Historical Dictionary of South Africa* (3ed) Rowman and Littlefield, London: 293.

⁸³ Saunders C & Limb P 2021 *Historical Dictionary of South Africa* (3ed) Rowman and Littlefield, London: 293.

⁸⁴ South African History Online Pondoland revolt 1950-1961 <https://www.sahistory.org.za/article/pondoland-revolt-1950-1961>. Accessed on 23 July 2021.

⁸⁵ Archer V 2010 *The Australian Tax Revolt: Constructing a 'new class' in 1978* Journal of Australian studies Vol 34 No. 1 March 2010: 19-33.

⁸⁶ Wilson-Smith A 1995 *A Hollow Tax Revolt* Maclean's; Toronto Vol. 108 Issue 9 (Feb 27, 1995): 27.

Archer discusses a new class discourse within an Australian context, which he finds was used extensively and effectively in the American Proposition 13 tax revolt.⁸⁷ He notes the discourse was designed to convince voters that most of their taxes were used to finance a new class of elites in government and special interest groups.⁸⁸ A tax revolt would, therefore, be the solution to restrain the elites as per Archer.⁸⁹ He avers that the government was removed from reality, spending their time coming up with exorbitant, large, and unrealistic programs that would prove a waste of taxpayer's money, as a result there was a need for a tax revolt.⁹⁰ Having dealt with selected tax revolt theories, the study now examines the psychology of a tax revolt.

2.5 THE PSYCHOLOGY OF TAXPAYERS' REVOLT

The section looks at the mind, possible mental characteristics, and the attitudes of the taxpayer when they revolt.

Studies have found that for a fiscus to be effective in urging tax compliance from taxpayers, not only the business profiles of the taxpayer must be understood but also the nature of their industry, the psychological and sociological factors that inform taxpayers' decisions to revolt or not.⁹¹ The traditional process of dealing with taxpayers through the law, auditors, penalties, debt collection,

⁸⁷ Archer V 2010 *The Australia Tax Revolt: Constructing a 'new class' In 1978* Journal of Australian Studies Vol 34 No. 1 March 2010: 24.

⁸⁸ Archer V 2010 *The Australian Tax Revolt: Constructing a 'new class' in 1978* Journal of Australian Studies Vol 34 No. 1 March 2010: 19-33.

⁸⁹ Archer V 2010 *The Australian Tax Revolt: Constructing a 'new class' in 1978* Journal of Australian Studies Vol 34 No. 1 March 2010: 19-33.

⁹⁰ Archer V 2010 *The Australian Tax Revolt: Constructing a 'new class' in 1978* Journal of Australian studies Vol 34 No. 1 March 2010: 19-33.

⁹¹ Braithwaite V 2003 *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Florence: Taylor and Francis. <https://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=4817142>: 1.

and court cases, Valerie argues, must be supported by measures that boost taxpayers' commitment to tax without being compelled by the fiscus.⁹²

Vogel argues that individuals compare their situation with others, select information from 'similar others', and this is called social comparisons.⁹³ Vogel identifies three main psychological factors that drive a tax revolt, namely, 'the individual relationship with government; the social orientation; and opportunities for evasion.'⁹⁴ These factors tend to have both a direct and indirect effect on tax attitudes.⁹⁵ A distinction is made between the process and content of deciding to revolt.⁹⁶ This, Kinsey describes as not a single decision but a series of actions.⁹⁷ They create a process of moving a taxpayer from compliance to a conscious decision to revolt.⁹⁸ Kinsey argues that most important factors that are considered before a revolt occurs are material consequences and normative expectations and these include how quickly the consequences of a revolt will be felt and the privacy of taxpaying.⁹⁹ Attitude towards government spending and tax systems fall under socio-legal

⁹² Braithwaite V 2003 *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Florence: Taylor and Francis. <https://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=4817142>: 2.

⁹³ Vogel J 1974 *Taxation and public opinion in Sweden: An interpretation of recent survey data*. National Tax Journal, 27: 499–513.

⁹⁴ Vogel J 1974 *Taxation and public opinion in Sweden: An interpretation of recent survey data*. National Tax Journal, 27: 499–513.

⁹⁵ Vogel J 1974 *Taxation and public opinion in Sweden: An interpretation of recent survey data*. National Tax Journal, 27: 499–513.

⁹⁶ Vogel J 1974 *Taxation and public opinion in Sweden: An interpretation of recent survey data*. National Tax Journal, 27: 499–513.

⁹⁷ Vogel J 1974 *Taxation and public opinion in Sweden: An interpretation of recent survey data*. National Tax Journal, 27: 499–513.

⁹⁸ Gcabo R & Robinson Z 2007 Tax Compliance and behaviour response in South Africa; and alternative investigation South African Journal of Economic and Management Sciences SAJEMS NS 10 No 3: 362: Para 2.4.

⁹⁹ Kinsey KA 1984 *Theories and Models of Tax Cheating*. American Bar Foundation: Chicago.

attitudes and expressive attitudes but are considered of lesser importance.¹⁰⁰ Elffers and Hessing see a revolt as a behaviour that is defective in a social dilemma and results in considerations of what is best for the individual and group.¹⁰¹

The research conducted under social dilemma pays attention to what motivates a taxpayer, whether from a personal level, together with other taxpayers or in competition with other taxpayers according to Warneryd and Walerud.¹⁰² The psychological aspect of feeling personal strain or realisation of how difficult it is to fulfill a tax obligation under the perceived unfair taxes, as per Lewis and Webley, leads to a tax revolt.¹⁰³ Equally, Gcabo and Robinson argue that if a taxpayer anticipates a loss in income, they would be more prone to taking a risk and revolting.¹⁰⁴

Field and Frey argue that tax compliance emanates from a complex interaction of deterrence measures and responsive regulation.¹⁰⁵ They also believe that citizens and the state get into a fiscal relationship in accordance with a psychological tax contract that sets up exchanges between taxpayers and the fiscus which involves loyalty and ties.¹⁰⁶ Also, Field and Frey argue that tax

¹⁰⁰ Kirchler E 1998 *Differential representations of taxes: Analysis of free associations and judgements of five employment groups*, Journal of Socioeconomics, 27(1): 117–131.

¹⁰¹ Elffers H & Hessing DJ 1997 *Influencing the prospects of tax evasion*, Journal of Economic Psychology, 18: 289–304.

¹⁰² Warneryd KE & Walerud B 1982 *Taxes and economic behaviour: Some interview data on tax evasion in Sweden*, Journal of Economic Psychology, 2: 187–211.

¹⁰³ Lewis A Webley P & Furnham A 1995 *The New Economic Mind: The Social Psychology of Economic Behaviour*. Harvester: New York.

¹⁰⁴ Gcabo R & Robinson Z. 2007 *Tax Compliance and behaviour response in South Africa; and alternative investigation South African Journal of Economic and Management Sciences SAJEMS NS 10 No 3 page 363: Para 2.5.*

¹⁰⁵ Field LP & Frey BS 2010 *Developing alternative frameworks for explaining tax compliance* Taylor & Francis Group: 88.

¹⁰⁶ Field LP & Frey BS 2010 *Developing alternative frameworks for explaining tax compliance* Taylor & Francis Group: 88.

morale is directly linked and results from: a) the exchange where taxpayers get service from the state from the taxes paid; b) the politics that causes the exchange and; c) the relationship between the state and the fiscus.¹⁰⁷ Where a psychological contract is in place, the fiscus will be mindful of the direct link between how it treats the taxpayer and the effect it has on enthusiasm towards paying tax and not revolting.¹⁰⁸ In conclusion, Field and Frey state that a psychological tax contract must shift focus from emphasizing tax compliance and deterrence and its effects to how to raise tax morale amongst taxpayers.¹⁰⁹ Rechberger, Hartner, Kirchler, and Hammerle weigh-in, adding that the contract can only be kept in balance if the fiscus respects the taxpayer and keep their end of the bargain by treating them appropriately.¹¹⁰

Research conducted to study the role of moral obligation to encourage tax compliance, according to Thurman et al, proved that an appeal to conscience was more effective than the threat of legal action.¹¹¹ However, they argue further that neutralization theory works against the feeling of moral obligation, not to revolt, and begins to justify a revolt. The theory removes all guilt feelings leading to a justification of a tax revolt.¹¹² To combat tax evasion the aspect of neutralisation must be dealt

¹⁰⁷ Field LP & Frey BS 2010 *Developing alternative frameworks for explaining tax compliance* Taylor & Francis Group: 88.

¹⁰⁸ Field LP & Frey BS 2010 *Developing alternative frameworks for explaining tax compliance* Taylor & Francis Group: 88.

¹⁰⁹ Field LP & Frey BS 2010 *Developing alternative frameworks for explaining tax compliance* Taylor & Francis Group: 88.

¹¹⁰ Rechberger S, Hartner M, Kirchler E & Hammerle 2010 *Tax Amnesties, Justice perceptions, and filing behaviour: A simulation study*. Law and Policy, 32: 214-225.

