

25-May-12

Mr Thabadiawa A. Mufamadi,
Chairperson of Parliamentary Standing Committee on Finance
Parliament of South Africa
Cape Town

Dear Sir,

SUMMARY of Submission on Rates and Monetary Amounts and Amendment of Revenue Laws Bill (B10-20120)

ANNEXURE A: CHALLENGING THE EQUITY AND RATIONALITY OF THE INCOME AND VAT ACTS: page 4

ANNEXURE B THE ERRORS of the KATZ TAX 1994 INTERIM COMMISSION REPORT page 7

Irrationality of Income Taxes:

Reference the RYAN ALBUTT Constitutional Case CCT 54/09 [2010] ZACC 4, sec 51: "But, where the decision is challenged on the grounds of rationality, courts are obliged to examine the means selected to determine whether they are rationally related to the objective sought to be achieved. What must be stressed is that **the purpose of the enquiry is to determine not whether there are other means that could have been used, but whether the means selected are rationally related to the objective sought to be achieved.** And if objectively speaking they are not, they fall short of the standard demanded by the Constitution."

Inequity of Income Tax Acts:

SEC 9 OF CONSTITUTION (3) *The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, **including** race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*

(4) *No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). **National legislation must be enacted to prevent or prohibit unfair discrimination.***

(5) *Discrimination on one **or more** of the grounds listed in subsection (3) (such as singling out landowners for a subsidy PIM) is unfair **unless it is established that the discrimination is fair.***

ANNEXURE A

LAND PRICE SUBSIDIES

It is irrational that the State subsidises land prices by taxing incomes and consumption (VAT), not land-whether improved or not. South African urban plots have risen to R485K on average, fourteen times their 1994 prices while CPI rose four times-a world record ratio of price multiple to CPI.

It is inequitable that only the well-off can afford land. Prices are deemed to be market related but prices for 'natural' assets, like land, spectrum, and oxygen follow different rules to man-made assets. For instance land sells at some fifteen years

multiple of the rent which it would attract, but it lasts in perpetuity. Cars have a five year economic life, bricks and mortar sometimes last a generation

Price subsidies are forever unearned, relying not on owner's work or capital but on nature, location, infrastructure and services.

The landless cannot qualify for the subsidy, by definition. It is therefore inequitable that the acquisition of land has to be financed by equity and/or debt. As Robert Solow, Nobel Memorial Prize in Economics, 1987 explains:

"The user of land should not be allowed to acquire rights of indefinite duration for single payments. For efficiency, for adequate revenue and for justice, every user of land should be required to make an annual payment to government equal to the current rental value of the land that he or she prevents others from using." NB This is a rates and taxes type payment.

Income taxes and VAT are unlawful because in raising land prices they contradict sec 25.5 of the Constitution "the State must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis."

SUPPLY

There are no adverse supply side effects from land taxes: the earth does not get smaller when it is taxed. The supply of man-made goods falls when taxed.

Land, a 'natural' asset, can be taxed 100% and its price then falls, an unrecoverable capital loss. 'Man-made' goods and assets can only practically be taxed up to $\pm 30\%$ before owners disinvest or flee.

It is also irrational not to charge people for leaving land vacant when there are millions who are landless but who could make a decent living on the land, working for themselves. No zoning scheme in the world allows owners not to put land to a use, like the 27m 'potential' arable hectares identified by Frost and Sullivan 2007

Moreover it is irrational not to collect 100% of all land rents because vacant lands generate no income or VAT but benefit from the subsidy.

RECESSIONS and CREDIT CRUNCHES

On the toxic mortgage aspect bankers will inevitably bet on land values, a proxy for house prices. They have no more interest in speculating on bricks and mortar than on pins, fridges or cars because man-made things depreciate whilst land does not. If the State captured land rents instead of personal taxes there would be no land prices to bet on and therefore no recessions.

THEFT

It is criminal for the State to sanction the theft of private property; some would say extortion, when it taxes incomes, profits, savings and consumption. These are criminal acts and it is only when land rents replace income taxes that citizen's private property will be safeguarded.

That is, the State has no more business stealing from their own citizens than shooting them, unless there is absolutely no alternative means to raise revenue, such as land taxes -a rates and taxes surcharge.

OTHER IRRATIONALITIES

Land rents are a user charge, like site value rating, and lower the cost of property, capital, employment and trade. Income and consumption taxes raise these costs.

It is senseless that income taxes, and flat rate taxes, target those who work twelve hours a day to pay more taxes than their eight hour neighbours, when the land under their houses share the same benefits of nature, infrastructure and services.

