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# VAT/GST : The UK Experience Revisited

## **Abstract**

This article reviews the experience of the UK with VAT over nearly three decades. There are several aspects that might be relevant to the way GST develops in Australia. One is that Australia might expect opposition to the new tax to diminish substantially as it becomes part of the fiscal furniture. Another is that GST might prove to have fewer disadvantages than some commentators have suggested and there might be pressure for an increase in GST in the future. A further aspect is that, with respect to legal issues, it might allow development of the purposive approach in tax matters.

## **Keywords**

GST, VAT, United Kingdom, Australia, tax

## VAT/GST: THE UK EXPERIENCE REVISITED

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This article reviews the experience of the UK with VAT over nearly three decades. There are several aspects that might be relevant to the way GST develops in Australia. One is that Australia might expect opposition to the new tax to diminish substantially as it becomes part of the fiscal furniture. Another is that GST might prove to have fewer disadvantages than some commentators have suggested and there might be pressure for an increase in GST in the future. A further aspect is that, with respect to legal issues, it might allow development of the purposive approach in tax matters.

### 1 INTRODUCTION

In 1995, the *Revenue Law Journal* published a number of useful articles on GST/VAT describing the experience of seven countries, including the UK.<sup>1</sup> Since then, of course, GST has been introduced in Australia and the focus of interest has shifted from the argument regarding the desirability of having such a tax to the likely path of its development. The VAT in the UK has now been operational for nearly 30 years. As a student during the run up to the introduction of VAT in 1973, the present author is old enough to remember distinctly the early controversy over the tax in general as well as particular aspects. However, VAT has now been an accepted part of the fiscal landscape for a long time and such controversy as remains is concerned with specific issues rather than the existence of the tax itself.

The purpose of this article is to look back at the original arguments for the introduction of VAT in the UK and to assess how far they have been justified

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<sup>1</sup> Warren N, "The UK Experience with VAT" (1993) 3 *Revenue Law Journal* 75.

by subsequent events.<sup>2</sup> This is done in Section 3. After that, some aspects that do not appear to have been widely anticipated are discussed, namely legal implications in Section 4 and two administrative issues in Section 5. Finally, if the GST follows a path similar to VAT in the UK, some tentative predictions are drawn in Section 6. However, the first task is to look briefly at some aspects of the tax and its history in Section 2.

## 2 THE NATURE AND BRIEF HISTORY OF VAT

The form a GST/VAT takes is significant and such a tax can be broadly equivalent to other types of taxation. For instance, a VAT that exempts capital expenditure and purchases of inputs is similar to a uniform income tax that exempts savings. Furthermore, there is also a correspondence between such a VAT and an expenditure tax,<sup>3</sup> where an expenditure tax is a tax on personal incomes after deducting savings and specifically taxing spending out of savings. A VAT was one method the Meade Committee saw as a possible way of achieving an expenditure tax.<sup>4</sup> As most forms of GST/VAT exempt capital inputs, it is effectively a tax on consumption rather than income.

In the campaign leading to the Australian general election in October 1998, much was made of the tendency for the rates of a GST type tax to rise over time. This is not necessarily an argument that such a tax is a bad tax. Quite the contrary, because of its advantages, greater reliance might be placed on it in the longer term and less reliance on taxes with more serious disadvantages. It follows that, if the rate of GST is changed in Australia, the experience in the UK and elsewhere suggests that it is likely to be increased rather than decreased.

VAT was originally introduced in the UK in 1973 at a standard rate of 10%. In 1974, this was cut to 8%, but VAT was levied at an additional "luxury rate" on a range of items at a rate of 25% from 1975. The wide disparity between the two rates and the range of anomalies in the relative taxation of items falling in different categories led to the 25% rate being reduced to 12.5% in 1976. However, the administration of the two rates remained difficult and further revenue was required to permit reductions in the rates of income tax. In 1979, therefore, the two positive rates of VAT were

<sup>2</sup> An earlier review was undertaken by Prest AR, *Value Added Taxation: The Experience of the United Kingdom* (1980 American Enterprise Institute).

<sup>3</sup> See eg, Prest AR and Barr NA, *Public Finance in Theory and Practice* (7<sup>th</sup> ed 1985 Weidenfeld and Nicolson) at 49.

