Investors and taxation: do companies and investors avoid paying taxation after a coup?

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Question

What evidence exists of companies and investors not paying taxes to host governments, under what conditions did this take place and what was the outcome? More specifically, are there any countries in which an exiled Government has asked companies and investors not to pay taxes to a regime which seized power through a coup as is the current situation in Myanmar?

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1. Overview

This rapid literature review aims to gather evidence relating to whether investors and companies have actively sought to maintain operations in a country (primarily for profit and livelihood of employee reasons) while avoid paying taxation for ethical or political reasons in the event of a coup or similar regime which lacks credibility with a proportion of the international community. It then explores the literature around the various responses that have occurred following or related to political regimes with significant domestic and international opposition.

The literature was drawn from on-line sources using keyword searches for terms such as taxation avoidance, coup, regime change, sanctions, specific countries with regimes considered contentious domestically and/or with the international community, tax resistance, willingness to pay taxes in authoritarian regimes, transfer pricing in authoritarian regimes, shadow governments and taxation, elite capture and taxation.

Overall, there is limited literature on direct tax resistance by international companies, though significantly more examples of domestic resistance even if these are generally not well documented in terms of reach and impact. The literature is stronger on indirect responses, ranging from disinvestment, shifts in how businesses are structured, as well as collusion with shadow governments where tax-benefits or other tax minimising activities can be brokered.

2. Summary findings

- There is no evidence of international companies directly avoiding paying taxes to host governments where sanctions have not been explicitly put in place. Reputational and political risk of tax avoidance is high, and for many firms, the impact on the livelihoods of their employees or suppliers is also a consideration.
- There is more, mostly anecdotal, evidence of domestic firms and individuals seeking to avoid paying taxes as an act of political defiance, including through non-payment of services to state-owned companies (e.g.: electricity bills). This will have some impact on revenues even if moderate; it can also lead to higher inflation as the state shifts to cover the fiscal gap through creating domestic currency, which is effectively a regressive tax.
- There is significant evidence that companies make decisions that will lead to a fall in tax revenue to the State. This mostly occurs as firms reduce their investments or pull out of a country facing political legitimacy challenges. International investors are more likely to divest or reduce exposure in countries following events like a coup, as risk is perceived to increase. This includes reputational risk, where the international reach of campaigns against a regime can lead to faster disinvestment.
- It is possible that some investors may implement transfer pricing more aggressively to minimise resources within the affected country as tax morale falls and associated reduced willingness to pay taxes. This can include “round tripping” domestic resources through tax havens, which allow for these resources to be treated as Foreign Direct Investment (FDI) rather than domestic investment, which can receive preferential tax treatment.
- Political risk may be mitigated where investors are from a country with close political relationships and associated leverage to protect investor interests. However, this will mean FDI become less diversified as it is limited to sources where these closer political relationships exist.
- In-country elites, sometimes in collusion with regional traders and international firms, may also seek to avoid taxation given the increased incentive to funnel these savings to
maintain power through patronage systems, at a cost to tax revenue and associated public services. Especially where closely linked to military power and a monopoly on violent suppression, this can entrench power structures through an expansion of a shadow state.

- States facing political pressures may also offer tax incentives to maintain international investors or draw in new sources of investment – effectively compensating investors for the increased risk. Overall, more democratic states and party-based autocracies tend to have higher revenue and offer fewer ad hoc tax breaks.
- Cases of exiled governments are very limited; however political organisations with strong domestic and international support can be effective at promoting non-compliance and disinvestment. Domestic investors and wider population are more likely to be driven by political motivation. Although international investors will primarily be driven by risks and returns to investment, strong political opposition will increase in-country risk as well as broader reputational risk, therefore increasing the likelihood of disinvestment or shifting their commercial structures to manage these risks.

3. Historical overview of Tax Resistance

History provides ample examples of tax resistance and the refusal to pay taxes to the relevant authority. Ramfol (2019) notes how tax resistance dates to biblical times and are not a new phenomenon. Neither are tax revolts unique to a particular country or nationality. Throughout the ages, tax revolts bear similar symptoms of declining levels of taxpayer morale and confidence in the government’s ability to manage public finances that is designed on the principles of equity and fairness.

There are multiple reviews of historical cases of tax resistance of domestic populations; Passant (2016) notes how the actions of the masses of ordinary people are key to understanding the events and the intertwining of war, tax, democracy, and rebellion became evident during his academic investigation of English tax history, and the events that led to the 1215 Magna Carta, the Peasants’ Revolt of 1381, and the English Revolution from 1640 to 1649. Other well-known examples include the Boston Tea Party in 1773, where the developing American colonies were no longer willing to accept taxation imposed without their consent (Murphy 2016), and the Salt March in 1930 lead by Mahatma Gandhi as non-violent civil disobedience and tax resistance campaigns against British rule (Brown and Fee 2008) ¹.