¹¹¹ Thurman QC St Johan C & Riggs L 1984 *Neutralization and tax evasion: How effective would a moral appeal be in improving compliance to tax laws*, Law & Policy v6 n3: 309-327.

¹¹² Thurman QC, St Johan C, and Riggs L 1984 *Neutralization and tax evasion: How effective would a moral appeal be in improving compliance to tax laws* Law & Policy v6 n3: 309-327.

with and taxpayers' guilty feelings must be activated and increased it is further argued by Thurman et al.¹¹³

A recent study done at the University of Pretoria in South Africa, using an approach called the prospect theory of behavioural response, found that taxpayers behave, *interalia*, in accordance with economic, socio, and psychological factors.¹¹⁴ The study was based on societal attitudes, emotions, and perceptions or feelings about tax in general, and three approaches were incorporated, the psychological theory, the traditional economic theory and the prospect theory.¹¹⁵ In the *psychological theory* the argument is that when the government is fair in its dealings with taxes, tax compliance is high.¹¹⁶ The second theory, the *traditional economic theory* argues that a good fiscus will exceed the efficiency levels expected of it. The *prospect theory* is a hybrid of these two theories and is based on the assumption that people are not rational decision-makers and 'will adapt to any constant in their lives until they find this constant neutral.'¹¹⁷ Gcabo and Robinson argue that when people expect a good refund from a fiscus, they will gladly submit their returns but when they are expecting a loss they will take the risk to avoid tax.¹¹⁸

¹¹³ Thurman QC, St Johan C, and Riggs L 1984 *Neutralization and tax evasion: How effective would a moral appeal be in improving compliance to tax laws*; Law & Policy v6 n3: 309-327.

¹¹⁴ Gcabo R, Robinson Z 2007 *Tax Compliance and behaviour response in South Africa; and alternative investigation South African Journal of Economic and Management Sciences* V10 N3: 358.

¹¹⁵ Gcabo R, Robinson Z 2007 *Tax Compliance and behaviour response in South Africa; and alternative investigation South African Journal of Economic and Management Sciences* V10 N3: 358.

¹¹⁶ Gcabo R, Robinson Z 2007 *Tax Compliance and behaviour response in South Africa; and alternative investigation South African Journal of Economic and Management Sciences* V10 N3: 358.

¹¹⁷ Gcabo 2007 *Tax Compliance and behavioural response: An analytical approach SAJEMS* NS 10 (2007) No 3: 358.

¹¹⁸ Gcabo 2007 *Tax Compliance and behavioural response: An analytical approach SAJEMS* NS 10 (2007) No 3: 363.

2.6 CONCLUSION

This section has dealt with the history of tax revolts, the theories explaining tax revolts and psychological factors that lead to a tax revolt stipulating how a fiscus cannot ignore the sociological and psychological aspect in dealing with a tax revolt. The chapter has also delved into the different theories: the self-interest explanation, the tax level explanation, and the tax-efficiency explanation. Also discussed is the tax distribution explanation, economic pinch explanation, political ideology interpretation, political disaffection explanation, and the information explanation. On psychological factors attention was paid to factors such as risk, fear, trust, fairness or equity, and opportunity to evade and further focus was on sociological factors: norms, gender, education level, and ethnic background that equally have an impact on the thought processes of a taxpayer when deciding to revolt.¹¹⁹ In the next chapter the study discusses what the pay-now-argue-later principle is, its history and development and delves into what its rationale is.

¹¹⁹ Ramfor R *The fine line between tax compliance and tax resistance: The case of South Africa*: 5.

CHAPTER THREE

THE PAY-NOW-ARGUE-LATER PRINCIPLE

3.1 INTRODUCTION

To understand the pay-now-argue-later principle, one must look at the enabling legislation, the case law that builds up to the principle, and the discussion by notable scholars. The Tax Administration Act 28 of 2011 (“TAA”) provides for the pay-now-argue-later principle and it will be dealt with in the sections that follow.

The pay-now-argue-later principle is the requirement that where an assessment has been made by the fiscus, with or without penalties, that taxpayer is obliged to settle the liability, and whatever objections or appeals the taxpayer has can be raised later after payment is done.¹²⁰

THE HISTORY AND DEVELOPMENT OF THE PAY-NOW-ARGUE-LATER PRINCIPLE

The principle can be traced back to the Income Tax Act of 1962 hereinafter (“ITA”) and later the Value-Added Tax Act (“VAT Act”) of 1991.¹²¹ Section 88 of the Income Tax Act of 1962 required that a taxpayer settles their penalties levied by SARS regardless of whether there was an appeal or not.

The Interim Constitution of 1994 brought forth taxpayers’ rights awareness and the rights of the fiscus as a government agency tasked with the collection of taxes.¹²² Revenue laws were finally

¹²⁰ Section 164(1) of the TAA 28 of 2011.

¹²¹ Income Tax Act 58 of 1962; Value Added Act 89 of 1991.

¹²² The Interim Constitution, 1994.

also subject to constitutional scrutiny which brought with it major changes to the SA legal system. In 2009, the pay-now-argue-later principle was clarified in the Taxation Second Laws Amendment Act.¹²³ In the 2009 Act, the amendments included: that a tax debt may be collected despite an objection to an assessment; provided guidance in relation to factors to be considered when deciding whether to suspend the principle or not; and also rules were framed for SARS to pay interest when an appeal by a taxpayer is successful.¹²⁴ In the subsequent 2011 Act, section 164 (2) was added and now allowed for the principle to be suspended pending an appeal by a taxpayer in a court.¹²⁵ Now this begs the question what is the rationale for the principle?

3.2 THE RATIONALE OF THE PRINCIPLE

Wunsh J dealt with section 99 in *Hindry v Nedcor Bank Ltd and Another 1999 (2) SA 757 (W)*. The court had to consider whether section 99 went against provisions of the Constitution.¹²⁶ Section 99 of the ITA allows SARS to appoint an agent to withhold an amount that the agent is in possession of belonging to a taxpayer and for further payment of the same to SARS on behalf the taxpayer for any tax debts owed. Such agent could be a bank, clients, an employer or even pension fund managers.

In the Hindry case, the taxpayer had erroneously been refunded in terms of the Fourth Schedule paragraph 28(7) of the ITA, and in the quest to reclaim the refund, SARS appointed the taxpayer's

¹²³ Taxation Second Laws Amendment Act, 2009.

¹²⁴ SARS Website (2011) <https://www.gov.za/pay-now-argue-later-principle-clarified#:~:text=The%20South%20African%20Revenue%20Service,effect%20from%201%20February%202011>. Accessed on 23 August /2020.

¹²⁵ The relaxation of the principle is discussed further below on pages 30, 31, 35, 40, 43 and para 5.1.2 on page 55.

¹²⁶ Constitution of the Republic of South Africa, 1996.

banker to act as an agent per section 99.¹²⁷ Hindry filed for an interdict citing that the provision violated his constitutional right to property enshrined in section 25; the right to administrative justice in section 33; the right to privacy in section 14; and in section 34, the right to access to the courts.¹²⁸

Wunsh J stated that:

‘while the garnishment of a debt may be regarded as a seizure of property, it is a form of execution available generally to enforce a money judgment and the distinguishing feature of section 99 is that it may be enforced to recover an amount due under an assessment or an amount due by a way of an incorrectly made refund or some other unpaid tax without there being a judgment.’¹²⁹

The court held further that none of the statutes require SARS to give notice to a taxpayer of an impending garnishee order.¹³⁰ It was held that such notice could lead to a taxpayer frustrating the efforts of SARS and that such practices (appointment of an agent) are commonly used in many open and democratic societies as a result it is considered a reasonable and necessary procedure.¹³¹

The Hindry case held that the principle was not contrary to the Constitution.¹³²

¹²⁷ *Hindry v Nedcor Bank Ltd and Another 1999 (2) SA 757 (W) at 764H.*

¹²⁸ Croome B 2010 *Taxpayers’ Rights in South Africa* JUTA & Co, Cape Town: 42.

¹²⁹ Croome B 2010 *Taxpayers’ Rights in South Africa* JUTA & Co, Cape Town: 43.

¹³⁰ *Hindry v Nedcor Bank Ltd and Another 1999 (2) SA 757 (W).*

¹³¹ *Hindry v Nedcor Bank Ltd and Another 1999 (2) SA 757 (W).*

¹³² *Hindry v Nedcor Bank Ltd and Another 1999 (2) SA 757 (W) at 166.*

This decision shows how the pay-now-argue-later principle can be enforced by the courts and how appointment of agents to assist in the same is a reasonable and necessary principle in an open and democratic society for the effective functioning of a fiscus.

Kriegler J in *Metcash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC)* case had to decide on the purpose and importance of the pay-now-argue-later principle.

The Applicant Metcash was a trader and was charged by SARS with conducting fictitious transactions with its associated companies for which it attempted to claim for input tax.¹³³ The Commissioner contended that:

“No goods were sold and delivered and accordingly no input tax on the transactions in question could be claimed.”