<sup>4</sup> Meade Committee, *The Structure and Reform of Direct Taxation* (1978 Institute for Fiscal Studies).

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amalgamated at 15%. Much later, following the poll tax disaster,<sup>5</sup> a substantial slice of local government taxation was also replaced by a further increase in the rate of VAT to 17.5% in 1991.

The VAT base has also been extended since 1973. An early change was that the original concession for food and drink did not seem to be quite so appropriate for confectionery, ice cream, soft drinks and potato crisps, and they were duly subject to VAT from 1974. Other anomalies between goods and services subject to VAT and those not taxed continued to cause problems and some further extensions have occurred since 1973. For example, imported services became taxable from 1978 and a further range of items from 1989.

One such issue that was quite noticeable was that originally meals that were eaten on the suppliers' premises were subject to VAT but "take-away" meals were not, including the British staple of fish and chips. The result was a significant shift in restaurant meals to "take-away" service and VAT was duly extended in 1984 to hot food consumed off the premises. After a range of entertaining but unsuccessful attempts to avoid the new provisions, such as free hot fish and chips to go with the VAT-free (cold) salt and vinegar, this change was generally accepted by taxpayers.

### 3 ASSESSING THE REASONS FOR INTRODUCING VAT

Although a whole range of reasons for introducing VAT were put forward at one time or another, the main ones were that it was a broadly based tax, a tax on consumption, that it promoted tax harmonisation, made a contribution to balance of payments policy and was self-enforcing. These will be dealt with in turn.

#### **VAT as a broadly based tax**

One of the main arguments for VAT was a more general one that taxes should not distort economic behaviour by different taxation of different economic activities.<sup>6</sup> Therefore, there was a case for broadly based taxes rather than a series of specific taxes on particular products. Historically, indirect taxation

<sup>5</sup> See eg, Smith P, "Lessons from the British Poll Tax Disaster" (1991) 44 *National Tax Journal* 421.

<sup>6</sup> For further analysis see eg, James S and Nobes C, *The Economics of Taxation* (7<sup>th</sup> ed 2000 Prentice Hall).

developed as the taxation of goods rather than services<sup>7</sup> for straightforward reasons. In less developed economies, goods were easier to see, value and tax than were services. Furthermore, service industries in general were a less important part of overall economic output than they are in more advanced economies. In the UK, goods had been subject to Purchase Tax but, as in Australia,<sup>8</sup> over a period of time goods as a proportion of economic output had declined and with it the indirect tax base. The anomaly that goods should be taxed but not services became increasingly obvious as the service sector expanded. In the UK this led to the introduction in 1966 of an ill-fated attempt to redress the balance. This was the Selective Employment Tax ("SET"), soon dubbed the "Silliest Ever Tax", by which all payrolls were taxed, but the tax was refunded to manufacturing industry.<sup>9</sup>

The UK Government's Green Paper proposing the introduction of VAT stated that the existing system had become too "complex and discriminatory". It was intended to replace the existing "system of indirect taxation by a more broadly based structure, which, by discriminating less between different types of goods and services, would reduce the distortion of consumer choice".<sup>10</sup>

This efficiency argument for a broader based tax was also linked to an equity issue. As the report on VAT by the National Development Office pointed out, the existing indirect UK taxes, taken as a whole, tended to fall relatively more heavily on the lower income groups. Indeed, it made it very clear that "at the lowest levels, among old age pensioners for example, [indirect taxes] are quite regressive, because of the very high specific duties on beer and tobacco".<sup>11</sup> A more broadly based tax was seen as going some way to reduce this outcome.

Looking back from the year 2000, it is clear that the aim of a very broadly based tax was not met from the beginning. To secure its political acceptability, many concessions were made either by exempting items from VAT or by subjecting them to a zero-rate of VAT (which meant the producers could claim back tax on their inputs but did not have to charge their customers VAT. Zero-rating is therefore more favourable than exemption). As a result of the extensive exemptions and zero-rating, VAT covered only

<sup>7</sup> For further discussion see eg, Webber C and Wildavsky A, *A History of Taxation and Expenditure in the Western World* (1986 Simon and Schuster).

<sup>8</sup> *Tax Reform: Not a New Tax, A New Tax System* (1998 Commonwealth of Australia) Vol 2 at 71.