The more specific case of economic resistance to the apartheid regime in South Africa is covered below as one of the few reasonably well documented cases were tax resistance and associated disinvestments were also applied by international investors.

However, as these examples suggest, there is no documented historical evidence of international investors directly revolting against taxation. It this case, decisions are likely to be mostly driven by risks and returns and seeking negotiated solutions (or disinvest), although this does not mean more ethnocultural or political considerations are not factors in decision making, not least as they impact on perceptions of risk.

4. Review of the literature

Drivers of taxation: tax enforcement and tax morale

Braithwaite (2003) covers these two basic perspectives of enforcement and social choice (tax morale) through five motivational postures:

- **Commitment to pay.** This is the level of recognition by taxpayers that paying taxes is a positive duty.
- **Capitulation to pay.** This refers to acceptance that taxes should be paid due to regulations, to remain legal and law abiding.
- **Resistance to pay.** Generally, resistance is driven by lack of trust in the system, such as perceptions of poor usages of taxation, corruption, legitimacy or simply viewing taxes as unfair.
- **Disengagement.** This is where individuals and firms seek to avoid authorities and duty of payment of taxation, primarily for income maximising reasons.
- **Game playing.** This refers to the active seeking loopholes or negotiate preferential agreements, which reduce the levels of tax paid while remaining within the limits of the law.

Alm (2019) notes that drawing on an Economics-of-Crime Model of Tax Compliance, it is the fear of detection and punishment that are key motives to comply. This suggests that tax compliance is dependent upon enforcement or other negative consequences to the firm or individual if tax is not paid. Alm (2019) also notes that under a behavioural economics lens, an individual’s compliance decision depends upon how the choice is presented and the social context in which the decision is taken.

Conversely, the OECD (2019) notes this significant focus on administration and enforcement of taxation, however, highlights that the understanding of tax morale has been relatively neglected. Based on extensive global survey data of interviews of individuals and businesses, the OECD (2019) further notes the positive correlation between the increased levels of tax morale and the satisfaction with government service delivery supports the existence of the fiscal contract, especially for individuals and small and medium enterprises (SMEs). Results where more complex for multinational firms, where tax certainty was a significant driver. Overall, the importance of trust in the state was concluded to be consistent, though different priorities and needs impact how this trust is assessed.

In broad terms, firms and individuals will make the decision to pay tax based on a range of factors from compliance to social choice, which will also depend significantly on profiles and context. The following sections draw on evidence around the main drivers, especially where relevant to the realities that firms and individuals may be facing in Myanmar following the February 2021 coup, though given the evidence available, most focus on the indirect tax impacts rather than direct non-compliance of tax payments.

**Impact of legitimacy of the state on tax morale and associated revenue.**

Tax fairness and broader tax morale is seen as one of the main components of a tax system. Empirical studies are mixed in terms of evidence, though generally indicate issues of trust, fairness and legitimacy as drivers of revenue collection. Uadiale et al (2010) conducted a
study in Nigeria while examining the relationship between personal income, tax evasion and cultural factors like religiosity, trust in government, and legal enforcement. This study found positive impact on personal income tax of trust in government and legal enforcement. Based on data from Samarinda, Indonesia, Majid et al (2017) were not able to find statistically significant evidence that perceptions of tax fairness were correlated with tax compliance, with other factors including compliance assumed to be a more significant driver. Mughal (2012) found in the context of Pakistan, one of the variables explaining tax evasion was “poor relationship of tax-payers and authority.” Social pressures also play a factor, Chau and Leung (2009) concluded that tax compliance is influenced by the peer, such as friends, family, and the people around them. Similarly, social distance will determine the level of acceptance and rejection of the taxpayer through the tax system, which in turn will affect their compliance behaviour (Braithwaite 2003). The more the individual or the firm feels disassociated from those collecting taxation, which is more likely to occur where governments are perceived illegitimate, the less likely they will willingly seek to pay taxes.

