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Looting Africa: South Africa and Tax Injustice

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- Tax Justice Network for Africa

Tax evasion and avoidance costs South Africa billions of rand each year. The Commissioner of the South African Revenue Service (SARS) estimates that in 2005 African taxpayers held more than R500bn in overseas accounts to avoid taxation. [1] South African economists have estimated that from 1980-2000, over a third (37%) of the value of all capital formation in South Africa was moved offshore, depriving the South African economy of an astonishing $238bn since 1980 (assuming a conservative rate of return). [2]

This represents an enormous loss for South African economic growth and its efforts to alleviate poverty. 34% of South Africa's gross fixed capital formation from 1980-2000 (and 58% from1995-2000) has been lost to offshore capital flight. [3]

From apartheid to the present day

Tax evasion and capital flight by South Africa's wealthiest was prevalent during the apartheid era, but have remained a feature of post-apartheid South Africa. Indeed some estimates suggest that they have accelerated. Economists Seeraj Mohamed and Kade Finnoff have found that capital flight increased after the democratic elections in 1994: during a period of relative stability, this counters the usual perception that capital flight and tax avoidance in Africa is mainly driven by political and economic instability rather than by the selfish desires of wealthy elites to avoid paying taxes to their democratic governments. [4]

Since tax evasion is almost invariably the outcome of capital flight, the result has been to enable South Africa's economic elite to avoid contributing to economic development and redistribution by the democratically elected post-apartheid government.

The tax avoider's tool-kit

Circumventing foreign exchange controls

During Apartheid, South Africa's foreign exchange controls were notoriously abused by wealthy elites to move their wealth offshore: for example, abusing the 'financial rand', a higher-value currency than the ordinary commercial rand available only for foreign investment. Notoriously, it has been alleged that South African residents like Oliver Hill fraudulently brought funds into the country at the financial rand rate and expatriated the difference between this money and its commercial rand value - in Hill's case, moving offshore an alleged profit of R210million using forged Eskom bonds. [5]

While the financial rand system no longer operates, South Africa's foreign exchange controls continue to be abused. In his 2006 Budget speech Minister of Finance Trevor Manuel announced the completion of a foreign exchange control amnesty, revealing that some 42,672 applications had been made belatedly declaring R68,6bn held by South African tax avoiders in foreign assets. Since many evaders will not have declared their assets, and will remain protected by offshore banking secrecy, the actual figure is likely to be much higher. [6]

Corporate tax breaks and commodity exports

Several of South Africa's exporters of raw commodities – particularly diamonds – enjoy tax exemptions which allow South Africa's resources to be exported by multinational corporations without them fully contributing to the country's development through just taxation. Yet persistent allegations claim that these generous exemptions have themselves been abused, from apartheid to the present day, by manipulating export declarations, and using offshore subsidiaries and tax havens. Diamond exports are a case in point.

Since 1992 de Beers has moved diamonds out of South Africa duty-free under the terms of "section 59 agreements" permitted by the 1986 Diamond Act. According to this Act, the export of rough diamonds is subject to a 15% duty, levied by the South African Diamond Board; but this duty can be exempted if a stone has been offered to a cutter or for sale at a diamond exchange. According to the Mail and Guardian, duties paid to the Diamond Board ranged between R19-million and R56-million per year during the 1980s, but plummeted to just R15 000 in 1991, and have never recovered. [7]

The Mail and Guardian has reported that the South African government is currently investigating a shipment of 3 ½ tonnes of unpolished diamonds to London by de Beers just before the 1994 elections. Under the terms of the 1992 agreement, the diamonds were reportedly shipped without paying duty. The newspaper cites claims that De Beers manipulated its stocks in anticipation of favourable export terms, and may in fact have offered the stones to local cutters or diamond traders, evading as much as R1bn in duty in the 1994 shipment alone. [8] De Beers has strongly denied these allegations.

It would not be the first time that de Beers has been accused by officials of avoiding taxes. During apartheid, a commission of enquiry under Natal judge Pieter Thirion investigated the assessment of tax on mining companies in Namibia in 1984. Journalist David Pallister has reported that Judge Thirion found “the allegations of mining and tax evasion proven and...accused the company of deliberately doctoring reports to state officials”. Pallister reports that the commission and investigators produced evidence that diamonds were exported through a host of de Beers subsidiaries, who each took a cut of profit, before the diamonds were channelled through the tax haven of Bermuda, returning only 86% of the selling price to the Namibian holding company liable for tax. In the first six months of 1983 alone, diamonds worth US$171 million were reportedly channelled in this way. [9]

The tax gap – undercutting South Africa’s development SARS estimates that between R10bn and R30bn of South Africa’s due taxes remain uncollected – around 45% of government revenue. [10] This has an inevitable and massive impact on the resources available for South Africa’s development and anti-poverty efforts. It represents:

– between 2.5 and 7.5 times the amount of overseas aid to South Africa in 2004 [11]

– between 3 and 9 times the total direct government spending on tackling HIV/AIDS in 2005/6 [12]

– from 40% to 120% of the total provincial spending on South Africa’s education system in 2006/7 [13]

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[1] Commissioner Pravin Gordhan, quoted in Anél Powell, ’Tax cheats “leading SA down slippery slope”’, *Cape Times* 1 November 2006

[2] Seeraj Mohamed and Kade Finnoff, ’Capital Flight from South Africa, 1980 to 2000’, paper presented at forum on African Development and Poverty Reduction: the Macro-Micro linkage, Somerset West, South Africa, 13-15 October 2004.

[3] Mohamed and Finnoff, ’Capital Flight from South Africa’

[4] Mohamed and Finnoff, ’Capital Flight from South Africa’

[5] Alan Robertson, ’Hill may face charges for offences involving R210 million’, IOL, 2 August 1996

[6] Trevor Manuel, Budget speech, 15 February 2006, www.info.gov.za/speeches/2006/06021515501001.htm.

[7] Nick Dawes, ’De Beers Tax Bill is forever’, Mail and Guardian, 9 September 2005

[8] Ibid

[9] D. Pallister, S. Stewart and I. Lepper, South Africa Inc.: The Oppenheimer empire (London 1988), quoted in Hennie van Huren, Apartheid Grand Corruption: Assessing the scale of crimes of profit in South Africa from 1976 to 1994 (report prepared by civil society at the request of the Second National Anti-Corruption Summit, May 2006), pp. 68-9

[10] Monique Vanek, ’Sars takes on the rich and corporates’ offshore misdemeanours’, Moneyweb 11 September 2006, www.moneyweb.co.za/economy/tax/153684.htm.

[11] OECD Development Cooperation Report 2005, http://www.oecd.org/dataoecd/0/6/1878742.gif . According to the OECD, net Overseas Development Assistance to South African in 2004 was $617m, or R3985m (assuming 2004 exchange rate of R6.46 to 1$ (unofficial rate supplied by US Embassy: http://london.usembassy.gov/irs/irsxchng.htm)

[12] According to the South African government, combined government spending on AIDS/HIV in 2005/6 was R3.28bn: Republic of South Africa, Progress Report on Declaration of Commitment on HIV and AIDS, March 2006, p.9 http://data.unaids.org/pub/Report/2006/2006_country_progress_report_south_africa_en.pdf.

[13] ’Treasury: Provinces improve spending patterns’, Mail and Guardian, 2 November 2006