

Peter Meakin Memo on behalf of Sacprif

THE SACPRIF CASE AGAINST THE SA INCOME TAXES and VAT ACTS

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INTRODUCTION

It is no easy matter to summarise SACPRIF's work but the most urgent is to complete the business of William Wilberforce whose abolition successes were over-shadowed by landless and jobless citizens everywhere becoming worse off than slaves. They at least had a job and most would have been kept in good condition, like all machines enjoy.

The fact that our Constitution seems to authorise the needed reforms to South Africa's tax regime to remove this apartheid remnant has meant challenging the Income Tax and VAT Acts

THE SACPRIF CASE

Sec C25.5 says that "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."

- It is alleged firstly that the State has not taken these measures as landlessness is rife in the scrap-metal suburbs which engulf our towns and cities. The State's argument is broadly that it cannot afford the to buy land; that its 'available resources' are insufficient.

The unequivocal reason is that, albeit inadvertently, the State subsidises land prices, now averaging ±R500K for an urban plot according to ABSA, and more for small holdings. This subsidy led to a fifteen times increase in the South Africa's raw land prices from 1994 until today [ABSA] whilst the CPI for that period rose just four times. This multiple of nearly four times is an international record according, to The Economist.

An example of how the subsidy manifests is that the value of the land beneath my Claremont house has increased by some R2.125M since 1988. This was entirely unearned: no labour or capital of mine was applied. The lesson is that landowners cannot influence land prices without improving land by building on it or seeking permission for a rezoning, subdivision, or the removal of onerous conditions of title which all lies with the State to approve.

So raw land values are dependent on title conditions, location, infrastructure (including maintenance) amenities and services, good governance, economic growth and increases in population.

More importantly however they rely on the State land price subsidy which depends on the extent to which personal taxes on income and trade supplant land rents. This means that if income taxes and VAT were to be gradually replaced by land rents then there would be no entry cost to raw land: it would become 'equitably' accessible as sec 25.5 demands-without requiring any more State 'resources.'

Whilst this change in tax rates is not a sec 25.3 expropriation because title deeds are not disturbed, compensation for the loss of land rents will occur naturally if South Africa becomes a tax-haven because incomes and profits become tax free and higher price earnings ratios will prevail as the landless and jobless insurrection threat is lowered.

Land use charges, or rent, differ profoundly from income taxes and VAT. They are like rates and taxes and are the same whether the land is unused or worked 24/365. This is very similar to Hong Kong^j which has no resources to remotely compare with SA but its GDP per head is five times higher and its unemployment rate is one fifth of ours at 5%. This 'tiger' economy attracts investments for being a low Income Tax state.

This tax vs user-charge debate is well understood by the Treasury in their 2006 Environmental Fiscal Reform Study:

"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 required 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."

Nobel Prize winners advised President Gorbachev in an open letter in 1991 (see web site) what this meant practically:

"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 the government, equal to the current rental value of the land that he or she prevents others from using."

That advice was never taken and the natural wealth of Russia, its land and resource rents, were diverted to the Oligarchs.

OPPOSITION

- Notwithstanding this innovative SACPRIF assertion, universities in South Africa as well as the media, business and the State all swallowed the post Constitutional Katz Commission recommendation that taxes across all the factors of production, including land, should remain so as not to favour any one faction.

This assumes that each factor behaves in the same way, whether a 'natural' asset like land or 'man-made' like a pump. The Free Market Foundation, a typical commentator, adopted the view that there was no difference in the structure or behaviour of these two categories through Richard Grantⁱⁱ:

"the distinction between 'man-made' and 'natural' factors of production that is, between capital and land ... is irrelevant when discussing intervention and taxation: the consequences will be the same for any asset."

Those consequences were explained by Leon Louw, the FMF Director as followsⁱⁱⁱ:

"It is only common sense that you get less of what you tax and more of what you subsidise."

Yet the surface area of South Africa will not shrink one iota if 100% of land rents are taxed.

The confusion arises because of the different nature of 'natural' and 'man-made' assets. This 'natural' earth is billions of years old and was neither produced, nor can it be reproduced or moved to a better place. It has a perpetual economic life and for all practical purposes does not depreciate or suffer from obsolescence during a life time. It is the source of all wealth and well-being, like a celestial treasure chest.

