

# Between a tax and a hard place: rethinking third-party appointments in South Africa

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## *Abstract*

Tax administrations must balance revenue collection with protecting taxpayers from financial hardship. In South Africa, third-party appointments allow the South African Revenue Service to recover tax debts amongst others from employers or pension funds, but inadequate protections risk pushing taxpayers into financial distress. This article critiques the existing protections in South Africa and examines comparative approaches – where third-party appointments are referred to as levies in the United States of America, garnishees in Australia, and deduction notices in New Zealand. By assessing how these jurisdictions protect a taxpayer's basic living expenses while ensuring efficient tax collection, the article proposes legislative reforms to strengthen South Africa's framework. These insights offer valuable lessons for jurisdictions seeking to balance tax enforcement with taxpayer rights.

**Keywords:** tax collection, taxpayer rights, financial hardship, garnishees, deduction notices, tax levy

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## 1. INTRODUCTION

The United Nations (UN) Sustainable Development Goal 10 aims to reduce inequality by 2030. Taxation plays a crucial role in achieving this goal through redistributive mechanisms such as progressive taxation. However, tax administration must be designed carefully to avoid unintentionally exacerbating inequality. While maximising revenue collection is essential for achieving socio-economic objectives,<sup>1</sup> it must be balanced with protecting taxpayers' rights and ensuring that those in vulnerable situations do not suffer excessive financial hardship.<sup>2</sup> As Kokott and Pistone correctly observe, safeguarding the collective rights of taxpayers to ensure sufficient revenue for public welfare does not justify unreasonably infringing on the rights of individual taxpayers.<sup>3</sup> Moreover, Baker and Pistone indicate that in protecting taxpayers' rights, tax collection should never deprive taxpayers of the minimum resources required for living. Failure to safeguard this minimum impedes on taxpayers' human dignity.<sup>4</sup>

The economic impact of Covid-19 has left many individuals in significant debt, complicating revenue authorities' ability to collect taxes without causing financial hardship.<sup>5</sup> While this challenge is not unique to any one country, it underscores the need for tax administrations worldwide to balance enforcement with economic stability. Although maximising tax collection at all costs may seem beneficial for realising socio-economic rights, such an approach is short-sighted. In the long term, maintaining a financially stable taxpayer base is preferable to increasing the number of individuals dependent on government assistance.

Within this global context, South Africa's National Development Plan 2030 aligns with UN Sustainable Development Goal 10 by aiming to eliminate poverty and reduce inequality.<sup>6</sup> This objective is particularly urgent given that South Africa had the highest income inequality in Southern Africa, with a Gini index of 54.1 in 2022.<sup>7</sup> Moreover, with 29 million people reliant on social grants and only 7.4 million registered income taxpayers,<sup>8</sup> it is crucial to ensure that financially vulnerable taxpayers are not pushed into hardship, where they too become dependent on government assistance.

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<sup>1</sup> Joel Manyam, 'The Commissioner of Inland Revenue's Statutory Duty to Collect the Highest Net Revenue' (2016) 24 *Waikato Law Review* 108, 109.

<sup>2</sup> IBFD, Observatory on the Protection of Taxpayers' Rights (Philip Baker and Pasquale Pistone, directors), *The IBFD Yearbook on Taxpayers' Rights 2023, General Report on the Protection of Taxpayers' Rights* (IBFD Publications, 2024) 157.

<sup>3</sup> Juliane Kokott and Pasquale Pistone, *Taxpayers in International Law: International Minimum Standards for the Protection of Taxpayers' Rights* (Beck/Hart/Nomos, 2022) 71, 79.

<sup>4</sup> Philip Baker and Pasquale Pistone, 'General Report' in *Cahiers de Droit Fiscal International, Vol 100B: The Practical Protection of Taxpayers' Fundamental Rights* (International Fiscal Association, 2015) 17, 57. See also IBFD, above n 2, 157.

<sup>5</sup> Kevin O'Rourke, Ann Kayis-Kumar and Michael Walpole, 'Serious Hardship Relief: In Need of a Serious Rethink?' (2021) 43(1) *Sydney Law Review* 1, 2.

<sup>6</sup> See National Planning Commission, South Africa, 'National Development Plan – Vision 2030' <[https://www.nationalplanningcommission.org.za/National\\_Development\\_Plan](https://www.nationalplanningcommission.org.za/National_Development_Plan)> (accessed 22 May 2026).

<sup>7</sup> World Bank, 'Gini Index – Africa Eastern and Southern', <<https://data.worldbank.org/indicator/SI.POV.GINI?locations=ZH>> (accessed 25 May 2026).

<sup>8</sup> Malcolm Libera, '29 Million People on Grants in South Africa – But Only 7.4 Million Taxpayers', *BusinessTech* (1 November 2024) <[https://businesstech.co.za/news/finance/798152/29-million-people-on-grants-in-south-africa-but-only-7-4-million-taxpayers/?utm\\_source=chatgpt.com](https://businesstech.co.za/news/finance/798152/29-million-people-on-grants-in-south-africa-but-only-7-4-million-taxpayers/?utm_source=chatgpt.com)> (accessed 22 May 2026).

Beyond provisions for tax debt relief or write-offs in certain cases, the South African Revenue Service (SARS) can mitigate the risk of taxpayers becoming reliant on social grants by considering their financial position before, during and after initiating enforcement actions.

One such enforcement action is the third-party appointments, where a third party is required to pay over money owed or held on behalf of the taxpayer to the revenue authority. This article focuses on cases where taxpayers rely on a salary or pension for basic living expenses, raising important concerns about financial hardship and tax administration fairness.

This article begins by demonstrating that the current South African protections are insufficient (section 2). It then examines approaches in the United States of America (section 3), Australia (section 4), and New Zealand (section 5) that seek to balance tax collection with the protection of taxpayers in vulnerable financial situations, with the aim of identifying potential amendments suitable for the South African context (section 6). While the primary focus is on lessons South Africa can learn, the discussion also offers valuable insights for other tax administrations on achieving an appropriate balance between protecting taxpayers from undue financial strain and ensuring the effective and efficient collection of taxes.