<sup>9</sup> For an analysis see Reddaway WB, *Effects of the Selective Employment Tax* (1970 First Report HMSO 1973 Final Report, Cambridge University Press).

<sup>10</sup> *Value-added Tax* (1971 HMSO London Cmnd 4621) at 3.

<sup>11</sup> National Economic Development Office, *Value Added Tax* (2<sup>nd</sup> ed 1971 HMSO London) at 3.

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just over half of consumer expenditure<sup>12</sup> and the proportion has not increased much since its introduction.

### VAT as a tax on consumption

The case for a tax on consumption expenditure has a long and distinguished history. For instance, over three centuries ago Hobbes wrote:<sup>13</sup>

To Equall Justice, appertainth also the Equall imposition of Taxes...Which considered, the Equality of Imposition, consisteth rather in the Equality of that which is consumed, than of the riches of the persons that consume the same. For what reason is there, that he which laboureth much, and sparing the fruits of his labour, consumeth little, should be more charged, then he that living idley, getteth little, and spendeth all he gets; seeing that one hath no more protection from the Common-wealth, then the other? But when the Impositions, are layd upon those things which men consume, every man payeth Equally for what he useth: Nor is the Common-wealth defrauded by the luxurious waste of private men.

In 1857, further arguments were advanced by John Revans. The title of his pamphlet is self-explanatory.<sup>14</sup>

A percentage tax on domestic expenditure to supply the whole of the public revenue. By which two millions and a half will be annually saved in the cost of collection; and trade and production will be rendered perfectly free.

The issue was later considered by the Select Committee on the Income Tax and Property Tax of 1861. It was discussed before the Committee by John Stuart Mill. His view was that:<sup>15</sup>

The proper mode of assessing an income tax would be to tax only the part of income devoted to expenditure, exempting that which is saved. For when saved and invested...it thenceforth pays income tax on the interest or profit which it brings, notwithstanding that it has already been taxed on the principal. Unless, therefore savings are exempted from income tax, the contributors are twice taxed on what they save and only once on what they spend.

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<sup>12</sup> Davies EH and Kay JA, "Extending the VAT Base: Problems and Possibilities" (1985) 6 *Fiscal Studies* 1.

<sup>13</sup> Hobbes T, *Leviathan* (1651 Cooke) ch 30.

<sup>14</sup> Revans J, *A Percentage Tax...* (1847 Hatchard).

<sup>15</sup> Mill JS, *Principles of Political Economy* (7<sup>th</sup> ed 1871 Longmans, Green and Co) Book 1, ch II, s 4.

This approach continued to be developed by other eminent economists. Alfred Marshall argued that a progressive personal tax on expenditure was “ideal perfection”.<sup>16</sup> Pigou devoted a whole chapter to it<sup>17</sup> and Kaldor a whole book.<sup>18</sup> Kaldor argued, amongst other things, that such a tax does not discriminate against either saving or enterprise and risk-taking and it “alleviates, even if it does not remove, the disincentive effects of progressive taxation on work”.<sup>19</sup> Kaldor went on to raise the specific possibility of introducing a VAT<sup>20</sup> when the debate in the UK began to focus on a consumption tax in that form.

In the USA a similar line of thinking also emerged. An early contribution (1906) was Irving Fisher’s work on the definition of income. For Fisher, “income” does not include income that is saved. As he put it: “The income from our capital ... is simply that which it does for us. Whether it brings us money or other return does not matter; the flow of its *services* is its income”.<sup>21</sup> He later specifically related this work to taxation.<sup>22</sup>

After the introduction of GST in Australia, the US remains the only member of the Organisation for Economic Cooperation and Development (“OECD”) without such a tax, but it has often examined it with interest. For instance, it was looked at carefully by Sullivan,<sup>23</sup> and Lindholm concluded that “[t]he new role of the British VAT in turning around the British economy promises to be a social engineering project of great interest to US Policymakers.”<sup>24</sup> The more general European experience has also been assessed from a US viewpoint.<sup>25</sup>

Apart from the US, the widespread adoption of a VAT testifies to its advantages. It has been successful as a consumption tax in the UK, but is limited by its restrictive coverage, as indicated in the previous section, by covering only just over half consumer expenditure.