On the other hand 'man-made' assets are the exact opposite as they were produced and are reproducible, can be moved, and depreciate or become obsolescent. Software has a short economic life, houses might last for a generation if properly maintained.

This means that land will behave contrarily to capital when taxed: its price will lower when new pump prices etc will rise. So the FMF idea that all factors of production should be taxed equally is mistaken-unless the goal is for high priced land which contradicts sec 25.5.

OTHER DAMAGING CONSEQUENCES OF THE INCOME TAX

So SACPRIF argues that the State is bound to replace income taxes and VAT with land rents because it is a 'reasonable legislative measure' and because it sympathetically addresses other damaging consequences of income taxes and so will comply with the Preamble in "improv(ing) the quality of life of all citizens and free(ing) the potential of each person":

- Income taxes raise the cost of property, capital, employment and trade and so undermine GDP growth by 30% pa according to some calculations. These are known as dead-weight personal taxes levied against citizens and their 'man-made' assets. They drag down companies and lengthen job queues.
- Rescinding income taxes compels the State to raise land taxes only. The lower land prices means everyone will have a chance to make a decent life for themselves on the land even if there are not enough decent jobs.
- Many South Africans advance money to the state for rates and taxes and wait for land prices to catch up. An urban plot in Southfield, an average SA suburb, now sells for ±R540K according to ABSA. The current rates and taxes are R5.5Kpa. Meanwhile the land price increased by R70K during 2010, thirteen times the rates payable.

Of course only landowners who enjoy these privileges, so the wealth gap widens.

- Income taxes are the prime cause of recessions and regularly destroy millions of jobs and mountains of wealth. If house prices were de-coupled from land prices, much like in Hong Kong too, then bankers would no more speculate in prime or sub-prime mortgages than in pins, fridges or cars. Booms rely on price speculation in land, tulips, dot coms and more recently copyrights. Bricks and mortar on the other hand depreciate in real value, enjoying an average economic life of only twenty years unless continuously maintained and refurbished.

(When banks talk about increases in house prices they mean the increase in land prices beyond the house depreciation. My old Cape of Good Hope Bank mortgage required a 25% deposit (for the land) and then the house was paid off over twenty years with its value depreciating at a similar rate to the outstanding balance of the loan. Safe as houses!)

- Income taxes are State sanctioned theft. It is a criminal act to forcibly appropriate a share of the fruits of a citizen's labour, savings or trade and it is only when land taxes replace income taxes that citizen's earnings can be safeguarded. Death and taxes are said to be the only two inevitabilities in life- but the State has no business stealing from their people, nor can they shoot them, unless there is no alternative to raising revenue.

Personal taxes were favoured over land rents on three occasions in South Africa. Firstly in the mid 19th century when settlers were encouraged to redeem their 'perpetual quitrent' tenures for a premium payment of fifteen years rent to the Governor. Then followed the first Income Taxes in 1914 and VAT in 1991. If these three simple interventions in favour of landowners had not occurred then land prices could never have gone beyond a recurring one-month's land rent.

(To reverse the decisions made by his predecessors is the prerogative of the Minister of Finance who adjusts tax rates each year. The last major change was in 2008 when corporate taxes were reduced by 7% by Minister Manuel. The 2011 Amendments are currently going through this Parliamentary process.)

- Massive windfall profits unfairly flow to citizens whose land values are improved by 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 if overseas norms of tax-leakage apply. This is clearly inequitable but infrastructure spending can become self-funding [paid for by the land owning beneficiaries] when the State captures all land rents and increases.

The monetary benefits which each land parcel enjoys are fully reflected in land rents- the surplus product. It is often not appreciated that toll roads also add value to near-by properties. These can pay their fair share of the capital costs, reducing the motorist's tolls.

- The buying or expropriating land for citizen's access is certifiable because the State then pays twice. Firstly to create the land value through the infrastructure, amenities and services it provides and secondly in the repurchase.
- Some free market sympathisers object to the fact they will be prevented from investing in raw land by these measures. They overlook that keeping land vacant and unused is not a permitted zoning condition. Penalty rates, up to four times, are already being applied to unused land in Joburg and Durban Municipalities.
- Prima facie single land taxes are a precise response to the constitutional demands of dignity, freedom, equality and land access and other rights which without land access will remain unfulfilled. 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 earned by working the land, their factory floor

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

Freedom requires being able to walk away from an unwanted job because the alternative of raw land on which to work becomes a practical alternative.