## 2. TAX THIRD-PARTY APPOINTMENTS IN SOUTH AFRICA

Section 179(1) of the *Tax Administration Act 2011* (South Africa) (*Tax Administration Act*) empowers SARS to issue a notice to a third party ‘who holds or owes, or will hold or owe, any money’ to or for a taxpayer with an outstanding tax debt. Pensions, salaries, and wages are explicitly listed as being subject to the third-party appointment notice.

In relation to pensions, pension benefits, amounts payable to a member or beneficiary in terms of the rules of the pension fund,<sup>9</sup> may be transferred if permitted by the *Pension Funds Act 1955* (South Africa), the *Income Tax Act 1962* (South Africa), or, importantly for the current discussion, the *Tax Administration Act*.<sup>10</sup> However, a pension interest, which refers to the benefits a member would have been entitled to if their membership of the fund had been terminated before retirement,<sup>11</sup> is not subject to a third-party appointment notice. This is because section 37D(1)(d) of the *Pension Funds Act* allows deductions from a member’s individual account, as opposed to a payable amount, in only two instances: when a pension interest is assigned to a non-member spouse in terms of a court order, or in terms of a maintenance order. Accordingly, SARS cannot claim a pension interest through a third-party appointment notice. Thus, the reference to ‘pension’ in relation to third-party appointments under the *Tax Administration Act* can only refer to pension benefits and not a pension interest.

Appointing an employer or pension fund as a third party can have severe consequences for salaried employees, who may lose a significant portion of their income, or older individuals reliant on their pension. This risk is heightened by the absence of specific monetary or percentage limits, potentially leaving taxpayers destitute.

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<sup>9</sup> ‘Benefit’ as defined in the *Pension Funds Act 1955* (South Africa) s 1.

<sup>10</sup> *Ibid* s 37A(1).

<sup>11</sup> ‘Pension interest’ as defined in the *Divorce Act 1979* (South Africa) s 1.

While the *Tax Administration Act* provides certain protections to mitigate the impact of third-party appointments, it is important to assess whether these measures are sufficient to protect taxpayers from undue financial hardship. First, a third-party appointment notice may only be issued 10 business days after a final demand for payment has been delivered to the taxpayer. This demand notice must, in addition to demanding payment, outline SARS's collection powers and the debt relief options available to the taxpayer. Crucially, for the purposes of this article, the notice must inform a natural person taxpayer that they may, within five business days of receiving the demand, apply for a reduced amount to be paid to SARS under the third-party appointment, ensuring the taxpayer can cover their own and their dependents' basic living expenses.<sup>12</sup>

Although this protection was included in the third-party appointment process with good intentions, it frequently fails in practice, as SARS often disregards this requirement. In *SIP Project Managers (Pty) Ltd v Commissioner for the South African Revenue Service*,<sup>13</sup> *WPD Fleetmas CC v C:SARS*,<sup>14</sup> *Ferrari Logistics South Africa (Pty) Ltd v C:SARS*<sup>15</sup> and *Autumn Skies Trading 94 CC v C:SARS*,<sup>16</sup> the demand notices were not delivered to the taxpayers prior to the third-party appointment. In fact, in the latter two cases SARS not only failed to serve the demand notice, but there was not even an outstanding tax debt.<sup>17</sup> Instead of rectifying its non-compliance after the taxpayer alerted SARS to the absence of a delivered letter of demand (and absence of an outstanding tax debt in the latter two cases), SARS allowed these matters to proceed to court.<sup>18</sup> This meant that taxpayers not only temporarily lost the amounts paid over by the third party but also had to incur legal expenses to rectify the situation. The mere fact that the loss is temporary, and the court can order the reversal of the third-party appointment and repayment of the money, does not negate the negative consequences. Being out of pocket, even for a short period, may not only affect the taxpayer but also create a ripple effect that impacts their dependants<sup>19</sup> and business cash flow, leading to reputational damage and causing emotional distress.<sup>20</sup> Furthermore, if a significant portion of the taxpayer's pension or salary has been paid over by the third party to SARS, the taxpayer may lack the funds to pursue litigation to have the appointment declared void. Financially constrained taxpayers may also struggle to secure a loan to finance such litigation.

The second protection allows the taxpayer subject to a third-party appointment to request an extension of the period over which the outstanding tax debt should be paid. This also ensures the taxpayer can still afford their and their dependants' basic living expenses.<sup>21</sup>

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<sup>12</sup> *Tax Administration Act 2011* (South Africa) s 179(5) ('*Tax Administration Act*'). Equally, a taxpayer who is not a natural person can request a reduction based on serious financial hardship.

<sup>13</sup> Unreported case number: 11521/2020 (30 April 2020) (High Court) ('*SIP Project Managers*').

<sup>14</sup> Unreported case number 31339/2020 (19 August 2020) (High Court).

<sup>15</sup> Unreported case number 62914/2020 (8 December 2020) (High Court) ('*Ferrari*').

<sup>16</sup> Unreported case number 28987/2020 (14 July 2020) (High Court).

<sup>17</sup> *Ibid*; *Ferrari*, above n 15, [17].

<sup>18</sup> These are known examples where taxpayers took the matter to court; there may be numerous other unknown instances.

<sup>19</sup> *Nondabula v Commissioner: SARS and Another* [2018] (3) SA 541 (High Court) [25].

<sup>20</sup> Inspector-General of Taxation and Taxation Ombudsman (IGTO), *Review into the Australian Taxation Office's Use of Garnishee Notices: Tax Administration Management Report* (2019) 178.

<sup>21</sup> *Tax Administration Act*, above n 12, s 179(4).

This protection has not received the same amount of judicial attention as the demand notice, but the recent matter of *Piet v C:SARS* reveals issues with applying this protection.<sup>22</sup> In this matter the taxpayer became aware, when he requested the withdrawal of his pension benefit, that the entire benefit due to him had been paid over to SARS in terms of a third-party appointment.<sup>23</sup> Although the taxpayer did receive a demand notice informing him that SARS has the power to appoint a third party, his lack of awareness that this notice had indeed been issued resulted in him being unaware that he would be affected and that he should request an extension of the period over which the amount was to be paid.<sup>24</sup>

In this respect, the High Court held this protection ‘necessarily presupposes’ that the pension fund notifies the taxpayer before adhering to the third-party appointment notice.<sup>25</sup> This argument is flawed as section 179 of the *Tax Administration Act* requires a third party to do only one of two things: pay over the amount indicated in the third-party appointment notice,<sup>26</sup> or inform SARS that it is unable to comply with the notice and provide reasons for this inability.<sup>27</sup> There is no explicit requirement for the third party to inform the taxpayer of such a notice once it has been received.