The Commissioner had also assessed the applicant and found that despite the fictitious amount taxpayer attempted to claim, they in fact owed double the amount. Metcash was given 48 hours in which to pay or risk a summary procedure being implemented based on section 40(2)(a) of the VAT Act 89 of 1991.¹³⁴ The court had to decide on the Constitutionality of section 36 (1) and section 40 (2) (a) and (5) of the VAT Act.¹³⁵ Section 36 (1) provides that where an assessment has been made by SARS, despite there being the possibility of an appeal by the taxpayer, there is an obligation on the taxpayer to pay the assessed amount together with all other attendant costs. If

¹³³ *Metcash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC)*: Para 3.

¹³⁴ *Metcash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC)*: Para 5.

¹³⁵ *Metcash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC)*: Para 1.

there happen to be adjustments and refunds, these will be determined later as per court findings. Section 40 (2) (a) on the other hand, gives SARS the power to file for a civil judgment and makes the correctness of the assessment not challengeable.

Kriegler J stated that the impugned sections violated section 34 of the Constitution which provides for the right to access the court and further found they could not be saved under section 36 of the same Constitution, and as a result could neither be found to be reasonable nor justifiable.¹³⁶ The matter was sent to the Constitutional Court for the declaration of invalidity of the sections.

At the Constitutional Court, it was held that the burden of proving SARS wrong, lay with the taxpayer.¹³⁷ The Constitutional Court found Metcash's challenge had a two-pronged supplementary means to enforce a quick payment by the taxpayer and these were firstly in section 36 (1) on the obligation to pay taxes assessed including interest being suspended and the other in section 40 (2) which gives the Commissioner the power to file with a clerk of the court a certified statement in pursuant of a civil judgment for a liquid debt and (5) whose statement's correctness is not questionable despite the lodging of an appeal or objection.¹³⁸ It further held that when looking at whether a provision is justified, there was a need to be mindful of the fact that the limitation under section 40 (5) was subject to judicial review, temporary and limited in scope.¹³⁹

Other important reasons for the provisions were found to be the importance in obtaining 'full and speedy settlement of tax debts in the overall context of the Act...', and 'ensuring prompt payment

¹³⁶ *Metcash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC): Para 5.*

¹³⁷ Section 37 VAT Act 89 of 1991.

¹³⁸ *Metcash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC): Para 24.*

¹³⁹ *Metcash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC): Para 60.*

by vendors of amounts assessed to be due by them....¹⁴⁰ The Act ‘relies on its efficacy on self-regulation by registered vendors and regular periodic payments’ to be effective according to Kriegler J.¹⁴¹ Requiring taxpayers to settle debts resulting from an assessment before they dispute them is very important as it reduces ‘frivolous objections’ ensuring ‘that the fiscus is not prejudiced by the delay in obtaining finality’ held the court.¹⁴²

Kriegler J continues to state, the principle pay-now-argue-later is used in many democratic societies that have a scheme requiring immediate execution against a taxpayer to ensure the efficaciousness of the rule.¹⁴³ He notes that the rule is accepted for being reasonable as required in section 36 of the Constitution.¹⁴⁴ Lastly, he avers that the effect of the pay-now-argue-later principle is made less burdensome by the fact that a taxpayer can apply to the Commissioner to suspend its action – hence the rule is not absolute but subject to the suspension.¹⁴⁵

The Constitutional Court held that the impugned provisions did not violate the right of access to courts, finding that the provisions in question are justified and declined to confirm the order by the

¹⁴⁰ *Mecash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC): Para 60.*

¹⁴¹ *Mecash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC): Para 60.*

¹⁴² *Mecash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC): Para 60.*

¹⁴³ *Mecash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC): Para 61.*

¹⁴⁴ *Mecash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC): Para 61.*

¹⁴⁵ *Mecash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC): Para 62.*

High Court that section 36 (1), 40 (2) (a) and 40 (5) of the VAT Act are invalid.¹⁴⁶ Other judgments are discussed in the paragraphs that follow.

The *Nedbank Limited v Pestana 2009 (2) SA 189 (SCA)* decision also dealt with the effect of section 99 of the ITA, in which Jose Manuel Pestana, (“Respondent”) held a current account at Nedbank’s (“Appellant”) Carletonville branch and a namesake, a Mr. Joseph Michael Pestana (“Pestana”) also held an account at the same branch.¹⁴⁷ Pestana instructed the branch to transfer an amount of R480, 000 to the Respondent on 4 February 2004 and the branch effected the transfer.¹⁴⁸ Unknown to them, Nedbank’s head office had received notice from SARS of R340 million that Pestana owed them and subsequently appointing them as an agent under section 99 of the ITA to collect the same on their behalf.¹⁴⁹ The branch obliged and reversed the credit made to the Respondent’s account without his consent and effectively paid the R480, 000 to SARS.¹⁵⁰

The respondent sued the bank in the High Court for the amount whose claim was dismissed but the claim succeeded on appeal to a full bench.¹⁵¹ At the Supreme Court, the court agreed with the full bench of the High Court, stating,

‘I cannot agree, therefore, that the decision to pay was ‘erroneous’, or that the decision of the branch is ‘not relevant in law’, as argued. The fact that the branch

¹⁴⁶ *Metcash Trading Limited v Commissioner for the South African Revenue Service and Another 2001 (1) SA 1109 (CC): Para 73.*

¹⁴⁷ *Nedbank Limited v Pestana 2009 (2) SA 189 (SCA) Para 3(a).*

¹⁴⁸ *Nedbank Limited v Pestana 2009 (2) SA 189 (SCA): Para 3(b).*

¹⁴⁹ *Nedbank Limited v Pestana 2009 (2) SA 189 (SCA): Para 3(d).*

¹⁵⁰ *Nondabula Commissioner: SARS and Another 2018 (3) SA 541 (ECM) (2017 June 2017): Para 2.*

¹⁵¹ *Nedbank Limited v Pestana 2009 (2) SA 189 (SCA): para 2.*

*subsequently changed its mind cannot, in my view, undo the validity of the completed transaction....*¹⁵²

Accordingly, the Supreme Court dismissed the appeal by Nedbank and ordered them to pay costs for the Respondent including counsels.¹⁵³ While this case is about enforcement of the principle, it also shows how the court views the effect such a principle would have on a taxpayer and how it must not be abused.

The *CSARS V Capstone 556 (Pty) Ltd [2016] 2 All SA 21 (SCA)* case sums up the reasons for the pay-now-argue-later principle. Binns-Ward J explains the importance of the principle stating that:

*'The considerations underpinning the pay-now-argue-later concept include the public interest in obtaining a 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.'*¹⁵⁴

This approach, therefore, prevents objections that are unfounded and baseless, the type that would waste fiscus' and courts' time.

In *Nondabula v Commissioner: SARS and Another 2018 (3) SA 541 (ECM) (2017 June 2017)*, Nondabula, the (“Applicant”), applied to interdict SARS, the (First Respondent”), from invoking section 179 of the TAA pending its final determination of additional assessment of the Applicant’s income tax. The Applicant also sought an order against the First Respondent to withdraw the

¹⁵² *Nedbank Limited v Pestana 2009 (2) SA 189 (SCA): Para 15.*

¹⁵³ *Nedbank Limited v Pestana 2009 (2) SA 189 (SCA): Para 17.*

¹⁵⁴ *Capstone 556 (Pty) Ltd and Klüh Investments (Pty) Ltd v CSARS [2011] 74 SATC 20.*

appointment of an agent to collect on its behalf monies owed to it by the Applicant. Section 179 of the TAA provides that:

"A senior SARS official may by notice to a person who holds or will hold or owe any money, including a pension, salary, wage or other remuneration, for or to taxpayers require the person to pay the money to SARS in satisfaction of the taxpayer's debt"

The Applicant, a sole proprietor of a business, was assessed twice by SARS in the years 2014 and 2015 and had duly settled his debt with the fiscus.¹⁵⁵ In 2016, SARS issued the Applicant with a heftier bill amounting to R1, 422, 637.83 without giving reasons for the assessment and demanding that it be settled in 10 days failing which further action would be taken.¹⁵⁶

The court held, the First Respondent, as a creature of statute, can only act within the confines of its enabling legislation.¹⁵⁷ Section 239 of the Constitution gives a definition of an organ of the state of which the First Respondent is one, and section 195 (1) (f) requires such organs to be accountable and the only way to be accountable was as per section 195 (1) (g), to give the public timely, accessible and accurate information.¹⁵⁸ While section 92 empowers the First Respondent to conduct an additional assessment, where it is not satisfied that an assessment is a true reflection of application of a tax Act and may be prejudicial to it, section 95 requires the fiscus to make an assessment based in whole or part on an estimate from information available to it. This is the case where there is failure by a taxpayer to submit a return or submits an incorrect or inadequate

¹⁵⁵ *Nondabula Commissioner: SARS and Another 2018 (3) SA 541 (ECM) (2017 June 2017)*: Para 4.

¹⁵⁶ *Nondabula Commissioner: SARS and Another 2018 (3) SA 541 (ECM) (2017 June 2017)*: Para 5.

¹⁵⁷ *Nondabula Commissioner: SARS and Another 2018 (3) SA 541 (ECM) (2017 June 2017)*: Para 11 and 24.