Then it is certainly irrational to have a tax system where many South Africans simply advance money to the state as taxes and then sit back and wait for land

prices to catch up. An urban plot in Southfield, an average SA suburb, now sells for ±\$US 60K according to ABSA. The current rates and taxes are \$ US 300pa. Meanwhile the land price increased by \$US 8000 during 2010, twenty five times the rates payable and often more than income tax paid of \$US 8400pm by the average resident.

And it is concerning that windfall profits flow to citizens whose land values are enhanced by spending on State infrastructure. The few thousand land owners within seven minutes' walk of the new Gautrain stations are expected to share land profits of R25bn, the total project cost, with the compliments of all other South African tax-payers. The e-toll project between Pretoria and Joburg will raise the land value of sites which it influences by the same project cost. Infrastructure is self-funding if land rents are used.

It is likewise absurd for the State to buy or expropriate land, say for housing, because it then pays twice. Firstly to create the land value through the myriad infrastructure, amenities and services it provides which add value to land. Secondly in the repurchase.

Farm mechanisation has also reduced formal agricultural jobs to some 600K when the 3.4m unemployed could be producing organic food for all of South Africa on 1ha plots and save half a ton of carbon per hectare. This is inclusive of animal husbandry and grain production according to the unit standard adopted by Prof Miguel Altieri of Berkley University's Dept. of Agroecology.

Without universal land access other rights become diluted. Thirty percent of all the rights contained in the Bill of Rights lie in this category:

Human dignity relies on self-sufficiency which for the jobless can only be realised by working the land, nature's shop floor.

Life needs sustenance, raiment and shelter which, apart from begging, borrowing stealing, or social welfare, can only come from applying labour to land.

Freedom includes being able to walk away from an unwanted job when self-employment becomes affordable.

Slavery and forced labour can offer more favourable living conditions than being landless and jobless because slaves are 'kept' in food, shelter and attire. They are also provided with full time occupation.

Freedom of occupation (work) is only meaningful to the jobless and unskilled if land is affordable.

Housing relies absolutely on land access for location and building materials.

Security of persons relies on the well-being of others and their ownership of private property.

Environments that are most harmful to health and well-being are found in slums where people naturally congregate when they have no alternative.

Health care, food and water are rights which are difficult to envisage if there is no access to land where food can be grown, water found and a healthier life-style taken up.

Education what chance has anyone of being properly educated when under fed and living in crowded conditions?

And how rational was it to appoint the 1994 Katz Tax Commission to report on the appropriateness of the tax regime and then pack it with tax lawyers and accountants who would all loose their livelihoods if they found in favour of land taxes.

The Commission erred when it ruled, without making any attempt to prove it, that "Both equity and the enhancement of economic growth.... cannot be promoted by

attempts to shift the tax burden predominantly onto any single dimension of economic activity¹” (such as the single land tax),

The Commissioners also broke the unfounded news that “It is not in the tax system that the remedy for poverty is to be found.²”

ANNEXURE B

THE KATZ TAX COMMISSION ERRORS

Here are extracts from the Commission’s Interim Guidelines of Principle as sec 1.5: *“In its approach to this Report, the Commission has followed the following general guidelines, which are set out not in any particular order of importance in 1.5.4:-“*

(a) Established precepts of taxation

The Commission endorses the following precepts, as articulated in the Report of the Margo Commission:-

For an adequate tax structure the basic characteristics (where the one does not conflict with the other or others) are equity, neutrality, simplicity, certainty, administrative efficiency, cost-effectiveness, flexibility, stability, distributional effectiveness, and a fair balance from the point of view of taxpayers between the respective burdens of direct and indirect tax. The ideal, both for direct and indirect imposts, is a broad based, widely distributed, low-rate, high yield tax, conforming to these other requirements as far as possible.

RESPONSE: This ‘ideal’ is irrational and inequitable and so unconstitutional. The fact of the matter is that whenever incomes and consumption (VAT) are taxed in place of land rents the tax burden on private land revenues is lowered and so land prices rise. This is in effect a direct subsidy enjoyed by landowners only and the reason why land prices have risen by fourteen times since 1994 whilst the CPI rose by four. The use of income taxes and VAT also contradicts sec 25.5 if equitable means affordable and affordable means land becoming devoid of any entry cost. The Commission’s error was to conclude that land prices would rise when land rents, imputed or not, are captured by the State. But of course it is only the costs of labour, savings and goods which rise when taxed. This is the difference between ‘man-made’ and ‘natural’ assets.