The obligation for the third party to inform SARS of its inability to comply cannot be interpreted to mean that the third party must bring the appointment to the taxpayer’s attention to consider the taxpayer’s inability or situation. This requirement pertains solely to the third party’s ability to comply. For instance, if the taxpayer is not employed by the third party, does not have a pension benefit at the pension fund, or has withdrawn the money from the bank account before the third-party appointment, the third party must inform SARS of its inability to comply. SARS would then withdraw or amend the notice accordingly.

Furthermore, as regards to notifying the taxpayer of an impending third-party appointment, the High Court in *Hindry v Nedcor Bank* indicated that

[i]f the taxpayer were to receive prior warning, he or she could frustrate the tax collector’s ability to recover the amounts due from his/her assets in the hands of a third party, for example by instructing the third party to pay the money to someone else or to the taxpayer him/herself or by ceding his/her claims to another.<sup>28</sup>

If a third party were to inform the taxpayer that they had received a third-party appointment notice and intended to comply with it, this could place the third party at

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<sup>22</sup> Unreported case number 3090/2023 (27 August 2024) (High Court) (*‘Piet’*).

<sup>23</sup> Ibid [12].

<sup>24</sup> Ibid [32]–[33].

<sup>25</sup> Ibid [23].

<sup>26</sup> *Tax Administration Act 2011*, above n 12, s 179(1).

<sup>27</sup> Ibid s 179(2).

<sup>28</sup> *Hindry v Nedcor Bank Ltd* [1999] (2) All SA 38, 55 (High Court). In this matter SARS issued a notice in terms of section 99 of the *Income Tax Act 1962* (South Africa), the former third-party appointment provision for income tax, to Nedbank. For a discussion of this case see Editorial, ‘The Commissioner’s Power of Tax Collection’ (March 1999) *The Taxpayer* 50; Linda van Schalkwyk, ‘Constitutionality and the Income Tax Act – Revisited’ (2004) 12(2) *Meditari Accountancy Research* 185; C Keulder and T Legwaila, ‘The Constitutionality of Third Party Appointments – Before and After the Tax Administration Act’ (2014) 77(1) *Tydskrif vir Hedendaagse Romeins-Hollandse Reg/Journal for Contemporary Roman Dutch Law* 53, 58–61.

risk. For example, if a bank's head office receives the appointment notice and informs the taxpayer, but a branch remains unaware,<sup>29</sup> it could result in the taxpayer withdrawing funds from the branch. This is because the third-party appointment notice does not in itself freeze the relevant account, nor does it result in an automatic cession or transfer of funds.<sup>30</sup> The third party would then be held personally liable for the amount.<sup>31</sup>

Should the specific relationship between the third party and the taxpayer obligate the third party to assume this risk by informing the taxpayer of the third-party appointment before the money is paid over to SARS? The court in *Piet* appears to think so.<sup>32</sup> However, van Zyl and Schulze remark that a bank customer in South Africa subjects themselves to South African law.<sup>33</sup> Thus, a taxpayer with a bank account would not succeed in a claim for breach of contractual duty against a bank that did not inform them before paying over the money, as the bank was complying with the *Tax Administration Act*. A similar argument applies to employees and pensioners.

Section 179 of the *Tax Administration Act* does not indemnify a third party against potential withdrawals by the taxpayer if the taxpayer is informed before the third party complies with the appointment notice. Since the Act also does not expressly require the third party to notify the taxpayer, the third party has no obligation to do so, regardless of the nature of its relationship with the taxpayer. Yet, without SARS or the third party informing the taxpayer of the third-party appointment before the third party complies, the protection safeguard has no value.

Ultimately, the protections intended to ensure a taxpayer's financial position is considered are currently ineffective. This is because taxpayers are often not afforded the opportunity to make representations regarding their financial affairs, either due to not receiving the demand notice or being unaware that an appointment notice is imminent.

Consequently, it is important to consider how other jurisdictions address third-party appointments and the potential financial hardship such appointments may cause for the taxpayer.

### 3. TAX LEVIES IN THE UNITED STATES

In terms section 6331(a) of the *Internal Revenue Code*, a taxpayer who fails to pay an outstanding tax debt within 10 days of receiving a notice to pay may generally be subject to tax collection through a third-party appointment, which is known in the United States as a 'levy'.<sup>34</sup> Such a levy is a legal seizure of a taxpayer's property, including funds from a bank account, social security benefits, and wages, to satisfy the outstanding tax debt.<sup>35</sup>

<sup>29</sup> This example is based on the facts of *Nedbank Ltd v Pestana*, 2009 (2) SA 189 (Supreme Court of Appeal).

<sup>30</sup> *Ibid* [1] referring to *Nedbank Ltd v Pestana* (2008) 71 SATC 97 (Tax Court) [12].

<sup>31</sup> *Tax Administration Act*, above n 12, s 179(3).

<sup>32</sup> *Piet*, above n 22, [23].

<sup>33</sup> SP van Zyl and WG Schulze, 'The Collection of Value Added Tax on Cross-Border Digital Trade – Part 2: VAT Collection by Banks' (2014) 47(3) *Comparative and International Law Journal of South Africa* 316, 345.

<sup>34</sup> Only in instances where the tax is in jeopardy, would the 10-day period not apply.

<sup>35</sup> Taxpayer Advocate Service (US), 'Levies' (28 January 2025) <<https://www.taxpayeradvocate.irs.gov/get-help/interacting-with-the-irs/levies/>> (accessed 26 May 2025).