<sup>16</sup> Marshall A, “The Equitable Distribution of Taxation” reprinted in AC Pigou, *Memorials of Alfred Marshall* (1925 Macmillan) at 351.

<sup>17</sup> Pigou AC, *A Study in Public Finance* (1928 Macmillan).

<sup>18</sup> Kaldor N, *An Expenditure Tax* (1955 Unwin).

<sup>19</sup> Ibid, at 14.

<sup>20</sup> Kaldor N, “A Memorandum on the Value Added Tax” from *Essays on Economic Policy* (1964 Duckworth).

<sup>21</sup> Fisher I, *The Nature of Income and Capital* (1906 Macmillan) ch VIII, s 8.

<sup>22</sup> Fisher I, “Income in Theory and Income Taxation in Practice” (1937) 5 *Econometrica* 1.

<sup>23</sup> Sullivan CK, *The Tax on Value Added* (1965 Columbia University Press).

<sup>24</sup> Lindholm RW, *The Economics of VAT: Preserving Efficiency, Capitalism and Social Progress* (1980 Lexington Books) at 54.

<sup>25</sup> For example, by Aaron HJ (ed), *The Value-Added Tax: Lessons from Europe* (1981 Brookings Institution).



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## Harmonisation

One consideration was harmonisation with Europe. At the time of the discussion about the introduction of VAT, there were only six members of the European Economic Community ("EEC") and each had adopted a VAT system. It was clear that they required a mutually acceptable system of indirect taxation that would operate without causing distortions to the trade between them. Furthermore, the Scandinavian countries were moving in the same direction. The UK then had about 40% of its trade with countries either having or proposing to have a VAT,<sup>26</sup> so whether or not it joined the European Community the tax would be relevant to the UK. It also appeared that the "general experience of the tax [in 1971] in the seven countries which have adopted and operated it for a year or more is that, after the initial teething troubles, the tax is not found to be unduly difficult to work in practice".<sup>27</sup>

The UK's original application for membership of the EEC had been rejected, but by the late 1960s the main political parties were favouring a further application. Furthermore, when the Conservative Government took over from Labour in 1970, it had little interest in continuing with the SET introduced by Labour.

In terms of harmonisation in the European Union, VAT is the tax that has seen the most developments. Between 1967 and 1977 six European Directives were issued covering the adoption of VAT, the inclusion of the retail stage in its coverage, the use of VAT levies in the central EC budget and greater uniformity in the VAT structure.<sup>28</sup> The result has been considerable progress in terms of the adoption of VAT across the European Union and the method of calculating it. Nevertheless, differences remained in the coverage and structure of VAT. Slowly some movement was achieved on further progress and a transitional VAT system was scheduled for introduction in 1993. This was to be replaced by a permanent system from the start of 1997, but the necessary agreement was not reached.<sup>29</sup>

More recently, *A Common System of VAT: A Programme for the Single Market* was published by the European Commission in July 1996.<sup>30</sup> The Commission considered that the present system of VAT was holding back the

<sup>26</sup> National Economic Development Office, *Value Added Tax* (2<sup>nd</sup> ed 1971 HMSO London) at 4.

<sup>27</sup> *Value-added Tax* (1971 HMSO London Cmnd 4621) at 9.

<sup>28</sup> El-Agraa A, *The Economics of the European Community* (4<sup>th</sup> ed 1994 Harvester Wheatsheaf) at 294.

<sup>29</sup> Weatherill S and Beaumont P, *EU Law* (3<sup>rd</sup> ed 1999 Penguin) at 494.

<sup>30</sup> European Commission, *A Common System of VAT: A Programme for the Single Market* COM 328 (96) Final, Brussels, 10 July 1996.

general policy objectives of the European Community as a whole, that Member States were finding it increasingly difficult to control the proper application of the tax, and that businesses were still paying the price for the absence of a genuinely common system of VAT.<sup>31</sup> The Commission also put forward a timetable for a new common system of VAT. A first step towards the harmonisation of rates was a minimum rate of 15%. Later proposed steps included a second round in the approximation of Member States' VAT rates and the harmonisation of the tax base and exemptions, but there is still a long way to go before such proposals are fully implemented.

