HOWARD W. DAVIS

THE NEW ZEALAND GOODS AND SERVICES TAX 1985:

AN INTERPRETATION, COMPARISON AND EVALUATION

RESEARCH PAPER FOR TAXATION

LL.M (LAWS 531)

LAW FACULTY

VICTORIA UNIVERSITY OF WELLINGTON

WELLINGTON 1986

SUMMARY TABLE OF CONTENTS PAGE

TABLE OF CONTENTS

ABBREVIATIONS

Advisory Panel:	The Advisory Panel on the Goods and Services Tax to the Minister of Finance (chaired by Dr. Donald Brash).
de Cleene Committee:	The Finance and Expenditure Committee of the House of Representatives who reported on the Goods and Services Tax (chaired by the Hon. Mr. Trevor de Cleene, M.P.).
GSTA:	The Goods and Services Tax Act 1985.
GSTB1:	The first draft of the Goods and Services Tax Bill as introduced to the House of Representatives on 22 August 1985.
GSTB2:	The second draft of the Goods and Services Tax Bill as reported from the de Cleene Committee.
IRD:	The Inland Revenue Department.
ITA:	The Income Tax Act 1976.
OMV:	Open Market Value.
TRB:	The Taxation Reform Bill as introduced into the House of Representatives in 1986.
WP:	The White Paper on the Goods and Services Tax New Zealand.Parliament. House of Representatives. Appendix to the journals, vol. 2, B.27, 1985.
VATA:	The Value Added Tax Act 1983 (UK).

ACKNOWLEDGEMENTS

The author gratefully acknowledges those who helped him with this paper including the Hon. Mr. Trevor de Cleene, M.P., Under Secretary of Finance; Messrs. Ian Dickson and Carl Bakker, Treasury; Messrs. Paul Mersi, Phil Leloir, Graham Tubb and Peter Barrand, I.R.D; Dr. Claudia Scott, Victoria University; Mr. William Davis; and staff at the General Assembly, Treasury and IRD libraries. The writer also acknowledges the information supplied by Miss Moira Davenport, H.M. Customs and Excise, England on the UK VAT. The author, of course, accepts full responsibility for this paper.

PREFACE

The writer's approach to this topic is both legal and economic. The economics of the Goods and Services Tax (GST) are relevant to what is predominantly a legal paper because the legislation would make little sense without an understanding of the economic theory which animates it. The value added tax (VAT) is one of the few taxes that is modern enough to have been developed from economic theory and by taxation economists rather than by taxation lawyers and accountants. It has its roots in an economic literature that accumulated over forty years before any country implemented it rather than being a tax which developed and was studied by public sector economists after the event. Tax economics is also relevant because it provides policy criteria to evaluate taxation law. Alternatively this paper could be seen as an example of what has become known as the economic analysis of law.[1]

The Goods and Services Tax Act 1985 (GSTA) is a topic that could be approached in several different ways. Firstly the Act could be considered simply as what it is: New Zealand's second most important piece of taxation legislation. Secondly, as suggested above, it could be seen as a taxation reform designed to meet certain, explicit, economic objectives with a number of important economic and social effects.

Thirdly, this topic could be seen as an interesting case study in legislative drafting. The GST Booklet in 1984 announced the implementation of a tax for which "uniformity in the treatment of traders and goods and services [was to be] a central tenet."[2] The GST White Paper[3] (WP) followed this up and contained a broadbased but European type VAT which, besides having many technical problems, appeared to be drafted with the objective of minimising distortions higher in the draftperson's mind than administrative considerations. Certain problem areas, including the treatment of land and financial services and the appropriate registration threshold and rate, were also highlighted for later consideration. The Advisory Panel heard submissions and issued a report[4] which filled in many details and made a number of important changes, largely designed to ease administration of the tax for small business, like a reasonably high threshold, differentiated return periods and a hybrid cash/accruals accounting system. These and other changes contributed to making the first draft of the GST Bill (GSTB1) a unique VAT. The Finance and Expenditure Committee (de Cleene Committee) heard further submissions and apart from some important changes, like the treatment of land and the $48,000 de minimis rule, largely tidied up the legislation. The recently introduced Taxation Reform Bill 1986 (TRB) continues this process.

Fourthly, and similarly, this topic could be approached as a sociological study of the influence of a small number of readily identifiable groups with different philosophies or interests on the composition of an important piece of legislation. These actors included the government departments: the Inland Revenue Department (IRD), the Customs Department and, especially, the Treasury who supported the concept of a "textbook VAT". The Advisory Panel, whose brief was always administration of the GST, arguably placed a greater emphasis on lowering compliance costs particularly for small traders. They were also not afraid of proposing radical changes to the legislation, for example in the areas of financial services and imports. Those who made submissions to the two committees also had an important impact on the legislation. These included special interest groups, like the local body and tourist lobbies, and those like the Society of Accountants and accounting firms with more general interests who suggested possible improvements to the legislation. Other groups like the Federation of Labour promoted various measures to relieve the impact of the GST on lower income groups. Finally of course there were the politicians who were more or less divided along party lines on the GST.

Fifthly the GST can be seen in the international context of at least forty one VAT-like taxes in the world all adopted since the end of the Second World War that makes VAT arguably the world's most popular tax reform. New Zealand's move from the wholesales sales tax means that with the exception of Australia and Canada no OECD country uses that tax, the manufacturers' sales tax or the once popular turnover tax. The change also means that N.Z. shifts closer to the OECD average in its mix of direct and indirect taxation and its taxation of income and expenditure (see Ch. 18).

The writer has attempted to cover all of these aspects of the topic as well as the strictly legal and policy aspects.

This paper begins with a discussion of the tax policy criteria used in it. A brief history of and introduction to the VAT is given. As a beginning to the legal discussion the scheme of the GSTA is outlined. The main legal prerequisites for GST liability are set out in Ch. 5 to 9. The mechanism by which GST liability is determined - the credit offset mechanism - is then discussed followed by three chapters which deal with related matters: the value of supply, the time of supply and accounting bases. The important issues surrounding the treatment of particular goods and services are canvassed in Ch. 14. Exports, imports and some international implications are then considered followed by a discussion of the system of registration and returns and some documentation and pricing issues. The writer then returns to a more economic perspective by considering the place of the GSTA in the total tax system and draws some policy conclusions about the GSTA. For reasons of space most administrative and transitional provisions in the GSTA are not discussed. These provisions are also only peripheral to the issues raised in this paper. Appendicies are used for matters of detail and bibliographies of important UK cases and references are provided.

The UK and other overseas law, unless stated otherwise, is as at the end of 1985. The N.Z. law assumes that the Taxation Reform Bill 1986 (TRB) is passed in the form introduced into Parliament. All exchange rates are BNZ sell rates as at 6 August 1986.

1. POLICY CRITERIA FOR EVALUATING ALTERNATIVE FEATURES OF TAXES

Tax economists have long been concerned with questions like: What is a "good" tax system, what is a "good" tax and what are "good" features of particular taxes?[5] The writer, for present purposes, is interested primarily in the last two questions; although similar considerations apply to all three questions. Tax economists have created a number of criteria for answering these questions. Precisely which criteria are adopted and the weighting they are given, depends on the question being answered as well as the tastes of the writer. In the context of evaluating alternative features of VATs, in particular, the writer adopts the below criteria.

1.1 Neutrality

Neutrality is synonymous with efficiency. A neutral tax does not distort individuals' economic decisions. Under a perfectly neutral tax the economic choices of individuals would be no different to if there were no tax system. There is a substantial and very technical economic literature on tax neutrality.[6] This seems to confirm that no tax, with the possible exception of the lump sum tax, can achieve absolute neutrality even in theory. All other taxes seem to distort individuals' choices between goods and leisure.[7] Neutrality is therefore more of an objective or a benchmark for taxes than something that is feasible. Some of the other main decisions which taxes may distort, according to Bevin[8], include:

(a) the choice between present and future consumption (i.e. savings);
(b) the choice between assets or industries (i.e. investment decisions);
(c) the choice of business organisational form; and
(d) the choice between real and financial assets in a household's asset portfolio.

Though these were framed as business tax criteria they can be applied more generally. For example, as will be seen, it is widely argued that the turnover sales tax distorts the choice in (c) while the income tax vis a vis the expenditure tax distorts (a).

1.2 Equity

Equity is fairness. What is fair is obviously a subjective question. However there are a few common approaches to the concept. The two most common in the economic literature are the benefit approach and the ability to pay approach. Under the benefit approach:[9]

> ...an equitable tax system is one under which each taxpayer contributes in line with the benefits which he or she received from public services. According to this principle, the truly equitable tax system will differ, depending on the expenditure structure. The benefit criterion, therefore is not one of tax policy only, but of tax-expenditure policy.

Economists who adopt this approach often argue for the "earmarking" of government revenue for particular expenditures.[10] For example it has been argued excise taxes on alcohol should be earmarked for expenditure in the health and law and order areas as alcohol use results in expenditure in these areas.

Musgrave and Musgrave state that the ability to pay approach "....calls for people with equal capacity to pay the same, while people with greater ability should pay more [taxes]. The former is referred to as horizontal equity and the latter as vertical equity".[11] A major problem these definitions of horizontal and vertical equity create is the meaning of "capacity" or "ability". Musgrave and Musgrave put some good arguments for consumption being this measure of capacity.[12] The Australian Tax Review Committee, for example, however adopts the more usual income measure.[13]

Other approaches are possible to equity.[14] In line with the weight of academic writing, though recognising the problems of the approach, the writer will mainly use the ability to pay approach with income as the measure of who are equals and who are unequals.

1.3 Administrative Efficiency

Along with the economic costs in Ch. 1.1. taxes have other costs that fall specifically on the taxpayer and the tax collector. The former are called compliance costs and the latter administrative costs. The writer will define an administratively efficient tax, or feature of a tax, as one which minimises both administrative and compliance costs. There is a well developed literature on compliance costs.[15] This suggests that any tax, with any combination of features, is likely to have higher commencement compliance costs than its permanent costs. The writer is primarily concerned with the latter. It is also important to recognise that these permanent compliance costs - including, say, the money costs of employing a tax consultant, the time costs of collecting accounting data and the psychic costs of the anxieties associated with taxes - should be offset by cashflow benefits and managerial benefits.[16] Cash flow benefits are the benefits (in terms of interest payments) in holding the IRD's money between return periods. Managerial benefits accrue to firms who are required to generate accounting information they did not have previously and which can be used to improve their operations.

1.4 Visibility

Consistent with the benefit approach to equity is the visibility criterion.[17] A visible tax is one individuals are made aware of so that they are aware of their total tax liability. If the tax system is visible to taxpayers who receive the benefit of government expenditure they will be able to weigh up the costs and the benefits of the public sector. Therefore, it is argued, voters will be able to use political processes to more rationally allocate resources between the public and private sectors.

1.5 The Writer's Approach

When one is evaluating possible alternative aspects of one tax rather than one total tax system vis a vis another, the writer would argue, equity objectives should be of less importance. Even if one accepts the ability to pay approach using income as a measure of equality of sacrifice there are usually only comparatively small vertical equity gains to be made from adjusting individual features.[18] On the other hand such adjustments can produce distortions which result in considerable efficiency losses. They can also create horizontal inequities, increase administrative costs and result in heavy, and often heavily regressive, compliance costs being imposed on some industries. Often also such adjustments have perverse results since they rarely deliver compensation just to those it is targeted to.

Further, to give equity objectives too heavy a weighting when evaluating alternative VAT features is arguably inappropriate because the VAT concept was never created to meet these objectives. The mechanisms of the VAT, which may seem so strange to those unfamiliar with them, were developed to create a neutral indirect tax to replace distortionary taxes like the turnover tax and excises.

The evaluation of alternative VAT features, then, will often amount to a trade-off between neutrality and administrative efficiency. Tax theory can tell us with reasonable certainty what, to maximise economic efficiency, most VAT features should be. These "first best" features may be the technically "correct" ones but may be too administratively difficult to implement[19] and, therefore, "second best" features will have to be developed. In addition, with many less problematic features there will be an implicit neutrality/administrative efficiency trade-off to be resolved.

2. A BRIEF HISTORY OF THE VAT AND THE GST

The VAT concept has its roots in European and, perhaps more surprisingly, North American tax writings. Though the French proclaim a Frenchman, Maurice Laure, the "father of VAT" one writer argued Laure did little more for the VAT than change its name[20] while another described VAT "as American as apple pie".[21]

A history of VAT should however perhaps begin in Spain in 1342 when the first turnover tax was introduced.[22] A turnover, or cascade, tax is a multistage tax similar to the VAT. Tax is added at each stage of the production or distribution process but without credit for tax paid at previous stages. Therefore the more stages in the production process the more tax there is on any particular product. This results in a "cascade" of tax on tax which creates an artificial incentive for vertical integration and otherwise distorts consumers' choices between goods and services and producers' preferences as to production processes. The first writer to use these sorts of arguments to recommend the substitution of a VAT-like tax for the turnover tax was the German von Siemens in 1918. Despite his and later writers' arguments the turnover tax remained the principal broadbased indirect tax in Western Europe until the late 1960s.

Before World War II the VAT concept gained a certain currency in the US.[23] In 1918 Professor T.S. Adams supported a VAT-like tax as the best form of business tax. In 1932 and again in 1933 the influential Brookings Institute recommended the VAT as a state sales tax for Alabama and Iowa.

Following endorsements by respected taxation writers like Paul Stadenski Senator C. Joseph O'Mahoney introduced a VAT Bill into the US Senate but failed to receive much support.

The event which probably triggered the initial interest in the tax after World War II was the Shoup Mission to Japan.[24] Professor Carl Shoup proposed a VAT (in some respects very similar to the current Brazilian ICM VAT) as a means of dealing with Japan's decimated post war economy. This consumption type VAT, based on the origin principle, allowed a choice between the subtraction and addition methods of calculation. It had two rates, two return periods and exempted a wide section of Japanese businesses. The Local Tax Bill was passed by the Japanese Diet in 1950 but its date of introduction was postponed a number of times until the Act was finally repealed in 1954.

In 1948 Laure introduced a VAT-like component to France's turnover tax at the wholesale stage which was extended in 1954. The French also persuaded the framers of the General Agreement on Tariffs and Trade (GATT) to accept the VAT as a legitimate aid to exporters greatly increasing its attraction for export orientated economies.

In 1953, with little advance warning, the State of Michigan introduced a tax called the business activities tax (BAT) which remained in force until 1967. It was a VAT-like business tax calculated on the subtraction method.[25] In 1960 it was held by a U.S. court to be an income tax.[26] In 1975 Michigan introduced the single business tax (SBT), a VAT-like business tax calculated on the addition basis.[27]

When the EEC customs union was formed in 1957 one issue high on their agenda was the finding of methods to harmonise their members' tax systems. In 1963 the Neumark Committee made the VAT EEC policy as they considered it the most desirable form of sales tax for harmonisation purposes.

A meeting of the EEC Ministers confirmed this policy. Hence the EEC Sixth Directive in 1967 was drafted, setting out a model tax code for a consumption type VAT based on the destination principle. This is still the basis for the so-called "European model" of VAT. From 1968 onward the EEC members converted their (mainly turnover) sales tax systems into VATs.

Despite the unfavourable finding of the UK Richardson Committee on Turnover Taxation[28] the 1970 Conservative Government was elected on a mandate of abolishing the Selective Employment Tax (SET) and investigating the VAT concept. In 1971 a Green Paper[29] was published proposing to replace the SET and the purchase tax in 1973. In 1973 the VAT was introduced with two positive rates which was reduced to one in 1979.

From 1960 onward a number of developing countries began to develop VAT-like taxes, usually from cascade or other sales taxes. Many of these remain merely refined turnover taxes but are nonetheless listed in Appendix A3. In 1976 Israel introduced a single positive rated VAT with a broad base while in 1977, on International Monetary Fund (IMF) recommendations, South Korea introduced another "textbook" VAT.

In 1979 Senator Long and Representative Al Ullman, Chairman of two leading congressional tax writing committees, proposed a ten percent $US115 B VAT[30]. The Library of Congress prepared for the House Ways and Means Committee a ninety eight page bibliography of VAT writings containing approximately 1000 entries in English.[31] The proposal again stalled but continuing U.S. interest in the VAT can be seen from the major 1984 Report of the U.S. Treasury on the VAT. A timeline of important events in the history of VAT is provided in Appendix A1 while a list of the world's VATs and VAT-like taxes is Appendix A3.

New Zealand has little experience with indirect taxation generally and, unlike in Europe, the VAT concept has only become known to the public very recently. NZ's first broadbased indirect tax was a wholesale sales tax introduced as a temporary emergency measure in 1933 at a single rate of five percent but with substantial exemptions for "necesssities". By 1984 tax rates had proliferated and the tax base had narrowed to only thirty seven percent of total consumption[32]. In the wake of the report of the Richardson Committee the Ross Committee on Taxation in NZ opposed the VAT, arguing it was inappropriate in NZ because we had no history of multi-stage sales taxes and had a great number of small businesses.[33] However they did recommend a wider wholesale sales tax base and a tax on some services.

By 1976 in NZ the tide of academic opinion was turning. The Monetary and Economic Council proposed a major shift to indirect taxation[34] (as the Australian Asprey Committee had done a year earlier). The NZ Taskforce on Tax Reform (the McCaw Committee) of 1982 recommended the consideration of the VAT concept.[35]

In July 1984 a Labour Government with little explicit policy on taxation was elected. In his 8 November Budget the Minister of Finance announced the proposed GST. Its general form was evident from his Budget Speech:[36]

> The Goods and Services tax will be levied in instalments on all transactions in goods and services up to and including the retail level.... Overseas experience with similar taxes, and experience in New Zealand with the wholesale sales tax, clearly shows that, to be efficient, the new tax should be applied at the single rate to the widest range of goods and services. This is our broad objective.

While the White Paper on the GST (WP) followed this broad objective it was published with a number of issues unresolved, like the rate, registration threshold and the treatment of financial services and land.

An Advisory Panel of Dr. Donald Brash (an economist), Mr. Alan Martin (a retailer) and Mr. Richard Green (a taxation lawyer) was set up to receive submissions. It issued two reports on 4 June and 22 August 1985. The Panel said four areas of concern were particularly important to those who made submissions to them, namely:

- the high costs of compliance;
- the consequences of taxing particular goods and services;
- the cashflow consequences of GST on some activities; and
- transitional problems.[37]

These concerns, as will be seen, framed the terms of reference for what was considered in the First Report which had a major impact on the GSTA. Of the Advisory Panel's fifty one recommendations the Minister of Finance substantially agreed with twenty eight, substantially disagreed with twelve and had other responses to eleven. Their Second Report[38] on financial services and land was largely rejected as being too difficult to implement in the time available.

After the deferral of the GST introduction date from 1 April 1986 to 1 October 1986 the Minister of Finance announced only a ten percent rate would be necessary as the GST's broad base would allow $2,700M to be collected in a full year.[39] The first draft of the GSTB was introduced into the House on 22 August 1985. By this stage the broad form of the legislation was set. The Bill however was referred to the de Cleene Committee who improved the drafting and resolved the question of the treatment of land. The GSTA became law on 3 December 1985 with some of its provisions coming into effect immediately. Further amending legislation, the TRB, was introduced into the House in 1986 and the GST was introduced in 1 October 1986. For a timeline showing the evolution of the GST see Appendix A2.

3. AN INTRODUCTION TO THE VAT CONCEPT

3.1 Introduction

To introduce the VAT concept, and therefore the GST, it is useful to begin by distinguishing between some of the theoretical, largely economic, taxation concepts. These are:

(a) direct and indirect taxation;
(b) the income and the consumption/expenditure tax base;
(c) broadbased and ad valorem sales taxes and excise sales taxes;
(d) single stage and multi-stage sales taxes;
(e) the ring system and the credit system;
(f) the gross product, income and consumption types of VAT;
(g) addition, subtraction and credit offset methods of calculation; and
(h) tax inclusive and exclusive bases.

In terms of these concepts the GST is an indirect tax on the consumption base. It is a broadbased ad valorem sales tax. It is multi-staged and makes use of the credit system. Within the family of VATs it is a consumption type credit offset VAT calculated using a VAT exclusive rate of ten percent although taxpayers will file returns using GST inclusive amounts.

3.2 Direct versus Indirect Taxation

The distinction between direct and indirect taxation is an economic one and is far from straightforward. Direct taxes are usually said to include income taxes, corporate taxes, capital gains taxes, social security taxes, payroll taxes, estate and gift duties and the like. Indirect taxes are said to include all taxes on goods and services and customs duties. Direct taxes are ones where the legal taxpayer is in fact the person who bears the tax (the economic taxpayer). Indirect taxes are ones where the person legally responsible for the tax passes it on to someone else (the economic taxpayer). The distinction is unclear,[40] and only of academic interest anyway, because the economic incidence of taxes is rarely known. In very uncompetitive markets taxes on corporations may be shifted forward to the consumers of their products in higher prices whereas in very competitive markets producers may shift backward liability for GST from the consumers of their products to themselves by lowering prices and earning a lower profit. Economists often have to make assumptions about where tax liability falls. For example it is usually assumed that GST will be fully shifted forward to consumers (which may be realistic in a largely cost-plus economy like it sometimes argued NZ is).[41]

The distinction is of little importance as economists no longer believe indirect taxes to be necessarily inferior to direct ones on the criteria in Ch. 1.[42] In fact commentators who perceive direct taxes to be carrying too much burden have made indirect taxes quite fashioinable.

3.3 Income versus Consumption Tax Base

Of more importance than the direct versus indirect taxation questions is the choice of tax bases. Though other tax bases are possible[43] the debate in most theoretical writings is between the income and the consumption tax bases. The income tax base is what is sometimes called the comprehensive income tax base as defined by writers like Haig and Simons[44] and includes income from all sources like capital gains and inter vivos gifts which may not be taxed in real world income taxes. The maximum tax base of taxes on commodities is consumption or expenditure (i.e. income less savings on an annual basis). Of course over time all savings will be liquidated and expenditure will equate with income making the savings decision essentially a choice between current or future consumption.[45] In any case most direct taxes, like income taxes, aim to tax income (i.e. expenditure plus savings).[46] It follows that the advent of the GST is as much a switch from the income to the consumption tax base as it is from direct to indirect taxation.

Which tax base is preferable on the criteria in Ch. 1? This is one most important and controversial question in public finance economics today. As stated the basic difference between the two bases is the treatment of savings. As interest payments are income an income tax, in effect, taxes savings twice i.e. once when the income is derived and again when part of the income yields a return in the form of interest payments.[47] In terms of neutrality the comprehensive income base is probably inferior[48] because it distorts individual choices in favour of present consumption and against future consumption of savings. It also reduces the rate of return on savings and, as the rate of return on investments is unchanged, drives a "tax wedge" between the two rates of return.

Goode however opposes the expenditure tax since it is more regressive with respect to income on ability to pay equity grounds.[49] However it is possible to argue for the expenditure tax on ability to pay grounds when consumption is used as the measure of capacity which Musgrave and Musgrave believe is more sensible.[50] It is also possible to argue for taxes on expenditure on equity grounds, on a less academic level, that "taxing consumption means taxing those who are withdrawing resources from the 'common pool', exempting those who are adding to productive potential by saving and hitting the wealthy who finance consumption out of capital resources."[51] It is on administrative efficiency criteria that opponents of taxing the expenditure tax base directly have their strongest case. The direct expenditure tax is largely untried[52] and would cause many problems in the international context. However an indirect consumption tax like the GST is largely without these difficulties. Therefore it could be concluded that the consumption base is superior to the income one and that substituting the ITA (which is not a comprehensive income tax anyway) partly with a higher rated GST would be a worthwhile reform.

3.4 Broadbased Ad Valorem and Excise Sales Taxes

If indirect taxes are seen to be largely synonymous with sales taxes of various sorts then sales taxes can be classified into two broad classes. Firstly there are the broadbased sales taxes (in historical order of appearance: the turnover tax, the manufacturers' sales tax, the wholesale sales tax, the retail sales tax and the VAT) and secondly the excise taxes. Broadbased sales taxes are levied on a class of business in an attempt to cover a wide range of goods and services. Excise taxes are levied on one or a small number of goods and services. Broadbased taxes, including GST, are usually ad valorem i.e. levied as a percentage of goods and services' prices, and hence provide an inflation proofed form of revenue for the government. Excise taxes, for example the motor spirits duty, are often per unit i.e. levied on some physical measure of the goods and are not inflation proofed.

Taxes on one or a few commodities violate neutrality because they alter consumer preferences,[53] tend often to regressivity and probably impose a heavy compliance cost burden on some traders. In the NZ context they may lack visibility, as evidenced by the ease and regularity with which past Ministers of Finance have raised them.[54] The only sound economic argument for such taxes, it is submitted, must be based on the benefit approach. If certain products, mainly tobacco and alcohol, increase costs in the public sector, in particular in the health and criminal justice areas then it can be argued the users of those products should meet those social costs. This rationale is often implicit in Ministerial statements[55] but to be justified two things are necessary. Firstly the social costs involved must be quantified in order that the extra tax burden the products should bear can be quantified. Secondly the government revenue should be explicitly "earmarked" for meeting the social costs. Neither of these steps have been taken in NZ as far as the author knows.

This approach to excise taxes is visible in the Taxation Reform Bill 1986 which repealed a wide range of excise taxes that existed before GST. The excises remaining are those on beer, wine, liquor and tobacco under the Customs Act 1966 and certain levies on petrol. Though the above two steps have not been scientifically completed, for what it is worth, it is the writer's opinion that, since the relevant social costs of alcohol and tabacco are widely known, these taxes should remain in place. The levies on petrol are more difficult to justify. These issues are returned to in Ch. 18 and 19.

3.5 Single Stage and Multi-Stage Sales Taxes

What are the merits of the various broadbased taxes? The arguments against the turnover taxes for a developed country are well known and in the writer's opinion very sound.[56] The arguments against NZ's wholesale sales tax (and therefore the inferior manufacturers' sales tax used in Canada) are set out elsewhere.[57] The retail sales tax - a tax levied on the final stage of the production and distribution process prior to consumption - is the only serious rival of the VAT. In comparing the two taxes it is important to realise how similar they are. In theory they can have identical tax bases.[58] Also a retail sales tax covers the sales of more than just retailers. To be as comprehensive as the GST a retail sales tax would have to cover many manufacturers, wholesalers and so on, over a certain threshold, who sell to the public. This is why the McCaw Committee[59] said that if either tax were adopted 180,000 traders would have to be registered.

A comprehensive retail sales tax has a number of disadvantages compared to a VAT[60] including:

(a) a method must be found to ensure sales between registered traders are not taxed. Some of the "credit" schemes to overcome this problem are a step on the road to a VAT;

(b) it is generally believed that retail sales taxes cannot sustain high rates without undue evasion. The VAT invoice trail seems to be a factor in allowing VAT rates of thirty percent without undue evasion with retail sales taxes above fifteen percent unknown; and

(c) apart from Sweden (who abandoned it) and developing countries like Zimbabwe there is no international experience of operating a retail sales tax at a national level whereas VATs are widely used and the UK VATA and other legislation provided a guide for drafting the GSTA as well as a useful body of case law.

3.6 The Ring and the Credit System

As seen above the retail sales tax - like the turnover tax and the other broadbased sales taxes - can result in tax on tax cascades if sales between registered traders are taxed. For reasons of neutrality with respect to organisational form and consumer choices these are undesirable. One response is the "ring system" where sales between registered traders, within the ring, are not taxed whilst those outside are. The ring system, which would probably have been part of the proposed Australian retail sales tax, reduces tax cascading but results in tax evasion when registered persons consume goods or services. It is therefore arguably only a "second best" approach helpful for developing countries (it was used in Bolivia, Costa Rica and Honduras in 1984[61]). The "credit system" is an alternative system where registered traders can offset the tax paid by other registered traders on the goods and services they purchase. This is of course a VAT-type mechanism. The adoption of this mechanism, to overcome the problems of the ring system, has lead to many of the developing countries in Appendix A3 adopting VAT-like taxes.

3.7 The Gross Product, Income and Consumption VAT Types.

In the theoretical VAT literature[62] there are at least three types of VATs with slightly different bases. These are the gross product type VAT (which allows credit for current expenditure but neither capital expenditure nor depreciation)[63], the income type VAT (which allows credit for current expenditure and depreciation but not capital expenditure) and the consumption type (which allows the deduction of current and capital expenditure but not depreciation). The gross product type has a tax base equal to total Gross National Product (GNP) or that of a comprehensive income tax without a depreciation allowance. Such a tax would be extremely distortionary with respect to savings decisions. The income type VAT would tax the same base as a flat rate comprehensive income tax i.e. net income or Net National Product (NNP). The consumption type VAT, however, taxes merely the consumption tax base. Hence the choice between the two types of VAT is between the two tax bases mentioned earlier.

These three and the other[64] VAT variants have developed from the theoretical VAT literature. While a number of developing countries have introduced non-consumption type VATs it is primarily that type, which was first implemented in France, we are concerned with.

3.8 The Addition, Subtraction and Credit Offset Methods of Calculation

Legal tax liability under a VAT is levied on the value a registered trader adds to the goods or services they produce. From economic identities this value added can be calculated in a number of ways.[65] This value added can be calculated by adding the factor payments to labour, land, capital and entrepreneurship since these represent the distribution of the value the firm adds amongst those who create it. Under this, the addition method, a firm's liability is calculated by adding wages, rent, interest and net profit. To calculate tax liability the rate is multiplied by the value added. Alternatively the value added by a firm can be calculated from its source. Under the subtractive method VAT is calculated by subtracting purchases from sales and applying the VAT rate to the difference. A refinement of this is the credit offset method of calculation. It calculates a firm's tax liability by applying the rate separately to a firm's sales and purchases. The purchases multiplied by the rate (input tax) is deducted from sales multiplied by the rate (output tax) to determine tax liability. A numerical example of these methods is included in Appendix A5. Appendix A6 shows these methods of calculation for each of the VAT types in Ch. 3.7.

A proper addition method has never been used to calculate VAT though the Japanese and post-1975 Michigan taxes come closest to this. A number of the developing countries with VAT-like taxes in Appendix A3 use a simple subtractive method.[66] The credit offset method of calculation is standard in European VATs and is a feature of the NZ GST. Its advantage over the subtraction method is that it creates a system of self-enforcement (the so-called invoice trail) since to get input tax deductions registered traders are required to produce documentation supplied by those who sell their goods and services. This added enforcement, though, raises compliance costs.

3.9 Tax Inclusive and Exclusive Bases

A VAT rate can be levied on a price either including or excluding the VAT element. The GST's ten percent rate is a VAT exclusive rate. Sweden is the only country to use a VAT inclusive rate. It has an inclusive rate of nineteen percent which gives an exclusive rate of 23.46 percent. It is submitted that exclusive rates tend to be more readily understood by the public.