Slavery and forced labour offer more favourable living conditions than being landless and jobless.

Freedom of trade; occupation and profession is only meaningful to the unskilled if they can get access to land.

Housing relies absolutely on land access.

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

Environments that are not harmful to health or well-being and cannot be found in slums;

Health care, food, water and social security which are difficult to envisage if reliance on service delivery is necessary due to no land access and where food can be grown, water found and a healthier life-style taken on.

Education what chance has anyone to become a PhD when under fed and living in a crowded shack, some without electricity.

LEGAL or EXECUTIVE MATTER?

We have been told that this is not an Executive matter. We have tried to influence the Executive including all Ministers of Finance and Presidents for seventeen years and gave evidence to the Constitutional Assembly and the Katz Tax Commissions. More recently we went to Parliament to protest against the Income Tax Acts and their amendments. We were referred to SA Treasury by the Chairman of the Parliamentary Finance Committee in 2009 but wasted two years there. This was after we met with them in Pretoria last September accompanied by Fred Harrison, a land rent specialist from UK. So we have done this PT.

There are two legal issues: Schedule 4 Section XXV of the Interim Constitution ordered that the *“National Government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution”* but this never happened in spite of our objection to the Registrar of the Constitutional Court.^{iv}

Secondly and instead, the State appointed Michael Katz a prominent tax lawyer and many of his professional colleagues to report on the appropriateness of the SA tax system. This amounts to a conflict of interest which prima facie favoured the pre Constitutional collection methods.

BACKGROUND ISSUES AND PERSONALITIES

This paper has been written for lay men and women to avoid economic or valuation jargon. Classical economists, however, such as Adam Smith, David Ricardo, the Physiocrats, Henry George, Professors Fred Foldvary, Mason Gaffney and Nic Tideman, journalists like Fred Harrison and Martin Wolf (the Financial Times chief economics editor^v) as well as a selection of Nobel Prize winners and Prof Joseph Stiglitz advanced these arguments. Leviticus was the first.

Endorsements came from unexpected quarters: Karl Marx adopted land rent collections though not enthusiastically:

“We ourselves, as I have already mentioned, adopted this appropriation of ground rent by the state among numerous other transitional measures, which, as we also remarked in the *Manifesto*, are and must be contradictory in themselves.”

Marx-Engels Correspondence [London,] 1881. Published: *Gesamtausgabe*, International Publishers, 1942

Joshua Nkomo’s explanation of Zimbabwean indigenous tenures sound like Heads of Agreement for land leases in the VandAW Waterfront, if any common or indigenous law examples are needed:

“We don’t believe in trading land or selling land - no. And in any government that I lead, you can be certain those practices must go. That does not mean we will be taking people’s land. It means that other people who haven’t got money will have a chance to use land, which is the common property of everybody.

“And if they have to pay some rates or rents that will go to a general fund of the people. In this way citizens can use as much land as they want. Our system is this: once you use land, that land belongs to you. But you have not bought it. You cannot sell it to someone (*PIM but one can sell the improvements attached to the land.*) The land belongs to the people, but everything on that land is yours.”

Cited in ‘The Predator State’ by Fred Harrison 2010

Local land rent academics are Stephen Meintjies^{vi}, Raymond Auerbach^{vii}, Piet-Hein van Eeghen^{viii} and David Solomon^{ix}

OPPONENTS

Against these stand the Katz Commission and others. The 1994 Katz Tax Commission was mandated to “enquire into the appropriateness of the present tax system.”

It “recognise(d) that economic stability cannot be promoted by attempts to shift the tax burden predominantly onto any single dimension of economic activity.”

sec 1.5.4 (h) the Interim Report page 10.

PIM Comment: No proof was offered for this assertion.

“It is not in the tax system that the remedy for poverty is to be found.”

Sec 2.4.3 3rd Interim Report of the Katz Commission

PIM Comment: Why not?

The single land tax was raised in submissions to the 8th (Land Tax) Katz Report:

“At one extreme Georgists held to the view that a site value tax on all land should be introduced, while all or most other taxes should be abolished. Alternatively, some respondents fiercely resisted the prospect of a land tax as an unjust impost on only one form of wealth that would discriminate against certain sectors of the economy.”