(c) Promotion of economic growth

The Commission believes that a first and major contribution the tax system should make is to assist with the funding of development initiatives, and more specifically to do so through facilitating growth in the economy. In this regard, the RDP White Paper referred to the tax system in the following terms:’

... ‘Improved and reformed tax systems will collect more tax without having to raise tax levels (as the RDP succeeds, more taxpayers will be able to contribute to government revenues).’

RESPONSE: The RDP did not succeed but all ‘high-tax, high land-price’ systems are anathema to economic growth because they raise the cost of everything including land as explained above.

(e)The Rule of Law

The Commission notes that the tax system is subject to the Constitution and must conform to society’s commitment to the Rule of Law.

This means not only that the system should be effective in the enforcement of all tax laws, equally and irrespective of status, but also that citizens’ right to be taxed strictly in

¹sec 1.5.4 (h) the Katz Interim Report page 10

² Sec 2.4.3 3rd Interim Report of the Katz Commission.

accordance with the terms of those laws should be scrupulously protected both in the design of those laws and in their implementation.

RESPONSE: Income taxes and VAT are a felony and repudiate the rule of law. They appropriate a portion of the fruits of citizen's work and savings, their private property. The saying that 'death and taxes are the only two certainties in life' is only true where the rule of law is moribund or where there is no alternative.

The capture of land rents is different because these are unearned revenues. They are also a pure user-charge (like rates and taxes) which collects the monetary value of the benefits which private lands enjoy through nature, public infrastructure, location, and myriad State services.

So we have calculated that each of the approximate nine million South African households are expected to pay an average of R5920pm in income taxes and VAT in the year ending February 2013. That will be the amount of land taxes, or rates and taxes which each landowner in Southfield, the average South African suburb will pay when their R5920 private property in taxes and VAT are repaid.

It is a wonder that income taxes and VAT have survived for nearly one hundred years. The writing of Thomas Paine springs to mind "A long habit of not thinking a thing wrong, gives it a superficial appearance of being right."

The SA Treasury knows the difference between taxes and user charges very well and documented these in their "2006 Environmental Fiscal Reform Study" which specifically distinguishes between 'general' and 'individual' monetary benefits of land. Only the individual benefit principle of user-charges can be equitable:-

6.1.1 A tax is defined as a compulsory unrequited payment not proportional to the good or service received in return for that payment. Since the payment made by an individual or firm does not necessarily equal the benefit derived, the general benefit principal applies.

6.1.3 User charges can be defined as requited payments for specific goods or services rendered. These payments are based on the individual benefit principle and attempt to link the amount paid to the benefit received by a specific individual.

(g) Moral consensus

The Commission recognises that taxation must be founded on a moral consensus around the need to nurture the tax system as a vital component of our national existence, in the valued ownership of all the people of South Africa. Although there must be room in a democratic society for energetic debate concerning tax measures, the tax system cannot serve as a forum for protest against other perceived wrongs.

RESPONSE: A moral consensus can never be found in the theft of private property or in the subsidy of landowners.

(h) Balance between taxes

Both require a considered balance between direct and indirect taxes, and between taxes based on income, transactions, resource use and consumption, and also require a balanced presence in the system of taxes on capital or wealth. The Commission recognises that economic stability cannot be promoted through attempts to shift the tax burden predominantly onto any single dimension of economic activity.

RESPONSE: Economic stability as well as equity and the enhancement of economic growth can only be sustainably realised under a single land tax regime because this nurtures the wealth creating activities of the entire population including the 5m currently unemployed and the 17m on social security. The latter can be phased out when families have a hectare of affordable land.

(i) Balance between simplicity and certainty

The Commission recognises that the extension of the tax system to encompass the millions of individuals and smaller enterprises whose engagement with the modern economy is vital for prosperity and redistribution, will be facilitated by simple rules and procedure and a minimum of fiscal complexity.

RESPONSE: The rules for a land-rent based fiscal system are much as the Property Rates Act 6 of 2004, excluding buildings and improvements. This is much simpler than those for income taxes and VAT being one centimetre thick, compared to nearly one metre for the Tax and VAT Acts

(j)International competitiveness

The Commission believes it is absolutely vital that the development of the tax system should be responsive to the country's re-entry into a sophisticated and highly competitive world economy.

RESPONSE: A great pity then that South Africa is not now a low land-price, tax haven like Hong Kong or Singapore