However it should be noted that in completing their GST return registered persons will calculate their output and input tax using the GST inclusive rate. Therefore they will have to use the GST inclusive rate of 9.1 percent or what is called the "tax fraction" in the legislation[67] ($^1/_{11}$). The tax fraction for calculating the GST component of GST inclusive amounts is equal to $\frac{t}{100+t}$ where t is the tax rate.

4. THE SCHEME OF THE GOODS AND SERVICES TAX ACT 1985

The GSTA itself (including the amendments in the TRB) is a near code for NZ's VAT. Though some areas, most notably pricing issues, apportionment rules and the treatment of GST for income tax purposes, will require further "legislation" (be it an Amendment Act, delegated legislation or, the method presently employed, IRD departmental instructions) the vast bulk of the GST is provided for in the GSTA's eighty five sections. This approach compares to, say, the UK VATA where much of the VAT law is contained in statutory instruments. This also compares with the NZ ITA where an Annual Taxing Act is required to set rates. The GST rate is "written into" the taxing provisions of the GSTA[68] (although the tax fraction is expressed in a general form).[69] Similarly most of the various thresholds or trigger levels are written into the Act,[70] though there are provisions for the Governor General to increase many of these.[71] This compares to section 9 of the 1972 version of the VATA which allowed a set rate which could be increased or decreased within a set maxima or minima[72] or section 9 of the current Act[73] which allows the current rate to be increased by up to twenty five percent by statutory instrument. Besides the constitutional problems these sorts of provisions raise, it is submitted that, the GSTA's approach is to be preferred for reasons of visibility. Legal and economic taxpayers should have access to an Act of Parliament which clearly sets out the rules for determining their tax liability and especially the rate(s). Further, it is submitted that, major changes to the GST regime, especially as to the rate(s), should be only possible after Parliamentary debate.

The GSTA is divided into twelve parts. Part I provides a number of important definitions including "supply" and "taxable activity". Part II imposes the tax and is central to both the Act and the discussion in this paper. Part III prescribes the return periods and the method for calculating the payment of

GST. Administrative aspects, like objection procedures, are provided by Parts IV to VII and are largely irrelevant for this paper. The requirements for registration of traders are dealt with in Parts VIII and IX. Some other matters and the transitional provisions, again largely outside the scope of this paper, are also provided for.

Within Part II GST is levied on traders under sections 8(1), 12 and 13. Section 12 imposes GST on imports entered or delivered for home consumption as under the Customs Act 1966. It is discussed in Ch. 15.3 of this paper. Section 13 of the GSTA imposes GST on goods subject to section 134 of the Customs Act, for example alcohol and tobacco. The most important provision in the GSTA is section 8(1) which provides:

> Subject to this Act, a tax, to be known as goods and services tax, shall be charged in accordance with the provisions of this Act at the rate of 10 percent on the supply (but not including an exempt supply) in New Zealand of goods and services, on or after the 1st day of October 1986, by a registered person in the course or furtherance of a taxable activity carried on by that person...

Therefore for tax liability to arise, for goods or services covered by section 8(1), several elements must be satisfied. Firstly there must be a non-exempt or taxable "supply". Secondly the place of supply must be "in New Zealand"; the residence requirements must be satisfied. Thirdly the supply must be of either "goods" or "services". Fourthly the supply must be by a person registered under Parts VIII and IX of the Act. Fifthly the supply must be "in the course or furtherance of a taxable activity carried on". The "taxable activity" is therefore the legal taxable entity under the Act having a similar meaning to "business". in addition, from the definition of "taxable activity" in section 6(1), the supply must also be for a "consideration" for GST to be imposed. These elements are discussed in Ch. 5 to 9 and 16 of this paper.

These elements are not novel. They have been adapted from those in section 2 of the VATA. Section 2(1) provides:

> Tax shall be charged on the supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

The elements above are substantially as in NZ except for differences in the taxable entity element. In the VATA the "consideration" element is included in the section 3(2) supply definition.

Though section 8(1) provides the general preconditions for tax liability it is silent on the extent of the liability and when it arises. The first question is answered by the value of supply provisions which in turn depends on the definition of consideration and the open market value provisions as discussed in Ch. 11. The second question is answered by a combination of the time of supply provisions and the accounting basis the trader adopts. These aspects of the GST are discussed in Ch. 12 and 13. Return periods are also relevant to this question and are discussed in Ch. 16.

The rest of the scheme of the GSTA is also very much as the Minister of Finance envisaged in his 1984 Budget speech. The effect of the GSTA provisions is to make the GST not just a single rated but a very comprehensive VAT in terms of its coverage of the tax base. Apart from exported goods and services zerorating is hardly used at all in the GSTA. Exemptions have been limited to a small number of goods and services. As is shown in Ch. 14 it is really only mainly the difficult to tax areas of financial services and accommodation and land where second best treatments have been adopted because of the technical problems. A further pointer to the width of coverage of the GSTA is, ironically, the complexity and number of deeming provisions in sections like those defining "supply" and "time of supply" which aim to tax specific transactions like bets and hire purchase transactions which differ from the stereotypical sale of goods or services transactions.

Two further aspects of the scheme of the GSTA are its adoption of the destination principle and its preferential treatment of many small traders. In line with the destination principle "border adjustments" provide that exported goods and services are zerorated while imported goods are taxed, as discussed in Ch. 15. As an attempt at dealing with the regressivity of compliance costs with respect to firm size, which is often a feature of VATs,[74] a number of features, largely instituted by the Advisory Panel, are provided, including:

- a reasonably high registration threshold;
- differentiated return periods;
- a number of special provisions for "non-profit bodies"; and
- the payments basis of accounting.

These aspects of the GSTA are largely discussed in Ch. 16 and 13.

5. THE MEANING OF "SUPPLY"

5.1 Introduction

In the GSTA for liability to arise there must be a non-exempt "supply". In NZ, as in the UK, supply is tautologically defined to "...(include) all forms of supply"[75]. "Taxable supply" is defined as "supply" less "exempt supply".[76] As well as having an ordinary meaning the following are deemed to be supplies:

(a) the non-voluntary sale of goods to satisfy a debt;[77]

(b) goods and services which have accrued input tax when a person ceases to be registered;[78]

(c) a sale under the Door to Door Sales Act 1967 after the cancellation period has expired;[79]

(d) the delivery of goods under the Layby Sales Act 1971;[80]

(e) the supplies of public and local authorities and local body rates;[81]

(f) betting and purchasing a lottery ticket;[82]

(g) the disposition of a taxable activity as a going concern;[83]

(h) an indemnity payment on a taxable activity-related insurance policy;[84]

(i) motor vehicle registration and licencing fees;[85] and

(j) supplies made for consideration in stamps on postal notes.[86]

Of course the deeming provision does not greatly assist us in discovering the ordinary meaning of supply in the GSTA. That is not defined in the Act. What, then, does it mean? Inter alia the Shorter Oxford Dictionary defines the noun supply as: "The art of making up a deficiency, or fulfilling a want or demand".[87] Such definitions however may be misleading as supply in the GSTA is coloured by the fact that the supply must be of goods or services. Other sources have therefore been explored.

5.2 Common Law and Statutory Definition

"Supply" in a sense similar to that used in the GSTA has been defined in a number of cases. In the US Clayton v. Bridgereport Machine Co. is often used as authority for the meaning of supply. There it was held supply can be defined as "to furnish with what is wanted"; "available aggregate of things needed or demanded"; "anything yielded or afforded to meet a want"; and "the art of furnishing with what is wanted".[88] This idea of supply as furnishing something was logically held in the UK (in the context of water) to involve passing something from those who have to those who want.[89] One natural result of this was that it was not possible for someone to supply themself.[90] The fact that the concept involves two parties was agreed to by an Australian Court in Andoloro v. Wyong Co-op. Dairy Soc. Ltd.[91] in a different context. They held supply required both a delivery and an acceptance of delivery.

An Australian case on the meaning of supply under the Airport Act provides interesting authority.[92] There Menzies J.held:[93]

> The supply of goods does not necessitate a change in ownership of the goods supplied. In many cases the word 'supply' is equivalent to the word 'provide' and it often happens that a person is provided by others with what belongs to him. Thus a shop, which has a home delivery service, supplies goods upon delivery notwithstanding that they may have been bought in the shop, or by telephone, or by mail order. A supplier is not merely one who sells. He may be one who delivers.

This is probably the case in the GSTA too. Though a supply of goods probably, without statutory intervention, must require two parties, one delivering to the other, it probably does not require a sale or a change in ownership. However, as will be seen, the time of supply rules are different to those in the quotation. Windeyer J. (dissenting) in the same case held that the supply of services:[94]

> ...connotes, I think, some undertaking regularly carried on, presumably for reward - such as providing porterage for passengers' baggage, booking accommodation for incoming travellers, arranging transport, or taking photographs. Merely helping someone with his suitcases would not, I think, be supplying a service, nor would driving him to or from the airport.

This is also probably the case under the GSTA.

5.3 U.K. Cases

The UK VAT cases, since they concern the same statutory language in the same context, are better authority. They are of a similar effect to those in Ch. 5.2. The leading case is Carlton Lodge Club v. CEC[95] where an unincorporated members' drinking club used members' subscriptions to buy alcohol. The club argued it did not supply alcohol because it did not sell alcohol. A member who wanted a drink from the bar paid a sum of money in consideration, only, for the other members releasing their share of the alcohol. The Court accepted both these arguments agreeing the club did not make "sales" to its members. They stated, though, that a sale was not required for a supply to exist. Milmo J. also used an old licensing case test which stated that the word "supply in its ordinary and natural sense means to furnish or to serve"[96] and therefore included this case.

Further in CEC v. Oliver[97] the taxpayer was a secondhand car dealer who sold some stolen goods. The Commissioners assessed him for VAT on that sale. The taxpayer argued there was no supply as the sale of a stolen article is void and does not comply with the legal requirements of the law of contract. Griffiths J. stated that "...it is quite clear from the language of this Act that 'supply' is a word of the widest import".[98] He said that: "...if any layman had asked the purchaser of one of the stolen motor cars who supplied him with the car, he would I think unhesitatingly answer by giving the name of the taxpayer".[99] He also held that the fact the contract was void was of no great moment; the technical rules of contract did not have to be satisfied. Finally he defined the supply of goods as:[100]

> ...the passing of possession in goods pursuant to an agreement whereunder the supplier agrees to part with and the recipient agrees to take possession. By 'possession' is meant in this context control over the goods, in the sense of having the immediate facility for their use. They may or may not involve the physical removal of the goods.

Oliver is to some extent limited by the House of Lord's decision in CEC v. Thorn Electrical Industries Ltd.[101] That case concerned contracts, for the letting of television sets, which existed when VAT was introduced. The taxpayer argued there was no supply of goods because the television sets had been delivered when VAT was introduced. It was held that supply included letting and did not necessarily require the delivery of goods. The formation of the contract for hiring was not the supply. The case is not necessarily contrary to Oliver however since the supply in Thorn was a continuous state rather than a once and for all transaction. Presumably Oliver is still good law for once and for all supplies of goods.

Supply then seems to involve two parties with one party providing or furnishing goods or services to the other without always, but usually, ownership changing or there being a sale. The technical sales of contract are probably not required to be satisfied. Goods will usually require some sort of delivery or passing of possession unless supply is a continuous state or, perhaps, the "goods" are some form of real property.

This regime would be similar to that under the German VAT Law 1967 (the Mehrwertsteur) where the "supply of objects" (movable and immovable goods and intangible goods like water and energy)[102] and performances of services[103] are generally taxable supplies. Such supplies are taxable regardless of whether title passes or the supply of goods or services is required by law.[104] The effect of the first rule can be seen in the treatment of hire purchase contracts which are taxable when the customer has the power to dispose of them not necessarily when the title in the goods passes.

On a policy level the writer considers it unfortunate that the legislature did not put a statutory definition of supply in the GSTA. Those who doubt that such a useful definition is possible are referred to the section 2 definition of "supply" in the N.Z. Commerce Act 1986 which could be used as the starting point for a more comprehensive definition.

6. THE MEANING OF "GOODS AND SERVICES"

6.1 Introduction

The supply must be of "goods" or "services" for it to be taxable under the GSTA. "Goods" are defined as "all kinds of personal or real property; but not choses in action or money".[105] This definition extends the natural meaning and is very wide: for example when compared to that under the Sale of Goods Act 1908 or even the Commerce Act 1986. Common law definitions of real and personal property show this width, for example:[106]

> It is not sufficient ... to say simply without qualification that land is realty and all other property is personalty. Real property includes, besides the freehold estates and interests in land, things which are said to 'savour of the realty'. These include, for example, such divergencies as the documents of title to freehold land, heirlooms, and deer preserved in a lawful park; in addition, trees are part of the realty until cut down, when they become personalty... Personal property, of course, includes both tangible chattels and choses in action ... leasehold interests in land are personal property.

Choses in action would be goods under this definition so they are expressly excluded and are included in services (when they are not money). Of course, many of these will be exempt as financial services.

"Money" is not taxed under the GSTA; only goods or services are. Money is widely defined to include currency; postal notes and money orders; and promissory notes and bills of exchange.[107] Therefore it could be argued, say, that discounting a bill of exchange is outside the GST regime though this result is prevented by section 3 (1) (b).

Section 2 GSTA says "'Services' means anything which is not goods or money". This provision is problematic in a number of ways.

Firstly it is rather strange to use the word "means" in a negative definition. It amounts to using "means" when the ordinary meaning is to be kept intact.[108] Secondly, and similarly, the definition is strictly incorrect. Anything which is not a good or money is not necessarily a service. Thirdly, and most importantly, it does little to clarify the meaning of "services".

What then is the meaning of "services" in the phrase "goods and services"? An economist would have little trouble with the concept. A service is an intangible (consumption or capital) good.[109] However this is a technical definition and the courts have in the past avoided economic definitions of words in revenue statutes.[110] The noun service has fourteen definitions in the Concise Oxford Dictionary.[111] None of these however are similar to the way the word is used in this context. Therefore the writer has researched a number of sources for the meaning of services.

6.2 General Case Law

Few cases in common law jurisdiction have discussed this meaning of services. However in the NZ case of Dwyer v. Hunter[112] legislation allowed a tribunal to "fix prices for goods and services". The Tribunal purported to fix hotel tariffs under the legislation. The case turned on the meaning of services. Though Finlay J. gave no definition of services he said:[113]

> An hotel keeper does render services, even if that term be regarded in the narrowest way. On arrival, a guest is received and escorted to the room he is to occupy, and his baggage is taken to that room. Thereafter meals are brought to him ... His shoes may be cleaned and his clothing sent to and received from a laundry. Mail addressed to him is received and delivered. Telephone calls and taxis are obtained as needed ... The supply of meals may be considered either as the rendering of services or as the sale and delivery of goods, or it may be something of both ... The provision of a bedroom with bed and other furnishings is the rendering of a service ... The provision of chairs in dining-rooms and sitting-rooms is ...

There is a similar list in R. v. Paddington Rent Tribunal.[114]

In a taxation case the Australian High Court had to decide the meaning of "rendering of services". McTiernan J. said:[115]

> The Shorter Oxford Dictionary defined 'service' as 'the art of helping or benefitting', and in plural, 'friendly or professional services'. This is a broad definition. It would include all the things contemplated by the word 'services' in the common phrase 'goods and services'. It would include any ordinary commercial contract, as well as all those activities more specifically called services, which do not actually involve the production or processing of goods, for instance, banking and financing, transportation, and insurance.

He concluded however that this broad definition could not be adopted. He quoted Sharke J. as saying in an earlier case that the rendering of services required the "doing of a positive act".[116] Williams J. there held that services must be a kind that could be performed under a contract of service. McTiernan J. himself decided:[117]

> I consider that the 'rendering of services' should consist of the doing of an act for the benefit of another, which is more than the mere making of a contract and which goes beyond the performance of an obligation undertaken in the course of an ordinary commercial contract.

Perhaps however the broader definition is more useful for present purposes.

In an entirely different context Herbstein J. had to decide a similar question. He held:[118]

> The phase 'for services rendered' is in common use and its ordinary meaning is that some thing has been done for the benefit of some person e.g. supplying of a particular need. When one speaks of a fee for services rendered one means the payment of a sum of money as compensation for an act which has been performed, or a need which has been

> performed ... The words apply naturally to the charging for hospital attention or attendance at a school.

This test then bears some similarity to McTiernan J's.

6.3 Overseas VAT Statutes

Article 6 of the EEC Sixth Directive[119] says the supply of services "shall mean any transaction which does not constitute a supply of goods..." but shall include (inter alia):

(a) assignments of intangible property;
(b) obligations to refrain from an act or to tolerate an act or situation; and
(c) the performance of services required by law.

Specifically Annex B of the EEC Second Directive[120] listed services to be included under members' VATs including: assignments of patents, trademarks etc; work on tangible movable property; provision of services to prepare or co-ordinate the carrying out of work; commercial advertising services; transport and storage; provision of staff; services provided by consultants, engineers, planning officers etc. in scientific, economic or technical fields; carrying out of an obligation to refrain from doing something and the services of intermediaries in the supply or importation of goods.

The German VAT legislation provides a slightly different, but interesting, approach to the meaning of services. Supplies of goods are defined as:[121]

> 'Performances by which an entrepreneur directly or through a third party acting on his behalf transfers to the recipient directly or through a third party acting on behalf of the latter the power to dispose of an item in the recipient's own name'. Supplies of services are ... all performances by an entrepreneur which are not supplies of goods in the above-mentioned sense. This includes also cases where the entrepreneur merely refrains from doing something or tolerates an act or situation ... If the materials provided and used by the entrepreneur carrying

> out his work are not of a merely accessory or ancillary nature the whole transaction is treated as ... a supply of goods ... If the entrepreneur uses entirely materials provided by his customer or if materials he provides himself are only of accessory or ancillary nature, the whole supply is treated as a supply of services. If the entrepreneur receives from his customer material for processing and returns to him the finished product not made out of the material received but of the same type of material, this is still seen as a supply of services...

The UK VATA has a similar definition of services to the GSTA as "anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any rights)".[122] There are quite a number of other contextual clues in the VATA as to the meaning of services. The transfer of a share of property in goods or the possession of goods is a supply of services.[123] Many of the services in the Second Directive are listed in Schedules 2 and 3 of the VATA. In Schedule 5 Group 9 some types of services are listed : cultural, artistic, sporting, educational and entertainment services.

6.4 UK Cases

The UK cases show one possible approach to the meaning of services in the GSTA. In Landmark Cash and Carry Group Ltd. v. CEC[124] the taxpayer was a company limited by guarantee whose members were cash and carry grocery outlets. The taxpayer's main purpose was to maximise the profitability of the group to the benefit of its members. Therefore it promoted the sales of its members' products. One method of doing this was to enter agreements with its members' suppliers for the payment of "overrider payments" when its members purchased more than a set quantity of goods from the suppliers. The overrider payments were eventually distributed to the members. The Commissioners argued these overrider payments to the taxpayer were consideration for the supply of services by the taxpayer. The VAT Tribunal agreed holding the services supplied were the offering of a potentially larger market to the suppliers. The Tribunal placed great emphasis of the definition of services as things "done" although they held that for something to be done did not necessarily require a positive activity. A negative activity, for example refraining from doing something, could be a service.

In the UK the following have also been held to be supplies of services:

(a) keeping a stallion on stud;[125]

(b) seconding employees;[126]

(c) providing an option to purchase a commodity which is not subsequently taken up;[127] and

(d) conferring the status of an approved customer on someone, allowing them a replacement bottled gas cylinder, for consideration.[128]

6.5 <u>GSTA Drafting History</u>

The GST WP defined "goods" as "all kinds of moveable personal property, including animals, but does not include things in action or money".[129] Real property was inserted by the de Cleene Committee when they decided to remove the special treatment of land in the first draft of the GSTB. Services were defined under clause 13. This provision owed much to the UK VATA. Services were things "done" for consideration.[130] Applying treatments or processes to other goods and the supply of power, heat, refrigeration or ventilation were all supplies of goods.[131] Subject to clause 13 it was provided "... anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment, or surrender of the whole or part of any right) is a supply of services".[132] Despite these useful contextual clues the Advisory Panel argued a definition of services was needed however the Minister of Finance disagreed with their contention.[133]

The first draft of the GSTB omitted the above references to goods and services. It contained the definitions that were to be incorporated in the GSTA as noted earlier. There are however a number of contextual clues in the Act. From section 3(1) it will be seen that (financial) services are capable of being described as "activities" although, as discussed in Ch. 8, the definition of that term is also problematic. More usefully the proviso to section 8(2) and section 11(2)(d) suggests that services must be capable of being "physically performed" which perhaps suggests similar results to defining services as "anything done". Also the inclusion of some negative activities in sections 11(2)(f) and (g) shows that they were considered by the draftsperson to be services. Though this resolves the difficult question of whether sales of intellectual property or restrictive covenants are services it does not show whether other negative activities are if they fall outside the definitions.

6.6 Conclusion

The precise extent of the meaning of services is therefore unclear. Obviously whatever definition the courts adopt it will include the type of services in Dwyer or Paddington Rent Tribunal. However more difficult situations like (a) to (d) in Ch. 6.4 are more doubtful though the author would expect similar conclusions to those in the UK cases. Even more difficult questions arise when there is or appears to be little or no positive activity by the purported supplier: for example the sale of a franchise or "goodwill" where no going concern is sold or the fulfilling of certain spiritual or religious needs for consideration.

Debate over whether or not any service is provided in exchange for motor vehicle registration and licence fees, which was resolved by an amendment to the GSTA,[134] highlights a related problem area. How do you distinguish negative activities from non-activities? Commonsense would suggest that a penalty, fine or impost, unless the legislation provides otherwise, should not be taxable as no service is provided in return for the payment. However it may be arguable that a service is there but just less evident. For example it could have been argued that motor vehicle relicensing fees may be eventually spent on providing better roading for motorists. A stronger argument can be made concerning parking fines for motor vehicles or overdue fines on library books. The writer understands that IRD's view is that certainly the former and perhaps the latter will not be subject to GST as the payments are a penalty rather than consideration for a service supplied. It could be argued though that the fined driver is consuming services: parking beyond the alloted time, the "services" of traffic officers and perhaps the "service" of having the vehicle towed away. The argument is much stronger in the situation of an overdue library book where an overdue fine may be deemed a payment for a de facto licence to hold the book beyond its due date.

For what it is worth it is the writer's opinion that, in line with some of the cases in Ch. 6.2, services in the GSTA should be found where some reasonably clear "benefit" is created for the person supplied whether by positive or negative act on the part of the supplier. It is also concluded that the loss of definition of services through the drafting process is very disappointing. The reader who does not agree that a definition that is both helpful and reasonably comprehensive could be drafted is referred to the European legislation and the definition in section 2 Commerce Act 1986. Interestingly the latter definition places emphasis on there being a benefit for the person supplied. Finally it should be noted that the meaning of services is not just important as to whether GST is imposed. As some provisions distinguish goods and services, for example those dealing with imports and exports, the definition of a supply may affect its treatment under the GSTA.

7. THE MEANING OF "CONSIDERATION"

To be taxable a supply must be for "consideration". "Consideration" under the GSTA includes:[135]

> ...any payment made or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods and services, whether by that person or by any other person.

Unconditional gifts (that is true donations) have been explicitly excluded from this definition.[136]

The consideration element was present in the WP[137] but that legislation followed the VATA in providing no definition of consideration. However perhaps because of concern over the courts' possible exclusion of non-voluntary payments to the government or even payments in kind the above definition was included. The definition as drafted is obviously a very wide one but has much in common with common law definitions. The "act or forbearance" part is reminiscent of the definition Sir Frederick Pollock adopted in Dunlop v. Selfridge.[138] The words "whether or not voluntary" are the main addition to the common law definition and appear to be an attempt to reverse the rule in Collins v. Godefrey[139] that the performance of a public duty is not consideration and, more importantly, ensure that statutorily required payments can be considerations. In the UK such payments escaped the VAT net because of their lack of voluntariness. In CEC v. Apple and Pear Development Council Ltd.[140] a compulsory levy of a statutory body, under a statute, was held not to be consideration in return for a supply.

The words may also have the effect, perhaps unwittingly, of making contracts made under (economic or other) duress subject to GST because consideration does not have to be voluntary and the technical rules of contract do not probably apply in determining whether there is a supply under the GSTA.[141]

Consideration in the VATA has been given its ordinary meaning under the common law by the UK courts.[142] However it has been held that in determining the existence of consideration the whole transaction should be examined without being artificially dissected.[143] The main requirement for consideration, implicit in the N.Z. definition, is reciprocity or mutuality for the supply of goods or services.[144] Profit, or whether the taxable entity is operated commercially, is irrelevant to whether there is consideration.[145] Under these rules, which would probably be followed in N.Z., the following have been held to be consideration:

(a) the giving of an interest free loan;[146]
(b) the allowing of a right to purchase goods at a discount;[147]
(c) an employee's services given for the "gift" of goods (i.e. petrol) from their employer;[148]
(d) the reimbursement of sums paid out (as profit is irrelevant);[149] and
(e) the exchange of a motor car.[150]

Consideration is not only important because it must countervail or flow in the opposite direction to the supply of goods or services for GST liability to arise. As is shown in Ch. 11 its open market value is used to determine the extent of that liability.

8. THE TAXABLE ENTITY : THE "TAXABLE ACTIVITY"

Under the GSTA the supply must be "in the course, or furtherance of a taxable activity".[151] Therefore the legal (but not the economic) taxable entity under the GSTA is the "taxable activity". "Taxable activity" is defined in section 6 GSTA. As taxable activity, unlike say business, is a manufactured expression having no natural or ordinary meaning the definition in section 6(1) is exhaustive except where other provisions of section 6 include or exclude activities. The section 6(1)(a) definition will be referred to as the ordinary meaning of taxable activity.

There are seven elements in this ordinary meaning of taxable activity, namely that:

(a) there must be an "activity";
(b) it must be "carried on continuously or regularly";
(c) it must be carried on "by any person";
(d) it can be carried on, or not, for "pecuniary profit";
(e) it must involve, or be intended to involve, in whole or in part the supply of goods and services;
(f) that supply must be to any other person; and
(g) that supply must be for a consideration. The definition includes:
(h) any taxable activity "carried on in the form of a business, trade, manufacture, profession, vocation, association, or club"; and
(i) the "activities of any public or local authority"[152].

Nothwithstanding anything in section 6 excluded from the definition are private recreational pursuits and hobbies; contracts of service; directorships; employment contracts of some highranking officials; and, of course, activities making exempt supplies.[153]

The writer will discuss the meaning of each of these elements to make clearer the nature of the GSTA taxable entity. First, however, what does the phrase "in the course or furtherance of a taxable activity" mean. Under the VATA the taxable entity is a "business". However for supplies to be taxable they must be made in the "course or furtherance of any business"[154]. The use of the word "any" in the VATA is wider than the word "a" in the GSTA. The supplies under the GSTA must be specifically in the course or for the furtherance of the taxpayer's taxable activity not of any business that they may be carrying on. This difference though, it is submitted, will be of little practical importance given the width of the taxable activity definition.

The meaning of "in the course of" is made a little clearer by the approach of Lord Emslie in <u>CEC</u> v. <u>Morrison's Academy Boarding Association</u>[155] to the expression "business":

> In my opinion it will never be possible or desirable to define exhaustively 'business'... What one must do is to discover what are the activities of the taxable person in

> the course of which taxable supplies are made. If these activities are, as in this case, predominately concerned with the making of taxable supplies to consumers for a consideration it seems to me to require no straining of the language of ... [the] Act to enable one to conclude that the taxable person is in the 'business' of making taxable supplies, and the taxable supplies which he makes are supplies made in the course of carrying on that business, especially if, as in this case, the supplies are of a kind which, subject to differences of detail, are made commercially by those who seek to profit by them.

This approach seems very sensible to the writer. If a taxable activity undertakes an activity which is predominantly concerned with making taxable supplies to consumers for consideration the taxable supplies of the taxable activity can be held to have been made in the course of the taxable activity. Also, to Lord Cameron the phrase "...suggests that the supply must be not merely in sporadic or isolated transactions but continued over an appreciable tract of time and with frequency as to amount to a recognisable and identifiable activity..."[156] The words "or furtherance" seem to widen the taxable supplies of a taxable activity that will be subject to GST though it is difficult to be precise how.

The fact that the taxable activity must be "carried on" reinforces Lord Cameron's interpretation of "in the course of". The meaning of "carrying on" in taxing statutes was established in Smith v. Anderson where it was said it "...implies a repetition of acts, and excludes the case of an association formed for doing one particular act which is never repeated".[157] It similarly also covers the "...habitual pursuit of a course of conduct..."[158]

Turning to the elements outlined: what is the meaning of the requirement for an "activity" in section 6 GSTA? The expression is not defined in the interpretation section, used widely in overseas legislation or the NZ ITA. The Concise Oxford Dictionary defines the noun "activity" as an "Exertion of energy; state or quality of being active". However activity in this context is probably not used in this English sense but in the American sense of a "specific action or pursuit".[159]

The question arises whether an activity requires positive actions (i.e. doing something) or whether negative actions (i.e. refraining from doing something) can amount to an activity? Section 3 suggests the former as it defines financial services and lists a number of activities. All these activities seem to be positive ones. The closest a UK case comes to this question is the Landmark Cash and Carry case, discussed in Ch. 6.4, which suggests services can be negative acts. Perhaps more on point is the EEC Sixth Directive Article 4 which is formulated similarly to section 6(1). It provides:[160]

> 1. 'Taxable person' shall mean any person who independently carries out in any place any economic activity specifically defined in paragraph (2), whatever the purpose or results of that activity.
>
> 2. The economic activities referred to in paragraph (1) shall comprise all activities of producers, traders, and persons supplying services including mining... activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

The Sixth Directive makes other use of the expression activities and lists twenty seven activities in Annex F. It would be difficult though to argue these provisions would be relevant in interpreting GSTA provisions.

In conclusion activity in the GSTA is probably used in the sense Webster's Dictionary defines it. It is submitted that actual acts or actions will be required for an entity to be a taxable activity. The idea that the taxable activity must be expending energy or being active is supported by section 6(1)(a) which requires the activity to be carried on. However perhaps the more important point is the width of the meaning of activity in this context. It extends well beyond the meaning of business to almost any form of pursuit. Stamp collecting or fishing, for example, are clearly activities or otherwise section 6(3)(a) would not have been necessary.