Judge Dennis Davis 8th (Land Tax) Katz Report of August 1998,

PIM Comment No attempt was made to arbitrate these viewpoints

The confusion continues to this day in the next generation of economists:

“Modern theories of property have little connection to these essentialist arguments about different kinds of property, especially not based on arguments as to origin (*PIM viz ‘natural’*)”

or 'man-made'). I am sympathetic to the modern views and treat property as a social institution and I concern myself with the rules and norms that help us to define property more or less clearly."

Professor Stan du Plessis (Department of Economics Stellenbosch),
Letter to Cape Town Club June 2009 after addressing a luncheon function

PIM Comment: So that's alright then

SPECULATIONS (Random Notes)

Not thinking it would be germane to the case SACPRIF did wonder what people would do if they got a hectare. How would it help the 5M unemployed?:

- “The SA free-land, tax haven.” Hong Kong is all leased land so the ‘entry cost’ is theoretically zero, subject to a recurring user charge. All else being equal a SA tax haven will attract more foreign investment than currently, like Hong Kong does, and this will improve job prospects in the towns and cities where most people seem to want to be, at least whilst their key to a self-sufficient life remains so elusive.
- Our “One hectare one millionaire” project emphasises the potential of private rural wealth creation and embodies Henry George’s assertion in his ‘Social Problems’ that ‘There is in nature no reason for poverty.’ Since starting this research evidence of small farmer’s already on their way to becoming millionaires has been unearthed. In today’s Financial Mail, for example, a Bethlehem Free State black farmers trust which started off with some 110 one hectare plots now reaps 5400 tons of Pink Lady apples a year. That is 50 tons per hectare and a strong reason against poverty.

In the 6th May 2011 Financial Mail, AgriSA president Johannes Möller bemoans the slow pace at which the development of agricultural potential is taking place. “If we had the same level of production on the high-potential land of the former homelands of Transkei and Ciskei, SA could have more than doubled agricultural production,” he says. “If fully developed as agricultural regions, Transkei and Ciskei could feed more than 70m people.”

Whilst it is often said how under-endowed SA is in agriculture it is worth mentioning that it has a higher percentage of arable land than the world average of 11% according to The Economist. Higher too than Brazil and Argentina.

- SACPRIF looked at two methods of rural wealth creation. The first was based on Basque villages in South West France where individual small holdings from one hectare upwards are spread out. Our investigation was led by J. Rogers QS who was tasked to determine just how many man-hours it would take for an able-bodied citizen to build a one hectare wine estate with a cellar and decent 160sqm brick house out of the clays and stones on site and the straw and timber that could be grown there. He calculated three years to completion with proper mentoring, working with a gang of nine others and using the R50 000 housing subsidy.

Each one hectare estate is located in a village of up to three hundred families with clinics and schools. A 1500m² vegetable and fruit garden, mielie patch and chicken run is needed which, under ideal conditions of sun, soil and water will yield all the food needed for a family of four some of which will be bartered for more variety. Work in these gardens averages two to three man-hours a day over five-day weeks.

My estimate is that such a farm would be worth a million rand excluding any land value.

If conditions are not ideal then more land and water will be needed. There are 27M unused ‘potential’ arable hectares in the country according to Frost and Sullivan’s 2008 report *“Opportunity Analysis of Biofuel Feedstock Markets in Southern Africa”*^x. In addition less than one percent of South Africa’s ground water is currently being used.^{xi}

For present purposes, it is therefore assumed that there is enough arable land to accommodate five million unemployed households on a one hectare small holding and that the State will procure adequate water supplies to satisfy these new, rural, work stations. It should jump at the chance because the retail price of a frugal food basket for four exceeds R15 000 per year.

Our expectations are that this will also catch on with developers as a 'work' village is not much different from a 'retirement' village except residents are shown how to build their own houses and earn a living for themselves. The alternative is squatting in the Cities and eking out a living for three years in a shack with no assets to show at the end of it and probably no job security either.