¹⁵⁸ Constitution of the Republic of South Africa, 1996.

information. or inadequate information – hence its assessment must be based on the information readily available to it.¹⁵⁹ However, before complying with section 92, SARS is required to comply with the provision in section 96, the taxpayer must be issued with an assessment containing, date and amount of assessment, tax period of the assessment, a date for the payment, a summary of the procedures for lodging an objection to the assessment and the grounds for an assessment.¹⁶⁰

The court found that section 96, which is crafted in peremptory terms, giving no discretion for SARS to deviate, was not complied with, in as far as the date of assessment, summary of procedures for lodging an objection, and a grounds for the assessment were not supplied to the Applicant.¹⁶¹ Not only was this unlawful but a disregard of the doctrine of legality, a requirement of the rule of law in a constitutional democracy as per *Jolwana J.*¹⁶² The court found the actions of First Respondent arbitrary, unconstitutional, a violation of its own legislation, therefore unlawful.¹⁶³

It is self-evident that the pay-now-argue-later principle, prima facie, infringes on several taxpayers' rights as discussed above. Chapter four will deal in greater detail with the equality analysis and whether the pay-now-argue-later principle's infringement of taxpayer rights is unjustified. To succeed in a challenge against SARS, taxpayers have had to prove that a provision is not a law of general application or have interdicted SARS and postponed the payment while the courts looked at the matter. Taxpayers have also had to prove that the law violates their right to just

¹⁵⁹ *Nondabula Commissioner: SARS and Another 2018 (3) SA 541 (ECM) (2017 June 2017):* Para 15.

¹⁶⁰ *Nondabula Commissioner: SARS and Another 2018 (3) SA 541 (ECM) (2017 June 2017):* Para 19.

¹⁶¹ *Nondabula Commissioner: SARS and Another 2018 (3) SA 541 (ECM) (2017 June 2017):* Para 20.

¹⁶² *Nondabula Commissioner: SARS and Another 2018 (3) SA 541 (ECM) (2017 June 2017):* Para 22-23.

¹⁶³ *Nondabula Commissioner: SARS and Another 2018 (3) SA 541 (ECM) (2017 June 2017):* Para 25-26.

administrative action as seen in the above cases. Otherwise, the courts have found that the appointment of a third party as an agent to collect for SARS is constitutionally necessary and justifiable so that SARS is not prejudiced against. This also allows for the fiscus to effectively deliver on its mandate of collecting taxes on behalf of the government. What could be found to be unconstitutional, nevertheless, could be how this power is exercised by the fiscus as per Croome.¹⁶⁴

3.3 THE DISCUSSION

The ITA, one of the tax administration Acts aligned by the TAA, empowers the Commissioner to appoint any person to be an agent of another person who will, in turn, be required to make a payment of taxes due by the other person indebted to SARS, be it an employer from salaries or a bank from an account held with them.¹⁶⁵ Section 172 of the TAA equally outlines the appointment of an agent fairly well. Croome argues that the issue is not so much about the power and the right of SARS to appoint an agent but how the Commissioner may exercise such powers.¹⁶⁶ It is this that may have an adverse effect on the taxpayer and not merely appointing an agent.

Fritz discusses the pay-now-argue later principle which the Davis Tax Committee described as controversial and considers approaches in Canada and Australia.¹⁶⁷ Fritz states that having looked at Canadian and Australian approaches, the best approach for South Africa should also be to suspend the payment obligation pending resolution of the dispute by an impartial forum to ensure

¹⁶⁴ Croome B 2010 *Taxpayers' Rights in South Africa* JUTA & Co, Cape Town: 43.

¹⁶⁵ Section 99 of the ITA 58 of 1962.

¹⁶⁶ Croome B 2010 *Taxpayers' Rights in South Africa* JUTA & Co, Cape Town: 43.

¹⁶⁷ Fritz C 2019 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* Journal for Juridical Science 2019:44(2):20-43 (An article from research done for author's LLD thesis titled 'An appraisal of selected tax-enforcement powers of the South African Revenue Service in the South African constitutional context' University of Pretoria, 2017).

a taxpayer's right of access to courts is not violated.¹⁶⁸ She also proposes that 50 per cent of the tax debt to SARS must be suspended until the impartial forum concludes its adjudication.¹⁶⁹ These, she argues, would fulfill the Constitution's requirement that for a determination of an infringement's reasonableness and justifiability test, one must look at whether there are lesser invasive means to achieve the purpose intended.¹⁷⁰ She agrees with the Davis Committee that the application of the pay-now-argue-later principle prevents a taxpayer from pursuing a review or appeal process as the money would have already been paid to SARS.¹⁷¹

Section 164 (2) of the TAA outlines factors to be considered when a taxpayer requests suspension of the obligation to pay his tax debt pending an appeal and a senior SARS official uses their discretion to grant the request or not. While the listing of the factors creates transparency on what factors would be considered and restricts the discretion to be used, Fritz opines, the factors considered should be certain to enable a taxpayer to establish his grounds for review.¹⁷² She alludes to the fact that no indication of the point when a risk of dissipation may be present as it is

¹⁶⁸ Fritz C 2019 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* Journal for Juridical Science 2019:44(2): 20.

¹⁶⁹ Fritz C 2019 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* Journal for Juridical Science 2019:44(2): 20-43 (An article from research done for author's LLD thesis titled 'An appraisal of selected tax-enforcement powers of the South African Revenue Service in the South African constitutional context' University of Pretoria, 2017.

¹⁷⁰ Fritz C 2019 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* Journal for Juridical Science 2019:44(2): 20-43 (An article from research done for author's LLD thesis titled 'An appraisal of selected tax-enforcement powers of the South African Revenue Service in the South African constitutional context' University of Pretoria, 2017.

¹⁷¹ Fritz C 2019 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* Journal for Juridical Science 2019:44(2): 24.

¹⁷² Fritz C 2019 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* Journal for Juridical Science 2019:44(2): 26.

subjective; whether fraud is *prima facie* involved – A finding by SARS to this effect goes against section 35 (3) (h) of the Constitution’s accused’s presumption of innocence.¹⁷³

Fritz further discusses the Canadian Income Tax Act RSC 1985 and the steps provided for a taxpayer to follow when appealing or seeking a review which may take as long as 90 days as opposed to TAA’s 10 business days.¹⁷⁴ In Canada, only after the process of resolving the dispute is completed by an impartial forum does the collection of the debt continue if the taxpayer was unsuccessful.¹⁷⁵ A taxpayer is slapped with interest charges if found to have abused the process and this is to prevent frivolous appeals.¹⁷⁶

The Australian approach, Fritz finds to be better as it provides the tax collection body with the discretion whether to collect tax debts pending an appeal, observed by the use of the word ‘may’ as opposed to the TAAs ‘must’ provision. Thus, Fritz finds the discretion would improve the ability of SARS to collect taxes without violating taxpayers’ rights unjustifiably.

Van Zyl decries the pay-now-argue-later principle and the appointment of an agent to collect tax debts on behalf of SARS due to the serious financial challenges it might present to the taxpayer.¹⁷⁷

¹⁷³ Fritz C 2019 *Reconsidering the ‘pay now argue later’ approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* Journal for Juridical Science 2019:44(2): 27.

¹⁷⁴ Fritz C 2019 *Reconsidering the ‘pay now argue later’ approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* Journal for Juridical Science 2019:44(2): 30.

¹⁷⁵ Fritz C 2019 *Reconsidering the ‘pay now argue later’ approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* Journal for Juridical Science 2019:44(2): 20-43 (An article from research done for author’s LLD thesis titled ‘An appraisal of selected tax-enforcement powers of the South African Revenue Service in the South African constitutional context’ University of Pretoria, 2017.

¹⁷⁶ Fritz C 2019 *Reconsidering the ‘pay now argue later’ approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* Journal for Juridical Science 2019:44(2):20-43 (An article from research done for author’s LLD thesis titled ‘An appraisal of selected tax-enforcement powers of the South African Revenue Service in the South African constitutional context’ University of Pretoria, 2017.

¹⁷⁷ Van Zyl SP 2018 *The Time is Ripe to Reconsider the Pay-Now-Argue-Later Principle – Vuyisile Zamindlela Nondabula v Commissioner: South African Revenue Service* (February 5, 2018). Journal of Contemporary Roman-Dutch Law, Vol. 81: 175.

He cites the Nondabula case where the trader provided jobs to a community and a balance had to be struck between the interests of the community and that of SARS – this usually leads to the scale tipping in favour of SARS’ need to collect revenue for the government.¹⁷⁸ Van Zyl supports the decision of the court in Nondabula to side with the taxpayer and the community as they too contribute to SARS’ mandate of collecting taxes for the government purse.¹⁷⁹ He acknowledges that there are lesser stringent means that SARS can employ to achieving the purpose of collecting tax debts, for example, by applying for a preservation order against the taxpayer’s account whereby funds in his accounts are frozen.¹⁸⁰ The taxpayer could counter the preservation order with an interdict which of course, as per Van Zyl, comes at a cost to the taxpayer – another challenging position the taxpayer finds themselves in, in the face of SARS’ abuse of power.