Element (b) reinforces the idea that more than sporadic transactions are required for an activity to be taxable. The expression "carried on" is repeated. Further the activity must be carried on "continuously or regularly". Those words will obviously exclude some activities since occasional irregular but quite substantial transactions will not come within section 6. This element for example ensures that private sales of houses worth more than $24,000 will not result in sellers being required to register. This element is an aspect of the natural meaning of "business" in taxing statutes[161] and of "business" under the VATA.[162]

Element (c) is an interesting one. The taxable activity must be carried on "by any person". "Person" is defined in section 2 to include bodies corporate and unincorporate as well as public and local authorities. Natural persons are obviously to be read in. The element is of academic interest because, as will be seen in Ch. 16, it represents the first time in NZ tax law that many unincorporated bodies have been taxable entities. The element is of more practical importance because it will require the Commissioner or the courts to determine in each case which person, natural or otherwise, is carrying on the taxable activity. An example of this general problem is discussed in the section on partnerships in Ch. 16.2 where it was originally possible for individuals to avoid being registered by engaging in a number of different partnerships with similar partners with low enough turnovers. The GSTA's anti-avoidance provision might also be invoked in these sorts of situations.[163]

Element (d) displaces the requirement for tax liability under the ITA for businesses to intend to earn a profit.[164] This simply codefies the UK position.[165] This element is sensible, as argued by Lord Cameron, since VAT is not a tax on business' profits but on consumption so that to exclude goods or services from liability on the basis that the suppliers of them did not seek profits would create administrative problems and distort consumer demand. For the same reason the German VAT requires registered persons ("entrepreneurs") who intend to create income net profits to be compulsorily registered (as those who intend to make sales presumably intend to earn income if not profits).[166] This policy argument is also behind UK courts holding that for business to be taxable they did not have to be "commercially" run. This rule was used to make a non-profit boarding house[167] and a public water authority[168] taxable and would certainly be followed in N.Z. It should be noted that this element is necessary to bring not just non-profit bodies but many government agencies within the GST where they supply goods and services.

The intended or actual supply of goods or services required under element (f) must be to another person (as defined under section 2). Therefore an activity for self-supply (for example the supply of accommodation in ones own residence) is not within the definition of taxable activity.

Element (g) is discussed in Ch. 7 of this paper.

The definition of taxable activity then includes any activity (with the above elements) carried on in the form of a business, trade, manufacture, profession, vocation, association or club. What meaning should be attached to these forms? Looking firstly at "business" three possible meanings occur to the writer. Firstly the word may have its meaning under the ITA. The writer would be surprised if the NZ courts adopted this definition since it includes trade, manufacture and profession which are separately provided for. It is also submitted that the policy of the GST of taxing consumers rather than profits makes this inappropriate.

Secondly perhaps business should have a meaning similar to that under VATA. Though it has never been possible to exhaustively define business there[169] various factors have been used including that the activity is:

(a) regular and makes goods or services available on a wide scale;[170]
(b) conducted on sound and recognised business principles;[171]
(c) conducted with a familiar constitutional mechanism for carrying on a commercial undertaking;[172]
(d) conducted with a declared purpose in providing goods and services which are of a type provided and exchanged in everyday life and commerce;[173]
(e) competing in a market with others offering similar goods or services;[174] and
(f) a serious undertaking earnestly pursued.[175]

Though factors like these will no doubt be used in the NZ statute the UK definition is, if anything, too wide. It only differs from the NZ "taxable activity" definition in that it does not cover some charities.[176]

The third and perhaps most appropriate meaning of business is its ordinary and natural meaning as illustrated by the dictum of Richardson J. in Grieve v. CIR. There, inter alia he described it as a "commercial or mercantile activity customarily engaged in as a means of livelihood and typically involving some independence of judgement and power of decision."[177] "Trade" probably too has its ordinary meaning in tax cases like Griffiths v. Harrison[178] of an entity which buys and sells goods while the inclusion of "manufacture" complements by providing for these activities who create goods. The other forms of taxable activities also probably have their natural meanings and confirm the width of the provision. Presumably two other possible forms of taxable activities, the "undertaking" and the "scheme", lack the required continuity of operations.

Element (i) expressly includes government activities. The non-taxation of recreational pursuits and hobbies codifies the VATA position in cases like CEC v. Lord Fisher[179] while the non-taxation of contracts of service and directors' salaries are also a feature of the VATA.[180] Both these exclusions can be supported on the policy ground that VATs do not attempt to tax the household sector of the economy.

Putting aside the inclusions and exclusions the ordinary meaning of taxable activity is obviously a very wide one. As most entities will be capable of being described as activities essentially there are only two main requirements for determining whether something is a taxable activity: whether it intends to supply goods or services and whether it has the required continuity and regularity of transactions for the Act. Therefore for most regular suppliers of goods and services the only way of avoiding GST liability will be to be under the registration threshold. It should also be noted that the wide and vague GST definition of the taxable entity, which is probably the widest ever used in NZ tax law, ensures maximum coverage of the tax base.

9. THE PLACE OF SUPPLY AND RESIDENCE RULES

For tax liability to arise under the GSTA the supply must be made "in New Zealand".[181] The GSTA's residence rules become relevant as to whether or not a supply has been made in NZ, subject to a number of exceptions, because supplies are "deemed" to be made in NZ if the supplier is a NZ resident and not if s/he is not.[182] One consequence of the fact that such a deeming provision is used is that supplies made "in NZ" in the common or ordinary sense are arguably within section 8(1) regardless of the residence rules. This will cover the vast majority of commercial transactions so that the residence rules will only have to be considered in difficult cases.

The general rule is that a supply will be made by a resident (and therefore in NZ) if that person is a resident in accordance with section 241 ITA, carries on in NZ an activity while having a fixed or permanent place related to that activity or is an unincorporated body with its centre of its administrative management in NZ.[183] If the person making the supply is not a resident that supply will still be deemed to be made in NZ if the goods are in NZ at the time of supply or the services are "physically performed" in NZ by someone in NZ when they are performed.[184] This second deemed supply in NZ will only apply in the situation when goods or services are supplied by the non-resident to a registered person for that person's taxable activity if the suppliers and the recipient agree to have it apply.

It is important to note that these rules apply independently of those for imports and exports. GST liability on imports arises independently of the section 8(1) requirement that supply be made in NZ, under section 12. Relief for exports, in the form of zerorating under section 11, is an ex post facto inquiry once it has been found that prima facie GST liability exists under section 8(1). Hence under section 8(3) NZ residents are taxed regardless of where the supply is made. However in practice they are taxed at zero percent if supplied overseas.

The GSTA residence rules are quite different for different types of registered persons. A natural registered person will be resident if s/he:

(a) is a resident in the natural or ordinary meaning;

(b) has a "permanent place of abode" in NZ;[185]

(c) is personally present for a continuous period of not less than 365 days (less visits overseas)[186] or

(d) carries on an activity with a fixed or permanent place in NZ (to the extent they do).[187]

A company which is a registered person will be resident if it:

(a) is a resident in the natural or ordinary meaning;

(b) is incorporated in NZ;[188]

(c) has its head office (i.e. "centre of administrative management") in NZ (except for banks);[189] or

(d) carries on an activity with a fixed or permanent place in NZ (to the extent it does.)[190] An unincorporated body will be resident if it meets the requirements of a natural person above or if it:

(e) has its centre of administrative management in NZ.[191]

This last provision was added by the TRB when it was realised that the ITA applies the provisions for a natural person, not for a company, to unincorporated bodies whereas in the context of the GSTA the reverse would be appropriate.

Each of the elements adds something to the meaning of residence for the various types of registered person though it is difficult to see how (b) and (c) of the natural person definition can be applied to unincorporated bodies which, unlike under the ITA, are taxable entities under the GSTA. In any case the NZ GST follows overseas VAT practice in using tests like "permanent place of abode", "fixed or permanent place" or "centre of administrative management" to determine residence. The UK VATA for example determines whether services have been supplied in the UK on the basis of such criteria. Section 6(5) says that a "supply of services shall be treated as made ...in the United Kingdom if the supplier belongs in the United Kingdom..." Where a supplier "belongs" is determined by where s/he has "a business establishment or other fixed establishment" or failing that his/her "usual place of residence".[192] A "business establishment" is defined as a "branch or agency" a person is carrying on a business through while the "usual place of residence" of a body corporate is the place it is legally constituted.[193]

As stated previously the supplies of a non-resident to an unregistered person will be taxable if the goods are in NZ at the time of supply or if the services are physically performed in NZ. This is consistent with the GST taxing all consumption in NZ regardless of the residence of the supplier as it may be possible for a non-resident to set up a taxable activity supplying goods without becoming a resident. Similarly it may be possible for a non-resident to set up a taxable activity performing services without becoming a resident. Where goods or services are supplied by a non-resident to a taxable activity, and they are goods which avoid being taxed as imports, GST need not apply unless the registered person and the non-resident agree it should. This can be justified on the basis that the Advisory Panel sought to have all imports untaxed:[194] there are no revenue implications in not taxing imports by registered persons as full GST becomes payable when the supply is made to an unregistered person in NZ. This provision will mainly apply to "imported" services. A different, and perhaps unnecessarily complex, approach to this is the German "Abzugsverfahren". Since 1980 services performed by non-residents for entrepreneurs in Germany have been subject to tax withholding. The entrepreneur is liable for the tax.[195]

Finally it should be noted that goods supplied to tourists in NZ and subsequently taken out of the country are subject to GST. Unlike in other countries like the UK no refund of GST paid is available. Similarly, as will be seen later, services performed for inbound tourists in NZ are fully taxable.

The topic of residence raises a number of related topics: the treatment of imported and exported goods and services, withholding taxes and international double and non-taxation. These are discussed in Ch. 15. It is sufficient to say for present purposes that the residence rules ensure that the maximum amount of the consumption tax base in NZ is taxed as all supplies of residents are taxed (with relief given if this is overseas) and all supplies by non-residents taxed where they are not caught by the importation provisions[196] or picked up later in the GST chain.

10. THE CONCEPTS OF INPUT AND OUTPUT TAX

10.1 Introduction

For the reasons in Ch. 3 the credit offset VAT makes use of the concepts of input and output tax. To simplify input tax is "the GST already paid on inputs purchased by a trader"[197] (for which credit is received) while output tax is"the GST owed on sales by taxable traders"[198] or simply the GST rate multiplied by sales. GST liability for the taxable entity is the difference between output and input tax. Under the GSTA output tax is the amount levied under section 8(1)[199]; where the elements dealt with in Ch. 5 to 9 are present. Input tax is the sum of the GST on supplies of goods and services made to the trader; the GST on imports and an imputed input tax credit on secondhand goods bought by a non-registered person[200] provided in each case that the goods or services are "acquired for the principal purpose of making taxable supplies".

The imputed input tax credit, $^1/_{11}$th of the consideration in money, is a NZ innovation, not in the WP[201] but in the GSTB1,[202] that neutrally treats registered and unregistered sellers of secondhand goods since both types of goods are likely to have had a GST component in their purchase price once GST has been in operation for a while.

The difference between output and input tax is payable to IRD under section 20.

To get an input tax credit for any good or service a registered person must meet two requirements: they must satisfy the "principal purpose" test and have the required documentation. In the vast majority of transactions it will be clear whether goods or services are acquired for the principal purpose of making taxable supplies. Generally if the acquisition was 51 to 100 percent for that purpose a deduction will be allowed though if the percentage is less than 100 percent apportionment will be necessary. Purposes will usually be fairly easy to ascertain with two major purposes clearly not deductible: private purposes and the purpose of making exempt supplies.

However there is a body of tax law which suggests there may be difficulties here. A number of cases on sections 65(2)(e) and 67 of the ITA have considered the meaning of "acquired" and "purposes". "Acquired" can have two meanings. It may merely mean coming into possession of something or it may require obtaining by ones own exertions.[203] It was held in the context of property transactions that acquire should be given this second narrower meaning.[204] This is consistent with the requirement that the goods or services be acquired with a purpose which would not be possible in the case of a passive recipient of a gift. Hence goods or services given by way of testamentary[205] or inter vivos[206] gift cannot allow the registered person an input tax credit. Nor can goods be acquired when the vendor comes back into possession of them under, say, a hire purchase or mortgage agreement.[207]

Turning to the meaning of "purpose" it is clearly a subjective concept. An input tax credit is still available to the bona fide but unreasonable person who acquires goods believing they can be sold while no one else would. Also the purpose, or mens rea element, must be present when the goods or services are acquired.[208] Therefore if goods or services are acquired for some purpose other than making taxable supplies but are subsequently used for that purpose no input credit can be given[209] or if goods or services are acquired for the purpose of making taxable supplies but are subsequently put to some private or exempt use the Commissioner has no right to reclaim the input tax credit.[210]

The meaning of purpose could be problematic however if the property transaction purpose cases are applied by the courts. For example if a land speculator purchases land intending to use it as a hedge against inflation, can she claim an input tax credit? Prebble argues[211] there are two lines of property transaction cases on the meaning of purpose. One line (the <u>Holden</u> v. <u>CIR</u>[212] line) focuses on the direct intention of the taxpayer and is not concerned with underlying schemes or motives at the time of acquisition. The other line (the <u>CIR</u> v. <u>Walker</u>[213] line) focuses on the underlying dominant purpose of the taxpayer rather than the more immediate intention. On the rules of precedent the <u>Holden</u> line is the better law and may prevent the land speculator from getting a tax credit because her underlying motive of eventual sale would be irrelevant and her direct intention was to hold the property rather than to use it to make taxable supplies. It is submitted however that, in this context the Walker line provides a better test for purpose.

Also, similarly to section 104 ITA, even if supplies are made to the registered person, there must be some sort of nexus between the purchases and the person's taxable supplies. In the UK the test is framed slightly differently since section 14(3) VATA requires the goods or services to be used for the purpose of the business rather than the purpose of making taxable supplies. It is submitted that this would make little practical difference since it has been held by the UK Court of Appeal that a business is an activity which makes or intends to make taxable supplies.[214]

For example the Court of Appeal case of CEC v. British Railways Board[215] is a fairly typical case. An employer incurred expenses running an employees' pension scheme and was allowed to claim an input tax credit because it was held that providing such a scheme was an integral part of the management of a modern business. Also of relevance are three cases of input tax credits claimed for racehorses. In the first two [216] companies sought to deduct the costs of horses as advertising expenses since the horses raced under the company name. These claims were disallowed because the sufficient nexus was missing. However in Demor Investments Ltd. v. CEC[217] a licenced house was allowed to deduct the expenses of racehorses because the company's customers were actively interested in racing so that running the horses was intended to promote the firm's name and custom.

It is also important to note that for input tax credits to claimed the supply must be made to the registered person who seeks the credit. Therefore an "input tax credit does not arise in respect of supplies made to an employee, agent or subcontractor".[218] An example of the first is BBC v. CEC[219] where an employer was prevented from claiming a tax credit for its employees' accommodation at a motel. This was because the accommodation was supplied to the employee even though he was travelling on his employer's business. Similarly in Stirlings (Glasgow) Ltd. v. CEC[220] the taxpaying company provided an allowance to its travelling sales representatives to purchase petrol but was prevented from deducting the VAT component of the petrol.

Input tax claims will also be disallowed if supplies are made to the taxpayer's customer rather than the taxpayer. In Normal Motor Factors v. CEC[221] the taxpayer company sold engine lubricants with a guarantee that they would extend the life of the customer's motor car engine. The taxpayer company tried to deduct the cost of repairs made under the guarantees but was prevented because the supply of materials was not made to them but to their customers.

On general principles then the provisions dealing with input and output tax credits in the GSTA, like in the VATA, are a sensible way of providing for the credit offset mechanism. The rules on input tax credits will operate as intended if the courts follow the UK precedents. However there are potential difficulties with the meaning of purpose if the property transaction cases are followed. The writer hopes that the courts do not apply that body of law or, if they do, that they apply the more appropriate Walker line of cases. For a useful diagramatical representation the GSTA's input tax provisions see Appendix A7.

10.2 Adjustments

Under any developed country's VAT system there will have to be adjustments to output and input tax. Those provided in the GSTA are:

(a) output tax is invoiced where goods and services are used, as non-exempt supplies, by the registered person;[222]

(b) input tax can be credited where private goods or services are introduced into the business;[223]

(c) output tax is payable on non-exempt fringe benefits calculated using the Fringe Benefits Tax formulae;[224]

(d) input tax is invoiced when bad debts are written off and output tax increased if they are subsequently received;[225]

(e) output tax is invoiced where an indemnity payment is received under an insurance contract;[226]

(f) output tax is payable on bartered goods on their open market value (OMV);[227]

(g) adjustments are made because of the transition to GST from the previous wholesale sales tax and where traders change their accounting basis or cease to be registered;

(h) output tax is payable where secondhand goods bought from an unregistered person are exported;[228]

(i) adjustments are made when credit or debit notes are issued;[229]

(j) input tax can be credited for pre-incorporation contracts;[230] and

(k) input tax can still be claimed where an invoice arrives late.[231]

An example of (a) is the common income tax evasion situation where a family who own a corner dairy "eat off their shelves" so that section 21(1) GSTA performs a similar function to sections 90 and 91 ITA. The situation in (b) is merely the reverse of (a).

The situation in (c) is not a "tax on tax" but recognises that if input tax credits are allowed for the expenses of a firm and no tax is payable on payments of fringe benefits then firms will have an added incentive to provide fringe benefits for their employees.[232] The US Treasury report for example notes that many EEC countries do not allow input tax credits for firms purchasing automobiles as a crude mechanism for penalising fringe benefits of automobiles provided to employees. The NZ treatment, which is expected to provide $16.5M yearly,[233] is probably more neutral than this but is by no means faultless as the "taxable values" under the Fringe Benefits Tax are an imperfect guide to the value of fringe benefit received by the consumer.

The bad debts provisions in the GSTA are very liberal and have an interesting drafting history. Under the VATA traders are required to bring their debtor to insolvency before they can get bad debt relief. This creates much hardship in the UK. Therefore the WP provided a fairer system whereby bad debt relief could be recovered if:

- the bad debt had been written off;
- the registered person had taken all reasonable steps to recover it; and
- the registered person had satisfied the Commissioner that there was no reasonable or probable expectation that the bad debt would ever be recovered.[234]

The Advisory Panel however thought these provisions was vague and discretionary and recommended the section 106(1)(b) ITA provisions be enacted.[235] This was provided for those using the invoice basis only until it was realised that many of those using the payments basis had to account for some sales on an invoice-like basis (e.g. hire purchase sales).[236] Hire purchase bad debts, due to the exemption of interest, must be apportioned so that only the percentage of cash price divided by the total payable under the agreement is an input tax credit.[237]

For analogous reasons to those for section 79 ITA indemnity payments from insurance policies covering commercial risks should be included in output tax. The adjustment in (h) is necessary to prevent those who export secondhand goods from getting an input tax credit twice.

The position in (i) is a little more complex. Debit or credit are issued when there has been an error: either a tax invoice [238] or a tax return[239] has been incorrectly completed. The legislation envisages a credit note will be issued when:

(a) previously invoiced supplies of goods and services have not been made;
(b) previously agreed consideration is too high;
(c) goods or services have been returned; or
(d) after a return has been made the amount of a tax invoice has been found to be too high. On the other hand a debit note is issued when:

(a) previously agreed consideration is too low; or
(b) after a return has been made the amount of a tax invoice has been found to be too low. Debit and credit notes are a necessary part of any VAT regime and assuming they are bona fide will be revenue neutral for the IRD. It should be noted that discounts for prompt payment do not require the issuing of a credit note.[240]

The adjustment in (j) is necessary to allow the deduction of purchases made in pre-incorporation contracts once the taxable entity is in existence.

10.3 Apportionment

The apportionment of output tax is necessary to correct the taxpayer's position when, in effect, too much input tax has been claimed. It must be realised however that as a result of apportionment output tax is increased, subsequent input tax claims are never reduced. Apportionment is also necessary to prevent exempted activities from being zerorated.

Apportionment occurs when a good or service is used 51 to 99 percent to make taxable supplies.

However a de minimus rule[241] is provided which effectively zerorates some exempt activities. The clawback of exempt activities' input tax is not required if the taxpayer has reasonable grounds for believing all his/her exempt supplies will be the lesser of:

- $48,000; or
- five percent of total turnover.

This rule was added by the de Cleene Committee and is calculated on the basis of a $24,000 threshold. If raised the Treasury believes it would on average only affect firms with an annual turnover of $1M or more. There are no legal rules for apportionment. However IRD instructions provide a number of guidelines for apportionments and adjustments.[242] Firstly it is necessary to calculate the amount of non-taxable use. The IRD suggests using the proportion of the use of the good or service in the taxable activity and otherwise (the attribution method) or, in the case of exempt supplies, the proportion exempt supplies are of total turnover (the turnover method). They further suggest that particular methods should be used for particular expenses, for example calculations for goods taken for private use should be on the attribution method while electricity should be apportioned using turnover. With capital items IRD say they require all taxpayers to use straight line depreciation over the expected life of the asset to calculate the extent of apportionment each taxable period even where diminishing value is used for ITA purposes.

It is submitted that either any reasonable method must be permitted by IRD or these rules should be included in some form of legislation.

11. THE VALUE OF SUPPLY

11.1 Introduction

To generalise the value of supply rules determine the maximum extent of GST liability. In theory the value of supply could be used to calculate output tax. The practice, as noted in Ch. 3.9, is that the value of supply is consideration less the GST component. Value of supply is tax exclusive while consideration is tax inclusive. For the purpose of returns the (GST inclusive) consideration is used with input and output tax calculated from the tax fraction rather than the GST rate. This is done for ease of administration.[243]

Consideration obviously can be in cash, part cash and kind or kind. Therefore in general the consideration will be the aggregate of:

(a) the consideration in money to the extent the consideration is money; and

(b) the OMV of the supply (i.e. the price of the supply on the market; or the price of a similar supply or a price the Commissioner determines) to the extent the consideration is not in money.[244]

These OMV rules were adapted from the previous Sales Tax rules on the recommendation of the Advisory Panel.[245]

Also in non-armslength transactions goods or services may be supplied for considerations less than their OMV for certain tax reasons. Under section 10(3)(b) the OMV rules may be applied where the two parties are "associated persons". The legislature have chosen to adapt the section 67 ITA definition to include:

- two companies with substantially the same shareholders or under the control of the same persons;[246]
- a company and a person (or his/her family or trustee) who holds ten percent of the share capital of the company;[247]
- a person and their trustee;[248]
- persons who are relatives to the fourth degree.[249]

Therefore the GSTA definition of associated person is substantially the same as the section 8 ITA definition and it is difficult to imagine a non-armslength transaction, other than perhaps through an intermediary company, which could escape the Commissioner's discretion.

11.2 Special Cases

The sorts of special types of supply seen in Ch. 5 of this paper often require special rules for value of supply. These special cases are:

(a) Credit contracts. As financial services, and therefore finance charges, are exempt under the GST the consideration in a credit contract is deemed to be its cash price only.[250] "Credit contract" is defined as under the Credit Contracts Act 1981.

(b) Accommodation in a commercial dwelling. The treatment of such accommodation is discussed in Ch. 14.5 but suffice to say in many cases consideration will be sixty percent of the actual consideration.

(c) Fringe benefits.[251] Consideration for fringe benefits is as under Part XB ITA. Low interest loans and probably overseas travel are excluded from these calculations where they are exempt or zerorated respectively.

(d) Layby sales not delivered. Where layby sales under the Layby Sales Act 1971 are cancelled but the seller retains or recovers[252] some amount the consideration is the amount retained or recovered.[253]

(e) Goods or services supplied to the Crown by a public or local authority. To get around problems in UK cases like CEC v. Apple and Pear Development Council[254] and of the indivisibility of the Crown the consideration in money from a public or local authority to the Crown shall be the "amount paid".[255]

(f) Racing, other gambling and lotteries. In determining the consideration in racing or gambling the deduction under the Gambling Duties Act 1971 and the Racing Act 1971 can be made.[256] The consideration in a lottery or other game of chance is the total proceeds of the ticket sales less all the cash prizes paid or payable. If however a prize is purchased it will be total proceeds since an input tax credit is available.

(g) Tokens, stamps and vouchers. The Advisory Panel proposed the sensible principle that "prepaid voucher(s) should be regarded as being similar to a postal note - a substitute for money".[257] This is carried through into section 10(17) which provides that the sale of such a voucher is not a relevant event for GST purposes where the voucher has a face value (unless it is sold for more than the face value).[258] When vouchers without face values and postal stamps are sold the consideration paid for them is the consideration for GST purposes and their redemption or use is not an event relevant for GST purposes.

(h) Gifts. Section 10(19) makes explicit that a supply for nil consideration (i.e. a gift) has a value of supply of nil and is not a chargeable event. Also a consideration only partly for a taxable supply, say a subscription with a cash donation, is only taxable to the extent of the consideration.[259]

The above special cases are required to comprehensively cover the tax base. Perhaps the least satisfactory one, as stated previously, is that concerning fringe benefits. The best value of supply for such supplies would be their fair market value[260] while the GSTA approach, like not allowing an input tax credit, is an administratively easy second best approach.

12. THE TIME OF SUPPLY

Once it is known that the criteria for tax liability have been satisfied the question arises: when is the supply to be taxed? The answer is determined by the time of supply or, as it is called in the UK, the tax point. Once the time of supply is identified precisely when the trader will account to, or claim credit from, IRD will be determined by the accounting basis used (see Ch. 13) and the return period rules (see Ch. 16). The reader should note that the section 84 and 85 transitional provisions also adjust these rules.

The general rule under the GSTA is that the time of supply is the earlier of:

(a) the time when the invoice is issued; or

(b) the time the payment is received.[261]

It will be noted that these events will usually be readily observable and can be contrasted with the more esoteric tax points lawyers might be expected to adopt like the time of delivery or passage of legal title. This general rule was developed by the Advisory Panel who considered the WP rules would create "enormous practical difficulties".[262] The WP rules deemed goods supplied "at the time of removal" or "at the time they [were] made available" "and services when they were performed"[263] with supply deemed to take place earlier in some situations where invoices were issued or payments made.[264] These rules were very similar to those operated in the UK[265] and other European countries. Though the results of these tests would be similar it is contended that the NZ rules will be clearer in the vast majority of (armslength) transactions.

Under the GSTA there are a number of special rules for certain classes of suppliers. As both the legal events in the general rule can be manipulated in a non-armslength transaction the GSTA provides that the time of supply between two associated persons will follow the UK rules.[266] A door to door sales person's time of supply begins after the seven day "cooling off" period under the Door to Door Sales Act 1967.[267] The time of supply under a layby contract is the time when the "property in the goods is transferred" or, if the contract is cancelled, at the time of cancellation.[268] The supply of services when placing a bet takes place when the bet is "dealt with"[269]. The time of supply with a lottery or other game of chance is when the result is first determined.[270]

The time of supply of goods or services supplied by coin or token operated machines, meters or other devices is the time the coins or tokens are removed from the machine by or on behalf of the supplier.[271] This reverses the harsh result that occurred in the UK[272] of the time of supply being when the coin or token was inserted in the machine regardless of when it was collected.

The time of supply of goods under a hire or lease agreement or enactment or services supplied for periodic payment is deemed to occur with each periodic payment at the earlier of when the payment is due or received.[273] Similarly goods provided "progressively or periodically due to any agreement or enactment which provides for the consideration ... to be paid in instalments or periodically..." or "building or civil engineering" works paid for periodically are deemed successively supplied with each supply taking place at the earliest of when each payment is due, received or an invoice concerning it issued.[274] This prevents building contracts triggering large GST liability for builders and institutes a regime similar to that in H.W. Coyle and Co. Ltd. v. CIR[275] for ITA purposes. This regime also replaces the previous subsection on retention payments and contract variations[276].

The time of supply for a hire purchase agreement is when the agreement is entered into.[277] This is a little surprising. In Austria for example the time of supply under such an agreement or a financial lease is when the goods are actually supplied. In Germany it occurs when the customer has the power to dispose of the goods while in the Netherlands it occurs when the last instalment is made.[278] As only the cash part of the hire purchase agreement is subject to GST it may be the draftperson's thinking that most retailers will be able to satisfy their GST out of the first payment they receive unless the periodic payment provisions apply.

Finally section 9(6) is a special provision designed to help primary producers participating in pool schemes. Where goods are supplied without consideration being known, usually because it will be calculated later in the season from set schedules, GST will only be payable to the extent it is known. This effectively eliminates a major problem in applying VAT to primary producers[279] and represents a major concession to them.

13. ACCOUNTING BASES

The GSTA provides for two accounting bases: the "invoice" method and the "payments" method. The presumption is that all traders will account for tax on the invoice basis.[280] On written application the Commissioner may allow the following classes of taxpayers to account for GST on the payments basis:[281]

(a) public or local authorities;
(b) non-profit bodies;
(c) those with an annual turnover over $250,000 per annum; and
(d) those due to the nature, volume and value of their taxable supplies and

the nature of their accounting system the Commissioner is satisfied it would be appropriate.

As with the $24,000 threshold there is provision for the Governor General to increase the $250,000 threshold but no automatic indexation.

The invoice method is similar to accruals accounting, which recognises receipts when earned and expenses when incurred, because output tax liability results at the actual or deemed time of supply outlined in Ch. 12 even if payment has not been received.[282] Input tax can also be deducted at that time even if payment has not been made.[283] The payments method is similar to cash accounting, which recognises receipts when received and expenses when paid, because output tax liability and input tax credit for an actual or deemed supply is only due or available in the taxable period to the extent payment has been made.[284] To simplify input tax credit for imports and bad debts may be now available on either method.[285]

As accounting systems are more an aspect of tax administration than tax law it is difficult to ascertain what accounting systems are used in overseas VATs. Though the European model is based on accruals accounting NZ is not the only OECD country to use a hybrid accounting system. For example the UK has nine standard retail schemes some of which allow cash accounting for those, including retailers, who deal with the public and cannot issue tax invoices for every sale.[286] Up until 1981 the Swedish VAT operated largely on a cash basis with the accruals basis allowable on the trader's request. Cash accounting on the basis of gross sales and presumed purchases is also a feature of the 'forfait' assessment of small firms used in countries like France.

One of the features of the WP which made it consistent with the European model was its use of the invoice basis with no provision for small trader schemes or cash accounting. The Advisory Panel, following many submissions calling for the use of the "tax fraction" method of calculation of GST,[287] recommended that all organisations have the option of accounting on a cash or accruals basis. It was argued for groups like local authorities, sports clubs and dairy farmers cash based accounting was necessary to avoid excessive compliance costs. It was noted that larger traders would opt for an accruals basis since they were probably already using it and that the option would have no revenue cost in the long run because the choice of method only affects the timing of payments to the IRD not their quantum. The Minister of Finance accepted this proposal.