Before a levy can be imposed, the Internal Revenue Service (IRS) is required to provide taxpayers with various notices to ensure that they have the opportunity to challenge or resolve their tax debt before enforcement actions take place. The IRS must first issue a formal demand for payment, giving the taxpayer 10 days to settle the outstanding tax debt voluntarily. If the tax remains unpaid, the IRS must then send a Notice of Intent to Levy and Notice of Your Right to a Hearing (Notice of Intent) at least 30 days before proceeding with the levy.<sup>36</sup> This notice serves as a critical procedural protection informing the taxpayer of the IRS's intention to seize assets, the legal basis thereof and procedures applicable to the levy. It also outlines available alternatives to prevent the levy, such as instalment agreements, the process to request the release of seized property,<sup>37</sup> and the right to challenge the levy through a hearing during the 30 days.<sup>38</sup>

On the taxpayer's request for a hearing, the hearing is conducted by the IRS Independent Office of Appeals.<sup>39</sup> During such a hearing, the taxpayer may question the suitability of the collection actions, propose collection alternatives such as an instalment agreement, and dispute the tax liability if they had not previously had the opportunity to do so.<sup>40</sup> In relation to the suitability of collection actions, the IRS considers whether the taxpayer's situation is so financially constrained that it is currently not collectible.<sup>41</sup> This would be the case if the taxpayer can show that the IRS levy will lead to or increase financial hardship.<sup>42</sup> The Independent Office of Appeals will ultimately determine whether the intended collection action, ie, the levy, strikes a balance between efficient and effective collection and not being unnecessarily intrusive on the taxpayer.<sup>43</sup> The determination by the Independent Office of Appeals can be taken on review to the Tax Court.<sup>44</sup>

In addition to the levy action generally only occurring 30 days after the Notice of Intent is issued, if the taxpayer proceeds with the hearing and any subsequent appeals, the IRS's levy power is further suspended. In fact, the IRS may typically only proceed with levy action 90 days after a final determination has been made.<sup>45</sup> However, there have been instances where the IRS has incorrectly made immediate levies on bank accounts or employers in cases where they believed an appeal had not been filed, when in fact it was the IRS that had yet to process the appeal filing.<sup>46</sup>

Financial hardship is not only considered before a levy is issued; the IRS also considers whether the levy creates financial economic hardship for the taxpayer as a basis for releasing the levy.<sup>47</sup> In this respect, the IRS relies on the Collection Financial Standards to assess the taxpayer's ability to pay the outstanding taxes.<sup>48</sup> Under these standards,

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<sup>36</sup> *Internal Revenue Code* sections 6331(d)(2), 6330(a)(2) ('IRC'). This notice does not apply when the tax is in jeopardy.

<sup>37</sup> *Ibid* section 6331(d)(2).

<sup>38</sup> *Ibid* section 6330(a)(3).

<sup>39</sup> *Ibid* section 6330(b)(1).

<sup>40</sup> *Ibid* section 6330(c)(2).

<sup>41</sup> Leslie Book, 'Collection Due Process at Twenty-Five: A Still Important and Needed Check on IRS Collection Power' (2022) 20(1) *Pittsburgh Tax Review* 145, 154.

<sup>42</sup> *Ibid*.

<sup>43</sup> IRC, above n 36, section 6630(c)3(C).

<sup>44</sup> *Ibid* section 6630(d)(1).

<sup>45</sup> *Ibid* section 6330(e)(1).

<sup>46</sup> Howard S Levy, 'IRS Collections in Troubled Times' (2009) 11(5) *Journal of Tax Practice and Procedure* 19, 20.

<sup>47</sup> IRC, above n 36, section 6343(a)(1)(D).

<sup>48</sup> Taxpayer Advocate Service, above n 35.

specific national allowances are included for food, clothing, and out-of-pocket medical care based on the size of the taxpayer's family.<sup>49</sup> Local standards, which vary according to location, provide maximum amounts for housing, utilities and transport.<sup>50</sup> The IRS may deviate from these standards if the taxpayer's specific facts and circumstances demonstrate that the standards are inadequate. The taxpayer must provide supporting documentation of their actual expenses to substantiate this claim.<sup>51</sup>

Beyond the general consideration of financial hardship, the IRS also considers financial hardship when enforcing levies to ensure that taxpayers retain sufficient income to cover basic living expenses. This is achieved by protecting a certain portion of a taxpayer's wages, salary, or other income from the levy.<sup>52</sup> The exempt portion is determined using tables that consider the frequency of the payments, the number of dependants and the taxpayer's filing status (such as head of household, married filing separate return).<sup>53</sup> The taxpayer has an opportunity to provide the IRS with a statement indicating the factors to consider in calculating the relevant exempt amount. Failure to provide this information will result in the exemption available to a married individual filing a separate return with only one personal exemption being applied.<sup>54</sup>

However, assets and income in retirement accounts do not enjoy the same protection, even though a levy on such an account 'may have a particularly negative effect on a taxpayer's future well-being'.<sup>55</sup> Recognising the potential harmful impact of a levy on retirement accounts, the IRS classifies levies on retirement accounts as 'special cases',<sup>56</sup> requiring additional evaluation.<sup>57</sup> Before proceeding with a levy on this account, the IRS must first determine whether alternative collection methods are available. This determination includes identifying both retirement and non-retirement assets, with the principle that non-retirement assets should be prioritised for collection. Furthermore, the IRS must consider if a payment agreement would not provide a better alternative.<sup>58</sup>

Beyond the availability of alternatives, the IRS evaluates the taxpayer's conduct. A levy on a retirement account should not be issued unless the taxpayer's conduct is deemed flagrant. Even if the taxpayer has engaged in flagrant conduct, the IRS is required to assess whether extenuating circumstances exist that may mitigate the severity of the conduct.<sup>59</sup> Although the term 'flagrant' is not defined in the Internal Revenue Manual,

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<sup>49</sup> IRS, 'Collection Financial Standards' (last reviewed or updated 9 February 2026) <<https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>>.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> IRC, above n 36, section 6334(a)(9).

<sup>53</sup> See <<https://www.irs.gov/pub/irs-pdf/p1494.pdf>> for the relevant 2026 tables.

<sup>54</sup> IRC, above n 36, section 6334(d)(B).

<sup>55</sup> Taxpayer Advocate Service, *Fiscal Year 2017 Objectives Report to Congress, Volume 1* (2016) 94 (footnote omitted)

<[https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Area\\_of\\_Focus\\_3.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Area_of_Focus_3.pdf)> ('*Fiscal Year 2017 Objectives Report*').

<sup>56</sup> Internal Revenue Service, *Internal Revenue Manual* (last updated 30 April 2026) section 5.11.6.2 ('Notice of Levy in Special Cases, Retirement Income') <[https://www.irs.gov/irm/part5/irm\\_05-011-006](https://www.irs.gov/irm/part5/irm_05-011-006)> (*Internal Revenue Manual*).