Section 96 of the TAA requires that when a taxpayer is assessed, the date, amount, tax period of the assessment must be included in the notice. Section 96 also requires that the summary of the procedure to be followed when appealing should be given. When SARS appoints a third-party agent, as discussed above, there needs to be a notice to the taxpayer of the assessment as per section 96 of the TAA – the absence of such notice, Van Zyl argues, defeats the requirement of transparency in section 96 of the TAA,¹⁸¹ and the demands for transparency and certainty as required of public administration in the Constitution also noted above. The payment of the tax

¹⁷⁸ Van Zyl SP 2018 *The Time is Ripe to Reconsider the Pay-Now-Argue-Later Principle – Vuyisile Zamindlela Nondabula v Commissioner: South African Revenue Service* (February 5, 2018). *Journal of Contemporary Roman-Dutch Law*, Vol. 81:175.

¹⁷⁹ Van Zyl SP 2018 *The Time is Ripe to Reconsider the Pay-Now-Argue-Later Principle – Vuyisile Zamindlela Nondabula v Commissioner: South African Revenue Service* (February 5, 2018). *Journal of Contemporary Roman-Dutch Law*, Vol. 81: 175.

¹⁸⁰ Section 163 TAA 28 of 2011.

¹⁸¹ Van Zyl SP 2018 *The Time is Ripe to Reconsider the Pay-Now-Argue-Later Principle – Vuyisile Zamindlela Nondabula v Commissioner: South African Revenue Service* (February 5, 2018). *Journal of Contemporary Roman-Dutch Law*, Vol. 81: 176.

debt, he argues, must be suspended until adjudication is concluded.¹⁸² Following the *Nemo Iudex* principle, SARS must not be a judge in a matter where it is also a player as provided for in section 164 and section 179 of the TAA.¹⁸³ A Balance must be struck between SARS mandate to collect taxes versus the Community's role in contributing to the government purse van Zyl opines.¹⁸⁴ Van Zyl concludes that the time has come for an impartial forum to be the judge where a taxpayer has grievances and not SARS.¹⁸⁵

3.4 CONCLUSION

Chapter three has discussed the pay-now-argue-later principle and its enabling Act, the TAA. Also discussed is the constitutional framework of the TAA and its dynamics, the purpose, and the importance of the principle. Cases that dealt with the pay-now-argue-later principle, mainly, Capstone, Metcash, Hindry, Pestana, and Nondabula have been considered. The final section of this chapter presented a discussion of the principle by prolific authors and academics: Fritz, who compared the South African approach to that of Canada and Australia and van Zyl who pondered whether it was time to reconsider the pay-now-argue-later principle, in the light of the Bill of

¹⁸² Van Zyl SP 2018 *The Time is Ripe to Reconsider the Pay-Now-Argue-Later Principle – Vuyisile Zamindlela Nondabula v Commissioner: South African Revenue Service* (February 5, 2018). *Journal of Contemporary Roman-Dutch Law*, Vol. 81: 177.

¹⁸³ Van Zyl SP 2018 *The Time is Ripe to Reconsider the Pay-Now-Argue-Later Principle – Vuyisile Zamindlela Nondabula v Commissioner: South African Revenue Service* (February 5, 2018). *Journal of Contemporary Roman-Dutch Law*, Vol. 81: 177.

¹⁸⁴ Van Zyl, SP, *The Time is Ripe to Reconsider the Pay-Now-Argue-Later Principle – Vuyisile Zamindlela Nondabula v Commissioner: South African Revenue Service* (February 5, 2018). *Journal of Contemporary Roman-Dutch Law*, Vol. 81: 175.

¹⁸⁵ Van Zyl SP 2018 *The Time is Ripe to Reconsider the Pay-Now-Argue-Later Principle – Vuyisile Zamindlela Nondabula v Commissioner: South African Revenue Service* (February 5, 2018). *Journal of Contemporary Roman-Dutch Law*, Vol. 81: 177.

Rights and the Constitution. The study will now delve deeper into the constitutionality of a tax revolt and the pay-now-argue-later principle and how they interrelate.

CHAPTER 4

THE CONSTITUTIONALITY OF A TAX REVOLT AND THE PAY-NOW-ARGUE-LATER PRINCIPLE

4.1 INTRODUCTION

This chapter considers whether a challenge of the pay-now-argue-later principle amounts to a tax revolt and whether it makes a difference if a single taxpayer or a group of taxpayers revolt. Chapter four also discusses the constitutional right to protest in the Bill of Rights through a step by step analysis of the right using the Harksen test. The main question of the study is dealt with in this chapter: What the interrelationship between a tax revolt and the pay-now-argue-later principle is and whether SARS can use the pay now argue later principle to deal with a tax revolt.

4.2 DOES A CHALLENGE OF THE PAY-NOW-ARGUE-LATER PRINCIPLE EQUATE TO A TAX REVOLT?

The Self-interest Explanation, one of Lowery and Sigelman's eight theories of a tax revolt revolves around an individual's expectation from government's collection of taxes (and its expenditure) and that when their expectation is unmet the taxpayer will revolt. This they argued was the most common theory of a tax revolt. While a taxpayer challenging the pay-now-argue-later principle has had their expectation not met by the fiscus, they fall short on expectation on expenditure, hence one can argue that a challenge to the principle is a step towards a tax revolt. How the fiscus will address the taxpayer's challenge may determine whether the taxpayer will revolt or join a revolt. It falls short to being a tax revolt because at this point the taxpayer intends to challenge an assessment by the tax authority in an appropriate tribunal. A challenge of the pay-now-argue-later principle does not need to result from any of Lowery and Sigelman's theories about how government spends the revenue raised, neither about a bloated government nor rampart waste by

government. An individual may not be challenging the principle due to perceived inequities in the tax system, he/she may not be anxious over economic conditions, although it might be on personal finances. It is highly an unlikely motive that a taxpayer will challenge the pay-now-argue-later principle because of their political value dictates or ideologies, neither a sign that government has lost popularity amongst the populace, nor a lack of information on what governments promises and policies that result from such promises. Although the motive cannot be ruled out where a collective of taxpayers challenge the principle because they have failed to pay their taxes or failed to submit a tax return as part of an action of protest. A taxpayer will not base their challenge on any one of the theories discussed above but will challenge because they believe the assessment or procedure followed is wrong. There is a high likelihood that if the taxpayer's grievance is not dealt with appropriately, it could lead to a tax revolt through a mobilization of taxpayers in a similar predicament.

4.3 INDIVIDUAL VERSUS GROUP TAX REVOLT

A revolt is most likely to happen when individuals mobilise to fight against the same injustice, be it over-taxation, non-inclusivity in decision making or unfair distribution of service delivery. In the examples of tax revolts, groups revolted against the system not individuals. Individuals merely joined the revolts based on a diversity of reasons outlined in the theories presented by Lowery and Sigelman. This is evidenced from the Boston tea party to the Bambatha tax revolt, the apartheid tax revolt and most recently the tax opposition of Ascension Island.

4.4 THE CONSTITUTIONAL RIGHT TO PROTEST

Iain Curry and Johan de Waal acknowledge the role that protest played in liberating South Africa from an apartheid past of oppression and suffering.¹⁸⁶ But they also recognize the role of mass protests in present day South Africa to shape the future by creating an environment where all can speak and be heard.¹⁸⁷ Suppressing peaceful protests takes the country back to the oppressive years where the majority could not express themselves and fight for their rights.

Section 17 of the Constitution provides that, “*everyone has the right, peacefully and unarmed, to assemble, demonstrate, to picket and to present petitions.*” The right to protest falls protected by this section in the Constitution.

The right to protest was dealt with in the *Mlungwana and Others v The State and Another [2018] ZACC 45* case.

The legal question in *Mlungwane* was whether section 12 (1) (a) of the Regulation of Gatherings Act 205 of 1993 was constitutional.¹⁸⁸

Section 12 (1) (a) criminalised failure of a convener of a gathering of more than 15 people to give notice to a local municipality.¹⁸⁹ It also dealt with interrelated questions, firstly whether s12 (1) (a) limited the right in section 17 of the Constitution and whether the limitation is reasonable and unjustifiable in an open and democratic society based on human dignity, equality and freedom.¹⁹⁰

¹⁸⁶ Currie I & de Waal J 2005 *The Bill of Rights Handbook* (5 Ed.) 396.

¹⁸⁷ Currie I & de Waal J 2005 *The Bill of Rights Handbook* (5 Ed.) 396.

¹⁸⁸ *Mlungwana and Others v The State and Another [2018] ZACC 45*: Para 1.

¹⁸⁹ *Mlungwana and Others v The State and Another [2018] ZACC 45*: Para 1.

¹⁹⁰ *Mlungwana and Others v The State and Another [2018] ZACC 45*: Para 1.