However the Minister of Finance appeared to change his mind when the first GSTB provided the regime as already outlined. A number of submissions to the de Cleene Committee noted this change and argued for a fully optional regime. Others asked for a different threshold: the Retailers Federation at $5M annual turnover and the Small Business Agency based on the number of employees. The Accountants Society argued for the optional regime as it would minimise compliance costs by allowing unsophisticated traders (of whatever turnover) to file simple returns and all traders to choose the most favourable cash flow position.[288] Also a number of arguments were made why the cash basis of accounting might be more appropriate than the accruals basis. It was argued that the payments basis was more appropriate as GST is in reality collected when payments are received, not when invoices are issued and similarly that the payments basis recognises the commercial reality of time gaps between invoicing and payment.[289] The Law Society[290] saw this as a particular problem for those, like professionals, providing services because unlike suppliers of goods it is not commercially realistic for them to withhold services until after payment. Also even large law firms usually only have cash accounting systems anyway which may have been the reason for the rather strange clause 16(10) WP.

Mr. B. Niculescu[291] argued that the invoice basis was derived from NZ's previous sales tax where it would have been worthwhile for traders to delay payment to the Customs Department. However he pointed out there would be no such advantage under GST as delay for one party would result in an offsetting delay for the other party to the transaction so that the IRD would be indifferent to such delays.

These are all very strong arguments. It should further be noted that the usual argument for accrual accounting, that it is the most appropriate way to calculate profit for a particular period because it correctly "matches" revenue and expenses for that period, is not directly relevant here. VATs are not annual taxes on profits but ongoing periodic taxes on consumption.

Probably there are two arguments for the GSTA's regime. Firstly a fully optional scheme would benefit few taxpayers. The writer understands thatTreasury estimates that at least seventy seven percent (or 135,000) traders will be eligible for the payments basis. One imagines that many of the rest will have adequate accounting systems to meet the Act's requirements. Secondly there are compliance arguments. Overseas studies[292] have shown VAT compliance costs on average may not be excessive but tend to be very regressive with respect to firm size. The $250,000 threshold is one of a number of GSTA provisions attempting to reduce this problem. Also as many businesses would wish to adopt the same accounting basis for GST and their own purposes the threshold can be seen as an incentive for larger firms to switch to the superior accruals basis. Sandford's study shows that these sorts of managerial benefits can be quite major. On balance the author would probably support the current regime.

Two further problems should be noted. Firstly as, amongst others, the Arthur Young submission[293] noted there is an essential contradiction and disincentive effect in criteria (d) for the payments basis. Traders with poor accounting systems will have the benefit of choosing between the two bases. If they choose the payments basis there will be a disincentive to improve their accounting system as they may risk the Commissioner putting them on the accounts basis. However as the nature of the accounting system seems to be a relevant criteria in exercising this discretion it is difficult to see a solution to this conundrum. The writer would agree with the Arthur Young submission however that the underlined "and" in (d) should be changed to "or" to allow the Commissioner a wider discretion.

The second problem is the lack of automatic indexation of the $250,000 threshold allowing its possible erosion over time.

14. THE TREATMENT OF PARTICULAR GOODS AND SERVICES: EXEMPTION, ZERORATING AND MULTIPLE RATING

14.1 The Mechanisms of Exemption, Zerorating and Multiple Rating

It is possible in a VAT to apply special treatment to particular goods or services, particular transactions (for example exports) or particular types of traders (for example small traders). These latter two types of special treatment are discussed elsewhere but similar issues arise to those discussed here. The three main alternatives for countries wishing to apply these special treatments are exemptions, zeroratings (exemptions with credit) and differential rating (i.e. imposing a higher or lower rate than the standard rate). As a general proposition such special treatments should be avoided because they reduce neutrality, create horizontal inequities and increase complexity making the tax less visible and administratively simple. However many countries feel vertical equity and other social arguments outweigh these considerations and also have found it very difficult to apply normal VAT principles to some goods and, particularly, services. Therefore some special treatments are probably unavoidable.

The three methods discussed here have very different economic effects. Exemption is usually considered less desirable by traders than zerorating. Exemption has the effect of removing the VAT component at the stage of exemption. There will still however usually be a VAT component in the prices of the exempt trader. This is because the exempt trader cannot claim any input tax whereas the zerorated trader can claim both input and output tax. The effect of exemption is then to shift the point of application of the tax back from the consumer to the trader.

Exemption also has the effect of freeing the trader from the requirement to be registered and file returns. Traders with zerorating on the other hand must be registered and file returns in order to claim back their input tax. They thus must collect invoices and, as traders who are part of the VAT system but subject to a different rate, issue them to other traders. Therefore zerorating is not an option for the treatment of small traders for compliance cost reasons. The burden of collecting invoices and issuing invoices and returns is that the special treatment is attempting to avoid.

When an exempt firm sells to a consumer they will enjoy a competitive advantage compared to registered traders and a competitive disadvantage compared to zerorated traders because their VAT component will be the tax on their purchases compared to the tax rate multiplied by the value added in the first case and nothing in the second. However if the exempt trader sells to a registered person exemption can result in more taxation than would exist under full taxation of the exempt firm's sales. This is because the registered firm will be paying a VAT component in the exempt firm's price but will not be able to claim an input credit for it as the exempt firm cannot issue an invoice. This has resulted in substantial distortions overseas for example in farming.[294] Zerorated firms on the other hand selling to other registered persons would have the unnecessarily large competitive advantage of selling a product with no VAT. This is one reason why zerorating is not widely used in the GSTA.

There is a further problem with exempting commodities. If a trader handles both exempt and taxable supplies substantial administrative and compliance problems are created. As input tax credits cannot be claimed for exempt uses the cost of purchases put to both exempt and taxable uses must be apportioned to allow the trader any credit. For a discussion of apportionment see Ch. 10.3.

In evaluating the two methods of special treatment then the central consideration is whether it is desirable to free the particular good or service of all or only some VAT liability. Multiple rating is probably not a worthwhile special treatment because it is another method of imposing different VAT liability on a particular good or service (like exempting) but requires the differently rated firm to be registered. It also creates economic distortions, horizontal inequities and sizeable administrative problems. Therefore the best method of special treatment can be determined by the motive for the special treatment. If the desire is to give a large economic advantage to a particular good or service, for vertical equity reasons for example, then zerorating is probably the best method. If a particular good or service requires special treatment because of the design problems of fully integrating it into the VAT, and it is desirable that distortions be minimised, exemption is probably more appropriate.

14.2 Special Treatments in the GSTA

All the special treatments in the GSTA are predominantly for design rather than income redistribution reasons. The GSTA exempts:

(a) financial services including life insurance that are not "exported";[295]

(b) the supply by a non-profit body of any donated goods and services;[296]

(c) rental accommodation:[297] and

(d) the sale of a rental dwelling owned for at least five years.[298] There is also a special regime for "commercial dwellings" (e.g. hotels and hospitals). In addition the sale of a business as a going concern and, of course, exports are zerorated.

14.3 Financial Services

The treatment of financial services is one of the most difficult questions the introduction of a VAT raises. Bakker and Chronican state that of the about thirty overseas cousntries who have a GST-type tax none have financial services fully integrated into their tax system.[299] Considering financial services the Advisory Panel said applying "GST to financial services raises difficult problems, conceptually, practically and politically".[300] They said the one point on which most of the submissions to the Panel agreed was that they considered the Government's proposal not the preferred solution. In one of their reports Treasury stated:[301]

> ...there is no practical and theoretically correct treatment of financial services under an indirect tax. The solution must inevitably be a compromise between what is conceptually correct and what is practical, and between under and over-taxing the services.

Bakker and Chronican describe four types of financial services:[302]

(a) Financial intermediation: the borrowing and lending of money by financial institutions for interest;

(b) trading in financial assets: the buying and selling of stocks, shares, bills etc;

(c) Fee and commission activity; and

(d) Insurance services.

The situation in (a) may seem initially easy to cover. Banks are essentially "renters" of money.[303] They pay interest to their depositors, "create" money through credit expansion and rent it out receiving interest. Their value added is the difference between the proceeds of their lending and the costs of their borrowing. However many banks' depositors do not receive interest at all but other services, like cheque facilities, whose value is difficult to assess to compute for input tax credits.

Trading in financial assets for capital gain is arguably a service provided for customers. As Bakker and Chronican argue[304] the existence of this service is most obvious, and hence easily taxed, when the bank is making short term gains on both sides of the transaction. In principle though the situation is no different to an institution buying a parcel of stock and selling it many years later the service element is more difficult to isolate and tax.

By comparison the value added of brokerage activities for commission can be easily calculated. With insurance too the value added is easily calculated. Where insurance policies have little or no savings element the value added of an insurance company is roughly equivalent to the payments it receives from policyholders for risk protection.[305] The situation with life insurance is more complex. As life insurance premiums have three components (policyholder savings, indemnity and management charge) the value of the service can be defined as the net return from providing life cover plus management charges plus any pre-tax operating surplus of the institution.[306] Though the Advisory Panel favoured separating these components and taxing the value added this would be by no means easy.

Of course the problems in this area are magnified by the fact that all financial services, with the possible exception of non-life insurance, are substitutes. Therefore different treatments or the exclusion of any one type of service may result in financial institutions reorganising their activities to minimise GST. In their discussion paper Bakker and Chronican discussed the possible options for financial services including full invoicing, differential rating, zerorating, exempting and an additive approach. After a number of seminars it was decided to adopt the second best approach of exempting all four activities except non-life insurance which is subject to full invoicing. This European approach was put forward by the Treasury while the Advisory Panel favoured full invoicing for all financial services. There are a number of advantages and disadvantages of each approach.

Full invoicing has the advantages of appearing to treat financial services the same as other services, avoiding apportionment and not requiring any definition of "financial institution". However there are a host of difficulties. The heavy GST burden would probably result in disintermediation. There are transitional problems: the Advisory Panel proposed a transition of zerorating before full invoicing could be brought in. The approach has never been adopted overseas and is largely unresearched. It has also been suggested that the Government were concerned about the impact of GST in a high interest rate environment.[307]

A more fundamental reason for opposing full invoicing is that it can lead to the overtaxation of financial intermediation which introduces the income tax tax wedge into the GST:[308]

> Taxing interest in full converts a tax like GST - a uniform levy on expenditure - into a uniform levy on expenditure plus a variable levy on the return of savings. In effect the transformation required to convert GST into a kind of income tax collected indirectly.

Differential rating of financial services would have a similar effect to exemption except that it has the disadvantage of introducing a separate rate into the GSTA.

Zerorating financial services would remove many of the apportionment problems exemption creates. However by imposing no GST on financial services it would be very distortionary and by requiring all financial institutions to be part of the GST system would have higher compliance costs than exemption.

As exemption without credit was the option adopted its advantages and disadvantages are very important. Its advantages are its simplicity, provided a reasonable definition of financial services can be adopted, its low compliance costs for unregistered traders, its lack of transitional problems, its widespread overseas use and its ability to impose some liability on financial institutions.[309] Disadvantages include apportionment problems, the creation of some price cascades and the possibility of international tax avoidance zerorating some financial services. As the export of financial services are zerorated and the import of services untaxed it will be possible for a NZ parent company to lend to an off-shore affiliate who will lend back to the NZ parent thus allowing the NZ parent to claim back its input tax.[310]

The addition approach is an interesting one. The Advisory Panel had a formula for calculating tax liability using this approach.[311] This approach is perhaps more appropriate for financial services than the credit offset approach. However there is no overseas experience with it, it does not tax the full price of all financial services and would be difficult to integrate into a credit offset GST. Most importantly it would require a definition of "financial institution" which would be very difficult to formulate (for example would it include shops making hire purchase sales?)

Once the second best option of exemption was chosen it was necessary to create a comprehensive definition of "financial services" covering all the activities listed by Bakker and Chronican. The difficultly of doing this can be seen for example in a UK case which held the payment for an option to purchase, bought to deal on the London Metal Exchange, was not the purchasing of a financial service and therefore was taxable.[312] The services exempted include the exchange of currency; the payment or collection of a cheque; the issuing or transferring of a debt, equity or participatory security; underwriting a security issue; the provision of credit under a credit contract; the provision of life insurance; futures contracting and "arranging" financial services.[313] This definition is extended by a wide definition of "cheque"[314] which for example includes electronic funds transfer. The GSTA definition is a very wide one, even when compared to the comprehensive German and Luxembourgeois provisions in Appendix A8. Whether it is comprehensive enough will have to be seen in practice. Practice will also show the extent the financial services sector will be able to use tax avoidance techniques. If this is the case the writer would suggest consideration of the Bankers' Association proposal, used in Belgium, France, Germany and the Netherlands (see Appendix A15), of a low rated financial transactions turnover tax despite the price cascades it might create.

14.4 Donated Goods and Services

The supply by a non-profit body, as defined in Ch. 16.2, of goods or services donated to it are exempt. The provision was an innovation of the Advisory Panel[315] who saw it as a compromise to imputing an input tax credit for what would usually be donated secondhand goods. It was also aimed at reducing the likelihood of applying GST to events like cake and "white elephant" stalls which would create compliance problems. Perhaps more significantly the special treatment is logical because from the point of view of the non-profit body such donations are substitutes for cash donations which are not taxable.[316]

Not taxing donations but taxing items like membership subscriptions creates a potential "grey area", say where a golf club asks for a compulsory "donation" to play a round of golf. The Advisory Panel suggested distinguishing true from contrived donations not by whether the donor actually receives some benefit from the non-profit body but whether the benefit is conditional on a donation being made.

14.5 Accommodation and Land

As the GST's treatment of rental accommodation cannot be sensibly separated from the treatment of accommodation and land those topics are discussed here. After financial services the treatment of accommodation and land creates the most design problems for a VAT. This is because land is fundamentally different to other goods or services (if land can be described as a good or service in the economic sense). Bare land is not capable of being consumed therefore to be strictly correct a consumption tax should leave it untaxed. On the other hand services related to bare land, the renting of it, the granting of legal interests in it, improvements to it and other services should be taxed like any other services. However in any land sale the bare land and service components are rarely apportioned.

A further complicating factor is the fact that an important part of the economic definition of consumption is the imputed or notional rent a person receives who occupies their own home. While economic theory suggests this should be taxed IRD considered this "unworkable"[317] because it would require many homeowners to be registered, would be a step towards taxing all sorts of intra-family services and would create valuation problems. The non-taxation of imputed rent provides a good case for not taxing actual rent and other substitutable forms of accommodation.

Considering first the sale of land for residential accommodation five main approaches are possible:[318]

(a) zerorate all property transactions between registered persons but tax the full price of sales between registered and unregistered persons;

(b) exempt the residential construction industry;

(c) tax the actual value of improvements of land supplied by registered persons;

(d) use (c) but use some arbitrary ratio of improvements to total value unless the taxpayer wishes to calculate (b); or

(e) tax the full contract price of all sales of land by registered persons.

Approach (a) was considered by the Advisory Panel as a simplifying method. However it assists little in dealing with the major problem - how to value supplies of land between registered and unregistered persons -and is more consistent with a retail sales tax than a VAT. Option (b) was not widely considered in NZ but was discussed by the US Treasury as a second best way of reducing the VAT content of residences sold to the extent of VAT on inputs (i.e. essentially materials).

Option (c) was the approach favoured by both the IRD and the Treasury and that used in the first GSTB. Conceptually it is probably the best approach. The draft legislation provided[319] that supplies of bare land (i.e. fee simple estates and leases of twenty one years or more) were not taxable while sales of lesser estates were fully taxable. The value of improvements to bare land was separated from the bare land element and were taxed. The definition of "improvements" was adapted from the Valuation of Land Act 1951 definition. Section 2 of that Act includes "visible" improvements, like buildings and fences, but since 1970 has not included "invisible" improvements like drainage, levelling, subdivision and other development work. To calculate tax liability the percentage of improvements to total value on the district land valuation roll would be applied to the sale price and the result multiplied by the tax fraction. For example, if a residential property had a seven year old valuation of $50,000 with $22,000 attributed to improvements and were sold for $150,000 the GST liability would be $6,000. (i.e. $^{1}/_{11}$th of $66,000). Clauses 11(3) and 12 allowed the registered person selling the property to appeal against the valuation method and to substitute a more appropriate one.

As improvements did not include invisible improvements and such improvements would have been deductible under the GSTA as a registered person developed the land an adjustment was required. "Land developers" (as adapted from section 67 ITA) were required to charge tax on "specified supplies" received in the last ten years, for example supplies related to drainage, excavation, filling, land reclaimation and so on. This would have required such land developers to keep reasonably detailed records for the last ten years.

While being conceptually correct then this approach was quite complex and would have imposed a very heavy compliance burden on land developers. The N.Z. Institute of Valuers also had "grave reservations" about the adequacy of the district valuations roll and estimated up to 20,000 special valuations might be required each year when the Valuer General only performed 13,400 such valuations in 1984. The de Cleene Committee accepted these arguments and replaced this regime with the simpler but technically inferior method described later.

Option (d) was a simplification of the above treatment proposed by the Advisory Panel. They proposed that unless the registered person could produce a more accurate valuation of improvements they should be deemed to be seventy percent of the sale price. Treasury and the Valuation Department rejected this approach since they believed no sensible average could be generated as factors like the age of the standing buildings would produce percentages very different from any average.[320]

Approach (c) - as proposed by both the US Treasury and McDaniel and Surrey - was adopted in the GSTA. All supplies of real property are taxed on their full contract price. The approach has the same tendency to over-taxation as the European turnover taxes on land in Appendix A15. This major legislative change was easily achieved. The special land provisions were deleted and replaced by adding real property to the definition of goods. This approach increases the importance of section 6(a) as any person who intends to sell land will be liable for full GST if they "regularly" carry on the activity of supplying land for consideration and exceed the threshold. If they do not they will be exempt. The writer suspects the courts will not interpret this provision as widely as the similar but less strict section 67(5) ITA restriction.[321]

The treatment of real property as goods has a number of interesting consequences. All supplies of lesser estates or interests in land which may appear to be services will be treated as goods. Registered persons who acquire such real property from unregistered persons may be able to acquire the imputed input tax credit for secondhand goods. All of the place of supply, importing and exporting provisions as related to goods will apply so that for example, technically, cross-border leasing[322] is the importation of a good though it is difficult to see the Customs Department taxing it.

As all sales of residences by unregistered persons will be exempt section 14(d) provides that the sale of any ex-rental dwelling owned for five years will also be exempt. This provision is to prevent a sale price differential between ex-rental and ex-owner-occupied residences. Obviously however a period like five years is necessary to prevent GST avoidance.

Of course one result of this treatment of residences is a possible price differential between exempt existing residences sold by a landlord or unregistered person and secondhand residences sold by property speculators and new residences built by builders. However a similar price differential will exist in most asset markets between registered and unregistered sellers of the asset.

The second important aspect of the GST's treatment of land is its treatment of rental services. As rent is a straightforward service to apply GST to two approaches are possible: rent can be exempt or taxed. In line with the Sixth Directive the GST exempts residential rent because an imputed rent is not charged to owner-occupiers. Though this may seem uncontroversial the Advisory Panel proposed full invoicing.[323] They rejected the imputed rent argument because the exempt landlord is likely to be passing on a sizeable amount of GST to his or her tenants anyway (with GST on rates, electricity and so on) and because there are many situations where preference is given to owner-users of assets over renters. One reason why this argument was not accepted, presumably, was that the Advisory Panel's approach would require the registration of many landlords for, on the Advisory Panel's argument, little revenue.

The third, related, area of the treatment of "commercial dwellings" has also proved difficult to legislate for. Commercial dwellings include establishments like hotels, motels, boardinghouses and camping grounds. The GSTA also included hospitals, hospices and the like.[324] There is a good argument for treating such dwellings like owner-occupied and rented residences where they are used as a residence. For example a camping ground may be used on a casual basis by holidaymakers or for long periods by retired couples as an inexpensive form of accommodation. To specially treat cases like the second section 10(6) provided a concession for accommodation at such commercial dwellings for more than four weeks. The value of supply was to be less the portion attributable to "domestic goods and services" like cleaning, maintenance, electricity and heating services.[324] However the concession could not be used to reduce the value of supply by more than eighty percent.

In the TRB however it was decided to alter this regime. In effect a new six percent rate was introduced.[325] This will apply after four weeks unless the establishment is a "residential dwelling" in which case it will apply all of the time. "Residential establishments" are basically those who expect seventy percent of their customers to reside with them for four weeks and includes similar hospitals.[326] Presumably IRD will attempt to identify these residential establishments fairly early on so that they will be able to apply the administratively simple method of charging all customers six percent. Other commercial establishments will have the more difficult task of applying two rates for their customers. Even this will probably be more straightforward than the GSTA treatment where the portion attributable to domestic goods and services (which was not fully defined) would have to be calculated in each case.

The final important area of the GSTA's treatment of land is its application to the construction and building industry. The major problem that could arise here, as noted by the Accountants Society, is that the commencement of a $10M building on 1 October 1986 could trigger $1M of tax liability immediately.[327] This was a real possibility on cases like Fincon Construction Ltd. v. CIR[328] but has been prevented by clause 8(3) TRB which provides for periodic payments.

The GSTA's treatment of land is then a second best one, largely the creation of the de Cleene Committee, after the more correct Treasury and IRD proposals were found to be too problematic. As in the area of financial services the Advisory Panel's approach was largely rejected. The N.Z. approach is also quite different to overseas regimes.

14.6 The Sale of a Going Concern

The GST zerorates the supply of a whole or part of a taxable activity, capable of separate operation, as a going concern.[329] This is because sales between registered persons create no GST revenue for IRD and therefore can be excluded. However, this argument is the basis of the retail sales tax not the VAT and therefore, it is submitted, should only be considered in situations like this where it raises no administrative problems. N.Z.'s approach is the same as that in the UK and Norway while Belgium and Germany takes the other approach of taxing such transactions in full.

14.7 The "Necessities": Food, Clothing and Energy

NZ's VAT is almost unique in having no special treatment for the so-called "necessities". Argentina, Austria, Belgium, France, Germany, Luxembourg and the Netherlands apply lower rates to some of these products. Ireland and the UK makes use of substantial zerorating of these goods and services while Israel zerorates some food and Norway and Sweden some energy forms. Even the comprehensive Danish VAT exempts some forms of energy.[330] The arguments against such special treatments are well known: they produce substantial distortions in the economy, reduce the tax's visibility and increase complexity and hence compliance and administrative costs. They also create a host of definitional and boundary problems. These arguments were accepted by the majority of submissions to the Advisory Panel and the Panel itself.[331]

Groups like the Parliamentary Opposition and the Federation of Labour supported zerorating necessities to assist lower income families. Putting aside political or social considerations the only tax policy argument that can be raised here is one of vertical equity. Comprehensive taxes on expenditure are likely to be more regressive than comprehensive income taxes because lower income families are likely to save proportionally less than higher income families and therefore pay a greater proportion of tax. Even if this is accepted as vertically inequitable the question arises: is the special treatment of necessities the best response to this problem? An incidence study in 1985 on the impact of GST on the distribution of income considered this and other questions. Though the study had a number of limitations[332] it concluded that though the exemption of food would decrease the GST's regressivity "the effect [would be] relatively minor"[333] and that "it may be that [the effect] is insufficient to justify the exemption of food, in light of the disadvantages associated with exemption."[334] The exemption of clothing was found to decrease regressivity slightly for different households but to actually increase it for some households comprised entirely of adults. As heat and light is a relatively small part of most household's expenditure its exemption was found also to have little impact on the GST's regressivity.[335] Therefore as compared to tax credits or, the method adopted in N.Z., personal income tax reductions special treatments for necessities appear to be a very inefficient and expensive method for providing a small amount of compensation.

14.8 Medical and Related Services

N.Z., apart from the special treatment of hospital accommodation, has no special treatment of medical or related services. This is unusual internationally. For example in Europe Belgium, Denmark, France, Germany, Italy, Luxembourg, the Netherlands and Norway exempt some medical services while Ireland, Sweden and the UK use a mixture of exemption and zerorating and Austria imposes a lower rate. The arguments of those who sought zerorating[336] for primary medical services were based on the sort of vertical equity arguments in Ch. 14.7. However the Institute of Policy Studies incidence study shows the impact of excluding medical practitioners and hospital fees from the GST base only reduces its regressivity a little and not uniformly. Therefore the argument for special treatment for medical services, apart from medical accommodation, is probably weaker than that for food. Furthermore there would be many boundary problems in specially treating medical services. For example would dentists, chiropractors, acupuncturists or herbalists be included?

14.9 The "Luxuries"

The GST applies no special treatment to goods or services often considered to be "luxuries". In countries like Austria, Belgium and France luxuries like perfumes, jewellery, fur skins, audio and video equipment and sport and luxury boats attract a higher tax rate. The disadvantages of this approach to compensation for vertical inequity are similar but generally greater than those for the special treatment of necessities because overseas experience suggests that multiple rating usually creates more difficulties for a VAT than exemption or zerorating within a single rated VAT.[337] Luxuries are also harder to identify.[338] Our perception of what products are luxuries also tends to change over time for example when the wholesale sales tax was introduced items like washing machines and clothes driers were taxed at the luxury rate.

14.10 Books, Periodicals, Libraries etc.

Again the NZ VAT is unusual in having no special treatment for books, periodicals, libraries, or similar goods or services. In Europe Austria, Belgium, Germany, Luxembourg and the Netherlands apply lower than standard rates to publishing while Norway, Portugal, Sweden and the UK zerorate and Ireland uses a combination of zero and lower rating.[339] In fact on average EEC countries levy twelve percent less sales tax on books than other commodities. In 1985 rumours that the UK Government were about to impose VAT on books resulted in a very successful "Please Don't VAT Books Campaign" which defeated such plans. Also many European countries subsidise their publishing industries for the effects of VAT and other taxes: for example Sweden annually subsidises their industry by $3.5M.

The "don't VAT books" argument, in NZ as elsewhere, is not based on vertical equity but on a number of social grounds, namely that:

(a) books have a special cultural and national significance;
(b) books are required for the literacy and education of the nation;
(c) to tax books is a "tax on knowledge";
(d) taxing books is contrary to the Nairobi Protocol to the Florence Agreement (1976) which NZ is a signatory of.

On these bases the NZ Book Council asked for zerorating with an annual cost of $11.5M in revenue or a similar amount of "compensatory funding". They regarded exemptions as more prejudicial than full invoicing. The Book Council also produced results from a survey which estimated that if an eight percent GST were introduced twenty two percent of locally published titles would not have been produced while with a twelve percent GST that figure would rise to thirty three.

Though it is difficult to evaluate these sorts of arguments in a paper like this the author would make three points. Firstly the effect of excluding a commodity from a broadbased VAT is to subsidise it and hence to include any sector should not prejudicially affect the demand for the sectors' commodities. Secondly zeroating creates boundary problems, should publications without national or cultural significance (e.g. pornography) get special treatment? Is it sensible to zerorate a book of a Shakespearean play while the sound recording or a ticket to the same play is taxed? Thirdly NZ has not ratified and therefore is not bound by the Nairobi Convention.

14.11 Secondhand Goods

As stated previously section 2 treats all secondhand goods like any other goods. The only adjustment is to allow a registered person an imputed input tax credit when a secondhand good is purchased from an unregistered person.[340] To be secondhand goods, to qualify for this credit, goods must be "acquired", which on previous case law may exclude gifts, and "have been used, or acquired for use, or held for use, by any other person". This imputed input tax credit is desirable as most secondhand goods will have borne GST previously and to allow secondhand dealers a neutral choice between goods from registered and unregistered persons.

The NZ approach of taxing secondhand good sales is a common one. In Europe it is used in Austria, Denmark and Germany. In Denmark however there is also a special scheme for used cars[341] while there are used goods schemes in the UK for motor cars; horses and ponies; goods acquired for entertainment purposes which do not give rise to an input tax credit; antiques, scientific collections and works of art; and used caravans, motor cycles, boats and outboard motors, electric organs, aircraft and firearms.[342] Both the Danish and UK schemes are similar in only imposing VAT on the registered person's margin. For example if a car is purchased for $8,000 by a dealer and sold for $9,100 output tax is ($9,100-$8,000 = $1,100 multiplied by the tax fraction) $100. The dealer's costs related to the car, say $110, are not subtracted from the margin but are deductible as on normal input tax credit.

The group who found the GST secondhand goods scheme most objectionable were, unsurprisingly, the used car dealers.[343] As well as complaints about transitional provision they argued the tax would have adverse effects on the industry. They said the ten percent price differential between registered and unregistered car sellers would reduce the market share of used car dealers from their present fifty percent to twenty or thirty percent having adverse effects on the industry and attracting customers away from the protection under the Motor Vehicle Dealers Act 1975. The dealers did not seek an exemption or a used car scheme, presumably because two tier pricing would remain under these, but wanted a levy on all vehicles payable at the Post Office.

The writer does not accept these arguments.[344] It is submitted there has always been a two tier market in most used goods. The purchaser of a used car from a dealer purchases not just a motor car but a bundle of services - the possibility of a trade in, loan finance, dealers' preparation, certain legal warranties and so on - which the private seller does not sell. The effect of the GSTA is to tax those services (i.e. the value added). For example if a dealer purchases a car for $22,000 and puts it in her lot with all the services she sells for $24,200 then the value added will be ($24,200 - $22,000) $2,200 on which tax of $200 will be payable by her. As the $2,200 represents the service component which is consumed in the normal sense it should be taxed. To do otherwise would be to give services provided by used car dealers an advantage over dealers providing services related to new cars. It is conceded that services provided by private sellers of used goods escape GST but this arises from the normal exempt treatment of the household sector under a VAT. Thus measures like special levies are difficult to justify while used goods schemes, which result in similar tax liability to applying normal VAT principles, are unnecessary.

14.12 Hiring and the Hire Purchase of Movable Property

Hiring or leasing and hire purchase are in a sense services so their treatment is discussed here while the hiring and leasing of land are discussed in Ch. 14.5. Hiring movable goods is taxable under both the GSTA and all the EEC VATs. As stated previously only the cash price of an article bought on hire purchase is taxed with the finance charge an exempt financial service. The combination of these treatments creates problems where a lease is used not as a method of hiring (or an operational lease) but as a substitute for hire purchase (a finance lease). In the latter case the defacto finance charge is taxed. While the Accountants Society argued this treatment of finance leases lacked neutrality it is difficult to see how the two types of lease could be separated. One country which attempts to do so is the Netherlands who seem to distinguish them on the basis that finance leases cannot be terminated whereas operational leases can.[345] Finance leases are treated similarly to hire purchase agreements. While this treatment has merit it could be concluded that, as the legislature were aware of the issue, they saw the GSTA as a means of discouraging finance leases.