<sup>57</sup> Treasury Inspector General for Tax Administration, *Procedures for Retirement Account and Thrift Savings Plan Levies Are Not Always Followed by Revenue Officers* (26 September 2017) 2.

<sup>58</sup> Internal Revenue Service, *Internal Revenue Manual*, above n 56, section 5.11.6.3 ('Funds in Pension or Retirement Plans').

<sup>59</sup> Ibid. Extenuating circumstances refer to situations beyond a taxpayer's control and include illness, acts of nature and losing employment.

the Manual does provide examples of what would constitute flagrant conduct. For instance, it would be flagrant conduct if the taxpayer makes voluntary contributions to their retirement account while aware of unpaid taxes. Nonetheless, if these contributions are made automatically from their basic salary or wages it would not constitute flagrant conduct.<sup>60</sup> The Taxpayer Advocate Service criticises the fact that there is no clear definition of flagrant conduct as it is simply within the subjective discretion of the relevant IRS officer who can only rely on the provided examples.<sup>61</sup> This creates inconsistencies in enforcement.

Moreover, the IRS must establish whether the taxpayer currently relies or will soon rely on the retirement account for basic living expenses.<sup>62</sup> To determine this the IRS follows the procedure set out in IRM 5.15 Financial Analysis. Unfortunately, this analysis does not include consideration of changing circumstances such as increased medical expenses or cost of living.<sup>63</sup>

The Taxpayer Advocate Service recently emphasised the need to codify retirement account protections, rather than leaving them subject to IRS policy discretion. Moreover, the Service argues, in line with Congress encouraging retirement savings, that taxpayers should not be able to agree to voluntary levies on their retirement accounts to settle their tax debt.<sup>64</sup>

Overall, the US tax levy power incorporates multiple protections, including formal notice requirements, appeal rights, and financial hardship considerations, to balance effective tax collection with taxpayer protections. However, gaps remain, particularly regarding retirement accounts, where the undefined concept of ‘flagrant conduct’ and the lack of a forward-looking financial assessment create inconsistencies in enforcement.

#### 4. TAX GARNISHEES IN AUSTRALIA

Section 260-5 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) empowers the Australian Taxation Office (ATO) to collect tax-related liabilities<sup>65</sup> payable, ‘whether or not the debt has become due and payable’, from a third party who ‘owes or may later owe money’ to that taxpayer. This third-party appointment power is commonly referred to as the ‘garnishee power’ in Australia.<sup>66</sup>

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<sup>60</sup> Ibid.

<sup>61</sup> Taxpayer Advocate Service, *Fiscal Year 2017 Objectives Report*, above n 55, 97.

<sup>62</sup> Internal Revenue Service, *Internal Revenue Manual*, above n 56, section 5.11.6.2.

<sup>63</sup> Taxpayer Advocate Service, *Fiscal Year 2017 Objectives Report*, above n 55, 96-97.

<sup>64</sup> Taxpayer Advocate Service, 2025 Purple Book: Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (2024) 54 (Legislative Recommendation 24, ‘Protect Retirement Funds from IRS Levies, Including So-Called “Voluntary” Levies, Absent Flagrant Conduct by a Taxpayer’).

<sup>65</sup> A ‘tax-related liability’ means ‘a pecuniary liability to the Commonwealth’ which has come about in terms of a taxation law as defined in the *Taxation Administration Act 1953* (Cth) Sch 1, s 255-1(1). According to the *Taxation Administration Act*, s 3AA(2) read with s 995(1) of the *Income Tax Assessment Act 1997* (Cth), ‘taxation law’ refers to an Act where the Commissioner of the ATO administers the Act, legislative instruments made under such an Act, the *Tax Agent Services Act 2009* (Cth) or regulations made in terms of the *Tax Agent Services Act*.

<sup>66</sup> ATO, ‘Enforcement Measures Used for the Collection and Recovery of Tax-Related Liabilities and Other Amounts’, Law Administration Practice Statement PS LA 2011/18 (14 April 2011, last updated 20 May 2026) [109] (‘PS LA 2011/18’).

This section establishes two requirements before a garnishee notice can be issued. First, there must be a payable tax-related liability, and second, the third party must owe or may later owe money to the taxpayer. Regarding the first requirement, it is evident that ‘payable’ liability entails something different from ‘due and payable’ debt. In the author’s view, payable liability refers to a legal liability irrespective of whether the money is payable at that stage.

In relation to the second requirement, the obligation imposed by a garnishee notice arises with the service of the notice.<sup>67</sup> Thus, as long as the requirement was met when the garnishee notice was issued, the notice will be valid.<sup>68</sup> Accordingly, subsequent actions by the taxpayer, such as assignment after a third-party notice has been served, do not make a garnishee notice ineffective.<sup>69</sup> However, the garnishee notice only becomes enforceable when there is an identifiable debt owed to the taxpayer.<sup>70</sup> Thus, only once an identifiable debt arises, is the third party obliged to act in accordance with the garnishee notice.

The ATO’s conduct regarding garnishee orders was scrutinised by the Inspector-General of Taxation and Taxation Ombudsman (IGTO) following accusations that the ATO had employed ‘disturbing and heavy-handed tactics’ targeting small businesses.<sup>71</sup> These alleged tactics included staff being directed to issue enduring garnishee notices in every case, resulting in a perceived ‘cash grab’ at the end of the 2016-17 financial year, as well as staff performance being assessed based on the amount of debt collected.<sup>72</sup> Although the IGTO ultimately found that these allegations were not supported by evidence, it nonetheless emphasised the importance of the ATO demonstrating care for disaffected taxpayers, particularly those in vulnerable situations, when issuing garnishee notices.<sup>73</sup>

One way in which this care is demonstrated is that before issuing a garnishee notice, the Commissioner of the ATO must consider the taxpayer’s financial situation. For instance, as illustrated in Case Study 1 of the IGTO report, if a taxpayer receives only a small amount of interest, it is unlikely that they have substantial funds held in investment accounts. Subjecting these accounts to a garnishee order may impede their ability to meet basic living expenses. As such, the ATO officer should consider whether garnisheeing a percentage of the taxpayer’s salary might have fewer adverse consequences for the taxpayer.<sup>74</sup> In terms of ATO Law Administration Practice Statement PSLA 2011/18, the ATO also considers other debts owed by the taxpayer and the possible impact a garnishee notice will have on the taxpayer’s family and business (if applicable).<sup>75</sup> Furthermore, the ATO will generally not garnish more than 30 per cent of salary and wages payable. This percentage can be increased if the taxpayer has

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<sup>67</sup> *Clyne v Deputy Commissioner of Taxation* (1981) 150 CLR 1, 23.