The Regulation of Gatherings Act had been promulgated to regulate public demonstrations and gatherings and from the preamble it was apparent that it aimed at balancing the right to assemble freely and peacefully and to ensure assemblies “take proper cognisance of and do not unjustifiably infringe the rights of others.”¹⁹¹ Section 1 of the Act defines “gathering” as an assembly or procession of more than 15 people on a public road as defined in the Road Traffic Act 29 of 1989 or public places to act against or promote principle or policies or even the failure of government to act in anyway. The definition of a “*demonstration*” is “*any demonstration of, by one of more persons, but not more than 15 persons, for or against any person, cause, action or failure to take action.*”

In the High Court, it was held that the impugned section limited section 17’s constitutional right to protest and found further that the limitation could not be justified under section 36 of the Constitution.¹⁹² The court based its finding on the importance of the right to protest, the severity of the sanctions meted on the violator of the section 12 (2) of the Regulation of Gatherings Act – the criminalisation and the fact that other means existed to incentivise the giving of notice.¹⁹³ These outweighed the rationality of the purposes intended to be served.

When the issue was brought to the Constitutional Court, Petse AJ held that the right in section 17 was very important and the nature of the limitation in this case was too severe such that the means adopted in section 12 (1) (a) and any legitimate purpose would be rendered too tenuous and

¹⁹¹ *Mlungwana and Others v The State and Another* [2018] ZACC 45: Para 7.

¹⁹² *Mlungwana and Others v The State and Another* [2018] ZACC 45: Para 36.

¹⁹³ *Mlungwana and Others v The State and Another* [2018] ZACC 45: Para 36.

unconstitutional.¹⁹⁴ The Constitutional Court confirmed the decision of the High Court of the unconstitutionality of section 12 (1) (a).

From the above, the study argues that a tax revolt in the form of a challenge of the pay-now-argue-later principle would constitute a protest in accordance with the Bill of Rights. The right to revolt can therefore be protected, subject to internal limitations in section 17 of the Constitution, that they be *unarmed* and *peaceful* and subject to the limitation clause in section 36 of the Constitution, the limitation clause. In a step-by-step process to determine if a right was infringed does the pay-now-argue-later principle infringe the taxpayers right arbitrarily? Can the infringement be justified?

4.5 THE HARKSEN TEST

Section 9(1) of the Constitution of the Republic of South Africa provides that everyone is equal before the law and is entitled to equal protection and benefit of the law, commonly known as the equality clause. In the Interim Constitution of 1994, the equality clause was in section 8(1) under which the *Harksen v Lane* case below was dealt with. The Harksen Test was formulated in the Harksen case.

Harksen v Lane NO and Others (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 (7 October 1997) case outlines the section 8(1) equality analysis and Goldstone J states that when section 8 is invoked to challenge the constitutionality of an executive conduct or a legislative provision, the question must be whether the impugned law indeed differentiates between people or categories of people.¹⁹⁵ If it does serve a legitimate government purpose, then it would not be

¹⁹⁴ *Mlungwana and Others v The State and Another [2018] ZACC 45: Para 78.*

¹⁹⁵ *Harksen v Lane NO and Others (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 (7 October 1997): para 42.*

considered to violate section 8 (1) of the Constitution but despite not violating section 8 (1) of the Constitution, Goldstone J argues it can still be found to be unfair discrimination under section 8 (2) analysis.¹⁹⁶ If there exists a rational connection to a legitimate government purpose, it is still necessary to proceed to section 8 (2) inquiry to determine if the differentiation amounts to unfair discrimination.¹⁹⁷

Goldstone J opines that the unfair discrimination test under section 8 (2) has two stages and these are: Firstly, does the differentiation amount to discrimination and secondly whether it amounts to unfair discrimination.¹⁹⁸ He sets out two categories of discrimination, differentiation based on listed grounds which leads to a presumption of unfairness and another on unlisted grounds but analogous to the listed grounds which must be proven by the one who alleges.¹⁹⁹

In the next analysis, an objective determination of the impact of the discrimination on the complainant which focuses on factors such as the complainants past experiences of injustice, whether the ground is listed or not and the importance of the impugned provision, is undertaken as per Goldstone J.²⁰⁰ He states, if discrimination is found unfair, then the provision will be in violation of section 8 (2).²⁰¹

¹⁹⁶ *Harksen v Lane NO and Others (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 (7 October 1997): Para 43.*

¹⁹⁷ *Harksen v Lane NO and Others (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 (7 October 1997): Para 44.*

¹⁹⁸ *Harksen v Lane NO and Others (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 (7 October 1997): Para 45.*

¹⁹⁹ *Harksen v Lane NO and Others (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 (7 October 1997): Para 46.*

²⁰⁰ *Harksen v Lane NO and Others (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 (7 October 1997): Para 53.*

²⁰¹ *Harksen v Lane NO and Others (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 (7 October 1997): Para 52.*

The final leg is the limitation clause in section 33 of the interim Constitution (section 35 of the Final Constitution) which entails balancing of the purpose and effect of the provision and the proportionality in relation to the “*extent of the infringement of equality.*”²⁰²

4.6 THE ENQUIRY IN THE CASE OF THE PAY-NOW-ARGUE-LATER PRINCIPLE

The study will not consider the constitutionality of a tax revolt in the light of the foregoing analysis as that has been discussed already above. That the pay-now-argue-later principle differentiates between taxpayers is apparent but would have to assess whether the government purpose would be considered legitimate and whether there is a rational connection to the purpose that is served.

Kriegler in the Metcash case above outlined the rationale of the pay-now-argue later principle. In the decision he stated that it helps in obtaining full and speedy settlement of tax debts as a result helps in making the fiscus efficient in collecting tax. Only after a tax amount is settled by a taxpayer can they then proceed to go to the various tribunals in so doing it reduces frivolous objections. Kriegler further argues that since the principle is used by tax authorities in many jurisdictions across the world, it shows the fact that it has become universally accepted as reasonable, based on the Constitutions limitation clause. Finally, the Metcash case shows how the principle is made bearable by providing the option to the taxpayer in the TAA of applying for its suspension. Looking at these facts, the pay-now-argue-later principle can be said to serve a legitimate government purpose and is a reasonable principle.

One cannot rule out the effects of the pay-now-argue-later principle on, not only taxpayers, but also their communities as in the Nondabula case, the inconvenience, prejudice and the burden that

²⁰² *Harksen v Lane NO and Others (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 (7 October 1997):* para 111.

it causes one finds that the pay-now-argue-later principle serves a legitimate government purpose but must not be abused. It also becomes more apparent when one considers that to date, there has been no successful challenge to the principle. The pay now argue later principle can therefore be found to have violated section 8 (1) of the interim Constitution (now section 9 (1) of the Final Constitution.

Since the discrimination that the pay-now-argue-later principle presents is not a listed ground in the Constitution, the one who alleges its unfairness would have to bear the onus of proof that the discrimination is unfair. The impact that the pay-now-argue-later principle would have on the victimised taxpayer is ameliorated by the options available to the taxpayer once the principle is invoked by the fiscus. The pay-now-argue-later meets the reasonableness test in the final leg of the analysis and the study would therefore conclude that the pay-now-argue-later principle is a reasonable and a fair principle albeit the fact that it discriminates, it does not do so unfairly since it serves a legitimate government purpose – effective tax collection. Now onto the question, is there a compelling justification for the infringement?

According to the section 36 (1) enquiry, once there is confirmation of infringement of a right in the Constitution by a law of general application, Currie and de Waal argue that the onus lies on the one relying on the impugned law to prove that there is a legitimate reason for the limitation.²⁰³ They argue further that it is permissible for a right to be limited if the limitation is considered serving a legitimate government purpose by reasonable citizens based on constitutional values.

²⁰³ Currie I & de Waal J 2005 *The Bill of Rights Handbook* (5 Ed): Para 7.2 (c).

Currie and de Waal state that the infringements must however not be more costly than the benefits derived from the limitation.²⁰⁴

4.7 THE INTER-RELATIONSHIP BETWEEN A TAX REVOLT AND THE PAY-NOW-ARGUE-LATER PRINCIPLE

A tax revolt is said to mend relationships between governments and its citizens by helping to negotiate the terms of exchange discussed by Ramskor. It is used as a restorative action to improve government performance. The eight theories discussed by Lowery and Sigelman bring to the fore areas that taxpayers are not happy with as result triggering the desire for government to fix those areas, a tax revolt will create a conducive environment to understudy taxpayers and their psychology so that areas requiring development maybe identified.

Using Musgrave and Lucier's arguments that revolts result from taxpayer's dissatisfaction with governments expenditure, the study finds that as a result government is likely to focus on how to reduce the expenses to curb the revolt. Likewise, Du Preez and Stoman opine that tax revolts are aimed at reducing taxes, to fight against corrupt practices and to reduce government wasteful spending. A tax revolt can be used to expedite policies that bring about development and much needed change – case in point, the Boston Tea Party revolt. A tax revolt can be used by the fiscus to research and develop policies that will assist to effectively collect tax.

Tax revolts are a necessary evil which can act as a catalyst for change. Tax revolts aid fiscus to improve on its services and the collection of taxes by instilling a culture of research and development as a direct response to the revolt and protest. Tax revolts help in improving the efficiency of the tax authority by directly and indirectly helping it to improve. Also, important to

²⁰⁴ Currie I & de Waal J 2005 *The Bill of Rights Handbook* (5 Ed): Para 7.2 (c).

note from the Pondoland and Boston Tea Party is that a revolt may not always produce the intended result. The results can be adverse towards the revolters.