14.13 Non-life Insurance

As was seen in Ch. 14.3 non-life insurance is integrated into the GSTA regime. It will also be recalled that where insurance has no savings component the current treatment is to tax all insurance premiums paid to registered insurance companies. This does not prevent most European countries (Belgium, Denmark, France, Germany, Italy, Luxembourg and the Netherlands) exempting insurance while Belgium, France, Germany and the Netherlands impose special transaction taxes on insurance (see Appendix A15). However the full invoicing proposal was adopted in the Government paper of 6 June 1985.[346] It was proposed that all the basic provisions relating to invoicing requirements, time and value of supply and transitional provisions would apply to all forms of insurance other than life insurance. The Advisory Panel accepted these proposals but had some doubt about provisions relating to overseas reinsurance.[347] The Insurance Council of NZ Inc., on behalf of the industry, also accepted the approach. Hence the GSTA's approach is to levy GST on all non-life insurance policies to the extent they do not expire before 1 October 1986.

The calculation of liability for most members of the insurance industry is more complex than for most industries for a number of reasons. Firstly insurance companies are likely to be, or related to, providers of exempt financial services. They will also usually be over the de minimis limit of section 21(1) and will have to adjust their output tax when they use assets partly for exempt purposes or may be barred from claiming input credits in some cases. Secondly, as they will usually hold assets for security, any realisation of their security will result in GST liability. Thirdly their reinsurance contracts complicate the situation. Output tax will often be incurred due to deemed supplies arising from recoveries from reinsurers while the GST paid to an outside reinsurer is deductible. Their position will be still further complicated by overseas reinsurance depending on whether the reinsurer is deemed a resident. If they are not, as is likely, no GST will be payable on premiums paid to reinsurers and no credit will be allowed for indemnity payments from them. Fourthly insurance companies will have to provide their own documentation to claim credit for indemnity payments to clients available under section 20(3)(d). Fifthly, and similarly, the insurance industry will probably have to do a large amount of section 24(2) self invoicing. Finally the transitional problems for the industry are quite complex.

Of course the full invoicing of insurance will have a major impact on policyholders also. The insurance industry estimated that the levying of GST on all premiums would affect most of its client base of six million policies and would result in customers owing $50M extra on existing insurance contracts.[348] Also, though the Insurance Council regard it as unnecessary,[349] some insurance companies may raise their excesses because of GST. Further it is arguable that because of the increase in the cost of most replacement assets due to GST policymakers should increase their amount insured though the Insurance Council also regard this as unnecessary. However despite the major complexities and important economic effects for both insurance companies and policyholders it is contended that NZ's full invoicing of insurance is the best treatment available.

14.14 Local Body Rates and Government Services

Few issues surrounding the GST produced so much debate or were so controversial as the decision to impose GST on local body rates. No country in the world the writer knows of imposes a major indirect tax on local body rates. However after the decision to tax rates was announced in the WP forty five local bodies made submissions to the Advisory Panel and eighty made submissions to the de Cleene Committee seeking the zerorating of rates. To summarise their arguments included:[350]

(a) that to impose GST on rates was a "tax on a tax";

(b) that "the rating system is itself an antiquated, unfair, and generally unsatisfactory way of funding local authorities, and to apply GST to this system would make the situation even worse";

(c) that central government does not pay rates itself and to be neutral ought to;

(d) that zerorating could be the first step for government to introduce a form of revenue sharing with local government;

(e) that rates are compulsory and therefore tax cannot be avoided by not paying them;

(f) that local bodies are non-profit making bodies and should not pay tax;

(g) that if taxes like rates are taxed income tax ought to include GST.

None of these arguments seem to be of much merit to the writer. With respect to argument (a) it is obvious many taxes on other taxes exist, for example excise taxes subject to GST. These are only undesirable if they produce undesirable economic distortions which, it is submitted, is not the case here. While there are undoubtedly problems with rates as a form of taxation and good arguments for (b) to (d) it is submitted that it is rarely good tax policy to attempt to alleviate weaknesses in one tax system by compromising another. Argument (e) seems to be based on the common misconception that GST is a discretionary tax on spending. While this would be true of excise taxes it could never be true of a broadbased tax like GST. Argument (f) is very weak as GST is not a tax on profits but on sales so the motives of those making them are irrelevant. As the Advisory Panel noted argument (g) is theoretically a strong one though impractical because the purpose of GST was to fund reductions in income tax.

The arguments against zerorating include:

(a) that local body rates represent a part of the consumption base and thus ought to be taxed;
(b) that to do otherwise would result in competitive disadvantages for those firms competing with local authorities;
(c) that it would encourage local authorities to finance their activities through rates rather than making the user pay with charges;
(d) that most local authorities would still usually have to be registered but would collect little revenue;
(e) that local authorities would have to separate out in their accounts their zerorated rates funded activities from their taxable activities funded by fees, increasing complexity; and
(f) that, on Treasury estimates, about $50M annual revenue would be lost.

An example of argument (b) was provided to the de Cleene Committee by the Association of Consulting Engineers who do twenty percent of their work for local authorities in direct competition with the inhouse capabilities of their customers. It is concluded that the arguments for the current treatment are much stronger than those for zerorating.

The principles above can be extended to the activities of central government. For example the US Treasury[351] argued that if an activity is taxable when provided by private enterprise then it should be taxable when provided by government. The arguments for applying VAT to the Government's commercial activities where there is actual or potential private sector competition have been widely accepted in Europe. However, in countries like France public bodies are not usually taxable in fields like administration, social affairs, education, welfare and sports. The practice the NZ central government seems to have adopted is the full invoicing of all commercial or non-commercial goods or services supplied to or from central government to the extent that transfers from the consolidated fund to government departments will bear GST. All grants, subsidies and transfers will also result in GST liability for their recipients and all government departments will be registered. This approach is then a desirable but very ambitious one as the same results as under the full invoicing of intra-government transfers could be achieved by zerorating those transfers (similarly to how transfers within a large company would be treated). Not distinguishing between commercial and non-commercial supplies to the public is also ambitious though it has the advantage of removing many boundary problems that would exist with such a distinction.

15. THE TREATMENT OF EXPORTS AND IMPORTS

15.1 The Destination and Origin Principles

As Biehl states the territorality principle requires some sufficient territorial nexus to be established in order for a country to tax a transaction.[352] As Ruppe states the territorality principle is applied in most European VATs so that only transactions taking place in the national territory are taxed regardless of where the business that carries them out is resident.[353] With direct taxation residence or source rules are used to establish territoriality whereas with indirect taxation the destination or origin principle is usually applied. The destination principle applies the rate(s) of sales tax in the country where the goods or services are consumed. This could be done in a number of ways in theory[354] but the mechanism used in both NZ and the EEC is border tax adjustment. Imports are based at the rate(s) of the importing country while exports are not taxed (except in the country they are exported into if that country has a destination principle sales tax). The origin principle taxes goods or services at the rate(s) of the country they were produced in or exported to. To implement this border tax adjustments would provide no refund of taxes on exports and therefore imports are taxed at the rate(s) of the countries they are exported from.

One of the major reasons for the popularity of the VAT is countries' desire to have a major destination principle sales tax. There are a number of reasons for this. For example Lindholm states that the:[355]

> use of the tax-origin principle ... nearly exclusively by one producing area and a very considerable use of the tax-destination principle by another are a closely paralleling situation to that which is developing between the United States and the EEC. Under this fiscal relationship, exports will be stimulated from the destination-principle country to the origin-principle country, but not on the basis of the most efficient resource use.

This export incentive may not be on the basis of the most efficient resource use, because the value added is taxed merely where it happens to be consumed rather than where it is produced, but seems to be valued by governments anyway. Further Tait is probably correct that taxes "...on exports appear against commonsense to most politicians" and that "probably the origin principle could only be adopted if a number of countries agreed to introduce it simultaneously."[356] This is why the EEC, whose eventual aim was to introduce the origin principle, only planned to apply it within the EEC and apply the destination principle to the rest of the world.

Reinforcing the perceived desirability of the destination principle is the fact that the General Agreement on Tariffs and Trade permits its use. Article XVI provides an exception to the rule forbidding subsidies for exports for destination principle indirect taxes. Article III paragraph 2 allows imports to be taxed providing the rates are not higher than for like domestic products.

Finally it is important to note that difficulties often arise with the treatment of services under the border tax adjustments required by the destination principle. While it is easy to identify and specially treat goods passing across the border it is harder to identify and therefore specially treat "exported services" or "imported services" because of the intangible nature of services. It may be that an exported service, like an exported good, is an activity which earns foreign exchange and thus would include for example accommodation of overseas tourists in the country. Or perhaps an exported service must be something physically performed overseas. However as will be shown it is probably true that where "services are concerned, border tax adjustments as a tool for avoiding double taxation and applying the destination principle is a failure".[357]

15.2 Exports of Goods and Services

It will be recalled from Ch. 9 that the GSTA place of supply rules uses residence criteria to ensure tax liability arises for goods or services consumed in NZ. This is the basis for the destination principle's application once the special treatments of exports and imports are added. The principle that "[n]o tax will be levied on exports and the tax mechanism will provide for the automatic refund of the tax entering into the cost of exported goods"[358] was a part of the GST proposal from the beginning and resulted in the zerorating of exports. However the first GSTB only zerorated goods. The final treatment of exported goods is that zerorating applies, to summarise, to goods entered, deemed entered or that will be entered for export under the Customs Act 1966 so long as they are not being re-imported.[359] Following on from the Advisory Panel's recommendations the following exported services are also zerorated:[360]

(a) the transportation of passengers or goods to or from NZ and the associated transportation of goods in NZ (and arranging those services but not ancillary services like loading or handling);
(b) services supplied directly in connection with land outside NZ;
(c) services directly connected with moveable personal property performed outside NZ;
(d) services directly connected with goods under sections 47(2) or 181 of the Customs Act (for example the repairing of an international aircraft in NZ);
(e) services that are "physically performed outside New Zealand";
(f) services supplied to a non-resident outside NZ unconnected with NZ land, moveable property, intellectual property or other rights;
(g) work on intellectual property rights for use outside NZ; and
(h) an agreement to refrain from conducting a taxable activity outside NZ.

Clearly the most important of these provisions is (e) which will allow most "exported services" tax relief and arose from the Advisory Panel's general philosophy that GST should be a tax on all consumption in NZ and therefore not on consumption outside NZ. The distinction in (a) also arose out of this philosophy:[361]

> ...the freight cost involved in transporting imports to New Zealand, and the landing charges involved in getting them across the wharf, form part of the cost of imports used in New Zealand, and so should be subject to GST...
>
> Conversely, the freight cost involved in transporting exports from New Zealand forms part of the cost of imports in another country, and so should not be subject to tax. If the exporter is selling on an FOB basis, the overseas importer is responsible for freight charges and

> the question of GST is unlikely to arise. If the exporter is selling on a CIF basis, with the exporter arranging and paying for freight, any GST charged by the shipping agent ...would be fully refundable as an input credit to the exporter. Either way the appropriate result is obtained.

It will not be possible to see if the exported services definition is comprehensive enough until the Act comes into force.

The area of greatest debate on exported services was the treatment of inbound tourism by non-residents in NZ. The NZ Tourist Industry Federation Inc. and the Travel Agents Association of NZ Inc. argued that "qualifying" overseas pre-purchased tourist services (per section 156E ITA) be zerorated as exported services. Their argument was opposed by the IRD, the Advisory Panel and the de Cleene Committee but supported by the Treasury. Their submission was largely opposed and presumably failed because it was argued that the GST is designed to tax all consumption in NZ including by overseas tourists. The contrary argument is that, like exports, inbound tourism is a foreign exchange earning activity and should be zerorated and that zerorating is necessary to maintain international competitiveness vis a vis other locations especially Australia where half of NZ's tourists came from. No country has comprehensively zerorated all inbound tourism though a number have granted concessions. Argentina, Brazil, Denmark, Germany, Italy and Sweden all exempt some passenger transport services in their country. UK zerorates some passenger transport services. France and the Netherlands apply a lower rate to some passenger transport services while Austria and France apply lower rates for accommodation. Korea comes the closest to the tourist industry's desired treatment. Since 1978 it has zerorated lodging services for non-residents and since 1980 food and lodging for non-residents. While NZ's special treatment of commercial dwellings may give some advantage to inbound tourists the writer would accept the tourist industry's arguments.

15.3 <u>Imports of Goods and Services</u>

It has also always been a principle of the GST that "GST will ...be levied at the time of importation of goods".[362] This revenue, collected by the Customs Department, is expected to account for up to forty percent of GST receipts.[363] This GST will generally be levied and collected as if it were customs duty under the Customs Act. All goods "entered or delivered for home consumption" under the Customs Act, including smuggled goods, will bear GST. The value of supply of these goods is different to that discussed in Ch. 11 and is the sum of:[364]

(a) the price paid for the goods (per the Ninth Schedule of the Customs Act);
(b) any customs duty and sales tax; and
(c) the cost of transportation to NZ and insurance.

It will be recalled that sections 12 and 13, which are deemed part of the Customs Act, create a separate form of liability to section 8(1). No taxable activity is required so that the imports of unregistered persons, for example NZ tourists returning from overseas, will attract GST. It should also be noted that (c) is consistent with the quotation from the Advisory Panel in Ch. 15.2.

The payment of GST by registered importers creates a potential cashflow problem for importers. Under the GSTB importers had to pay the GST component of their goods' price to the Customs Department before they were released to them. Importers would thus be incurring GST liablity before those subject to the normal invoicing rules. The Advisory Panel looked at a number of solutions to this problem - including having the Customs Department simply invoicing traders as if they were a normal taxable activity - and argued imports should be an exempt activity. Their argument was that exempting imports by registered persons used to make taxable supplies would lose no revenue for IRD since GST would be recovered later in the production and distribution chain. Imports by unregistered persons would be taxed under the Customs Act.

While a number of submissions to the de Cleene Committee supported this approach others preferred the use of a deferred payments scheme. The Customs Department's submission strongly opposed this arguing that such a scheme would:

(a) be open to fraud like overseas schemes;

(b) provide an incentive for NZ producers to use overseas sourced goods;

(c) affect the government's cash flows; and

(d) conflict with their plans to report back on their own deferred payments scheme in February 1986.

Therefore the GSTA's approach was to extend the bonded warehouse concept currently in the Customs Act. Bonded warehouses are warehouses under Customs Department control where goods subject to duties or taxes can be held for importers or manufacturers without liability arising until they are removed. Title in the goods can also be passed without incurring this liability. This regime for deferring tax liability was substantially unchanged by the TRB.

However on 14 March 1986 the Cabinet announced it was planning to abolish the bonded warehouse principle in favour of a deferred payments scheme. The deferred payments scheme is designed to treat importers as if they are normal purchasers of goods by having Customs Department invoice them in a similar way to how a local supplier would. In effect the scheme will allow importers to defer tax liability up to seven weeks. To minimise bad debts the scheme is only available to approved importers and security must be given to the Customs Depatent. The scheme will come into effect on 1 October and is expected to be used by at least the 60,000 traders currently registered under the Customs Act. It is hoped to eventually introduce direct crediting of GST payments into the system.

It is an important lacuna in the GSTA that the importation of services from non-residents not in NZ when the services are performed are not taxed. Only goods are covered by sections 12 and 13. Also the GST component on imports cannot be picked up later in the chain when the importer is the consumer of the service. To overcome this problem the Advisory Panel proposed some sort of withholding payment for unregistered traders. This problem emphasises the difficulties the destination principle has with services and the importance of the definitions of goods and services. A good example of the latter is computer software where importers are often merely licenced users rather than purchasers and are arguably importing a service or a good with a service component which should be untaxed. When a book is imported to be photocopied and ongoing royalties paid for the copyright again GST liability is unclear. These problems arise again in the international context.

15.4 International Double and Non-Taxation

As in the income tax context double or non-taxation often arises between two countries with VAT (or similar sales tax) systems. For NZ this will be particularly a problem in trade with the EEC. The theoretical VAT double taxation literature is not as well developed as that for direct taxation. There are also no VAT double taxation agreements although for EEC countries problems of non-uniformity are reduced by the requirements of the Sixth Directive. Ruppe concludes there has been little interest in double tax agreements because problems are reduced by the near universal application of the destination principle; the availability of input tax credits in some situations where double taxation problems arise and the cost plus nature of many firms' pricing.[365] Generally however he concludes problems can arise when:

(a) there are overlaps or gaps regarding the territory for which the right to tax is claimed;
(b) there are overlaps or gaps regarding the territorial attribution of goods;
(c) there are overlaps or gaps regarding the territorial attribution of services;
(d) there is differential treatment of national and foreign business; or
(e) there are incomplete or superfluous border tax adjustments.

It is submitted that problems (b), (d) and particularly (c) will probably be the most important for NZ. Problem (a) will usually only result in non-taxation. Problem (b) will not result in unduly large distortions because NZ like most countries generally follows the rule that for goods to be taxable they must be located in the territory at the time of transfer. A number of overseas countries however depart from this rule. Similarly type (d) and (e) difficulties will not arise from the GSTA's standard treatments but from unusual overseas treatments.

Unsurprisingly problem (c) is the most difficult to solve in theoretical terms. This is because the border adjustments for taxing imported and exported services often break down and the multiplicity of possible tests for the place of supply services should be taxed. These include:[366]

(a) the place of the person's business who is rendering the service;
(b) the place where the service is rendered;
(c) the place where the recipient of the service is resident;
(d) the place of the utilisation of the service.

Option (d) is probably the "correct" option for the destination principle indirect tax but is difficult to operate in practice. NZ relies mainly on a combination of (a) and (b) but makes use of (c) and (d) too.[367] Options (a) and (b) are probably the most common methods: for example Israel, Mexico and Portugal rely heavily on (a) while Argentina, Austria and Sweden generally use (b). The EEC Sixth Directive, which has a strong influence on member's VATs, applies the four tests: (a) is the general test; (b) is applied to services connected to immovable property and some transport; (c) is used for some transfers of intellectual property and advertising and (d) is applied to some transactions involving the leasing of movable personal property. Of course the non-uniformity of treatment of some problematic services, like financial services, further exacerbates this problem.

In conclusion the international consequences of the GST are very complex but it is probably true that wide possibilities exist for economic distortions and inequitable treatment of some taxpayers. International indirect taxation law or even the economic theory to create such law is not well enough developed to solve these problems. It is probably true however that these problems will not be as prevalent as income tax double taxation because of the universality of the destination principle and the similarity of VATs based on the European model. There are also obviously considerable opportunities for tax minimisation in international trade.

16. REGISTRATION AND RETURNS

16.1 The General Rules

It is a prerequisite for tax liability under the GSTA that supply must be from a "registered person" to be taxable. Any person carrying on a taxable activity may be registered. Such a person is required to register if they believe they have had or will have a turnover $24,000 or more of taxable supplies in the last or next twelve months.[368] The test is a subjective one. The Commissioner has a direction to not require this registration of such a person if their exceeding the threshold level is solely as a consequence of any cessation or substantial permanent reduction of the taxable activity or the replacement of a capital asset used in the taxable activity. Under section 52 once a person is registered they must stay so for two years. All registered persons must have been registered by 31 August 1986 under section 82. Also the GSTA has an anti-avoidance provision which can be used, inter alia, by the Commissioner to require a person to register.[369]

Once registration is required or voluntarily entered into the person must choose an accounting basis (see Ch. 13) and a return cateogory. These categories are:

(a) two monthly - January, March, May etc;
(b) two monthly - February, April, June etc;
(c) six monthly; and
(d) monthly.

Under section 15(1) the usual case will be that the Commissioner will allocate most registered persons to category (a) or (b). However the actual day of the return period can be altered seven days either way if permission is received.[370] Category (c) is available to all registered persons with an annual turnover less than $250,000.[371] A registered person cannot apply for category (c) because of deficiencies in their accounting system. Category (d) is available to all registered persons and is designed for those in a regular refund situation (e.g. exporters and those developing farms).[372] Registered persons normally have until the first day of the second month after a taxable period finishes to furnish the Commissioner with a return.[373]

Under section 15(4) a registered person in category (a) can change to any of the other categories with a written application. Other registered persons can only change categories if they meet the relevant criteria or fail to meet the relevant criteria. Category (c) registered persons will not be required to change categories if they exceed the $250,000 threshold solely as a consequence of or substantial and permanent reduction in the size or scale of their taxable activity or the replacement of any plant or capital asset.[374]

16.2 The Special Cases

The GSTA provides seven special cases for registration. These are:

(a) Non-profit bodies. Branches or division of non-profit bodies can be treated separately for registered purposes if each:

(i) maintains an independent system of accounting; and

(ii) can be separately identified by reference to the nature of the activities carried on or its location.[375]

This is a generous provision which effectively allows non-profit bodies to split themselves up to get under the $24,000 threshold provided they have the required amount of independence. Such a provision does not exist in any overseas legislation the writer knows of though this is not surprising given the wider taxation of non-profit bodies in NZ than overseas.

However it is important to realise that not all of what are generally considered non-profit bodies will be able to use this concession, and others available to non-profit bodies, as such a society, association or organisation must not only not be carried on for gain: under section 2 its articles or memorandum must not allow any distribution to its members or proprietors. Though most charities will fall within the definition many sporting and cultural clubs will not. This provision is logical however since organisations which do allow the possibility of such distributions cannot, in law, really be though of as non-profit bodies. In addition if this was not required commercial organisations could be structured to take advantage of this special case. In any case this special case should have caused a number of non-profit bodies to rewrite their constitution.

(b) Groups of companies and individuals. Where there are two or more persons who are about to be registered they may constitute a "group" for the purposes of the GSTA if:[376]

(i) they are companies and are a group under the section 191 ITA; or

(ii) one of them is not a Companies Act 1955 company and one person "controls" each of the others or one "controls" them all.

The test in (i) is, to simplify, whether any person (widely defined) holds two thirds of the shares in or is entitled to two thirds of the profits from the companies.[377] Part (ii) of the definition is very similar to section 29(3) VATA and presumably enacts common law tests of control.

However it is unclear precisely what is required for control in this context. Section 29(3) has adopted Companies Act definitions of requiring someone to control the composition of the board of directors or hold more than half of the entity's share capital for there to be control. These tests may not be relevant however to persons outside the Companies Act. Given the multiplicity of different commercial relations that would be covered by (ii) it is perhaps better if the courts and the Commissioner exercise the discretion on a case by case basis than set down specific tests.

Where (i) or (ii) have been satisfied and the members of the group have decided that they wish to be members for GST purposes a representative member must be nominated who will account for the group's GST and recommend to the Commissioner the members of the group. Though the other members of the group are now relieved of making returns and intra-group transactions have no GST consequences they must still adopt the same return period and accounting basis as the representative member, issue invoices, keep records, be registered and remain jointly and severally liable for their representative member's unpaid GST. This concession then is a desirable one as it will ease compliance costs for some groups of companies without revenue implications.

(c) Branches and divisions of a registered person. This special case is the converse of (b) but very similar to (a). Any branch or division of any registered person, as opposed to just NZ companies under clause 20 WP, can be separately registered if it meets the requirements of (i) and (ii) in (a).[378] Though each branch or division may account for GST separately it must maintain the same taxable period and accounting basis as if it were still part of the registered person. This special case is different to (a) (if it were not that special case would confer no benefit on non-profit bodies vis a vis other organisations) in that it allows branches and divisions to register separately not to be treated separately for registration purposes. Hence branches and divisions of registered persons cannot subdivide to avoid GST liability. This provision is similar to section 31(1) VATA but that provision appears to give the Commissioner more direction. The rationale for this concession is similar to that for (b).

(d) Unincorporated bodies. "Unincorporated body" is defined in section 57(1) GSTA to include partnerships, joint ventures and trustees of trusts. The income taxes conduit taxation of partnerships and joint ventures are replaced to make these bodies legal taxpayers. The complex income tax code of sections 226 to 233 ITA are also set aside to make trustees carrying on a taxable activity legally responsible for GST. However the GSTA recognises the reality of partnerships and other unincorporated bodies as legal fictions by making their members jointly and severally liable as members for the default of GST. Also the estate of a dead member is similarly liable. When a partnership has been determined an ex-partner can only escape such liability if s/he has notified the Commissioner of the change in membership. It is submitted that it would be difficult to devise a system of wider liability than exists in section 57(3). For example it is considerably wider than tort or contract liability under the Partnership Act 1908.

In the UK partnerships are also taxable entities under section 30 VATA since persons carrying on a business in partnership may register in the partnership's name. Betram and Co. v. CEC[379] seemed to provide a method for those in partnership to avoid being registered when it was held that it was "pefectly possible for the same two, or the same three or more, people to join together in separate partnerships for different purposes". However this proposition was put to rest in CEC v. Glassborow[380] which held that two persons who carried on two quite separate and distinct partnerships, set up before the VATA came into force would be required by the Commissioner to register as one entity. The writer would be surprised if a NZ court did not follow Glassborow as it is consistent with the special case which recognises the commercial reality that unincorporated bodies are an organisational form that often provides goods or services.

(e) Personal representatives, liquidators, receivers etc. Under section 58 if there is a bankruptcy, incapacitation or death of a registered person the Commissioner is empowered to deem any person carrying on the registered person's activity to be the registered person. For example a mortgagee who, to realise a debt, takes possession of the mortgagor's taxable activity can be deemed to be the registered person. This provision is similar to that under UK VAT regulations.

(f) Agents. Three situations of agency are provided for under the Act: Agents of absentee principals, agents generally and auctioneers as agents for those whose property they sell. In the first situation the principal must be outside NZ or, if a company, incorporated outside NZ and not having a permanent place in NZ.[381] In the second situation the agent must merely be a registered person who makes supplies "for or on behalf of" the principal.[382] In the third situation the agency of the auctioneer for the person whose goods are sold arises out of some sort of agreement between the two that such a relationship should exist.[383]

In each of the three situations slightly different GST consequences arise. While the supplies made to or from the agent are still deemed to have been made to or from the principal tax invoices or debit or credit notes are issued to or from the agent.[384] Agents of absentee principals will be liable for the principal's GST and will be required to make returns. Ordinary agents, though they issue and receive invoices and are required to keep records of such invoices, are not required to make returns for their principals.

The position is more complex with respect to auctioneer agents and their principals. People selling goods at auctions may or may not be registered persons. They also may be registered persons selling in their private capacity. Hence bidders at auctions may have two problems. Firstly they may not know if the price of goods being bid for should include a GST component for the seller (there will be course be GST on the auctioneer's commission if that person is registered). Secondly they may not know whether they will get an invoice from the seller. Hence two situations are provided for. Firstly, if the principal is unregistered, if the principal and auctioneer agree they may treat the supply of goods as if it came from the auctioneer with the tax collected and paid to the IRD by the auctioneer. If the principal is a registered person, making the supply to the bidder a taxable supply, then presumably the agent auctioneer must collect the GST and pass it along with the rest of the price (excluding commission and probably GST on that commission) to the principal who is liable in the normal way. Secondly, if there is no agreement to adopt this approach, again on general principles, the supply from principal to agent will be taxable if the principal is in the course of a taxable activity supplying those goods and the principal must account for GST on the money passed back to them.

The optional scheme, which is an innovation of the Advisory Panel as altered by the Minister of Finance, may result in higher prices for some goods but would reduce the confusion about whether prices in auctions include GST and would allow buyers, particularly in the export business, an invoice. How widely the optional scheme will be used, and whether in fact it will reduce confusion, will not be known until GST is in operation. For a discussion of the pricing issues in auctions see Ch. 17.2

16.3 <u>Conclusion</u>

The treatment of small traders was one of the most important areas of debate in the GST. The treatment of small traders under a VAT is usually an area of concern because overseas studies have shown that compliance costs fall disproportionately heavily on small traders. For example Professor Sandford's study of the compliance costs of the VATA, which has a comparatively high threshold for registration, has shown that compliance costs for the smaller firms in his study were thirty times those of the largest firms.[385] The smaller firms who carry this burden usually only make a small contribution to revenue. For example the Sandford study showed that forty percent of the compliance costs and fifty five percent of the administrative costs were incurred by, or in respect of, sixty nine percent of traders who generated less than five percent of the VAT revenue. Thus despite the neutrality arguments to the contrary there are good administrative reasons for some form of special treatment for small traders.

What concessions are possible? For the reasons in Ch. 14.1 zero or differential rating would appear to be poor concessions. As stated in Ch. 13 the optional accounting basis available to the smallest seventy seven percent of traders will allow some compliance advantages. There are also a number of concessions for non-profit bodies in the GSTA including that in Ch. 16.2. Overseas forfait systems and a number of special shcemes for groups like retailers and farmers have been introduced.[386] However it is submitted that the government was correct in regarding these as introducing unnecessary complexities into the GST.

Debate therefore centred on what registration threshold there should be below which traders would be exempt. The WP suggested a $2,500 annual threshold. Though this may appear very low, it will be seen from Appendix A9 that countries like Denmark, Italy, Norway and Sweden have similar thresholds (albeit usually with other small trader relief). In any case this threshold caused great concern to small businesses and other organisations and 171 submissions to the Advisory Panel suggested thresholds as high as $50,000. The Advisory Panel rejected a UK level threshold because they feared many businesses would operate just under it and that a high threshold would actually raise compliance costs for those who were registered. They proposed a $20,000 threshold which the Minister of Finance increased to $24,000, the writer understands, to fit better into a twelve month year.

As it turns out this threshold is similar to the unweighted average of the countries in Appendix A9 (excluding Luxembourg and the Netherlands) of $31,000. However in the international context NZ has joined Germany in the middle ground between a group of countries with very low thresholds and those over $50,000. The NZ threshold is estimated to exempt between 25,000 and 35,000 businesses with $50 to $80M revenue forgone per annum.[387] At least 180,000 and probably more than 200,000 businesses will be registered.

As seen in comparing the NZ returns regime to those of overseas countries in Appendix A10 the GSTA has attempted to alleviate the regressivity of compliance costs with differential payment periods. The WP proposed a standard two monthly return period. Following their proposal of what they regarded as a relatively low threshold the Advisory Panel proposed alternative monthly, six monthly and annual return periods, using various methods of calculation. This would be more return periods than any of the overseas countries in Appendix A10. The Minister of Finance accepted these alternative periods with the exception of the yearly return period. This return period regime is quite different to the usual quarterly return period in the appendix.

As a final point it is submitted that the failure to automatically index to inflation the $24,000 and $250,000 figures is a major weakness of the GSTA. As an ad valorem tax the GST is inflation proofed so that the failure to increase the $24,000 threshold would create a phenomenon similar to fiscal drag and is undesirable for reasons of visibility. For the GST and some overseas registration and return forms see Appendix A11.