Kemme et al (2019) note that low tax morale is primarily associated with domestic tax evasion based on a broad literature review. They highlight that tax morale and revenue are positively correlated in several empirical studies based on countries ranging from Eastern Europe to Southern Africa, as well as finding that countries with smaller shadow economies tending to have higher tax morale. Their own empirical study based on 23 OECD countries note that “round tripping” of domestic investment through tax havens, which converts the domestic portfolio capital into foreign investment and associated tax breaks, is higher in countries with lower tax morale. This implies that in the case of lower tax morale, high-worth individuals, and their companies, are more assertive in avoiding domestic taxation through financial loopholes to reduce their tax burden. Perceived corruption also plays a factor in tax morale. In an empirical study in Tanzania, Fjeldstad and Semboja (2001) found a relationship between increases in corruption to the demise of the reciprocal agreement with government. When a government loses credibility, the legitimacy of government is undermined and with it, taxpayer obedience. Furthermore, corrupt tax officials diminish the moral justification for taxpayers to act with honesty and integrity.

Exiled leaders can have significant business interests, leading to strong incentives to avoid taxation to the regime that led to their exile. For example, the 2009 unconstitutional change in leadership in Madagascar led to the exile of former President Ravalomanana. Part of the challenge of a peace agreement in 2013 was that Ravalomanana, self-exiled in South Africa, owed an estimated USD100 million in taxes in Madagascar given his extensive corporate interests, and non-payment of taxes was one of the criteria used by his opposition to bar him holding public office as part of negotiations around solving the political crisis faced in Madagascar that followed the unconstitutional change (Connolly 2013).

In Zimbabwe, where election legitimacy is highly contested by the opposition, there is a clear difference in trust in the legitimacy of how taxes are collected and used for government supporters and opposition. Afrobarometer (2021) found opposition supporters do not trust the revenue authority (71% compared to 26% of government supporters), and similarly 64% of opposition didn’t believe the government used tax revenues for the well-being of citizens (only 30% of supporters held this view). There was found to be a clear overall preference for lower taxation due to limited trust and clarity over how taxes are used, though this is not
disaggregated between government and opposition supporters. Economic challenges have significantly eroded Zimbabwe’s tax base, but evidence of calls for tax-resistance by the opposition due to significant intimidation in the run up to the 2000 elections also reflect a political resistance to taxation by what was perceived as an illegitimate government (IOL 2000).

Tax morale can also be specific to specific populations within a country. In Argentina, Mangonnet and Murillo (2019) note export-focused farmers resorted to lockouts, effectively withholding exports of agricultural products such as high value soybeans because of export taxes set by a left-wing urban-based administration. This resulted in farmers launching more than seven hundred lockouts in the soybean-producing provinces between 2003-2013 – with the withholding of selling grains impacting directly on exports and associated taxes at a time when the country was facing fiscal and balance of payment challenges.

Are authoritarian regimes more efficient at collecting taxation?

Given the relationship between taxation and legitimacy, it is possible to argue that authoritarian regimes may face more challenges in collecting taxation, while from an enforcement perspective, could be more efficient given increased ability to coerce taxpayers. Garcia and von Haldenwang (2015) based on panel analysis of 131 countries between 1990-2008, concluded the relationship between level of taxation collected and regime is U-shaped with dictatorships and full democracies having a higher revenue collection rate. Looking specifically at revenue raised from multinationals, Jensen (2013) finds that democratic countries generate as much as 26% more tax revenue from multinational corporations relative to authoritarian countries, based on extensive data of US-owned foreign affiliates. This suggested the ability for democracies to offer tax deals for specific companies is weaker given greater accountability, and probability that firms accept higher taxation given lower political risks.

In a review of the ability of different authoritarian regimes to raise revenue through taxation, Åsbald (2019) notes that based on quantitative analysis, party-based authoritarian regimes are more effective at collecting taxation, where the hypothesis is that party based political structures have more effective institutions and therefore greater legitimacy. This also suggests stronger administrative capacity including assertive capacity to collect resources, as well service delivery associated with higher tax morale.

In cases where authoritarian regimes have limited legitimacy, including facing sanctions, there is an increased incentive for collusion for tax avoidance and associated profits with individuals or regime associated organisations. For example, the high value timber trade of teak and rosewood from Myanmar seeks to circumvent EU controls (primarily seeking to avoid regulations that source of teak must be transparent, also targeted sanctions) by mis-categorising the wood and reducing tax paid, to the benefit of military linked organisations and the colluding timber companies importing the wood to the EU. Similar illegal trade goes into China, where China’s Forest Law also makes this illegal, but smuggling allows for significant leakages (EIA 2021). This breakdown of legitimacy and other political economy drivers also feed into the strengthening of shadow state structures as covered in the next section.
Tax divergence by shadow state structures

Tax evasion by companies associated with the Government elites (including military owned companies) can also evolve based on the power structures within government and if the State-citizen contract weakens (or was never strong). *Democracy in Africa* (2021) note that Shadow States clearly exist and have several common elements. The access of private networks to the State upon which they are parasitic and requires entry points at the highest levels and so usually runs through the president or prime minister, as well as through senior civil servants, such as permanent secretaries (or their equivalents), who run ministries. The need to generate resources both for personal enrichment and to fund election campaigns and patronage networks, which also means that it is common to find businesspeople and central bank officials in shadow state networks.