<sup>68</sup> *Ibid.* In *Clyne* the ATO issued a garnishee notice in relation to three interest-bearing deposits that had not yet matured. After issuing the garnishee notice, but before the deposits matured, the taxpayer assigned the deposits to another person.

<sup>69</sup> ATO, PS LA 2011/18, above n 66, 12, 19.

<sup>70</sup> *Commissioner of Taxation v Donnelly* (1989) 25 FCR 432, 442-443.

<sup>71</sup> IGTO, above n 20, v. See also Adele Ferguson, Lesley Robinson and Lucy Carter, “‘It’s Malicious and It’s Vengeful’”, *ABC News* (6 April 2018) <<https://www.abc.net.au/news/2018-04-07/australian-tax-office-accused-of-misusing-draconian-powers/9613808>> (accessed 23 May 2026).

<sup>72</sup> IGTO, above n 20, v.

<sup>73</sup> *Ibid.* iv.

<sup>74</sup> *Ibid.* 186.

<sup>75</sup> ATO, PS LA 2011/18, above n 66, [113].

another source of income and decreased if the taxpayer is already subject to other garnishees.<sup>76</sup> Moreover, the Commissioner must consider whether the issuing of a garnishee notice would ‘significantly prejudice’ a taxpayer’s right to appeal an assessment that gave rise to the tax obligation.<sup>77</sup>

Still, it must be noted that the ATO is not required in terms of law to consider the financial position of the taxpayer before issuing a garnishee notice and restricting salary and wages. Instead, a Practice Statement advises that the ATO should take the taxpayer’s financial position into account.<sup>78</sup> Accordingly, taxpayers may find it challenging to compel the ATO to consider their financial situation.

This lack of a legal obligation underscores a broader concern, that while the ATO’s garnishee power is a critical enforcement tool, its application must balance efficiency with fairness. The absence of a legal obligation to consider a taxpayer’s financial position highlights the need for greater protections to prevent undue hardship.

## 5. TAX DEDUCTION NOTICES IN NEW ZEALAND

In terms of section 157(1) of the *Tax Administration Act 1994* (NZ), the Commissioner of Inland Revenue has a discretion to issue a deduction notice requiring a person to deduct money that is, or may become, payable to a taxpayer to satisfy, among other things, an income tax debt owed by that taxpayer.<sup>79</sup> Due to the reference to ‘or may become payable’ it is apparent that the deduction notice also applies to money that will be payable to the taxpayer in future.<sup>80</sup> A such, the third party will be binding on the third party once an identifiable debt is owed to the taxpayer.<sup>81</sup> For instance, if the third party is a bank<sup>82</sup> any amount that is on deposit or deposited to the credit of the taxpayer on the day the notice is given to the bank<sup>83</sup> or any day thereafter, would be subject to the deduction notice.<sup>84</sup>

The Inland Revenue Department (IRD) states that it considers all relevant information before issuing an appointment notice, including communications with the taxpayer, the amount of unpaid tax, and the likelihood of taxpayer hardship.<sup>85</sup> Although the consideration of potential hardship is provided for only in a practice note, it enjoys legislative backing under section 176(2)(b) of the *Tax Administration Act 1994*. This

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<sup>76</sup> Ibid [119].

<sup>77</sup> Ibid [123].

<sup>78</sup> ATO, ‘Law Administration Practice Statements’ (last updated 1 August 2025) <<https://www.ato.gov.au/about-ato/ato-advice-and-guidance/ato-guidance-products/law-administration-practice-statements>> specifically indicates that the Practice Statements are not law.

<sup>79</sup> See Lisa Marriott, ‘Tax Debt Management in New Zealand and Australia’ (2014) 9(1) *Journal of the Australasian Tax Teachers Association* 1, 7-8 for a general discussion of the third-party appointment provisions in New Zealand.

<sup>80</sup> *Tax Administration Act 1994* (NZ) s 157(10)(b) definition of ‘amount payable’ as well as the wording of s 157(1). Once the money becomes payable the third party must pay it over. This notice remains valid until payment is made to the Inland Revenue Department or the notice is revoked.

<sup>81</sup> Joel Manyam, ‘The Extensive Powers of the Commissioner of Inland Revenue in Assessing and Collecting Tax Debts’ (2001) 9 *Waikato Law Review* 91, 119.

<sup>82</sup> *Tax Administration Act 1994* (NZ) s 157(10) provides that ‘bank’ refers to a building society registered in terms of the *Building Societies Act 1965* (NZ) and a bank as construed in the *Banking Act 1982* (NZ).

<sup>83</sup> *Tax Administration Act 1994* (NZ) s 157(10)(c)(i) definition of ‘amount payable’.

<sup>84</sup> Ibid s 157(10)(c)(ii) definition of ‘amount payable’.

<sup>85</sup> Inland Revenue Department, ‘Deduction Notices’, Standard Practice Statement SPS21/01 (12 April 2021) 2.

section states that, despite the IRD's obligation to collect the maximum outstanding taxes, the collection must not place a natural person taxpayer in serious hardship.

Section 157(5) of the *Tax Administration Act 1994* explicitly requires the Commissioner to provide the taxpayer with a copy of the deduction notice. In *Anzamco Ltd (in liq) v Bank of New Zealand*,<sup>86</sup> Barker J emphasised the significance of this requirement, noting that it allows the taxpayer an opportunity to oppose the notice. The judge opined that the copy of the notice should be served on the taxpayer within the period between its service on the third party and the deadline for payment specified in the notice.<sup>87</sup> This suggests that while the notice takes conditional effect upon service on the third party, it only becomes fully enforceable once the taxpayer has also been notified.<sup>88</sup>

Whilst opposing the notice would generally allow the taxpayer to indicate that the tax debt has already been paid or that a payment arrangement is in place, it also provides an opportunity for the taxpayer to inform the IRD of factors unknown to the IRD that could affect its assessment of whether hardship is likely.