17. SOME DOCUMENTATION AND PRICING ISSUES

17.1 Documentation

It is not proposed to cover the administrative aspects of the GSTA. However one important and hotly debated documentation issue was the disclosure provisions of tax invoices. Tax invoices are important because they usually provide the documentation which enables a trader to claim an input tax credit. Also a registered person who supplies goods or services must under section 24(1), on request, issue a tax invoice in twenty eight days. Failure to do so is a criminal offence.[388]

Section 24 GSTA sets out the information required to be in a "tax invoice". It is important to distinguish between the "tax invoice" and an ordinary "invoice" as both expressions appear in the Act. Under section 2 "invoice" has its ordinary meaning as a "document notifying an obligation to make payment" for goods and services supplied. An invoice may be a "tax invoice" if it includes the following particulars:[389]

(a) the words "tax invoice" in a prominent place;
(b) the name, address and registration number of the supplier;
(c) the name and address of the recipient;
(d) the date upon which the invoice is issued;
(e) a description of the goods and services supplied;
(f) the quantity or volume of the goods and services supplied;
(g) the tax exclusive consideration, the total amount of tax charged and the total consideration or (where the tax is charged on a tax fraction basis) the consideration and a statement that it includes GST.

The requirement for an individual serialised number on each tax invoice was removed by clause 19(1) TRB. Besides this change, and some alteration of (g), the only other drafting change was the removal of the requirement to include the date of supply.

These requirements for the normal tax invoice are similar to those in other jurisdictions. Of the EEC tax invoice requirements[390] the author has seen only the Belgium one requires an individual serialised number. In fact the Belgium tax invoice is a fairly complex one. In addition to the earlier mentioned information it must contain the date of supply, the applicable rate(s) and, if no VAT is due, reason for the exemption. The Danish, West German and Irish requirements are very similar to NZ's though the first two do not require VAT registration numbers while the latter requires the date the goods or services were supplied. The UK tax invoice is virtually identical to the GST's. The Austrian tax invoice is somewhat simpler since neither the registration number nor the quantity or volume of the goods supplied is required.

In most countries there is provision for simplified VAT invoices. In NZ these provisions are twofold. For supplies for consideration between $100 and $20 a simplified tax invoice can be used. Under section 24(4) this must disclose at least:

(a) the words "tax invoice" in a prominent place;
(b) the name and registration number of the supplier;
(c) the date upon which the tax invoice is issued;
(d) a description of the goods and services supplied; and
(e) the consideration for the supply and a statement that it includes a charge in respect of tax.

This can be compared to Austrian simplified invoice which requires (b) to (e) for supplies for consideration under 1000 AS (about $135). In Denmark the name and address of the consignee can be omitted for supplies for consideration under 200 D.Kr. (about $50). Similarly in Germany this and the date can be omitted for invoices for less than 200 DM (about $190).

For invoices for less than $20, presumably for items like taxi fares and periodicals, no invoice is required under sectiosn 24(5) to claim an input tax deduction. Similarly under section 24(6) and (7) for secondhand goods purchased from unregistered persons and some other transactions, like automatic bank deductions for certain payments, where it is not possible to acquire an invoice, provided sufficient records are kept the Commissioner has a discretion to allow particulars to be omitted from tax invoices or to not require invoices.

There are other important provisions regarding tax invoices: following recommendations of the Advisory Panel the GSTA allows the UK practice of buyer created invoices or self billing in situations where the buyer, not the supplier, normally issues invoices.[391] The writer also understands that invoices relating to more than one supply will also be allowed by the Commissioner. This may be useful for the auctioneers and other agents discussed in Ch. 16.2.

The other important disclosure requirements in the GSTA concern those for the credit and debit notes discussed in Ch. 10.2. The disclosure for a credit note is very similar to those for a tax invoice, namely:[392]

(a) the words "credit note" in a prominent place;
(b) the name, address and registration number of the supplier;
(c) the name and address of the purchaser;
(d) the date on which the credit note was issued;
(e) the amount of consideration involved;[393]
(f) the date on which the tax invoice was issued; and
(g) a brief explanation of the circumstances giving rise to their issuing of the credit note.

The disclosure requirements for debit notes under section 25(3)(b) essentially mirror these. At least one commentator has criticised these disclosure requirements as too onerous since they require more information than the tax invoices to which they relate. It is difficult to see how they could be sensibly further simplified however now that the requirements for serialised numbers have been removed.

As the GST legislation was originally drafted not only was it an offence to knowingly issue a tax invoice but to issue any tax invoice "in any material aspect erroneous or incomplete".[394] No mens rea was required and materiality was not defined and, per clause 64(3) GSTB1 each disclosure error could result in a $500 fine for an individual or $2,500 for a company. A number of submissions to the de Cleene Committee objected to these provisions including Mr. Whitmore's Citizens for a Better Tax who said the provisions were "unsatisfactory as they treat innocent oversights as serious offences. [They] will also put taxpayers who discover that minor errors have affected prior returns in a quandry". Consequently the current section 62(k) requires knowledge on the part of the offender.

Whether or not these documentation requirements will prove too onerous, particularly for small businesses, associations and clubs, is difficult to judge at this stage. It is also unclear how well credit card invoices, computer invoices[395] and other invoicing practices will be integrated into the GST regime. The writer understands that the UK Commissioners allow the following types of tax invoices: the adapting of credit card sale vouchers for small amounts, the adaption of till rolls from cash registers for cash and carry wholesalers and computer invoicing including on paper, magnetic media or for direct transmission. Whether these methods will be allowed is of course as much a question of tax administration as law. It is also submitted that the lack of indexation of the $20 and $100 "disclosure thresholds" may create problems if inflation forces higher informational burdens on businesses. The provisions for the Governor General to increase these amounts are not considered satisfactory alternatives. Finally it should be noted that the informational required by the GST, including that discussed here, does not just have negative consequences for business. Certainly there will be compliance costs but overseas experience suggests "managerial" benefits should be weighed against these. Sandford's study for example in 1977/8 found that of firms with a turnover under £100,000 forty two percent thought their purchase records and thirty percent thought their sales records were better kept because of VAT. For examples of GST tax invoices see Appendix A12.

17.2 Pricing

Another contentious and unresolved GST issue is that of pricing methods. Three main pricing methods are possible for goods' "sticker prices", price lists, advertisements and auctions: GST exclusive pricing, GST inclusive pricing and grossed up pricing (a variant on inclusive pricing). In a shop displaying GST exclusive prices the customers must estimate the total price of the good or service by adding the GST component to the sticker price which the vendor would calculate when the article was brought to the counter or the service performed. If a shop used GST inclusive pricing then, as is common in the UK, the vendor would probably display a sign saying "All prices include GST". Other than that a customer would have no reason to know or be concerned with GST. Grossed up pricing displays both the GST inclusive and exclusive prices and the GST component.

The WP was silent on pricing issues. The Advisory Panel received a number of submissions and summarised the arguments in favour of GST inclusive pricing thus:[396]

(a) A consumer should be able to make the buying decision knowing the total cost without having to make a calculation;

(b) GST inclusive prices are easier to compare for the customer;

(c) GST inclusive pricing might encourage some retailers to absorb some tax themselves;

(d) Certain types of unattended sales (e.g. parking meters) must be GST inclusive;

(e) Some transactions which must be done at speed (e.g. bus fares) may have to be GST inclusive. The Advisory Panel noted however the argument for GST exclusive pricing including:

(a) GST inclusive pricing may result in some rounding up of prices to the detriment of consumers;

(b) If the GST rate were increased all goods and catalogues GST inclusive priced would have to be repriced;

(c) GST inclusive prices are harder for shop invoices to write tax invoices from;

(d) Unregistered persons who need not add the full GST to their products would be inclined to sell articles with pre-printed GST inclusive prices for that price.

There are further arguments. Against the clarity and simplicity of GST inclusive pricing must be weighed the economic arguments of lack of visibility and the possibility of a ratchet effect. Over time a tax inclusive GST may become so invisible that revenue from it would be easily raised by increasing the rate and/or not increasing the $24,000 threshold. A ratchet effect might arise from businesses including GST in their cost structure, adding their markup on both the base price and the tax content.

Following submissions from groups like the Retailers Federation and the Accountants Society and the recommendation of the Advisory Panel either method (or the grossed up method) is permissible. This is implicit in the provisions for tax invoices and auctions. There is no legislation specifically on point despite the Government's clear preference for GST inclusive pricing and suggestions that regulations might be promulgated under the Fair Trading Bill 1986. The writer understands that the Minister of Consumer Affairs will only regulate, implementing GST inclusive pricing, if she is dissatisfied with practices after 1 October 1986.

18. THE GST IN RELATION TO THE REST OF THE TAX SYSTEM

In 1984, before the advent of the GST, NZ direct taxes were seventy two percent and indirect taxes (including highways tax and relying most heavily on wholesale sales tax and customs duty revenue) twenty eight percent of total tax revenue receipts.[397] This three quarters to one quarter direct to indirect tax mix had been a feature of the NZ tax system for a number of years and is similar to the mix in other OECD countries. In 1982 the make up was seventy six to twenty four percent compared to an unweighted average OECD mix of seventy one to twenty nine percent. This OECD average however is somewhat misleading as it includes a number of countries like Japan who had no broadbased sales tax whereas NZ supposedly did. The mix of OECD European countries - who all had broadbased indirect taxes, usually of the VAT type - though was still only seventy percent to thirty percent. Although the writer has not seen subsequent OECD data it can be assumed that the direct - indirect tax mix has not altered substantially since 1982.

What is the post-GST direct-indirect taxation proportion? The problem with answering this question is that the 1986 Budget data only gives projection of taxation revenue for the 1986/7 year. The GST will only be in force for half of that period. There will also be substantial collection lags so that all the revenue attributable to the 1986/7 year will not be collected in that period. Thus the GST will earn just $1.2B in 1986/7 and the direct-indirect tax mix will be seventy one to twenty nine percent,[398] substantially the same as above. To suggest that no switch to indirect tax has occurred would be erroneous however. The best published comparison of the direct-indirect tax mix in NZ was published in the Minister of Finance's Statement on Taxation and Benefit Reform 1985 and is reproduced in Appendix A13. That shows a direct-indirect tax mix without GST, but under the existing wholesale sales tax, of seventy five to twenty five percent for the year ending March 1986. The tax system after October 1986 (in full 1986/7 financial year terms) shows a five percent shift to a sixty five to thirty five percent mix. If this is the long term position the GST, even at only ten percent, would have changed NZ from a country which relies less than average to about sixth in the OECD (on 1982 data). However NZ would have to substantially increase the GST rate to emulate

Ireland whose thirty percent rated VAT helped indirect taxation to raise forty five percent of total tax revenue.[399]

Is there any "appropriate" tax balance NZ should seek between direct and indirect taxation? As noted in Ch. 3.2 older taxation economists used to regard indirect taxation, under a number of very restrictive assumptions, as inferior to direct taxation. This however was invariably because they were comparing theoretical comprehensive direct taxes to indirect excise taxes on one or a number of commodities.[400] Newer analyses suggest broadbased indirect taxes are not inferior to direct taxation and the question of the appropriate tax base - income, expenditure or wealth - is of much more interest to public sector economists. The appropriate mix of methods is largely then a question of tax administration: for example minimising administrative and compliance costs and incentives to avoid and evade tax. Overseas experience of course tells us very little about the appropriate tax balance in NZ.

While the direct-indirect tax mix can be used to approximate the percentage use of the income and consumption basis this is not necessarily appropriate. So-called income taxes often have elements which tax wealth, for example the treatment of land transactions, or consumption, for example any treatment of superannuation which allows a deduction for savings. So-called consumption taxes often have elements which tax other tax bases, for example the GST's treatment of land is closer to a partial assets tax than a true tax on consumption. However the GST certainly means that the NZ tax system taxes more heavily the consumption tax base and probably moves closer to the income base-consumption base mix of those OECD countries with VATs. As stated, though this is still a current debate in economics, taxing the consumption base is generally believed to be more neutral because it does not double tax savings.

Within consumption direct taxes how does NZ's division between the GST and excise taxes compare with overseas countries with consumption taxes and excise taxes? OECD statistics between 1955 and 1980[401] show that the share of consumption taxes to total tax revenue has fallen eight percent. However revenue from general consumption taxes as a percentage of total taxation actually increased three percent in that period; the fall was entirely due to an eleven percent decrease in the share of revenue from specific taxes on goods and services (i.e. largely excise taxes). One point is clear here: the tax on specific goods and services, which was once the primary source of indirect tax revenue, has fallen from favour. In 1955 taxes on specific goods and services were two and a half times as important as general taxes. By 1980 the two sources were of roughly equal importance.

In NZ in 1986/7 the ratio of GST and sales tax revenue to other indirect taxes (including highway taxation) will be forty five to fifty five percent. Again a more accurate ratio is gained from the data in Appendix A13 of sixty percent to forty percent.[402] This is an increase in the ratio of, say, 1985 when the wholesales sales tax allowed a ratio of just forty five to fifty five percent.[403] Post-GST however a substantial amount of revenue will still be coming from other indirect taxes. Following on from the TRB these other indirect taxes will be excises on alcohol, tobacco, motor spirits, motor vehicles, various gaming duties as well as highways taxation, customs duty and (not included in this data) local body rates. Large in number though these various taxes may be they are not as numerous as many in the European countries with VATs included in Appendix A15. As stated previously such taxes violate neutrality and are often markedly regressive. Also as stated previously their existence, as opposed to raising the GST rate, can only be defended on the benefit approach to equity. Putting aside customs duties and local body rates, which have functions outside the scope of this paper, the taxes on alcohol, tobacco, betting and highways taxation can only be defended as taxes to compensate the government for costs borne in areas like health, the criminal justice system and roading. However it is more difficult to argue that the taxation of motor cars and fuels, which has rarely been explicitly linked to expenditure in the roading area, can be justified on the benefit principle. It is submitted for any government to do so, for any excise tax, the social cost of a particular activity would have to be specifically identified and quantified to assess the amount of tax liability and revenue from that source explicitly "earmarked" to reducing that social cost. It is further submitted that in the absence of this the more neutral GST should be extended to replace these taxes.

Finally it is interesting to look at the GST specifically in the tax system. Overseas VATs contribute varying amounts to tax revenue. The average European VAT contributes seventeen percent of tax revenue or about seven percent of GDP (see Appendix A14). However there is a good deal of variance between the Luxembourgeois VAT which contributes eleven percent of tax revenue to the single rated comprehensive Danish VAT which earns twice as much. This link between single rated VATs and high revenue yield can be observed in the OECD study which shows in single rate VAT countries in 1980 VAT receipts were eighteen percent of tax revenue; in multiple rate countries they were sixteen percent and in sales tax countries just eleven percent. At $1.2B revenue the GST will contribute only seven percent of total tax revenue.[404] In a full year it would contribute the European average of seventeen percent of total tax revenue or five percent of GDP.[405] The comprehensive nature of the GST can be seen from the fact that this level of revenue yield is possible with such a low rate.

A number of conclusions can be drawn from this about the nature of the GST in the tax system. Firstly it has changed NZ from a country which makes less than average use of indirect/consumption taxes closer to the average without making exceptional use of them. Secondly NZ has followed the OECD trend out of the economically inferior selective taxes of goods and services towards a comprehensive consumption tax. However specific taxes remain very important in the NZ context as well as overseas. Thirdly though the GST is set at a low rate it contributes the European average percentage of revenue from such a tax.

19. CONCLUSION

Consistent with what has been written so far it is contended that the following major changes should be made to the GSTA:

(a) definitions of "supply" and "services" should be included;

(b) some rules for apportionment, the treatment of GST for income tax purposes and pricing methods should be legislated for;

(c) all thresholds should be automatically indexed for inflation;

(d) the introduction of a low rated financial services turnover tax in exchange for making financial institutions registered persons should be further considered;

(e) all prepaid inbound tourism should be zerorated; and

(f) all imported services, particularly to unregistered persons, should be taxed. The need for other specific charges will only become clear once GST is introduced. It is interesting how the introduction of a relatively neutral tax shows up weaknesses in other areas of NZ taxation. In the writer's opinion there are good arguments for reviewing the fringe benefits tax, the local body rating system and excise taxes in particular and all indirect taxes in general against tax policy criteria.

This leads to the writer's major proposal for change: it is submitted that the ten percent rate should be increased (keeping an appropriate tax fraction). In international terms the GST's rate is at the bottom end of the scale for a developed country (see Appendicies A14 and A15). Overseas such rates have been introductory, increased once the VAT has been in operation a while. From Appendix A4 the average standard or only positive rate of countries at introduction was eleven percent. By 1984 this average had crept up to fourteen percent. The use of introductory rates is often justified because it minimises the VAT's immediate impact on inflation. It is submitted that it is sub-optimal tax policy to use a comprehensive tax on 200,000 traders to earn only about seventeen percent of total tax receipts or half of indirect taxation, even if that is the European practice. Raising the rate would also allow further reform of indirect taxes, possibly revenue sharing with local government and income tax reductions as well as a further shift toward taxing the consumption tax base. A higher rate would also lower administrative and compliance costs because it would generate more revenue, with largely fixed costs, and increase the cash flow benefits to business.

How good a tax is the GST in terms of the criteria in Ch. 1? The GST may be the world's most neutral tax on expenditure. The draftsperson of the GST has learned the:[406]

> central technical lesson of European experience with the value added tax ... that multiple rates can be used to eliminate the regressivity of the value added tax, but that

the penalties in administrative complexity increased compliance costs, and distortions in consumption decisions have been high and probably unjustified.

The GST's coverage is also very broad. All of the usual special treatments, usually for vertical equity reasons, have been avoided. Though the GST's treatment of financial services, land and fringe benefits, as well as the medium sized registration threshold and the non-taxation of the household sector, will produce some economic distortions these are probably no worse than most overseas treatments. The GST's treatment of insurance, government services and supplies of non-profit bodies are in some respects quite revolutionary in their width.

A good measure of neutrality is the comprehensiveness of coverage of the tax base. According to the 1986 Budget[407] the GST tax base is slightly over one hundred percent of household consumption expenditure. Though it is difficult to know if exactly comparable measures of expenditure are being used in other studies this can be compared to the thirty seven percent of consumption NZ's previous wholesale sales tax taxed. It can also be compared to the UK where their VAT taxes fifty six percent of consumption while zerorated items remove thirty percent of the base.[408] Even the Danish VAT, the most comprehensive in Europe, covered only seventy percent of total personal consumption expenditure while the Canadian manufacturers' sales tax covered forty percent.[409] With the possible exceptions of the Korean and Israeli VATs, for which the writer has not seen data, the GST is probably the most comprehensive VAT in the world.

In terms of vertical equity it can be argued that the GST measures up less favourably. The Institute of Policy Studies incidence study found, under a number of assumptions and with a number of reservations, that the GST would be regressive with respect to income, though no more so than the existing wholesales sales tax. If this conclusion can be compared to overseas studies, which it cannot, it would be slightly more regressive than many overseas VATs and retail sales tax.[410] However even if that was decided to be undesirable it is submitted vertical equity is a criterion for the entire tax-expenditure system rather than one element of it. No such, general equilibrium, incidence study has been done in N.Z.

The administrative costs of the GST, at such a low rate and for an introductory period, are probably not excessive. On 31 March 1986 IRD employed 414 staff on GST on work though the writer understands there is authorisation for 1,000 staff. The projected GST administrative costs of \$18.3M in 1986/7[411] are 1.5 percent of the actual revenue of \$1,200M. This is lower, for example, that the comparable UK figure for the 1977/8 year.[412] Although a lower than UK registration threshold suggests higher and more regressive compliance costs than the Sandford studies show this conclusion cannot necessarily be drawn. A simpler, more comprehensive GST, different return periods and accounting bases, the concessions for non-profit bodies and a different interest rate environment could produce very different results.

Without any empirical evidence for saying so the writer would suspect that, because of the educational programme undertaken, the GST is a very visible tax for the general public, especially when compared to the previous indirect taxes.

The GST then, to the extent that information is known, is a very good tax in terms of the Ch. 1 criteria. However this conclusion is necessarily premature. If the history of taxation, and particularly indirect taxation in NZ, shows us one thing it is that it is much easier to compromise a good comprehensive tax than it is to maintain one.

<u>STOP PRESS:</u> The GST Amendment Act 1986 has just been passed and includes some changes to the regime in this paper. In particular the turnover limit for the invoice basis has been raised to \$500,000 and the treatment of supplies of fine metals has been clarified.

FOOTNOTES

1 For an example of this see M. Palmer "The Economics of Law : the Sharebrokers Act 1908" (1986) 16 V.U.W.L.R. 277.

2 Goods and Services Tax, a booklet published with Budget 1984 New Zealand.Parliament. House of Representatives. Appendix to the journals, vol. 2, B.6, p.13.

3 The White Paper on the Goods and Services Tax. New Zealand Parliament. House of Representatives. Appendix to the journals, Vol. 2, B.27, 1985. (WP).

4 Report of the Advisory Panel on the GST to the Minister of Finance (Government Printer, Wellington, 1985) henceforth First Report.

5 For example see H.M. Groves Tax Philosophers (University of Wisconsin, Wisconsin, 1974).

6 For a good introduction to this see R.A. and P.B. Musgrave Public Finance in Theory and Practice (4 ed., McGraw - Hill, New York, 1984), Ch. 14.

7 Ibid. pp.299-300.

8 P. Bevin How Should Business be Taxed? (VUP, Wellington, 1985), p.27.

9 Supra n.6, pp.227-228.

10 Ibid. pp.231-232.

11 Ibid. p.232.

12 Ibid. Ch. 12.

13 See P. Groenewegen Australian Tax Policy (Longman Cheshire, Melbourne, 1980), pp.149-150.

14 For example equality of opportunity in processes rather than of results see R. Kerr "Ideas, Interests and Experience : Some Implications for Policy Advice" a speech to the 30th Annual Conference, Australian Agricultural Economics Society, 3 February 1986.

15 See C. Sandford et. al. Costs and Benefits of VAT (Heinemann, London, 1981) or for a good summary A. Peacock and F. Forte Leds) The Political Economy of Taxation (Basil Blackwell, Oxford, 1981), Ch. 10.

16 C. Sandford "The Administrative and Compliance Costs of Taxation: Lessons from the United Kingdom" (1985) 15 V.U.W.L.R. 199, 202.

17 For a discussion of some of the pschological aspects of taxation see A. Lewis The Pschology of Taxation (Martin Robertson, Oxford, 1982).

18 See C. Scott, P. Goss and H. Davis The Incidence of Indirect Taxes Volume 1 (VUP, Wellington, 1985), Ch. 5.2.

19 The whole area of intra-family transactions may fall into this category see L. Hart-Wright "Personal, Living or Family Matters and VAT" (1983) 82 Michigan Law Review 419.

20 T.M. Rybczynski (ed). The VAT - the UK Experience and the European Experience (Basil Blackwell, Oxford, 1969), p. 29.

21 R.W. Lindholm VAT and Other Tax Reforms (Nelson-Hall, Chicago, 1976), p. 40.

22 For a discussion of turnover taxes see J.F. Due Indirect Taxes in Developing Countries (John Hopkins, Baltimore, 1970), Ch. 6.

23 For a discussion of these American roots see Lindholm op. cit. pp. 40-44.

24 For a description of the Japanese VAT see C.K. Sullivan The Tax on Value Added (Columbia University, New York, 1965), Ch. 3.

25 For a description of the Michigan VAT see Sullivan, op. cit. Appendix C.

26 Armco Steel Corporation v. Department of Revenue 359 Mich. 430 (1960).

27 For a description of this see R.W. Lindholm The Economics of VAT (Lexington Books, Massachusettes, 1980), pp. 19-23.

28 Report of the Committee on Turnover Taxation (1964; Cmnd. 2300).

29 VAT Green Paper (1971; Cmnd. 4621).

30 H. Aaron (ed) VAT - Lessons from Europe (Brookings Institution, Washington D.C., 1981), p.1.

31 W.J. Turnier "Designing an Efficient VAT" (1984) 39 Tax Law Review 435.

32 See C. Scott and H. Davis The Gist of GST (VUP, Wellington, 1985), Appendix A3.

33 Taxation in New Zealand (Government Printer, Wellington, 1967), (Ross Report), pp. 343-349.

34 L. McKay "Direct or Indirect Taxation?" (1977) N.Z.L.J. 469.

35 Report of the Taskforce on Tax Reform (Government Printer, Wellington, 1982). (McCaw Report), pp. 211-217.

36 Budget 1984 New Zealand. Parliament. House of Representatives. Appendix to the journals, Vol. 2, B.6.

37 First Report p.3.

38 Reproduced in CCH Guide on Sales, Goods and Services Taxes (CCH, Auckland) (Looseleaf), pp. 76301-76326, henceforth Second Report.

39 Statement on Taxation and Benefit Reform 1985. New Zealand Parliament. House of Representatives. Appendix to the journals, Vol. 2, B.6B, p.10.

40 C.V. Brown and P.M. Jackson <u>Public Sector Economics</u> (2 ed., Martin Robertson, Oxford), pp. 217-224.

41 This was the assumption in the NZ Institute of Policy Studies incidence study, supra n. 18, p.24.

42 Scott and Davis, op. cit. Appendix A2.

43 For example wealth. See C. Sandford J. Willis and D. Ironside <u>An Annual Wealth Tax</u> (Heinemann, London, 1975).

44 See for example H. Simons <u>Personal Income Taxation</u> (University of Chicago Press, Chicago, 1930).

45 This is the basis for Milton Freidman's lifetime income hypothesis. For example see 1. Friend and R. Jones (eds) <u>Proceedings of Conference on Consumption and Saving Volume 2</u> (University of Pennsylvania Press, Philadelphia, 1960), pp. 49-174.

46 Although the direct expenditure tax has been proposed. See S. Lodin <u>Progressive Expenditure Tax - an Alternative</u> (Liber-Forlag, Stockholm, 1978).

47 A. Peacock <u>The Economic Analysis of Government</u> (Martin Robertson, Oxford, 1982), p. 192.

48 A. Peckman (ed) <u>What Should be Taxed : Income or Expenditure?</u> (Brookings Institution, Washington D.C., 1980), pp. 75-125.

49 Ibid. pp. 49-70.

50 Supra n. 6, pp. 232-240.

51 Supra. n. 47.

52 Except for India and Sri Lanka.

53 Under certain assumptions. See Brown and Jackson, op.cit. pp. 204-213.

54 See T. Ashton and S. St. John Insights into Excises (VUP, Wellington, 1985), Appendix A4.

55 See ibid. pp. 15-18.

56 See the Richardson Report, supra n. 28.

57 Scott and Davis, op.cit. Appendix A3.

58 For the theoretical basis of this see C. Shoup. "Consumption Tax, and Wages Type of VAT" (1968) 21 National Tax Journal 153.

59 Supra n. 35.

60 For a fuller discussion of these see supra n. 27, pp. 106-109.

61 A. Tait "The Value Added Tax : Why and How" [1984] Conference Report of the Canadian Tax Foundation 487, 491.

62 W. Oakland "The Theory of VAT : I-A Comparison of VAT Bases" (1967) 20 National Tax Journal 119.

63 This exposition assumes a credit offset method of calculation.

64 For example see C. Shoup Public Finance (Aldine, Chicago, 1969), Ch. 9.

65 This exposition assumes a consumption type VAT.

66 For a discussion of some of these see supra n.21, pp. 129-133.

67 Section 2 GSTA.

68 Section 8(1) GSTA.

69 See s.2 GSTA.

70 For example ss. 15(2)(a) and 51(1)(a) GSTA.

71 Idem.

72 The Finance Act 1972 (UK) ss. 9(2) and (3) see Public General Acts and Measures of 1972, Part I, Ch. 41, p.561 or Halsbury's Statutes of England (3 ed., Butterworths, London, 1972) Vol. 42, p.159.

73 The Value Added Tax 1983 (UK) see Public General Acts and Measures of 1983, Part II, ch. 55, p.1273 or Halsbury's Statutes of England (3 ed., Butterworths, London, 1983) Vol. 53, p.117 henceforth VATA.

74 See Ch. 16.3 for a discussion of this.

75 Section 5(1) GSTA; s.3(2) VATA.

76 Sections 8(1) and 2 GSTA; s.2(2) VATA.

77 Section 5(2) GSTA.

78 Section 5(3) GSTA.

79 Section 5(4) GSTA.

80 Section 5(5) GSTA.

81 Sections 5(6) and (7) GSTA; cl. 6(2) TRB.

82 Section 5(8) - (11) GSTA.

83 Section 5(12) GSTA.

84 Section 5(13); cl. 6(4) and (5) TRB.

85 Clause 6(1) TRB.

86 Clause 6(3) TRB.

87 W. Little Shorter Oxford Dictionary Vol. 2 (3 ed., Clarendon, Oxford), p. 2086.

88 33 SW (2d) 787 (1931).

89 West Surrey Water Co. v. Guardians of Chertsey Union [1984] Ch 513, 516.

90 Idem, without statutory intervention. Some overseas regimes have deeming "self-supply" provisions.

91 [1965] NSWR 1121, 1138.

92 Commonwealth v. Sterling Nicholas Duty Free Pty. Ltd. [1972-3] ALR 23.

93 Ibid. 30.

94 Ibid. 33.

95 [1975] 1 WLR 66.

96 Ibid. 70.

97 [1980] 1 All ER 353.

98 Ibid. 354.

99 Ibid. 355.

100 Idem.

101 [1975] 1 WLR 437.

102 Article 3(1) German VAT Law 1967.

103 Article 3(9).

104 Article 1(1).

105 Section 2 GSTA.

106. H.M. Gray Garrow and Gray's Law of Personal Property in New Zealand (5 ed., Butterworths, Wellington, 1968), p.2.

107 Section 2 GSTA.

108 See the Peat Marwick Mitchell and Co. submission to the de Cleene Committee.

109 G. Bannock, R. Baxter and R. Rees The Penguin Dictionary of Economics (2 ed., Penguin, London), p. 406.

110 See for example see Merchants Loan and Trust Co. v. Smietanka 255 US 509 (1921).

111 J.B. Sykes Concise Oxford Dictionary (6 ed., Clarendon, Oxford), p. 1039.

112 [1951] NZLR 177.

113 Ibid. 190.

114 [1955] All ER 391, 395.

115 Revesby Credit Union Co-op Ltd. v. FCT (1964-5) 112 CLR 564, 577.

116 Ibid. 578.

117 Idem.

118 Maseti v. Key N.O. [1951] 2 SALR 187, 192.

119 For a full text see Encyclopedia of European Community Law (Sweet and Maxwell, London), volume C VI, C15-107 (looseleaf).

120 See Halsbury's Statutes of England (3 ed., Butterworths, London, 1983) Vol. 42A, p.731, 742.

121 J. Mollering "International Transactions under German VAT Law"[1982] BTR 332, 335-336.

122 Section 3(2)(b) VATA.

123 Schedule 1, cl. 1 VATA.

124 [1980] VATTR 1.