- The second 'get rich' method is the plantation model where workers are granted title to land and a farm job. Here is a description by journalist Douglas Rogers of two real projects in Mozambique where land has a nil entry cost because it is on lease:

"I did a story during the same trip for London's Saturday Telegraph magazine on a remarkable white Zimbabwean farmer named Jake Jackson who, unable to farm in Zimbabwe, had transformed a desperately poor, war-torn part of northern Mozambique into rich farmland by training more than forty thousand black Mozambicans to grow tobacco and other crops for export.

"Peasants who had recently lived in mud huts, dependent on food hand-outs from the West, were now building houses, driving four-by-fours and sending their children to (private) schools. Men like Jackson are lost to Zimbabwe. They now live as expatriates in many remote rural parts of Africa, where their skills are used to help feed and develop those countries as they once did in Zimbabwe. Few of them will ever return."

The Last Resort, A Memoir of Zimbabwe by Douglas Rogers Jonathan Ball 2009.

END NOTES

i Hong Kong vs South Africa

Hong Kong Taxes:14.2% GDP: (SA Taxes 28% GDP)

No sales tax

No capital gains tax

No VAT

No Excise duties on beer and wine

Maximum salary tax of 20%

Profit tax maximum of 16%

END NOTES

ii Previously Director of Research at the Free Market Foundation of Southern Africa in his book "Nationalisation: How Governments Control You." Sourced from the "Corruption of Economics" by F. Harrison and T M Gaffney

iii In Mr Louw's "A Neutral Tax Structure Shows Respect for the Consumer" published on the FMF web site

iv

Letter from P I Meakin to The Registrar of the Constitutional Court (17/06/1996 18:42:00):

Forum II

Braampark

33 Hoofed St.

Braamfontein 2017

.....My second objection to the Constitution is that it fails to define what fiscal powers the National Government are to have as promised in Schedule 4 Section XXV of the Interim Constitution:

"The National Government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution"

The closest that the Constitution comes to the required definition is in Sec 213:

(1) *There is a National Revenue Fund into which all money specified by an Act of Parliament and received by the national government must be paid*

An Act of Parliament is not a definition. This omission is particularly material because a tax system will either nurture the Constitution:

1. *heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;*
2. *improve the quality of life of all citizens and.*
3. *free the potential of each person*

or it can negate these precepts. For instance Parliament has approved the Interim Report of the Katz Commission which stated that "poverty relief cannot effectively be addressed through the tax system (par 9.10.5.(b))"

Regards.

Peter Meakin

V Martin Wolf FT article June 2010: <http://www.ft.com/cms/s/0/8f06df9e-8ac1-11df-8e17-00144feab49a.html>

Vi Head of Research at Imara S.P. Reid (Pty) Ltd. and author of the forthcoming "Our Land, Our Rent"

vii PhD Associate Professor Plant Production, School of Natural Resources Nelson Mandela Metropolitan University.

viii PhD Associate Professor Dept of Economics UNISA

ix PhD ex Head of Wits School of Economic and Business Sciences. Consultant to Department of Land Affairs on Land Tax Policy 2006. Southern African Tax Institute: Founder member and Chairman of the Executive Committee

x <http://frost.com/prod/servlet/report-brochure.pag?id=M260-01-00-00-00#Further>

Xi Umvola Africa Financial Mail interview 'Hidden Treasure.' -Financial Mail April 1st 2011

ⁱ Hong Kong vs South Africa

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1993		7.6	2009	
Hong Kong	South Africa		Hong Kong	South Africa
1074	12 000 000	Area sq.km	1074	12 000 000
6 000 000	35 000 000	Population	7 000 000	47 000 000
\$ 11 450	\$ 2 520	USA \$GDP/person	\$ 26 750	\$ 5 360
		SA Rand GDP/person	R 203 300	R 40 736
4.54	1		4.99	1
75%	55%	GDP % Services	92%	66%
		Unemployment	5%	25%
		Tax as %age of GDP	14%	29%

END NOTES

ⁱⁱ Previously Director of Research at the Free Market Foundation of Southern Africa in his book "Nationalisation: How Governments Control You." Sourced from the "Corruption of Economics" by F. Harrison and T M Gaffney

ⁱⁱⁱ In Mr Louw's "A Neutral Tax Structure Shows Respect for the Consumer" published on the FMF web site

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^{xi} Umvola Africa Financial Mail interview 'Hidden Treasure.' -Financial Mail April 1st 2011