The main difficulty is that Member States are often reluctant to give up control of taxation which provides not only their main source of revenue but is also a powerful instrument of economic and social policy. An interesting account of the European negotiations by Leonard Harris, as Director of VAT policy at Customs and Excise, seems to reveal that concessions made are usually ones that do not affect the UK in any case.<sup>32</sup> For instance, in recording that the UK agreed to a minimum standard rate of VAT of 15%, he pointed out the chances of the British Chancellor wanting to go below that were "slim". He went on to say that the UK agreed to the abolition of higher rates, which the UK does not have, and accepted a limit on the range of goods and services which Member States can include in their reduced rate bands, which the UK does not have either. On the other hand, the UK protected the right to retain its zero-rate provisions. So agreement was reached with little of any significance conceded at all!

### The balance of payments

In the period prior to the introduction of VAT, the UK had been concerned with its balance of payments, and deficits had been seen as a real problem. One of the arguments for change was that it would "benefit the balance of payments, since VAT can more fully be remitted on exports".<sup>33</sup> Some parts of the existing Purchase Tax were an indirect burden on exports and SET was often wholly unrelieved on exports.

VAT will have certainly reduced the tax burden on exports. However, since its introduction the value of the pound has normally been left to markets to determine, and the balance of payments has not been the policy concern that it was under a system of fixed exchange rates. However, should the UK give up

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<sup>31</sup> Ibid at 29.

<sup>32</sup> Harris L, "Indirect Taxation and the Single Market" in M Gammie (ed), *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990s* (1996 Institute for Fiscal Studies) at 165.

<sup>33</sup> *Value-added Tax* (1971 HMSO London Cmnd 4621) at 5.

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its independent currency and join the Euro, the balance of payments might once more become an important matter.

### **VAT as “self-enforcing”**

A further benefit claimed for VAT was that it was “self-enforcing” in a way that other indirect taxes were not. As VAT is paid at each stage of production, in order to claim credit for the VAT paid on its inputs against the VAT received on its outputs, a business would need to show, if required, that the VAT had been paid by its suppliers. “One man’s proof of purchases is evidence of another man’s sales.”<sup>34</sup> There would be no incentive for two traders to fail to invoice a transaction between them, since the purchaser’s liability for VAT would be increased by the amount the supplier had not been recorded as paying. With an indirect tax levied at only one stage of production, the whole of the tax is potentially at risk at that stage, whereas with VAT, theoretically at least, it is only the tax added at that stage that is at risk.

It had been recognised that there was scope for evasion, even though VAT was held to be “self-policing”. Tax could still be evaded by failing to invoice final customers or tax-exempt purchasers. There was further potential for evasion in wrongly classifying untaxed and taxed goods. The report of the National Development Office also recognised that these possibilities would not “exhaust the ingenuity of tax evaders”.<sup>35</sup> Although, by the nature of the phenomenon, no accurate figures exist for the extent of VAT evasion, it is thought to be considerable.

### **The arguments used against the introduction of VAT**

There were three main arguments used against the introduction of a VAT. One was its possible effect on prices and wages, which were a sensitive issue at the time. The second was the alleged effects on the distribution of income - primarily that it would be regressive in its incidence. Third, it was anticipated that the administrative and compliance costs would be considerably higher than the costs for Purchase Tax and SET.

The experience of VAT is that the prices and wages issue does not have the significance it once had. This is partly understandable, since the impact of a new tax is likely to be very different from one that has been established for nearly three decades. Furthermore, there has been a shift in the prevailing

<sup>34</sup> National Economic Development Office, *Value Added Tax* (2<sup>nd</sup> ed 1971 HMSO London) at 19.

<sup>35</sup> Ibid.

view regarding economic policy on these matters. In the period up to the introduction of VAT, it was commonly thought that government could and should influence such variables as prices and incomes, but the failures of such policies contributed to a more market-based philosophy and a much lighter hand of government in these matters.

The effects of VAT on the distribution of income turned out to be less adverse than some had anticipated. Much of this was a result of ensuring that certain items, such as food, were free of tax, whereas tax was levied on many forms of consumption that tended to be more the prerogative of those on higher incomes.