125 CEC v. Scott [1978] STC 191.

126 Cumbrae Properties (1963) Ltd. v. CEC [1981] STC 799.

127 Gardner Lohmann Ltd. v. CEC [1981] VATTR 76.

128 Calor Gas Ltd. v. CEC [1973] 1 VATTR 205.

129 Clause 2 WP.

130 Clause 13(2) WP.

131 Clauses 13(3) and (4) WP.

132 Clause 13(10) WP.

133 First Report, p.54.

134 Clause 6(1) TRB.

135 Section 2 GSTA.

136 Clause 3(4) WP.

137 See cl. 13(2) WP.

138 [1915] AC 847, 855.

139 (1831) 1 B. and Ad. 950, 19 ER 1040.

140 [1985] STC 383.

141 Oliver supra n. 97.

142 CEC v. Pippa-Dee Parties Ltd. [1981] STC 495.

143 Idem.

144 Supra n. 140.

145 For example see The Heart of Variety Ltd. v. CEC [1975] VATTR 103.

146 Exeter Golf and Country Ltd. v. CEC [1981] STC 211.

147 Supra n. 142.

148 Tarmac Construction Ltd. v. CEC [1981] VATTR 35.

149 Supra n. 145 but also see National Transit Insurance Co. Ltd. [1975] 1 WLR 552, 556.

150 See supra n. 148.

151 Section 8(1) GSTA.

152 See cl. 7 TRB.

153 Section 6(3) GSTA.

154 Section 2(1) VATA.

155 [1978] STC 1, 6.

156 Ibid. 8.

157 (1880) 15 Ch. D. 247, 277-278.

158 Premier Auto Ticket Issuers Ltd. v. FCT (1933) 50 CLR 268, 298 cited with approval in Lowe v. CIR [1981] 1 NZLR 326, 339.

159 J. McKechnie (ed) Webster's New Twentieth Century Dictionary (2 ed., World Publishing, Cleveland), p.20.

160 Supra n. 119, C115-113.

161 For example CT v. Miramar Land Co. (1907) 26 NZLR 723, 725.

162 See supra n. 155.

163 Section 76 GSTA.

164 For the definition of profit see Re Spanish Prospecting Co. Ltd. [1911] 1 Ch. 92. 98.

165 Morrison's Academy, supra n. 155.

166 Article 2(1) German VAT Law 1967.

167 Supra n. 155.

168 National Water Council v. CEC [1979] STC 157.

169 Supra n. 155.

170 Supra n. 168, 167.

171 Supra n. 155, 10.

172 Idem.

173 Idem.

174 Idem.

175 Rael-Brook v. Minister of Housing [1967] 2 QB 65,76 often cited with approval.

176 For example see Greater London Red Cross Blood Transfusion Service v. CEC [1983] VATTR 241.

178 [1963] AC 1, 11-12.

179 [1981] 2 All ER 147.

180 See Rikarby v. CEC [1973] 1 VATTR 186 and Hempsons (a firm) v. CEC [1977] VATTR 73.

181 Section 8(1) GSTA.

182 Section 8(2) GSTA.

183 Section 2 GSTA, cl. 3(5) TRB.

184 Section 8(2) proviso GSTA.

185 Section 241 (1A) ITA.

186 Section 241 (1C) ITA.

187 Clause 3 TRB.

188 Section 241 (2) ITA.

189 Idem.

190 Clause 3 TRB.

191 Idem.

192 Section 8(2) VATA.

193 Section 8(5) VATA.

194 <u>First Report</u>, pp. 26-27.

195 International Bureau of Fiscal Documentation <u>Guides to European Taxation Volume 4 : VAT in Europe</u> (Amsterdam) (looseleaf).

196 As will be shown in Ch. 15.3 there is however a "loophole" for imported services.

197 Scott and Davis, op.cit p. 75.

198 Idem.

199 Section 2 GSTA.

200 Idem.

201 WP pp. 13-14.

202 Clause 2 GSTB1.

203 J. Prebble <u>The Taxation of Property Transactions</u> (Butterworths, Wellington, 1986), pp. 116-117.

204 <u>A.G. Healing and Co. Ltd.</u> v. <u>CIR</u> [1964] NZLR 222, 224.

205 <u>McClelland</u> v. <u>FCT</u> [1971] 1 WLR 191.

206 <u>FCT</u> v. <u>Williams</u> (1972) 3 ATR 283.

207 By analogy with <u>Cowan</u> v. <u>FCT</u> (1972) 3 ATR 474.

208 See <u>CIR</u> v. <u>Walker</u> [1963] NZLR 339, 363.

209 Without statutory intervention by analogy with, for example, Beetham v. CIR [1973] 1 NZLR 575.

210 By analogy with Corin v. IRC (1967) 10 AITR 411 but see Ch. 10.3.

211 Supra n. 203, pp. 30-33.

212 [1974] 2 NZLR 52.

213 Supra n. 208.

214 Infra n. 254.

215 [1976] 1 WLR 1036.

216 Ashtree Holdings Ltd v. CEC [1979] STC 818 and Tallishire Ltd. v. CEC [1979] VATTR 180.

217 [1981] VATTR 66.

218 J. Tiley Butterworths UK Tax Guide 1985-1986 (4 ed., Butterworths, London, 1985), pp. 1253-1254.

220 [1982] VATTR 116.

221 [1978] VATTR 20.

222 Section 21(1) GSTA; cl 18(1) TRB.

223 Section 21(5) GSTA; cl. 18(6) TRB.

224 Sections 21(3) and (4) GSTA.

225 Section 26 GSTA; cl. 21 TRB.

226 Section 5(13) GSTA; cl 6 (4) and (5) TRB.

227 Section 10(2) GSTA; cl 9(1) TRB.

228 Section 10(4) GSTA; cl. 9(4) TRB.

229 Section 25 GSTA; cl. 20 TRB.

230 Section 22 GSTA.

231 Section 20(3) (f) GSTA.

232 US Treasury Report to the President on Tax Reform for Fairness, Simplicity and Economic Growth 1984 Volume 3, p. 82.

233 The Dominion, Wellington, New Zealand, 31 January 1986, p. 5.

234 Clause 31 WP.

235 First Report pp. 40-41.

236 Clause 21 TRB.

237 Section 26(1) proviso GSTA.

238 Because the supply of goods and services has been cancelled; the previously agreed consideration has been changed or the goods or services have been returned : section 25(1) GSTA.

239 Section 25(2) GSTA.

240 Section 25(3)(e) GSTA; First Report pp. 45-46.

241 Section 21(1) proviso GSTA. However this regime may be changed by cl. 18(2) and (3) TRB.

242 IRD GST Guide (Government Printer, Wellington, 1986), pp. 66-67.

243 First Report, p. 11.

244 Sections 10(2) and 4 GSTA. See also cl 5 and 9(1) TRB.

245 First Report, pp. 39-40.

246 Section 67(2)(a) ITA.

247 Section 67(2)(b) ITA; cl. 3(1) TRB.

248 Section 2 GSTA.

249 Section 2 ITA. (Definition of "relative").

250 Section 10(5) GSTA, whether or not disclosure is made: cl. 9(5) TRB.

251 Section 10(7) GSTA.

252 Section 5(5) proviso GSTA.

253 Section 10(9) GSTA.

254 [1985] STC 383.

255 Sections 10(10) and (11) GSTA.

256 Sections 10(12) and (13) GSTA.

256 First Report, p. 44.

258 Section 10(16) GSTA.

259 Section 10(18) GSTA.

260 M.R. McDaniel and S.S. Surrey International Aspects of Tax Expenditures : A Comparative Study (Kluwer, Deventer, 1985), section 3.8.

261 Section 9(1) GSTA.

262 First Report, p. 12.

263 Clause 15(2) WP.

264 Clauses 15(4) and (6) WP.

265 Section 4 VATA.

266 Section 9(2)(a) GSTA.

267 Section 9(2)(b) GSTA.

268 Section 9(2)(c) GSTA.

269 Clause 8(1) TRB.

270 Section 9(2)(e) GSTA.

271 Section 9(2)(f) GSTA.

272 CEC v. Townsville Miners Club MAN 78/212 (1978).

273 Section 9(3)(a) GSTA.

274 Clause 18(3) TRB.

275 (1980) 4 TRNZ 1.

276 Sections 9(4) and (5) GSTA.

277 Section 9(3)(b) GSTA.

278 Supra n. 195.

279 See First Report, p. 5.

280 Section 19(1) GSTA.

262 First Report, p. 12.

263 Clause 15(2) WP.

264 Clauses 15(4) and (6) WP.

265 Section 4 VATA.

266 Section 9(2)(a) GSTA.

267 Section 9(2)(b) GSTA.

268 Section 9(2)(c) GSTA.

269 Clause 8(1) TRB.

270 Section 9(2)(e) GSTA.

271 Section 9(2)(f) GSTA.

272 CEC v. Townsville Miners Club MAN 78/212 (1978).

273 Section 9(3)(a) GSTA.

274 Clause 18(3) TRB.

275 (1980) 4 TRNZ 1.

276 Sections 9(4) and (5) GSTA.

277 Section 9(3)(b) GSTA.

278 Supra n. 195.

279 See First Report, p. 5.

280 Section 19(1) GSTA.

281 Section 19(2) GSTA; cl. 16 TRB.

282 Section 20(4)(a) GSTA.

283 Section 20(3)(a) GSTA; cl 17 (4) TRB.

284 Sections 20(4)(6)(i), 20(3)(6)(i) and (ii).

285 Depending on how they are charged for see cl. 17(4) and 21 TRB.

286 Supra n. 218, pp. 1250-1253.

287 First Report, pp. 8-13.

288 See the Accountants Society's submission to the de Cleene Committee pp. 4-7.

289 See the submission of Mr. P. Whitmore to the de Cleene Committee.

290 See the Law Society's submission to the de Cleene Committee pp. 1-6.

291 See the submission of Mr. B. Niculescu to the de Cleene Committee pp. 1-2.

292 Infra n. 385.

293 Pages 5 - 6.

294 See A. Tait Value Added Tax (McGraw-Hill, London, 1972), Ch. 4.

295 Sectins 14(a) and 3 GSTA.

296 Section 14(b) GSTA.

297 Section 14(c) GSTA.

298 Section 14(d) GSTA; cl. 13 TRB.

299 C. Bakker and P. Chronican Financial Services and the GST (VUP, Wellington, 1985), p. 5.

300 CCH, op. cit p. 76303.

301 Ibid. p. 76387.

302 Supra n. 299, pp. 8-12.

303 US Treasury Report, op cit. p. 49.

304 Supra. n. 299, p. 11.

305 US Treasury Report, op cit. p. 53.

306 Supra n. 299, p. 12.

307 G. Harris and W. Mapp The Goods and Services Tax (Butterworths, Wellington, 1986).

308 CCH, op. cit. p. 76382.

309 Using a very simple model Treasury showed how exempting financial services produced an effective tax rate of 2.5 percent: idem. The Bankers' Association argued full invoicing would cost four of the major trading banks $14M while exemption would cost them up to $40M per annum: The Evening Post, Wellington, New Zealand, 31 August, 1985, p. 11.

310 CCH, op. cit. p. 76305.

311 Ibid. p. 76314.

312 Gardner Lohmann Ltd. v. CEC [1981] VATTR 76 but see s. 3(1)(k) GSTA.

313 Section 3(1) GSTA.

314 Section 3(2) GSTA.

315 _First Report_, p. 18.

316 Section 10(19) GSTA.

317 _CCH_, op. cit. p. 73011.

318 See _CCH_, op cit. pp. 76320-76321.

319 See cl. 2, 11, 12 GSTB1.

320 _CCH_, op cit. pp. 76397-76398.

321 See _Parry_ v. _CIR_ (1984) 7 TRNZ 345.

322 See _First Report_, p. 51.

323 See _CCH_, op. cit. pp. 76321-76324.

324 Section 2 GSTA.

325 Clause 9(6) TRB.

326 Clause 3(8) TRB.

327 _New Zealand Times_, Auckland, New Zealand, 23 March 1986, p. 2.

328 [1970] NZLR 462.

329 Section 11(1)(c) GSTA.

330 See Scott and Davis, op.cit. pp. 59-71 and infra n. 353, pp. 225 and 429.

331 _First Report_, p. 9.

332 Scott, Goss and Davis, op. cit. p. 24.

333 Ibid. p. 41.

334. Ibid. pp. 41-44.

335 Ibid. p. 46.

336 See the submissions to the de Cleene Committee of the Medical Association and the Royal Plunket Society.

337 See for example infra n. 406.

338 Tobacco is often thought of as a luxury good but this is not supported by empirical evidence: see Ashton and St. John, op. cit. pp. 44-45.

339 Supra n. 330 and the NZ Book Council submission to the de Cleene Committee. Also see B. White and M. Ewins Don't Tax Reading (National Book Committee, London, 1985).

340 Clause 3(6) TRB prevents a tax avoidance situation.

341 Article 10 Danish VAT Law 1978.

342 See VAT (Cars) Order, S.I. 1980, No. 442 and VAT (Special Provisions) Order, S.I. 1981, No. 1741.

343 See the Motor Vehicle Manufacturers Association submission to the de Cleene Committee.

344 Supra n. 260, guidelines 16 and 16A.

345 See supra n. 195.

346 CCH, op cit. pp 73037 - 73038.

347 Ibid. pp. 76316-76317.

348 The Evening Post, Wellington, New Zealand, 7 May 1986, p. 14.

349 See IRD The Fire and General Insurance Industry and GST (Government Printer, Wellington, 1986), p. 17.

350 See First Report, pp. 22-23 and, for example, the submissions of the Waihi Borough Council, Upper Hutt City Council and the Rangiora Borough Council to the de Cleene Committee.

351 US Treasury Report, p. 68.

352 D. Biehl "International Taxation Principles" (1982) 37 Public Finance 189.

353 International Fiscal Association International Problems in the Field of General Taxes on Sales of Goods and Services (Kluwer, Deventer, 1953), pp. 109-148.

354 Ibid. p. 117.

355 Supra n. 27, p. 173.

356 Supra n. 294, p. 17.

357 Supra n. 353, p. 144.

358 WP p. 11.

359 Section 11(1) GSTA and cl. 10.

360 See section 11(2)(a), cl. 10(4); s11(2)(6); s11(2)(c)(i) and cl 10(5); s11 (2)(c)(ii); s11(2)(d); cl 10(6); s11(2)(f) and s11(2)(g) GSTA or TRB. For the UK position see Sch. 5, Group 9 and 15 VATA.

361 First Report, p. 16.

362 Supra n. 358.

363 National Business Review, Auckland, New Zealand, 2 May 1986, p. 25.

364 See cl 15(2) GSTB1; s.12(2) GSTA and cl 11(3) TRB.

365 Supra n. 353, p. 121.

366 Ibid. pp. 124-125.

367 See cl. 10(6) TRB; s.11(2)(f); s.8(2) and s.11(2)(d) GSTA respectively.

368 Section 51(1) GSTA.

369 Section 76 GSTA; First Report, p. 54.

370 Section 15(1)(d) GSTA.

371 Section 15(2) GSTA.

372 Section 15(3) GSTA.

373 Section 16 GSTA.

374 Section 15(4) GSTA.

375 Section 15(5) GSTA.

376 See s.55 GSTA, cl. 29 TRB.

377 Sections 191 and 2 ITA.

378 Section 56(1) GSTA.

379 [1973] 1 VATTR 43.

380 [1975] QB 465 but see Saunders v. Smith [1980] VATTR 53.

381 Section 59(1) GSTA see s.32 VATA.

382 Clause 30(1) TRB.

383 Section 60(5) GSTA.

384 See ss.59(2), 60(2) GSTA and cl. 30(1) TRB.

385 C. Sandford "The Administrative and Compliance Costs of Taxation : Lessons from the United Kingdom" (1985) 15 VUWLR 199, 201.

386 Scott and Davis, op. cit. pp. 40-43.

387 Ibid. p.43.

388 Section 62(1)(l) GSTA.

389 Section 24(3) GSTA.

390 See supra n. 195.

391 Section 24(2) GSTA and First Report, pp. 30-31.

392 Section 25(3)(a) GSTA and cl. 20 TRB.

393 To simplify see cl. 20(3) TRB.

394 See cl. 64(1)(f), (l) and (k) GSTB1.

395 Note that the "document" definition in s.2 GSTA seems to contemplate such invoices.

396 First Report pp. 35-37.

397 Scott and Davis, op.cit. pp. 11-15.

398 Budget 1986 Part II New Zealand Parliament. House of Representatives. Appendix to the journals, vol. 2, B.6A, p.32.

399. Supra n. 397.

400 Ibid. pp. 54-55.

401 OECD Long Term in Tax Revenues of OECD Member Countries 1955-1980 (OECD, Paris, 1981).

402 Although this does not take account of the substantial increases in tobacco taxes in the Budget 1986.

403 Supra n. 398, p. 35.

404 Idem.

405 Where GDP is predicted at $51,540M in 1986/7 in nominal prices by the Institute of Economic Research.

406 H. Aaron (ed). VAT - Experiences in Some European Countries (Kluwer, Deventer, 1982), p. 27.

407 Budget 1986 Part I New Zealand Parliament. House of Representatives. Appendix to the journals, vol. 2, B.6, p. 63.

408 E.H. Davies and J.A. Kay "Extending the VAT Base: Problems and Possibilities" (1955) 6 Fiscal Studies 1.

409 J.G. Head (ed) Taxation Issues in the 1980s (Australian Tax Research Foundation, Sydney, 1983), p. 317.

410 Scott, Goss and Davis, op. cit. Appendix A3.

411 Estimates of the Government of NZ for the year Ending 31 March 1987 New Zealand Parliament. House of Representatives. Appendix to the journals, vol. 2, B.7, p. 142.

412 Supra n. 385.

APPENDIX A1 - IMPORTANT EVENTS IN THE HISTORY OF VAT

1342	First turnover tax introduced in Spain and Spanish colonies (the Alcabala).
1904	Philipines rekindled interest in the turnover tax by introducing one.
1917	The French introduced a turnover tax as did many other European countries in the early part of the century.
1918	Professor Thomas S. Adams of the Yale University spoke at the Annual Conference of the National Tax Association recommended a form of VAT as a business tax and a German industrialist, von Siemens, proposed a "refined turnover tax" (veredelte Umatzsteuer), an income type VAT, for Germany.
1932 and 1933	US Brookings Institute recommended the VAT as a state sales tax for Alabama and Iowa.
1934	A German, Gerhard Colm, published an article entitled "The Ideal Tax System" that incorporated a VAT.
1935	A partial VAT element was introduced into the Argentine turnover tax.
1940	American, Paul Studenski, concluded VAT was the ideal business tax and wrote in favour of it. Senator C. Joseph O'Mahoney introduced a VAT Bill into the US Senate.
1948	The French introduced a VAT component into the wholesale state of their turnover tax.
1949	The Shoup Mission went to Japan to rebuild its war torn economy. They recommended a VAT and the Local Tax Bill was passed in 1950. However the legislation was never put into effect and was repealed in 1954.

1953 With little prior warning the State of Michigan introduced the VAT-like tax Adams had proposed (the Business Activities Tax).

1954 Maurice Laure (the "father of VAT") extended the VAT component in the French turnover tax.

1957 The Treaty of Rome created the EEC.

1959 Carl Shoup's influential report on the "Fiscal System of Venezuela" argues in favour of the turnover tax over the VAT.

1960 The Swedish General Tax Commission proposed their retail sales tax be replaced by a VAT. The US case of Armco Steel Corporation v. Department of Revenue 359 Mich. 430 (1960) held the Michigan VAT to be an income tax.

1963 The EEC Neumark Committee made VAT part of the EEC tax harmonisation policy. The UK National Economic Development Commission report recommended a VAT as a way of increasing economic growth. The German federal government sent the Fourth Bundestag a "Blueprint for a Turnover Tax Law" which envisaged an income type VAT.

1964 The UK Richardson Committee on Turnover Taxation (Cmnd 2300) opposed the VAT for administrative reasons. A partial VAT was introduced in Finland.

1965 The Brazilian states adopted a VAT (called the ICM).

1966 The Canadian Carter Commission argued for the retail sales tax ahead of the VAT.

1967 The EEC issued the Sixth Directive with guidelines on members' VATs. Oakland wrote two pathbreaking theoretical articles on the VAT in the National Tax Journal.

1968	France introduced the first comprehensive consumption type VAT followed by Germany and Uruguay.
1969	The Netherlands and Sweden introduced VATs.
1970	Deadline for all EEC members to introduce VATs : Belgium and Italy failed to meet it. Luxembourg and Norway introduced VATs. A minority report to the US President proposed a VAT for the US. A Conservative Government was elected in the UK with a promise to abolish the Selective Employment Tax (SET) and investigate VAT.
1971	A UK Green Paper (Cmnd 4929) was published proposing to replace SET and the purchase tax with a VAT in 1973. Belgium introduced a VAT.
1972	Irish VAT introduced.
1973	The UK and Austria introduced VATs. A US Advisory Commission on Intergovernmental Relations report opposed VAT for the US, but two IMF reports supported it.
1975	The Australian Asprey Committee recommended a shift to indirect taxation. The State of Michigan introduced a VAT-like business tax calculated on an additive basis (called the Single Business Tax).
1976	Israel introduced a broadbased VAT.
1977	Following IMF recommendations Korea also introduced a broadbased VAT.
1978	The UK Meade Committee on the Reform of Direct Taxation argued in favour of the expenditure tax base.
1979	The UK standard and higher rates were replaced by a single rate of fifteen percent.

1979 and 1980	Senator Long and Representative Al Ullman, Chairman of two influential congressional tax legislation committees proposed a ten percent VAT for the US yielding $US 115B (HR 7015, the Tax Restructuring Act of 1980).
1984	The Secretary of the Department for the Treasury reported to the US President on proposals for introducing a VAT.

Sources: Various.

APPENDIX A2 - A HISTORY OF THE GST

1933	A five percent wholesale sales tax on most products was introduced as a temporary emergency measure. Over the years its rates proliferated and its base narrowed to thirty seven percent of the potential base.
1967	The Ross Committee investigating the NZ tax system argued the VAT was unsuitable for NZ.
1976 and 1977	The Monetary and Economic Council proposed a major shift in NZ taxation to indirect taxation.
1981	A private sector consultation held at the Trillos in Auckland on February 24 considered the VAT but decided it was "politically unacceptable".
1982	The McCaw Committee Report recommended consideration of the VAT.
8 November 1984	GST announced in the 1984 Budget.
26 March 1985	The White Paper on the GST and "GST the Key to Lower Income Tax" published.
1 May	An Institute of Policy Studies incidence study of GST found it to be little more regressive than the existing wholesale sales tax.
17 May	Submissions on White Paper closed.
4 June	The Advisory Panel presented their First Report to the Minister of Finance proposing major changes to the GST after considering 1067 submissions in two weeks.
6 June	IRD discussion paper on the financial services sector completed.
13 June	The Minister of Finance's second Budget dealing mainly with government expenditure given.

16 June	Deferral of GST to 1 October 1986.
5 August	The Economic Adviser to the Treasury submitted a critical report on the Second Advisory Panel Report to the Minister of Finance.
20 August	The Minister of Finance gave his Statement on Taxation and Benefit Reform when he announced the GST rate.
22 August	The Minister of Finance released the Second Advisory Panel Report on the GST dealing with financial services and land. The first draft of the GST Bill was introduced into Parliament and later referred to the Finance and Expenditure Cosmmittee who called for further submissions and received over two hundred.
27 September	Submissions on the GST Bill closed.
19 November	The GST Bill was reported back to the House of Representatives from the Committee.
28 November	The GST Act was passed in Parliament.
3 December	The Act got the Governor-General's ascent and became law.
22 March 1986	The Automobile Association and some magazines were reported as beginning charging for GST.
1 April	Original commencement date for GST. Most sales taxes abolished.
31 July	1986 Budget estimated revenue from the GST.
31 August	All taxable activities were required to be registered.
1 October	GST introduced. Deferred payment scheme introduced.
Sources:	Various.

APPENDIX A3 - THE WORLD'S VATS

Country	VAT introduced	Taxes mainly replaced[a]	Designed effect on revenue	Other concurrent tax changes
Argentina	January 1975	Wholesale sales	Equal yield	Provincial tax changes
Austria	January 1973	Cascade wholesale	Equal yield	Lower income taxes
Belgium	January 1971	Cascade wholesale	Equal yield	—
Bolivia	November 1973	Multistage ring system	Equal yield or increase	New luxury tax rates, increased excises
Brazil	January 1967	Cascade tax on sales and consignments	Equal yield	—
Chile	March 1975	Cascade turnover	Increase	Taxes on gasoline income and property raised
Colombia	January 1965	No sales prior to VAT	Increase	Income, property, capital gains taxes changed
Costa Rica	January 1975	Multistage ring system	Increase	Increased excises
Denmark	July 1967	Wholesale	Increase	Lower income tax
Dominican Republic	November 1983	—	—	—
Ecuador	August 1970	Turnover taxes on mining and manufacturing replaced	Increase	Mining taxes reduced
France............	January 1968	Simpler VAT	Equal yield	Tax exemptions abolished and income tax adjustments
Germany, Federal Republic of.......	January 1968	Cascade retail	Equal yield	—
Greece[b]				
Guatemala	August 1983	Stamp duty on sales, services, and imports	—	—
Haiti	November 1982	79 excises	Equal yield	Replaced commissions, levies, and excises

Source: Aaron "The Value Added Tax : Why and How", op.cit. 488-490.

Country	VAT introduced	Taxes mainly replaced[a]	Designed effect on revenue	Other concurrent tax changes
Honduras	January 1976	Single-stage ring system	Increase	—
Indonesia[b]	January 1985	Manufacturers' ring with eight rates	Equal yield	Reform of the income tax
Ireland	November 1972	Wholesale and retail sales	Equal yield	Some tariff reductions
Israel	July 1976	Various sales	Increase	—
Italy	January 1973	General and local government sales	Equal yield	—
Ivory Coast	January 1960	Manufacturers' VAT	Equal yield	—
Korea	July 1977	Eight sales taxes representing 40 per cent of revenue	Equal yield	Changed excises
Luxembourg	January 1970	Cascade wholesale	Equal yield	—
Madagascar	January 1969	Cascade production	Increase	—
Mexico	January 1980	Cascade production	Equal yield or increase	Lower border VAT of 6 per cent
Morocco	January 1962	Cascade production	Equal yield	Changed corporate and production taxes
New Zealand	May 1986	Wholesale tax	Yield extra revenue	Changed income taxation
Niger	January 1986	Cascade manufacturer	Yield extra revenue	Replaced existing taxes on services
Netherlands	January 1969	Cascade wholesale	Equal yield	Lower income tax
Nicaragua	August 1978	Multistage ring system	Equal yield	Reduced customs duties
Norway	January 1970	Sales taxes on 65 per cent of consumption	Loss	Reduced income and property taxes
Panama	January 1976	No sales tax	Increase	Stamp taxes reduced and increased excises
Peru	January 1973	Cascade production and stamp tax	Increase	—
Portugal[b]	—	Manufacturers' sales tax	Equal yield	—

Country	VAT introduced	Taxes mainly replaced[a]	Designed effect on revenue	Other concurrent tax changes
Senegal	March 1961	Manufacturers' VAT	Equal yield	—
Spain[b]				
Sweden	January 1969	Retail sales tax	Equal yield	1 per cent payroll tax to offset lost revenue
Turkey	January 1986	—	—	—
United Kingdom	April 1973	Multirate wholesale	Loss	Selective employment tax removed
Uruguay	January 1968	Manufacturers' single-stage tax and a cascade turnover tax	Equal yield	—

[a] This column is as accurate as a brief summary can be: "cascade production tax" refers to a cascade tax on business turnover restricted to the production stage; "cascade wholesale tax" extends the turnover tax to include the wholesale stage; "cascade retail tax" extends the turnover tax to include the retail stage; "manufacturers'," "wholesale," or "retail" taxes are single-stage taxes, some operated on a ring system, others on a credit system. [b] Proposed.

APPENDIX A4 - RATES OF THE WORLD'S VATS

Country	VAT introduced	VAT rates at introduction[a]	1984[a]
Argentina	January 1975	*16*	5, 8, *18*, 25
Austria	January 1973	*8*, 16	
Belgium	January 1971	6, 14, *18*	6, 17, *19*, 25
Bolivia	October 1973	5, *10*, 15	5
Brazil	January 1967	*12*	9, *12*, 17
Chile	March 1975	*20*	*20*
Colombia	January 1975	4, 6, *10*	6, *10*, 15, 20, 35
Costa Rica	January 1975	8	
Denmark	July 1967	10	22
Dominican Republic	January 1983	*6*	*6*
Ecuador	July 1970	4	
France	January 1968	6.4, *13.6* 20, 25	5.5, 7, *18.6*, 33.3
Germany, Federal Republic of	January 1968	5, *10*	7, *14*
Haiti	November 1982	*7*	*10*
Honduras	January 1976	3	*5*, 6
Ireland	November 1972	5.26, *16.37*, 30.26	0, *23*, *35*
Israel	July 1976	0, 8	
Italy	January 1973	6, *12*, 18	28, 10, 15, *18*, 20, 38
Ivory Coast	January 1960	*8*	11.11, *25*, 35.13
Korea	July 1977	0, 10	
Luxembourg	January 1970	2, 4, *8*	3, 6, *12*
Madagascar	January 1969	6, 12	
Mexico	January 1980	*10*	0, 6, *15*, 20
Morocco	January 1962	5, *12*	11.25, *17*, 30
Netherlands	January 1969	0, 4, *12*	5, *19*
Nicaragua	January 1975	*6*	*10*, 25
Niger	January 1986	8, *12*, 18	
Norway	January 1970	20	
Panama	March 1977	*5*	*5*
Peru	July 1976	2, 30, 40	*18*
Senegal	March 1961	—	7, *20*, 50
Sweden	January 1969	11.1	
Turkey	January 1986	10	
United Kingdom	April 1973	0, *10*	0, *15*
Uruguay	January 1968	5, *14*	12, *20*

[a] Rates in italic are the so-called "standard rates."

Source: Ibid. 496.

APPENDIX A5 - METHODS OF CALCULATION

Assuming a 10 percent rate and three firms in the economy.