Kriegler in Metcash case held that the pay-now-argue-later principle helps in obtaining full and speedy settlement of tax debts and ensures prompt payment by taxpayers of assessed amounts. The pay-now-argue-later rule, the court also held, helps in reducing frivolous objections that have the potential to prejudice the fiscus and delay finalization of tax matters. The justification for the pay-now-argue-later principle discussed in the earlier chapters is that it is used in many democratic jurisdictions hence universally acceptable as it is found to be reasonable. This is also due to the fact that many other alternatives to ameliorate the extent of the disadvantage to the taxpayers do exist. The recalcitrant taxpayers are restricted from abusing the objection and appeal procedures as a strategy to defer payment of their taxes through the pay-now-argue-later principle as was held in the Nondabula case. Tax avoidance may be seen as an attempt to address the short comings in the pay-now-argue later principle.

4.8 HOW SARS CAN USE THE PAY-NOW-ARGUE-LATER PRINCIPLE TO DEAL WITH A TAX REVOLT

It is possible for SARS to use the pay-now-argue-later principle to deal with tax revolt as long as it is used within the confines of the constitutional values, ensuring that all procedures provided for in the TAA, for instance, are followed.

4.9 CONCLUSION

Chapter 4 presented a step by step constitutional analysis of the pay-now-argue-later principle to ascertain whether the principle passes the constitutional mast. The analysis led to the finding that

it is justifiable as it assists the fiscus in fulfilling its mandate of collecting taxes effectively. On the other hand the research delved into the right to protest in the constitution and whether it can be justified, mindful of South Africa's history of strife and inequalities, the research argued that the right to protest (revolt) is justifiable as long as it is not accompanied with violence as stipulated in section 17 of the Constitution. The interrelationship between a tax revolt and the pay-now-argue-later principle the study opines is set where both can be utilised to make the fiscus more efficient in collecting taxes through research and sound policies resulting from a tax revolt and the pay-now-argue-later principle can be used to ensure speedy processes in tax debt settlements where there is a revolt. Chapter five makes recommendations and concludes the study.

CHAPTER 5

RECOMMENDATIONS & CONCLUSION

5.1 INTRODUCTION

In this chapter the study makes recommendations based on the findings of the research and concludes the study.

5.1.1 INDEPENDENT FORUM

As per Fritz and Van Zyl, and in accordance with the *nemo iudex* principle, this study agrees that there needs to be an independent forum that decides on appeals against SARS' decisions on tax matters. SARS must not be a judge and jury in a matter where it is involved – an appeal by a taxpayer for instance. With the current set up the pay-now-argue-later principle is bound to be abused.

5.1.2 SUSPENSION OF THE PAYMENT AND GREATER CERTAINTY

The payment must be suspended either fully or partially until the independent and impartial tribunal decides on the matter as this would justify the principle of justifiability – this would be a less invasive means according to Fritz.

The taxpayer must be provided with all information they need to appeal which would guarantee certainty and help in upholding the constitutional presumption of innocence. Certainty must be created around the factors considered by SARS for a suspension request to be allowed, and as discussed above, dissipation factors must be defined and the point when dissipation is suspected made clearer as it can be subjective and has the potential to go against the presumption of innocence in the Constitution's section 35 (3) (h). As opined by van Zyl, notice must be given,

with no exceptions, to a taxpayer of an impending appointment of agent in line with section 96 of the TAA.

5.1.3 INTEREST CHARGED ON ASSESSMENT FOR ABUSE OF PROCESS

This study further agrees with Fritz that SARS must slap an errant taxpayer who abuses the appeal or review process with interest as it is done in Canada. Discretion must be used by SARS.

5.1.4 PSYCHOLOGY OF A TAX REVOLT

As argued by Gcabo and Robinson, not only the profile of the business must be considered when SARS is making a decision that has a bearing on a taxpayer but also the psychology, how they act the way they act

5.1.5 COMMUNITY NEEDS

Likewise, the needs of the community in which a taxpayers operates from need to be considered, especially in the rural setting as per Van Zyl -this helps in coming up with less stringent measures taken against the taxpayer which would affect a community adversely.

5.1.6 PROTECTION OF PEACEFUL AND UNARMED TAX REVOLT

Section 17 of the Constitution provides for a peaceful and unarmed (non-violent) protest. Considering this, the study acknowledges that tax revolt is protected in the Constitution, subject to Constitutional limitations. The protests must be conducted in accordance with the values enshrined in the Constitution.

5.1.7 AVOIDANCE OF ABUSE OF PRINCIPLE BY FISCUS

It is possible for less stringent means of achieving a similar purpose to be arrived at than use of the pay-now-argue-later principle especially where it involves a community depending on the taxpayer e.g. a preservation order in which monies in his account can be frozen. As per Nondabula case, SARS must follow and abide by its own rules lest they be found foul of the provisions of the Bill of Rights.

5.1.8 EDUCATION OF SARS OFFICIALS

Neither SARS nor its staff seem to be abreast of the times when it comes to understanding SARS' own procedures to be followed when pursuing an errant taxpayer as stated by Croome. There is need for SARS to educate its staff and communicate the same to its clients.

5.1.8 ADHERENCE TO THE CHARTER

Finally, the SARS - taxpayer charter must be utilised to assist with the improving of the relations between SARS and taxpayers.

5.2 CONCLUSION

This study has endeavoured to define a tax revolt by looking at its history, the development over the thousands of years, the theories, dynamics, and psychology of a tax revolt. In the end the study concludes that there is no universal definition of a tax revolt as these aspects change from one community to the next. Nevertheless, understanding the psychology of a tax revolt helps in understanding how a taxpayer thinks when they revolt so that appropriate polices maybe

formulated to make the fiscus more effective in achieving its mandate of effective collection of taxes.

The rationale and development of the pay-now-argue-later principle is explored in chapter four. At the time of the study, no challenge of the constitutionality of the pay-now-argue principle had succeeded looking at the case law discussed in the research – but it does not mean the status quo will remain unchanged. Challenges to SARS not following its own procedures in enforcing the pay-now-argue-later principle have borne fruit evidence by the Nondabula case.

The right to protest (revolt) has been found to be Constitutionally protected in section 17. Tax revolt that is devoid of arms and is peaceful is bound to yield policies being developed by SARS to improve its tax collection or better yet, government to improve in its service delivery. Likewise, well enforced pay-now-argue-later principle, that has followed all SARS' procedures and upholds the values enshrined in the Constitution will assist in improving SARS ability to raise revenue required by government to develop a nation. Croome notes that the relationship between the taxpayer and tax collector will always be adversarial, there is a greater need, more so presently, to understand the interrelationship between the tax revolt and the pay now argue later principle, if the fiscus is to be effective in achieving its mandate.²⁰⁵ The study, The inter-relationship between a tax revolt and the pay-now-argue-later principle has made some recommendations which are aimed at an improving this interrelationship to ease the relationship between the fiscus, taxpayer and the government.

²⁰⁵ Croome B 2010 *Taxpayers' Rights in South Africa*: 320.

BIBLIOGRAPHY

1. Constitution of the Republic of South Africa 1996.
2. Interim Constitution of South Africa, 1994.

6.1 BOOKS

3. Archer V 2010 *The Australian Tax Revolt: Constructing a 'new class' in 1978* Journal of Australian studies.
4. Burg DF 2004 *A World History of Tax Rebellions: An Encyclopaedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present*.
5. Croome B 2010 *Taxpayers' Rights in South Africa*. Juta & Co.
6. Currie I & de Waal J 2005 *The Bill of Rights Handbook* (5 Ed.) 396.
7. Field LP & Frey BS 2010 *Developing alternative frameworks for explaining tax compliance* Taylor & Francis Group.
8. Gunderson C 2004 *The Boston Tea Party* ABDO Publishing Company Minnesota
9. Kinsey KA 1984 *Theories and Models of Tax Cheating* American Bar Foundation: Chicago.
10. Lewis A Webley P & Furnham A 1995 *The New Economic Mind: The Social Psychology of Economic Behaviour*. Harvester: New York.
11. Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations* American Political Science Review, Volume 75, Issue 4, December 1981.