The third argument about the higher administrative and compliance costs - proved to be correct, but in the long run these costs did not turn out to be as high as some had predicted. Replacing Purchase Tax and SET with VAT led to an increase in the number of taxpayers from 74,000 to 1.4 million, and an increase in the number involved with the administration of these taxes from 2,000 to 12,500.<sup>36</sup> To estimate the compliance costs of VAT, an extensive study was undertaken at the University of Bath,<sup>37</sup> looking at such costs five years after the introduction of VAT. As is well known, producing accurate estimates of such costs is very difficult. For instance, in the Bath study only 2,857 of the 9,094 questionnaires despatched were returned. The bias was towards larger businesses, and it cannot be known exactly how far those who completed the questionnaires were able or willing to provide a full and accurate picture of such costs to their firm. On the basis of their investigation, Sandford and his colleagues estimated that the total compliance costs of VAT as a percentage of revenue collected was of the order of 10%.

It is also known that the compliance costs for the smallest registered firms are very high. A National Audit Office report on VAT compliance found costs that were the equivalent of about 20% of the tax paid.<sup>38</sup>

However, since the information was collected for the initial Bath study, the standard rate of VAT was nearly doubled with the obvious result that compliance costs, as a percentage of revenue collected, fell substantially. It is also likely to have fallen significantly further since then. Sandford and his colleagues later estimated that, for 1986/87, compliance costs were approximately 3.7% of VAT revenue.<sup>39</sup> They suggested that significant falls

<sup>36</sup> Kay JA and King MA, *The British Tax System* (5<sup>th</sup> ed 1990 Oxford University Press) at 129.

<sup>37</sup> Sandford C, Godwin M, Hardwick P and Butterworth I, *Costs and Benefits of VAT* (1981 Heinemann).

<sup>38</sup> National Audit Office, *HM Customs and Excise: Costs to Business of Complying with VAT Requirements* (1994 HMSO London).

<sup>39</sup> Sandford C, Godwin M and Hardwick P, *Administrative and Compliance Costs of Taxation* (1989 Fiscal Publications) at 135.

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in compliance costs were the result of the abolition of the higher rate of VAT, the learning effect of taxpayers gaining expertise in compliance and a series of simplification measures by the Customs and Excise.

### Overall experience

In terms of the arguments originally put forward for the introduction of VAT the outcome has been moderately successful. Although limited, the tax was a broadly based tax, without some of the problems associated with its predecessors. Furthermore, the disadvantages have not proved as bad as some had claimed. However, there have been further trends that might be noted.

## 4 LEGAL ISSUES

The experience of VAT illustrates a number of legal issues that have important implications. One of the most important is the shift in emphasis, in the UK, from a literal approach to the interpretation of tax law to a more purposive approach in the drafting of tax law in the first place. This has repercussions for a range of aspects relating to tax administration, such as simplification<sup>40</sup> and tax rulings.<sup>41</sup> For the UK, VAT has been an important factor in this change, because of its roots as a European tax. As a result, European law has perhaps made a more rapid and far-reaching impact on UK taxation than it might otherwise have done. In a frequently quoted and somewhat prophetic statement in 1974, Lord Denning said:<sup>42</sup>

But when we come to matters with a European element, the Treaty is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back. ... In future, in transactions which cross the frontiers, we must no longer speak or think of English law as something on its own. We must speak and think of Community law, of Community rights and obligations, and we must give effect to them. This means a great effort for the lawyers. We have to learn a new system.

Stephen Oliver, as President of the VAT and Duties Tribunals, estimated that, leaving aside penalty appeals, about half the VAT appeals he heard have a

<sup>40</sup> James S and Wallschutzky I, "Tax Law Improvement in Australia and the UK: The Need for a Strategy for Simplification" (1997) 18 *Fiscal Studies* 445.

<sup>41</sup> James S and Wallschutzky I, "The Design of an Appropriate System of Tax Rulings" (1995) 5 *Revenue Law Journal* 175.

<sup>42</sup> *H P Bulmer Limited v J Bollinger S A* [1974] Ch 401 at 418F to 419B.

European law point and some of the appeals relate almost entirely to such issues.<sup>43</sup>

Previously, there has been a tradition in the UK of interpreting fiscal legislation according to the letter of the law. Lord Cairns, in another widely quoted view, stated that:<sup>44</sup>

As I understand the principle of all fiscal legislation, it is this: if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.