In addition to considering potential hardship before issuing a deduction notice, the *Tax Administration Act 1994* provides further protections for vulnerable taxpayers under section 157(3). This provision limits deductions from wages and salaries, ensuring that a third party may withhold up to the lesser of 10 per cent per week of the taxpayer's due income tax or 20 per cent of their wages or salary, with a minimum deduction of NZD 10 per week. These restrictions serve to mitigate excessive financial strain on taxpayers while still enabling tax debt recovery.<sup>89</sup>

From the above, it is clear that the deduction notices in terms of the *Tax Administration Act 1994* balance tax recovery with taxpayer protection. Protections like notification requirements and wage deduction limits ensure fairness, preventing excessive hardship while enabling effective tax collection.

## 6. STRENGTHENING THIRD-PARTY APPOINTMENTS

As discussed in section 2 of this article, South African third-party appointments are not subject to any restriction on the amount or percentage that may be recovered. This means there is no general protection in place for taxpayers who rely on their salary or pension to cover basic living expenses. Although there are legislative protections intended to ensure that taxpayers can bring their financial circumstances to SARS's attention before a third-party appointment notice takes effect, these protections have failed in practice, as illustrated by case law.

Turning to the first safeguard, the failure by SARS to deliver the final demand letter, informing the taxpayer of the opportunity to request a reduction in the amount subject to third-party appointment, renders the subsequent third-party appointment void. This is because, under a purposive approach to statutory interpretation, one must consider the purpose of the provision and whether a literal interpretation would undermine that

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<sup>86</sup> (1982) 5 NZTC 61,249.

<sup>87</sup> Ibid 61,257.

<sup>88</sup> Ibid.

<sup>89</sup> See Inland Revenue Department, above n 85, 6-7 for examples of the wage calculation.

purpose.<sup>90</sup> Where the wording of a provision is peremptory, its underlying purpose must guide its application.<sup>91</sup> In this respect, the court in *SIP Project Managers* held that the section 179(5) of the *Tax Administration Act* imposes a clear limitation on SARS's power to issue a third-party appointment.<sup>92</sup> Failure to deliver the required notice amounts to a disregard of a legally mandated constraint.<sup>93</sup> As a result, the subsequent third-party appointment must be declared null and void.<sup>94</sup>

Nonetheless, the subsequent third-party appointment must be declared null and void by a court if SARS does not withdraw it of its own volition.<sup>95</sup> A taxpayer who may have required a reduction in the amount subject to the third-party appointment to meet their basic living necessities may not be in a position to incur legal costs to have SARS's unlawful action set aside. Such a situation is clearly untenable.

Apart from approaching the court and incurring legal costs, a taxpayer may consider lodging a complaint with the Office of the Tax Ombud. This Office is mandated, among other things, to 'review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS'.<sup>96</sup> In the author's view, the taxpayer would not be required to first exhaust the complaints resolution mechanisms available within SARS, as contemplated in section 18(4) of the *Tax Administration Act*. This is because requiring the taxpayer to do so would result in undue hardship, as they may remain out of pocket while SARS investigates the complaint, particularly if SARS fails to withdraw the appointment after being informed of its non-compliance with the section 179(5) demand notice requirement. These circumstances constitute compelling circumstances for not requiring the exhaustion of internal procedures.<sup>97</sup>

Although the review by the Office of the Tax Ombud is free,<sup>98</sup> this Office does not have the power to halt any enforcement actions and, as such, the third party would still need to comply with the third-party appointment notice whilst this investigation is under way. Furthermore, even if the Office of the Tax Ombud recommends that SARS should withdraw the third-party appointment due to failure to adhere to the peremptory wording of the demand notice, a recommendation by the Office of the Tax Ombud is not binding on SARS.<sup>99</sup>

In relation to the second safeguard, the *Piet* judgment highlights the need for legislative intervention regarding who is responsible for notifying the taxpayer. Without an explicit obligation being placed on the third party, and if the notice takes conditional effect upon service on the third party but only becomes fully enforceable once the taxpayer has also been notified, as is the case in New Zealand, this safeguard will remain meaningless.

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<sup>90</sup> *African Christian Democratic Party v Electoral Commission* [2006] (3) SA 305 (Constitutional Court) [23].

<sup>91</sup> *SIP Project Managers*, above n 13, [24].

<sup>92</sup> *Ibid* [26].

<sup>93</sup> *Ibid* [23].

<sup>94</sup> *Ibid* [27].

<sup>95</sup> From the cases discussed in section 2, it is clear that SARS is not inclined to withdraw this appointment out of their own volition.

<sup>96</sup> *Tax Administration Act*, above n 12, s 16(1)(a).

<sup>97</sup> *Ibid* s 18(5)(b).

<sup>98</sup> Office of the Tax Ombud, *Complaints Guide*, 3.

<sup>99</sup> *Tax Administration Act*, above n 12, s 20(2).

Given the inadequacies in the South African approach, the remainder of this section draws on the positions in the United States, Australia and New Zealand to explore potential solutions for addressing these shortcomings.

As regards restricting the amount of salaries and pensions that can be subject to appointment notices, the United States, Australia and New Zealand all provide for a default portion of salaries and wages to be protected from tax collection. Although none of these jurisdictions provide a similar protection for pensions, they all consider the financial position of a taxpayer generally to ensure that the taxpayer would have sufficient money available to cover their basic living expenses.

From a South African perspective, establishing an objective standard of protection as a starting point would be commendable. Such a standard would provide clear guidance on how SARS's duty to collect the maximum amount of tax is balanced with taxpayers' rights in this context.<sup>100</sup> The principle of protecting a portion of an employee's salary is also already recognised in South African law, as ordinary civil creditors cannot attach more than 25 per cent of a judgment debtor's basic salary.<sup>101</sup> Section 23(5) of the *Insolvency Act 24 of 1936* (South Africa) serves as another example in South Africa of where a portion of a person's salary is protected, as the trustee is only entitled to the portion of the salary that is not necessary for the support of the insolvent and their dependants.