12. Lucier RL 1979 *Gauging the strength and Meaning of the 1978 Tax Revolt* Public Administration Review Vol. 39, No. 4 (Jul. - Aug. 1979): 371-379.
13. Mariono T and Jose RM 2006 *Political Disaffection in Contemporary Democracies: Social Capital, Institutions and Politics* Routledge: 5
14. McCaffrey J & Bowman JH. 1978 *Participatory Democracy and Budgeting: The Effects of Proposition 13* Public Administration.
15. Musgrave RA 1979 *The Tax Revolt* Social Science Quarterly Vol. 59, No. 4 (March 1979): 701 University of Texas Press <https://www.jstor.org/stable/42860474>.
16. Ndlovu T 2017 *Fiscal Histories of Sub-Saharan Africa: the case of South Africa*.
17. Ramfor R 2019 *The fine line between tax compliance and tax resistance: The case of South Africa*.
18. Rechberger S, Hartner M, Kirchler E & Hammerle 2010 *Tax Amnesties, Justice perceptions, and filing behaviour: A simulation study*. Law and Policy, 32: 214-225.
19. Redding S 2006 *Sorcery and Sovereignty: Taxation, power, and rebellion in South Africa, 1880-1963*: 2.
20. Saunders C & Limb P 2021 *Historical Dictionary of South Africa* (3ed) Rowman and Littlefield, London.
21. TLB Bible.
22. Van Zanten 2016 *Tax Collecting Practices: A Comparison Between Antiquity and the Modern Age* (Thesis) para 3.4; In-Kind Zanten defines it as payment in the form of goods or services and not in money.

23. Wenzel M 2003 *Tax compliance and the psychology of justice: mapping the field*. In *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Aldershot, UK: Ashgate Publishing.
24. Wright JD 1981 *Political Disaffection*. In: Long S.L. (Eds) *The Handbook of Political Behaviour*. Springer, Boston, MA. https://doi.org/10.1007/978-1-4684-3878-9_1: 2.

6.2 CASES

25. *CSARS V Capstone 556 (Pty) Ltd [2016] 2 All SA 21 (SCA)*.
26. *Harksen v Lane NO and Others (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 (7 October 1997)*.
27. *Hindry v Nedcor Bank Ltd and Another 1999 (2) SA 757 (W)*.
28. *Metcash Trading Ltd v Commissioner for the South African Revenue Service 2002 2 SA 232 (W)*.
29. *Mlungwane and Others v The State and Another [2018] ZACC 45*.
30. *Nedbank Limited v Pestana 2009 (2) SA 189 (SCA)*.
31. *Singh v CSARS (65 SATC 203)*.
32. *Vuyisile Zamindlela Nondabula v Commissioner: South African Revenue Service (February 5, 2018)*.

6.3 JOURNALS

33. Boston Tea Party <https://www.history.com/topics/american-revolution/boston-tea-party#:~:text=The%20Boston%20Tea%20Party%20was,India%20Company%20into%20the%20harbor>.

34. Braithwaite, Valerie. 2003. *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Florence: Taylor and Francis.
<https://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=4817142>.
35. Du Preez H & Stoman J 2019 An analysis of current tax revolt factors in South Africa
<https://www.emerald.com/insight/2049-372X.htm>.
36. Courant Paul, Gramlich, E & Rubinfeld, D 1979 *Tax Limitation and the Demand for Public Services in Michigan*. National Tax Journal.
37. Elffers H & Hessing DJ 1997 *Influencing the prospects of tax evasion*. *Journal of Economic Psychology*.
38. Field LP & Frey BS 2010 *Developing alternative frameworks for explaining tax compliance* Taylor & Francis Group.
39. Fritz C 2019 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia* Journal for Juridical Science 2019.
40. Fritz C 2017 *Reconsidering the 'pay now argue later' approach of South Africa in relation to disputed taxes – lessons from Canada and Australia*. Journal for Juridical Science 2019:44(2):20-43 (An article from research done for author's LLD thesis titled 'An appraisal of selected tax-enforcement powers of the South African Revenue Service in the South African constitutional context' University of Pretoria, 2017).
41. Gcabo R & Robinson Z. 2007 *Tax Compliance and behaviour response in South Africa; and alternative investigation* South African Journal of Economic and Management Sciences SAJEMS NS 10 No 3.
42. Gunderson C 2004 Boston Tea Party Available at
<https://books.google.co.za/books?hl=en&lr=&id=XP96AgAAQBAJ&oi=fnd&pg=PP1&>

[dq=BOSTON+TEA+PARTY+TAX+REVOLT&ots=8YsH8jFHQC&sig=d5j9uSaC389fGVvByBoNfsDBVEI&redir_esc=y#v=onepage&q=BOSTON%20TEA%20PARTY%20TAX%20REVOLT&f=false.](https://www.google.com/search?q=BOSTON%20TEA%20PARTY%20TAX%20REVOLT&ots=8YsH8jFHQC&sig=d5j9uSaC389fGVvByBoNfsDBVEI&redir_esc=y#v=onepage&q=BOSTON%20TEA%20PARTY%20TAX%20REVOLT&f=false)

43. Kirchler E 1998 *Differential representations of taxes: Analysis of free associations and judgements of five employment groups*. Journal of Socioeconomics, 27(1).
44. Lucier RL 1980 *Gauging the Strength and Meaning of the 1978 Tax Revolt*. In Levine, Charles (ed.), *Managing Fiscal Stress*. Chatham, N.J.: Chatham House
45. Lewis A, Webley P & Furnham A 1995 *The New Economic Mind: The Social Psychology of Economic Behaviour*. Harvester: New York.
46. Lowery D & Sigelman L 1981 *Understanding the Tax Revolt: Eight Explanations*. American Political Science Review, 75(4).
47. Lucier RL 1979 *Gauging the strength and Meaning of the 1978 Tax Revolt* Public Administration Review Vol. 39, No. 4 (Jul. - Aug. 1979).
48. Musgrave RA 1979 *The Tax Revolt* Social Science Quarterly Vol. 59, No. 4 (MARCH 1979), p. 701 University of Texas Press <https://www.jstor.org/stable/42860474>.
49. Present Taylor & Francis Available at https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false.
50. Rechberger S, Hartner M, Kirchler E & Hammerle 2010 *Tax Amnesties, Justice perceptions, and filing behaviour: A simulation study*. Law and Policy.

51. Siahhaan FOP 2013 *The effect of Tax Transparency and Trust on Taxpayers' Voluntary Compliance* GSTF Journal on Business Review (GBR) Vol 2 No 3, March 2013
<http://dl6.globalstf.org/index.php/gbr/article/viewFile/1264/1280>.
52. Smith D 1999 *Howard Jarvis, Populist Entrepreneur: Re-evaluating the Causes of Proposition 13*. Social Science History, 23(2), 173-210.
 doi:10.1017/S0145553200018058.
53. van Zyl S 2018 *The Time is Ripe to Reconsider the Pay-Now-Argue-Later Principle – Vuyisile Zamindlela Nondabula v Commissioner: South African Revenue Service (February 5, 2018)*. Journal of Contemporary Roman-Dutch Law, Vol. 81, Available at SSRN: <https://ssrn.com/abstract=3226517>.
54. Taylor & Francis Available at
https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false.
55. Thompson LA 1982 *Historia: Zeitschrift fur Alter Geschichte*, Bd. 31 H.3 (3rd Qtr.).
56. Thurman QC, St Johan C, and Riggs L 1984 *Neutralization and tax evasion: How effective would a moral appeal be in improving compliance to tax laws* Law & Policy v6 n3.
57. Vogel 1974 *Taxation and public opinion in Sweden: An interpretation of recent survey data*, National Tax Journal.

58. Warneryd KE & Walerud B 1982 Taxes and economic behaviour: Some interview data on tax evasion in Sweden. *Journal of Economic Psychology*.
59. Wenzel M 2003 *Tax compliance and the psychology of justice: mapping the field*. In *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Aldershot, UK: Ashgate Publishing.
60. Wilson-Smith A 1995 *A Hollow Tax Revolt Maclean's*; Toronto Vol. 108 Issue 9 (Feb 27, 1995).
61. Wright JD 1981 *Political Disaffection*. In: Long S.L. (Eds) *The Handbook of Political Behaviour*. Springer, Boston, MA. https://doi.org/10.1007/978-1-4684-3878-9_1.

6.4 LEGISLATION

62. Income Tax Act 58 of 1962.
63. Tax Administration Act 28 of 2011.
64. Taxation Laws Amendment Act, 2009.
65. Value Added Tax Act 89 of 1991.

6.5 WEBSITES

66. Bhengu C Twitter Urges Maimane to 'deal with Zille' after opposing her #TaxRevolt <https://www.timeslive.co.za/news/south-africa/2019-01-29-twitter-urges-maimane-to-deal-with-zille-after-opposing-her-taxrevolt/>.
67. Burg DF 2004 *A World History of Tax Rebellions: An encyclopaedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* Taylor & Francis Available at

[https://books.google.co.za/books/about/A World History of Tax Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false](https://books.google.co.za/books/about/A_World_History_of_Tax_Rebellions.html?id=LrvxuLs101cC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false).

68. <https://almanac.upenn.edu/archive/v48/n28/AncientTaxes.html>.

69. Ortiz-Ospina E & Rosa M Taxation <https://ourworldindata.org/taxation>.

70. SARS <https://www.sars.gov.za/About/Pages/default.aspx>.

71. SARS Website 2011 <https://www.gov.za/pay-now-argue-later-principle-clarified#:~:text=The%20South%20African%20Revenue%20Service,effect%20from%201%20February%202011>.

72. Tax Administration 2361 Pay Now Argue Later November 2014 Issue 182
https://www.saica.co.za/integritax/2014/2361_Pay_now_argue_later.htm.