As John Avery Jones has pointed out,<sup>45</sup> purposive interpretations of legislation were also made at the time, but the literal approach prevailed in tax matters for the next 100 years. He also quotes a much more recent version from Lord Wilberforce in 1980: "A subject is only to be taxed upon clear words, not upon 'intendment' or upon the 'equity' of an Act. Any taxing Act of Parliament is to be construed in accordance with this principle."<sup>46</sup>

The difficulty with this view, as Avery Jones went on to point out, was that a narrow, semantic approach by judges to the interpretation of tax legislation led to increased tax avoidance. As he put it, "Doctors have a word for it: iatrogenic, or doctor-induced disease; my Greek is not up to it, but there should be a word for the judge-induced disease of tax avoidance."<sup>47</sup> There has been a shift in attitude, for example, in *Pepper v Hart*,<sup>48</sup> whereby courts may refer to *Hansard*, but the move towards a more purposive approach has not yet been as great as it might be.

The role of VAT has been to open the door more to the traditional European practice of stating the principle and then moving to the facts, rather than the

<sup>43</sup> Oliver S, "The Role of the Tax Tribunals" in M Gammie (ed), *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990s* (1996 Institute for Fiscal Studies) at 188.

<sup>44</sup> *Partington v Attorney-General* (1869) LR 4 E & I (App HL) 100 at 122.

<sup>45</sup> Avery Jones J, "Tax Law: Rules or Principles" (1996) 17 *Fiscal Studies* 63 at 71.

<sup>46</sup> *Ramsay v IRC* 54 TC 101 at 184E.

<sup>47</sup> See Avery Jones, above n 45 at 72.

<sup>48</sup> [1992] STC 898.

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English way of doing the opposite.<sup>49</sup> As Avery Jones suggests, VAT has provided a body of law that enables us to make some comparisons between the traditional English literal approach and the more purposive European approach. Farmer and Lyal conclude:<sup>50</sup>

In interpreting the Community VAT legislation the [European] Court has relied heavily on the teleological method of interpretation. It has paid close attention to the description of the model system in Article 2 of the First Directive and to the considerations set out in the preamble to the directive, in particular the aim of achieving a tax which is neutral in domestic and intra-Community trade. It has been conscious that that neutrality depends first and foremost on its general application.

Conlon also reinforced the point that the UK's legislative technique does not sit well with the broader purposive language used in the [European] directives<sup>51</sup> and inconsistencies remain. However, changes in emphasis are clear. For instance in *Yoga for Health*,<sup>52</sup> Nolan J held that the Court should follow a purposive approach and take account of the language of the Directive. Further cases have reinforced this stance and VAT directives have encouraged a new approach to the interpretation of UK law in tax matters more generally.

How far any such changes might affect Australia is, of course, unclear, but the increasing globalisation of economic forces and tax systems<sup>53</sup> means that the GST might also be influenced by such changes. The issue is related to harmonisation more generally,<sup>54</sup> and this is a trend with respect to VAT more than any other major tax.

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<sup>49</sup> The differences between the English and European approaches are summarised in Tiley J, "The Law of Taxation in a European Environment" (1992) 51 *Cambridge Law Journal* 451 at 469.

<sup>50</sup> Farmer P and Lyal R, *EC Tax Law* (1994 Clarendon Press) at 89.

<sup>51</sup> Conlon M, "A Tide in the Affairs of Men ..." (1998) *British Tax Review* 563 at 566.

<sup>52</sup> *Yoga for Health Foundation v CCE* [1984] STC 630.

<sup>53</sup> See eg, James S, "The Future International Tax Environment" (1999) 25 *International Tax Journal* 1.

<sup>54</sup> See eg, James S and Oats L, "Tax Harmonisation and the Case of Corporate Taxation" (1998) 8 *Revenue Law Journal* 36.

## 5 ADMINISTRATIVE ISSUES

The introduction of such a new tax was bound to have an impact on tax administration. Two issues are noted here - the gender balance in tax administration and appeals.