While allowing a court, as an impartial and objective forum, to determine the appropriate amount would also ensure objectivity, it would also significantly hinder SARS's ability to collect taxes efficiently, given the severe backlog in the South African court system.<sup>102</sup>

Nonetheless, using a specific percentage as a default to ensure protection to vulnerable salary taxpayers may not provide the ideal balance between taxpayers' rights and SARS's collection mandate. If Taxpayer A has a net salary of ZAR 10,000 per month and only 30 per cent may be subject to a third-party appointment, SARS would only be able to collect ZAR 3,000, leaving Taxpayer A with ZAR 7,000 at their disposal. By contrast, if Taxpayer A's net income is ZAR 600, they would be left with only ZAR 420 per month if SARS were to collect outstanding taxes by way of a third-party appointment.<sup>103</sup>

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<sup>100</sup> Carika Fritz, 'An Appraisal of Selected Tax-Enforcement Powers of the South African Revenue Service in the South African Constitutional Context' (LLD Thesis, University of Pretoria, 2017) 326.

<sup>101</sup> *Magistrates' Court Act 1944* (South Africa), s 65J (1A)(c)(iii).

<sup>102</sup> Fritz, above n 100, 326. See generally Nathan Geffen, 'Our Justice System Is Grinding to a Halt', *GroundUp* (9 December 2024) <<https://groundup.org.za/article/our-justice-system-is-grinding-to-a-halt/>> (accessed 23 May 2026); Alison Tilley, 'Shortage of Judges Is Severely Hampering Delivery of Justice in Gauteng's High Courts', *Daily Maverick* (5 September 2024) <<https://www.dailymaverick.co.za/article/2024-09-05-shortage-of-judges-is-severely-hampering-delivery-of-justice-in-gautengs-high-courts/>> (accessed 23 May 2026) regarding the backlog in South African courts.

<sup>103</sup> Although a person with a net monthly income of ZAR 600 would not be liable for income tax on this income (see SARS, 'Personal Income Tax' (last updated 19 May 2026) <<https://www.sars.gov.za/types-of-tax/personal-income-tax/>> where it is indicated that a person younger than 65 years is liable for income tax if they earn more than ZAR 99,000), the taxpayer could be subject to income tax in relation to a previous year where they earned more than the threshold amount, or the tax liability could relate to another type of tax.

In the first scenario, Taxpayer A may still be able to pay most of their expenses, essential and some non-essential, while SARS gets the short end of the stick. In the second scenario the taxpayer's disposable income would be below the lower-bound poverty line of ZAR 1,109.<sup>104</sup> As such, the taxpayer would not even be able to pay their basic living expenses despite the 30 per cent cap on third party appointments. Due to the inadequacy of restricting third-party appointments to a certain percentage, it is recommended that a certain amount of a person's salary or wages should be protected from third-party appointments. This amount should be linked to the lower-bound poverty line to ensure that these taxpayers are able to meet their most basic needs.<sup>105</sup> In the author's view this protection should extend to pensions as a taxpayer reliant on their pension would also rely on this income to meet their most basic expenses. It may not be necessary to extend this lower-bound poverty line protection to other forms of income such as rental or interest amounts as those would seldom be the only form of income a person receives. Nonetheless, in instances where it is the only form of income, the protection should also apply.

Regardless of whether the default protection is based on a percentage, or on an amount such as the lower-bound poverty line, this protection should be incorporated into the *Tax Administration Act* rather than being set out in a practice statement, as is the case in Australia. This would enhance legal certainty, which is essential for upholding the rule of law and ensuring that SARS is bound by this protection. Moreover, given that the 2018 Report of the Commission of Inquiry into Tax Administration and Governance by SARS<sup>106</sup> and the 2022 Judicial Commission of Inquiry into State Capture<sup>107</sup> have confirmed 'a massive failure of integrity and governance' at SARS during the period from 2014 to 2018, public trust in SARS remains very low. It is, therefore, essential that this protection is enacted in legislation and not left to SARS's discretion.

Yet, the percentage or lower-bound poverty line protection should be the mere point of departure and in situations where there is (still) not sufficient money available for a taxpayer to meet their basic needs, for instance because of the number of dependants or the appointment notice is issued in relation to another type of income, the taxpayer should approach SARS. SARS would then determine the affordability based on the individual circumstances of the taxpayer.<sup>108</sup>

Of course, for individual circumstances to be considered, it is essential that a taxpayer is aware of an imminent third-party appointment so they can provide the necessary evidence of their basic living expenses. Unfortunately, as shown in this article the protections in the *Tax Administration Act* as they currently function in practice are

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<sup>104</sup> The lower-bound poverty line is the income level where an individual would be able to buy essential non-food items but would need to sacrifice food to obtain these items. For further information in this regard, see Zeynep Dierks, 'National Poverty Line in South Africa 2024', *Statista* (26 January 2026) <<https://www.statista.com/statistics/1263737/national-poverty-line-in-south-africa/>> (accessed 23 May 2026).

<sup>105</sup> Fritz, above n 100, 327-328.

<sup>106</sup> Commission of Inquiry into Tax Administration and Governance by SARS (Judge R Nugent, Commissioner), *Final Report* (11 December 2018) 197.

<sup>107</sup> Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State (Justice RMM Zondo, chair), *Judicial Commission of Inquiry into State Capture Report: Part 1, Vol 3, South African Revenue Service and Public Procurement in South Africa* (delivered 4 January 2022). The full set of reports can be accessed at <<https://www.statecapture.org.za/site/information/reports>>.

<sup>108</sup> Fritz, above n 100, 328.

lacking. Whilst the functioning of the protections must be improved, as suggested earlier in this section, the inclusion of default objective protections would greatly assist taxpayers in vulnerable positions.

## **7. CONCLUSION**

A well-balanced tax administration framework should ensure effective revenue collection while safeguarding taxpayers from undue financial hardship. The current South African approach to third-party appointments lacks sufficient protections, potentially leaving taxpayers without the means to meet their basic living expenses. Drawing from international best practices, incorporating a legally binding protection threshold, whether a percentage-based cap or an amount linked to the lower-bound poverty line, would provide greater legal certainty and ensure that vulnerable taxpayers are not pushed into financial distress. Additionally, legislative amendments should enhance procedural protections, including ensuring taxpayers are notified in time to engage with SARS and provide evidence of their financial position.

Achieving these reforms requires buy-in from all stakeholders, including SARS, third-party institutions, policymakers, and taxpayers themselves. Effective implementation depends not only on legislative changes but also on clear administrative processes and cooperation among all involved parties. A system that is both fair and efficient will not only protect taxpayers but also contribute to long-term tax compliance and economic stability.