These shadow state structures generally emerge in one party states or failed democracies and have considerable tax avoidance capacity as seek to expand economic interests, capture states resources, main power through patronage and control (often military). Finance Minister Tendai Biti of Zimbabwe, from the opposition party within the government of national unity, noted that the substantial flow of diamonds revenue, controlled by a small civil-military elite, had not made a meaningful contribution to state resources despite their volume, and that there “might be a parallel system of government somewhere in respect of where these revenues are going, since they are not coming to us,” (Africa Confidential 2021). Similarly in 2004, quasi-fiscal operations led by the Central Bank circumvented the finance ministry and led to “mobilizing finances for the parallel activities of the shadow state (Democracy in Africa 2021), also noting that in Democratic Republic of Congo (DRC), when mining shafts are set up, army commanders or the police set up a military post nearby primarily for “tax collection and harassment purposes.”

In Myanmar, *Le Monde* (2021) newspaper alleges that part of the rents from gas production are co-shared between the largest shareholder of Yadana field (*Total*) and the military interests, which jointly own the gas pipeline through an offshore company and charge higher gas pipeline fees to reduce profits in Myanmar, leading to higher profits to shareholders of the pipeline through what is a “tax optimisation” scheme. *Total* provide a response to this allegation that the structure or profits are not unusual being set up 30 years ago, and pipeline profits rise in mature fields (*TotalEnergies* 2021). As covered later in this review, *Total* has since announced it will disinvest from the Yadana field.

Similarly, Norwegian owned mobile phone *Telenor* sought to sell its interests in Myanmar following the 1 February 2021 coup. *Telenor* stated it was pulling out of the country after “continued pressure” from the junta to activate the technology to monitor clients. According to Reuters (2022), the Myanmar junta backed the *Telenor* unit sale only once a local partner was found for the Lebanese M1 Group buyer; it had previously blocked the sale only to M1 Group by *Telenor*. Reuters also note that M1 Group is owned by the family of the Lebanese Prime Minister Najib Mikati, who partnered with Shwe Byain Phyu for a successful bid to take over the *Telenor* unit. Reuters also highlight that an activist group raised concerns over the sale, given Shew Byain Phyu has “links to the Myanmar military, which deepens the risks to Myanmar people, whose personal data is exposed through the sale.”
Proactive measures taken by States following political shifts

Although political shifts away from rights-based democracies can lead to increased activity by shadow state structures, some autocratic regimes retain control over revenue collection through formal channels as noted by the fact some dictatorships appear able to gather as much revenue as democracies. Following the reduction of liberties in Hong Kong, which has led to significant outward migration and associated financial resources, the Hong Kong government is trying to charm the city’s financial class and entice the wealthy with a big tax break for investors and making it easier to connect to affluent mainlanders, increasing profitability for major western financial companies (New York Times 2021). This will have an impact on revenue, but likely to protect wider economic interests as it is noted that several mayor financial firms have benefitted from this shift and expanded rather than contracted their operations in the territory.

In the 1980s, the pressure on the apartheid regime of South Africa led to policy shifts by the South African state. Pickles and Woods (1990) observe that Western companies reorganised their links with South Africa to lower their profile, and South African state sought out investment from what were newly industrialised countries in east Asia. They also note the significant resistance by unions and homeland governments within South Africa.

The regime change in Afghanistan with the Taliban takeover of the country means most western investments have pulled out. Other investors are being courted such as Turkish investors, as noted in the pro-Turkish government paper Daily Sabah (2021), and Chinese mining groups who “scour Afghanistan for opportunities” as reported by the Financial Times (2021).

In extractive industries (eg: Oil and Gas), the long-term risks are a critical criterion given the high upfront capital costs and then long periods of revenue. This means countries with rising political and human rights risks will have to accept lower revenue flows to the budget as higher returns will be sought by the investor, or lower quality suppliers, or investors from countries that can manage risk differently such as the closeness of the political relationship. (Adapted from Duan et al 2021)). For example, investment analysis expects that investment in the significant gas sector in Myanmar following the coup is likely, meaning new fields will be delayed and impact as legacy fields mature and reduce production. The analysis also assumes that this will lead to Myanmar moving further into the Chinese economic orbit as a major investor and export market; the reduced diversity of supply of capita investors and technology would lead to reduced FDI and revenue flows (Wood MacKenzie 2021).