### The gender balance in tax administration

Dame Valerie Strachan was one of the team of civil servants responsible for introducing VAT and later became chairman of Customs and Excise, which was charged with its administration. General trends in the workforce such as the gender balance are well known, but the introduction of VAT seems to have produced something of a culture shock to the "ancient" Customs department, with its fine masculine traditions of battling with smugglers and so on. Dame Valerie recently wrote of the introduction of VAT:<sup>55</sup>

Many of the new staff were women recruited into non-clerical grades, something new for Customs and which brought a new perspective to the Department and a shift in our culture. Today Customs has women throughout its management hierarchy. Just as the demographic profile of Customs was irrevocably altered by VAT, so too was our management culture and structure.

Dame Valerie does not elaborate on this particular aspect, but perhaps VAT can be seen as making its contribution to equal opportunities.

### Appeals

The volume of appeals expected with respect to VAT was considerable. Permanent appeal tribunals with full-time chairpersons were set up in London, Belfast, Birmingham, Cardiff, Edinburgh, Leeds and Manchester. However, at least to begin, with VAT appeals were much less than anticipated. The full-time chairs were reduced from nine to three and the number of tribunal centres was also reduced to three - London, Edinburgh and Manchester.<sup>56</sup> However, there had been a growing problem with non-compliance, as described in 1983 by the Committee on the Enforcement Powers of Revenue Departments.<sup>57</sup>

<sup>55</sup> Strachan V, "Twenty-five Years of VAT" (1998) *British Tax Review* 547.

<sup>56</sup> Oliver S, "Twenty-five Years of the VAT Tribunals: A View from the President" (1998) *British Tax Review* 552.

<sup>57</sup> Committee on Enforcement Powers of the Revenue Departments, *Report* (1983 HMSO) Vol 1 at 31.



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Far and away the most significant problem is that about 88% of the total number of VAT payment returns fail to be submitted by the due date ... the average amount of tax outstanding after due date is some £1,000 million.

A “default surcharge” regime was introduced and generated a large increase in appeals for seven years, when the volume dropped. It is not entirely clear why this happened, but it seems that it may have been a combination of taxpayers learning to live with the new system and the Customs and Excise becoming more pragmatic.<sup>58</sup> However, the number of appeals now remains generally higher than it was originally. In 1985, only about 2,000 decisions had been issued, but this was up to 15,000 by 1998. Apart from a tougher penalty regime, Hamilton attributes part of the reason to “the diminishing reluctance of taxpayers to appeal”.<sup>59</sup>

## 6 POSSIBLE LESSONS FOR AUSTRALIA

Predicting future developments, including those in taxation, is a hazardous exercise. However, there are similarities in the factors leading to the introduction of a GST/VAT in both countries, and in other countries as well for that matter. In both Australia and the UK, a strong driving force was the perceived inadequacy of the existing indirect tax system and a view that an overall reform rather than modification of existing taxes was required. Politically, in both countries it proved impossible to introduce a GST/VAT that was as broadly based as economic theorists would have liked. The process of introducing such a tax aroused opposition and special pleading. The tax that was eventually introduced had a much wider range of excluded items, such as foods, than had originally been intended.

If the parallels continue in the future, Australia might expect opposition to the tax to diminish rapidly and the tax to become accepted as part of the fiscal furniture. Such opposition as remains is likely to focus on particular issues rather than on resistance to GST in principle. Furthermore, in the longer run, as its disadvantages appear to be less than those associated with some alternative taxes, the pressures to raise more revenue through GST will grow. However, there may be significant opposition to increases in the rate of tax as there was to increases in VAT in the UK.

In terms of legal issues, the purposive approach is already present in Australia and in some case law, but there has been a judicial reluctance to use it more widely in tax matters. Such changes are more likely to have an impact with a

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<sup>58</sup> See Oliver, above n 56 at 553.

<sup>59</sup> Hamilton P, “Twenty-five Years of the VAT Tribunals: An Advocates’ View” (1998) *British Tax Review* 560 at 562.

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new tax rather than with a more established tax, and it might be that the introduction of GST in Australia allows similar changes in this respect, as in the UK. If the same pattern is followed in Australia, depending on the enforcement regime, there may be a long-term upward trend in appeals as taxpayers become more familiar with the process.

In conclusion, if GST in Australia follows a similar path of development as VAT in the UK, it will rapidly become accepted as a tax. Looking back at the controversy leading up to its introduction, some may wonder what the fuss was about.