In the context of Myanmar, the Financial Times (2022) - and other newspapers – reported that Total and Chevron take the decision to draw down early from the same investment as for Total, the situation “no longer allows TotalEnergies to make a sufficiently positive contribution in the country,” adding that it had approached the French government to help bring in sanctions on financial flows through a system of escrow accounts to hold the payments, without shutting down production.

These shifts in political alliances and associated risk management allowing for investors to operate are not necessarily implying a reduction in Western interests and investment. Western companies can also benefit from political risk coverage, where reputational risk is not significantly at stake or can be factored into investment decisions. For example, the Canadian owned oil and gas company Calvalley, has restarted operations in Yemen in partnership with an Emirati based multinational, in areas controlled by the Security Council-determined Internationally Recognised Government (IRG), helping provide revenues to the IRG. Hydrocarbons rents are estimated to
provide around three quarters of revenue to the IRG (Acaps 2021). What is consistent is that as political risk rises, investors will be more limited and increasingly tied to political and other vested interests, reducing the quantity and quality of investment available.

The case of South Africa: multinational response to the Apartheid regime

In terms of available literature, South Africa potentially offers the most significant example given the period during which a strong resistance against the government (anti-apartheid movement) operated both within and outside South Africa. The academic literature is primarily driven by studies carried out by USA based academics, often drawing on data from US multinationals. Some subsequent studies were also later carried out in a democratic South Africa. There is no evidence that multinational companies sought to openly avoid taxation in South Africa, though in some cases they did seek to try to balance commercial interests with ethical behaviour – with a focus on worker’s rights. Perhaps the most notable efforts were led by United States Baptist minister and civil rights leader, named Leon Sullivan, who, in 1977 proposed a set of six principles to govern US investments and business operations in South Africa (Larson 2020). Through his role as a Board member of General Motors and alongside twelve major companies including Ford and IBM (Levy 2020), the Sullivan Principles were developed and agreed. These were subsequently signed and adopted by up to 150 companies at one point.

However, these were not without criticism. Reverend Desmond Tutu noted “our objection to the code is on the basis that is does not aim at changing structures. The Sullivan Principles are designed to be ameliorative. We do not want apartheid to be made more comfortable. We want it to be dismantled.” (Mangaliso 1999). Sullivan himself is also noted that he would call for withdrawal if apartheid had not been dismantled within two years. Although these principles will not have led to direct reduction in taxation, the increased employment standards for black/non-white workers may have reduced profitability and so likely corporate taxation, and Levy (2020) notes that in the period prior to these principles, in the 1960s, thanks in large part to Apartheid’s political economy, American investors averaged a 20.6 per cent rate of return on their investments, the highest in the world. A significant number of the companies that signed up the Sullivan Principles subsequently pulled out of South Africa.

Aside from managing reputational risk through agreed social corporate responsibility through the Sullivan Principles in this case, there are broader considerations around operating risk, returns to investment. Meznar, Nigh and Kwok (1994) study the impacts on stockholders’ wealth following US multinationals following their withdraw, noting announcements of withdrawal from the South African market were associated with a significant drop in the value of the firms’ stock, concluding that managers were considering interests of groups other than stockholders in their decisions to withdraw. From a different perspective, Levy (1999) notes that withdrawal of several US companies operating in South Africa reflected economic realities of increasing risk and falling returns, as the South African economy struggled with the consequences of increasing sovereign debt (following the oil crisis of the 1970s) and wider structural issues (including the cost of

2 Gordon K (2001) reviews several the most widely adopted guidelines, noting that the OECD Guidelines for Multinational enterprises cover taxation unlike other guidelines. However, the specific coverage in the OECD guidelines focus on obligation to pay taxes and how to manage transfer pricing. (source: “The OECD Guidelines and Other Corporate Responsibility Instruments: A Comparison”. https://www.oecd.org/corporate/mne/WP-2001_5.pdf
maintaining an oppressive Apartheid state). This meant some companies pulled out primarily due to commercial reasons as risks increased, and it was about protecting the assets of the company. Many international companies simply sold their assets cheaply to local white businesses, and maintained non-equity linked franchise, licencing, and technology agreements that permitted them to keep operating.

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