	Firm M	Firm W	Firm R	Total
Addition Method				
Wages	120	180	300	600
Rent	20	30	50	100
Interest	20	30	50	100
Net Profit	40	60	100	200
Value Added	200	300	500	1000
VAT	20	30	50	100
Subtraction Method				
Sales	300	600	1100	2000
Purchased	100	300	600	1000
Value Added	200	300	500	1000
VAT	20	30	50	100
Credit Offset Method				
Sales	300	600	1100	2000
Output Tax	30	60	110	200
Purchases	100	300	600	1000
Input Tax	10	30	60	100
VAT (i.e. Output Tax - Input Tax)	20	30	50	100

APPENDIX A6 - METHODS OF CALCULATION FOR EACH VAT TYPE

Examples to Illustrate Calculation Techniques with each VAT Base

Base \ Techniques	Addition		Subtraction		Credit	
Gross Product	+ Profit	180	+ Sales	1000	+ Tax on Sales	100
	+ Depreciation	40	- Purchases (Current)	(300)	-Credit on Purchase	(30)
	+ Wages	400	+ Increase in Inventory	20	+ Tax on Inventory Increase	2
	+ Rent paid	100				
	+ Interest paid	-0-				
	VAT Base	720	VAT Base	720		
	Tax (10%)	72	Tax	72	Tax	72
Income	+ Profit	180	+ Sales	1000	+Tax on Sales	100
	+ Wages	400	- Purchases (Current)	(300)	-Credit for Tax on Purchases	(30)
	+ Rent paid	100	+ Increase in Inventory	20	+Tax on Inventory Increase	2
	+ Interest paid	-0-	- Depreciation	(40)	-Tax on Depreciated Part of Property	(4)
	VAT Base	680	VAT Base	680		
	Tax	68	Tax	68	Tax	68
Consumption	+Profit	180	+ Sales	1000	+Tax on Sales	100
	+ Wages	400	- Purchases (Current)	(300)	-Credit for Tax on Current and Investment Purchases	(35)
	- Increase in Inventory	(20)	- Investment	(50)		
	+ Depreciation	40				
	- Investment	(50)				
	+ Interest paid	-0-				
	+ Rent paid	100				
	VAT Base	650	VAT Base	650		
	Tax	65		65		65

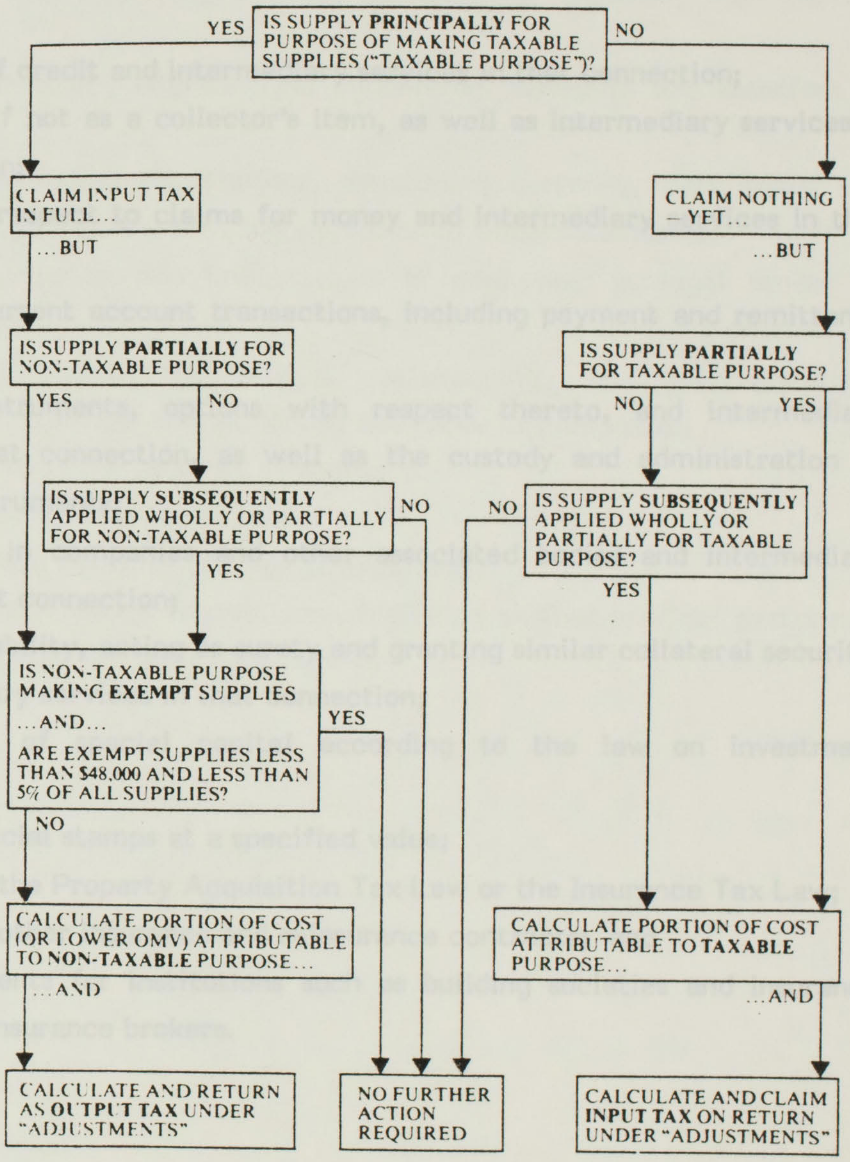
Assumptions: (1) Absolutely general comprehensive VAT at single uniform 10% rate
(2) Enterprise Transactions as follows

Purchases on Current Account	300	Sales	1000
Depreciation	40	Closing Inventory	120
Wages	400		
Rent	100		
Profit	180		
Beginning Inventory	100		
Investment in Fixed Assets	50		

(3) Profit is net after depreciation and adjusts for inventory

Source: Price, Waterhouse and Co. Information Guide : Value Added Tax (US, 1979).

APPENDIX A7 - SCHEME OF INPUT TAX DEDUCTIONS



Source: Peat, Marwick, Mitchell and Co. The Complete Business Guide to GST (NZ, 1986), p. 38.

APPENDIX A8-FINANCIAL SERVICES EXEMPTIONS IN GERMANY AND LUXEMBOURG

Germany

The following financial services, to simplify, are exempt under Article 4 of the German VAT Law 1980 being certain financial transactions and turnovers in connection with:

(a) the granting of credit and intermediary services in that connection;
(b) legal tender, if not as a collector's item, as well as intermediary services in that connection;
(c) dealings with respect to claims for money and intermediary services in that connection;
(d) deposit and current account transactions, including payment and remittance transactions;
(e) negotiable instruments, options with respect thereto, and intermediary services in that connection, as well as the custody and administration of negotiable instruments;
(f) participations in companies and other associated bodies and intermediary services in that connection;
(g) undertaking liability, acting as surety and granting similar collateral security, and intermediary services in that connection;
(h) administration of special capital according to the law on investment companies;
(i) dealings in official stamps at a specified value;
(j) supplies under the Property Acquisition Tax Law or the Insurance Tax Law;
(k) supplies under other insurance and reinsurance contracts; and
(l) business of agents for institutions such as building societies and insurance companies or insurance brokers.

Luxembourg

The following financial services, to simplify, are exempt under Article 44 of the Luxembourg VAT Act:

(a) the granting, negotiation, and administration of credit, discount and rediscount transactions;

(b) the registration and management of credit guarantees or any other security for money;

(c) transactions, including negotiations, with respect to debts, except for debt collection;

(d) transactions, including negotiations, with respect to cheques and other negotiable instruments;

(c) transactions, including negotiations, concerning deposits and current accounts;

(f) transactions, including negotiations, concerning payments and transfers of funds;

(g) transactions, including negotiations, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items;

(h) deliveries, negotiation and importations of gold used as legal tender or regularly quoted;

(i) transactions including negotiations, safekeeping, and administration, concerning securities and shares, stocks and bonds of companies;

(j) services rendered in the issuance of shares;

(k) services concerning investment funds;

(l) the supply, at face value, of postage stamps; and

(m) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents.

Source: Supra n. 195.

APPENDIX A9 - VAT REGISTRATION IN SOME OVERSEAS COUNTRIES

Austria

- threshold : 40,000 AS (about $5,400) per annum turnover.
- other : deduction for small traders of 20 percent of turnover if turnover is less than 100,000 AS and 10 percent of turnover if turnover is less than 150,000 AS.

Belgium

- threshold : 2.5M BFrs. ($112,500) per annum turnover.
- other : threshold 4.5M BFrs. if food is sold.

Denmark

- threshold : 10,000 D.Kr ($2,500) per annum turnover.
- other : threshold 30,000 D.Krs for canteens and 50,000 D.Krs for blind entrepreneurs.

Germany

- threshold : 20,000 DM ($18,800) per annum turnover.
- other : turnover less than 100,000 DM allows special low rates and simplified accounting methods.

Ireland

- threshold : £30,000 ($78,300) per annum turnover (if ninety percent of turnover is taxable supplies otherwise £15,000 turnover).

Luxembourg

- threshold : 20,000 LFrs. per annum turnover.
- other : deduction for small traders with turnover less than IM LFrs.

Italy

- threshold : 2M lire ($2,700) per annum turnover.

Netherlands

- threshold : 2050 Dfl. ($1,700) per annum tax.

Norway

- threshold : 6,000 Nkr. ($1,600) per annum turnover.

Sweden

- threshold : 10,000 SKr. ($2,800) per annum turnover.

U.K.

- threshold : £19,500 ($56,160) per annum turnover.

Source: Idem.

APPENDIX A10 - RETURN PERIODS IN SOME OVERSEAS COUNTRIES

Austria

- return periods : monthly
  : quarterly if turnover less than 300,000 AS (about $40,500) per annum.
- returns required : ten days later.

Belgium

- return periods : monthly
  : quarterly if turnover less than 20M BFrs ($900,000) per annum
- returns required : twenty days later.

Denmark

- return periods : quarterly
  : monthly
  : six monthly (for some agricultural entrepreneurs).

France

- return periods : monthly
  : quarterly if returns less than 500 Frs ($140) per month.

Germany

- return periods : monthly
  : quarterly if tax liability less than 6000 DM ($5,600).

Ireland

- return periods : two monthly.
- returns required : nineteen days later.

Italy

- return periods : quarterly if turnover 36M to 180M lire ($36,000 to $180,000) per annum.

Luxembourg

- return periods : monthly
  : quarterly required if turnover 1.6M to 18M Lfrs per annum.
- returns required : fifteen days later.

Netherlands

- return periods : three monthly (normal)
  : monthly (voluntary).
- returns required : one month later.

UK

- return periods : three monthly
  : monthly (voluntary).
- returns required : thirty days later.

Source: Idem.

APPENDIX A11 - GST AND OVERSEAS REGISTRATION AND RETURN FORMS

INLAND REVENUE

Goods and Services Tax Application for Registration

Goods and Services Tax Act 1985

- Please print in CAPITAL LETTERS in the appropriate panels.
- When completed, return this form to the Inland Revenue Department using the reply-paid envelope provided.
- If you require help to complete this form, please contact the Inland Revenue District Office at the location below.

PORIRUA
374249 00000

I.R.D. Number 1 21-683-973

Please read the brochure *"Guide to Registration"* before completing this form

A (i) Will you be conducting a 'taxable activity' on 1 October 1986? *Enter YES or NO*

If your answer is 'NO', just complete J (the Declaration panel) and return this form to the Inland Revenue Department

(ii) Do you expect your 'total taxable supplies' for the year ended 30 September 1986 *or* 30 September 1987 to be more than $24,000? *Enter YES or NO*

OFFICE USE ONLY R.V.N 2

(iii) *If* the answer to (ii) above is 'NO', are you applying for 'voluntary registration'? *Enter YES or NO*

B **Trading Name** - Enter trading name, if any. 3

C **Postal Address** - Complete this panel if the address shown above is incorrect for GST returns and correspondence. 4

D **Street Address** - Enter street address of principal place of business. *(do not use box number)* 5

E Enter **Telephone number** of principal place of business.

F What is your main 'taxable activity'? 6

G Do you make 'exempt supplies'? *Enter YES or NO* 7

H Enter date of commencement of 'taxable activity' if after 1 October 1985. 8 day month year

I **Importer/Exporter** *Enter YES or NO* (a) Are you an importer? 9 (b) Are you an exporter? 10

If YES enter your C.A.S.P.E.R. number 11

J **Declaration**

Name of person making this declaration — first names — surname

your title — indicate whether proprietor, partner, director, manager, secretary, office holder in club or association, duly authorised person.

I declare that the above particulars are true and correct.

signature — date / /

K **Assistance** – Once your registration has been acknowledged, would you like an officer to contact you to explain the Goods and Services Tax? *Enter YES or NO* 12

OFFICE USE ONLY ► Category 13 — Vis Alloc. Code 14 — Checked by: — Date: / /

Sources: Various

GST4

INLAND REVENUE.

Goods and Services Tax Act 1985

Goods and Services Tax
Application for Group Registration

- Please print in CAPITAL LETTERS in the appropriate panels
- When completed, return this form to the Inland Revenue Department
- If you require help to complete this form please contact your local Inland Revenue Department office.

Name: ABC PRINTERS LIMITED

Address: P.O. BOX 34797
WELLINGTON

Please read the '*GST Guide*' before completing this form

A Nominated Representative Member

Name: ABC PRINTERS LIMITED — Registration Number: 99 999 999

Postal Address: P.O. BOX 34797, WELLINGTON

B Eligibility for Group Registration

1. Group of Companies

Does this Group qualify for Group Treatment for Income Tax in terms of Section 191 of the Income Tax Act 1976? *Enter Yes or No* YES

2. Groups other than Companies

(a) Does one member control each of the other members? *Enter Yes or No*

(b) Does one person control all of the members? *Enter Yes or No*

(c) Do two or more individuals, carrying on a taxable activity in partnership, control all the members? *Enter Yes or No*

(d) Name(s) and address(es) of the member or individuals who control the Group

C Enter the date you wish grouping for Goods and Services Tax to begin: 01 10 86 (day month year)

D List of Members to be included in the Group
(All Members must be individually registered for Goods and Services Tax before applying for Group Registration)

Name	Registration Number
ABC PRINTERS (LEVIN) LIMITED	33 333 333
ABC PRINTERS (PALMERSTON NORTH) LIMITED	44 444 444
ABC PRINTERS (ROTORUA) LIMITED	55 555 555
ABC PRINTERS (TAIHAPE) LIMITED	66 666 666
ABC PRINTERS (WANGANUI) LIMITED	77 777 777

continue on reverse if necessary

E Declaration: *On behalf of the members of the Group, I declare that the particulars on this form are true and correct*

Name of person making this declaration: JOHN ERNEST (first names) FLOWERS (surname)

your title: MANAGING DIRECTOR (indicate whether partner, director, secretary, duly authorised person)

Signature: [signature]

date: 30/5/86

OFFICE USE ONLY
Checked by ....
Date: ..../..../....

Attach your cheque here

INLAND REVENUE

GST 101

Please refer to the booklet 'GST Guide' before completing this form

Goods and Services Tax RETURN

Goods and Services Tax Act 1985

Period covered by this return	from	to		Registration No.	
2 MONTHS	01–12–86	31–01–87	2	99–999–999	1

This return & payment due by: 01–MARCH–1987

ABC ELECTRONICS LIMITED
P.O. BOX 2197
WELLINGTON

Return to: Inland Revenue Department
PORIRUA

INLAND REVENUE OFFICE COPY

Goods and Services Tax on supplies *made* by you

		Box
Total taxable supplies made for the period *(including GST)*	$ 127,640·34	3
less: Zero rated supplies included above	$ 4,718·10	4
equals	$ 122,922·24	
divided by 11 equals	$ 11,174·75	
plus (total amount of tax adjustments)	$ 292·60	
equals Total output tax (A)	$ 11,467·35	

plus: Tax Adjustments *(see notes in panel A on reverse of form)*

		Box
Tax on Goods and Services taken for private use *(if any)*:	$ 176·18	5
plus Other:	$ 116·42	6

Entnr total amount of tax adjustments here

Deduction of Goods and Services Tax *paid* by you

		Box
Total taxable supplies received *(including GST)* for which tax invoicing requirements have been met.	$ 77,420·70	7
divided by 11 equals	$ 7,038·24	
plus: Tax Adjustments *(see notes in panel B on reverse of form)* — *Enter total amount of tax adjustments here*	$ 115·40	8
equals	$ 7,153·64	
plus: adjustment for wholesale sales tax	$ 2,499·00	9
equals Total deductions (B) (input tax)	$ 9,652·64	

Subtract Total (B) from Total (A)

Delete that which does not apply: GST payable / ~~GST to be refunded~~ — *difference* $ 1,814·71 — 10

Declaration

Name of person making this declaration: AARON BLAIR CALDER (First Names / Surname)

I declare that the information given in this return is true and correct.

Signature: A Calder — date: 10/2/87

Your title: MANAGING DIRECTOR — Telephone No: 721 0321

Indicate whether proprietor, partner, director, manager, secretary, office holder in club or association, duly authorised person

OFFICE USE ONLY ▼

Checked by / /

Forward top two copies with your cheque to the Department for GST payable

A receipt will not be issued for payments by cheque

If making payment at an Inland Revenue office please present all copies

OFFICE USE ONLY ▼

Amount of payment $ ·

VALUE ADDED TAX
Application for Registration

HM Customs and Excise

For official use

Date of receipt | 1
Local office code and registration number
Name
Trade name
Taxable turnover | E D R | D M Y | Stagger | Status
Rept | Vol | Oversize name address | Computer user | Group Div | Insg | Overseas
Bn | D M Y

You should read the notes opposite before you answer these questions. Please write clearly in ink.

Applicant and business

1 Full name

2 Trading name

3 Address

Phone no.

Postcode

4 Status of business

Limited company ☐ Company incorporation certificate no. ______ and date day month year 19

Sole proprietor ☐ Partnership ☐ Other-specify ______

5 Business activity ______ Trade classification ______

6 Computer user ☐

7 Date of first taxable supply day month year 19 Expected value of taxable supplies in the next 12 months £

Repayments of VAT

8 ☐ Bank sorting code and account no. National Girobank account no.

VAT 1

please continue overleaf →

Compulsory registrations

9 Date from which you have to be registered — day | month | year 19

10 Exemption from compulsory registration ☐

expected value of zero-rated supplies in the next 12 months £

Other types of registration

11 Taxable supplies below registration limits ☐

value of taxable supplies in the last 12 months £

12 No taxable supplies made yet ☐

(a) expected annual value of taxable supplies £

(b) expected date of first taxable supply — day | month | year 19

Business changes and transfers

13 Business transferred as a going concern ☐

(a) date of transfer or change of legal status — day | month | year 19

(b) name of previous owner

(c) previous VAT registration number (if known)

14 Transfer of VAT registration number ☐

Related businesses

15 Other VAT registrations Yes ☐ No ☐

Declaration You must complete this declaration.

16

I ______________________________

(Full name in BLOCK LETTERS)

declare that all the entered details and information in any accompanying documents are correct and complete.

Signature ______________________________ Date ______________

Proprietor ☐ Partner ☐ Director ☐ Company Secretary ☐ Authorised Official ☐ Trustee ☐

For official use

Registration	Obligatory	Exemption	Voluntary	Intending	Transfer of Regn. no.
Approved – Initial/Date					
Refused – Initial/Date					
Form Issued – Initial/Date	VAT 9/ Other	VAT 8	VAT 7	Letter	Approval Letter

Printed in the UK for HMSO Dd 8858099 5924

9

You must answer this question even if you are applying for exemption under Question 10.

You should read paragraph 6 of the registration booklet before you answer this question. If you decide that you have to register you must give the date from which you have to be registered. If you wish to register from a date earlier than you have to, please enclose a letter explaining why and from what date.

9

10

You can apply for exemption from registration if you would not normally be liable to pay VAT to Customs and Excise because your taxable supplies are wholly or mainly zero-rated. If you want to apply for exemption from registration, you should:

- tick the box; **and**
- give the value of the zero-rated supplies you expect to make in the next 12 months.

Paragraph 7 of the registration booklet tells you more about this.

Please make sure that you have also answered Question 9.

10

11

Paragraph 8 of the registration booklet explains when you can apply for registration if the value of your taxable supplies is below the registration limits. If, having read this, you decide to apply, you should:

- tick the box;
- give the value of your taxable supplies in the last 12 months; **and**
- enclose a letter explaining why you need to be registered.

11

12

Paragraph 9 of the registration booklet explains when you can apply for registration if you are not yet making taxable supplies but intend to do so in the future. If, having read this, you decide to apply, you should:

- tick the box;
- give the annual value of taxable supplies you expect to make;
- give the date when you expect to make your first taxable supply; **and**
- enclose supporting evidence to show that you will be making taxable supplies by that date.

12

If you are answering Questions 13 and 14, you should read the leaflet *Selling or transferring a business as a going concern*, because of the special VAT rules which apply.

13

If you are taking over a business as a going concern, or changing the legal status of your existing business, for example from sole proprietor to partnership, you should:

- tick the box; **and**
- answer questions (a), (b) and (c).

13

14

Tick the box if you wish to retain the existing registration number of the business.

14

15

If, during the last twelve months, you have been (or now are) a director, sole proprietor or partner of any VAT registered business, you should:

- tick the YES box; **and**
- enclose a letter giving the name(s) of the business(es) and the VAT registration number(s).

If, during the last twelve months, you have not been a director, sole proprietor or partner of any VAT registered business, please tick the NO box.

15

16

Only the person specified below should sign the declaration and tick the appropriate box:

- for a sole proprietor – the sole proprietor
- for a partnership – a partner
- for a company incorporated under the UK Companies Acts – a director or the company secretary
- for a public corporation or nationalised body, or a local authority, or any other corporation – an authorised official
- for an unincorporated association – an authorised official
- for a trust – the trustee(s)
- for an overseas company, non-resident person or firm – see the leaflet *Overseas traders and United Kingdom VAT*.

16

Please remember, you must send the completed form(s), with any extra information requested, to the VAT office nearest your principal place of business.

VALUE ADDED TAX

The registration booklet *Should I be registered for VAT?* will help you decide whether you should register. If, having read this booklet, you decide that you have to register you must fill in this form.

Don't delay in returning this form. There are penalties for failing to notify promptly once you are liable to be registered. You may also have to account for VAT which you haven't collected and which you may not be able to recover from your customers.

If you will be importing goods you should ask your local VAT office to send you a Form C1416.

Remember, if you need more help or advice your local VAT office is always ready to help. You will find the address in the phone book under "Customs and Excise".

Application for Registration

1 If the application is from a:

- sole proprietor – give your title (eg Mr) followed by your first name(s) and surname
- company – give the company name
- partnership – give the firm's name. If there is none, give the full names of all the partners. You must also fill in a Form VAT 2.

1

Please start at the beginning of each line, use block letters and leave a space between words. For example:

MR MARK JOHN SMITH

Remember:

- it is the person not the business that is registered for VAT
- a person can be a sole proprietor, partnership, limited company, club or association or charity
- registration covers all the business activities of the registered person – no matter how varied these activities are.

2 Show the trading name of your business if it is different from the name you gave at Question 1.

2

3 This should be the place where orders are received and dealt with and the day to day business activities carried on or managed. Don't forget to show the postcode and phone number where you can be contacted.

3

4 Tick the appropriate box. If the business is a limited company you should also give the number and date shown on the Certificate of Incorporation.

4

5 Give a brief description of your main business activity and put the trade classification code number which best fits it. A list of business activities and their codes is given in the booklet *VAT Trade Classifications* (VAT 41).

5

6 Tick the box if any part of your records or accounts will be prepared by computer.

6

7 Give the date on which you made, or expect to make, your first taxable supply. Then give the total value of taxable supplies – sales, etc – that you expect to make in the next 12 months.

You will find more about taxable supplies in paragraphs 2 and 3 of the registration booklet. Normally the value of your taxable supplies will be your total turnover. If you are unsure about whether or not to include some items – such as donations or grants – please check with your local VAT office.

7

8 If you expect regular repayments of VAT from Customs and Excise **because the VAT on your sales will normally be less than the VAT on your purchases** you should:

- tick the box; and
- give either your bank sorting code and account number or National Girobank account number.

8

H M Customs and Excise

Return of Value Added Tax

For the period

to

To be returned not later than

These dates must not be altered without the agreement of Customs and Excise.

For Official Use

Registration No | Period

Please complete the whole of this form. The notes on the back and *Filling in your VAT return* will help you to do this. Return it, with any VAT due in the enclosed envelope to the Controller, VAT Central Unit, H M Customs and Excise, 21 Victoria Avenue, SOUTHEND ON SEA X

Complete all boxes (writing "none" where necessary). If an exact amount of pounds is to be entered write "00" in the pence column. **Do not** put a dash or leave the column blank.

FOR OFFICIAL USE

	Box	£	p
VAT DUE in this period on OUTPUTS (sales, etc), certain postal imports and services received from abroad	1		
Underdeclarations of VAT made on previous returns (but not those notified in writing by Customs and Excise)	2		
TOTAL VAT DUE (box 1 + box 2)	3		
VAT DEDUCTIBLE in this period on INPUTS (purchases etc)	4		
Overdeclarations of VAT made on previous returns (but not those notified in writing by Customs and Excise)	5		
TOTAL VAT DEDUCTIBLE (box 4 + box 5)	6		
NET VAT PAYABLE OR REPAYABLE (Difference between boxes 3 and 6)	7		
Value of Outputs (excluding any VAT)	8		00
Value of Inputs (excluding any VAT)	9		00

Please tick only ONE of these boxes:

box 3 greater than box 6 — payment by credit transfer ☐ — payment enclosed ☐

box 6 greater than box 3 — repayment due ☐

How to pay the VAT due

Cross all cheques and postal orders "A C Payee only" and make them payable to "H M Customs and Excise". Make credit transfers through account 3078027 at National Girobank or 10-70-50 52055000 for Bank Giros. You can get pre-printed booklets of credit transfer slips from your local VAT office. In your own interest do not send notes, coins, or uncrossed postal orders through the post.

Please write your VAT registration number on the back of all cheques and credit transfer slips.

Please tick box(es) if the statement(s) apply:

box 5 includes bad debt relief ☐ — box 8 includes exempt outputs ☐ — box 8 includes exports ☐

Retail schemes If you have used any of the schemes in the period covered by this return please tick the box(es) to show all the schemes used.

A | B | C | D | E | F | G | H | J

Failure to make a complete return or to pay the full amount of VAT payable by the due date is an offence.

DECLARATION by the signatory to be completed by or on behalf of the person named above.

I ______________________ declare that the
(full name of signatory in BLOCK LETTERS)

information given in this return is true and complete.

Signed ______________________ Date ______________ 19
Proprietor, partner, director, secretary, responsible officer, member of club or association, duly authorised person — Delete as necessary

FOR OFFICIAL USE

NOTES

These notes and the pamphlet, *Filling in your VAT return*, will help you to fill in this form. You may also need to refer to other VAT notices and leaflets.

If you need help or advice, or any of the answers overleaf gives a negative figure, please contact your local VAT office quoting your VAT registration number.

Box 1 You must show the VAT due on all goods and services you supplied in this period. This is your *output* tax.

Remember to include VAT due on:

- goods taken for private use
- gifts and loans of goods
- sales to staff
- sales of business assets
- imported services listed in *The VAT guide*, Appendix G
- postal imports where a full customs entry is not required

Remember to subtract any VAT credited to your customers.

If you use a retail scheme the *How to work* pamphlet for your scheme will help you work out the output tax due.

Box 2 If any of your previous returns showed too little VAT payable by you or too much VAT repayable to you, show the amount here—but leave out:

- adjustments notified in writing by Customs and Excise
- VAT declared on a previous return which you have not paid in full

Box 4 You must show the amount of VAT deductible on any business purchases you have made, including imported goods and services and goods removed from bonded warehouse. This is your *input* tax.

If this is your first return include any VAT you can reclaim on goods and services received before registration (see *The VAT guide*, paragraph 33).

Exclude any VAT on:

- goods and services not supplied for the use of your business
- business entertainment (except of overseas customers)
- motor cars
- second hand goods which have been sold to you under one of the VAT second-hand schemes.

If you are a builder see VAT Leaflet, *Construction industry*, about non-deductible input tax on fixtures and fittings.

Remember to subtract any VAT credited by your suppliers.

If you have exempt outputs this may affect the amount of input tax you can reclaim (see *The VAT guide*, paragraph 30).

Box 5 If any of your previous returns showed too much VAT payable by you or too little VAT repayable to you show the amount here.

Include:

- any VAT you are claiming back as bad debt relief under the conditions set out in the VAT Leaflet, *Relief from VAT on bad debts*, and tick the box on the front of this form.

Exclude:

- adjustments notified in writing by Customs and Excise
- repayments of VAT claimed on a previous return but not yet received from Customs and Excise
- assessments already paid in this or other periods.

Box 7 If the amount to be entered is under £1 you must still fill in this form and send it to the VAT Central Unit. You need not send any payment, nor will any repayment be made to you.

Boxes 8 and 9 Show your total outputs in box 8. Include exports, exempt income such as rents, and other business income. Leave out the VAT. If exports or exempt outputs are included please tick the appropriate box(es) on the front of this form.

Show your total inputs in box 9. Include imports and other business expenses. Leave out the VAT.

For both boxes 8 and 9 you should show net figures after deducting any credits. Do not deduct any cash discounts. If your accounts are net of cash discounts you should add back a reasonable amount for any discounts given or received.

Some income and expenses must be left out of boxes 8 and 9. There are two ways to work these boxes out – Basis A and Basis B. Use the same basis for both boxes. Whichever basis you use always leave out:

- VAT
- wages and salaries
- PAYE and National Insurance contributions
- money put into or taken out of the business
- loans, dividends, grants, gifts of money
- compensation payments or insurance claims
- Stock Exchange dealings.

If you use Basis A also leave out

Box 8

- sales of cars on which you paid no VAT (see *The VAT guide*, Appendix B, paragraph 10)
- exempt outputs excluded from any partial exemption calculation.

Box 9

- exempt purchases
- MOT fees and vehicle licence duty
- local authority rates
- purchases on which you cannot reclaim input tax (see *The VAT guide*, paragraph 28)

If you decide to use Basis B check if either or both of your outputs or inputs are above £50,000 on average (or £20,000 if you make monthly returns). If they are you must tell Customs and Excise by attaching a letter to the first VAT return that you make using Basis B, quoting "reference 2B/Basis B".

If you later decide to change to Basis A, you must inform Customs and Excise in the same way.

Remember, you must tell your local VAT office about any changes in your business circumstances. You will find details in *The VAT guide*, Section XI.

Printed in the UK for HMSO Dd 8857606 3. 84 (4289)

Danish VAT Form

Value Added Tax
TAX ACCOUNTING

Date	Purchases			Sales			Comments
	1 Purchase price Including VAT	Tax Credit		4	5	6 VAT	
		2 Domestic purchases	3 on own imports	Sales price	Tax payable	deductible on exports	

Value Added Tax
DECLARATION

Taxable Period

Kroner (rounded)	Specification
	Tax payable
	Tax deductible
	Tax liable

....
Signature

LETTER

Official
Paid

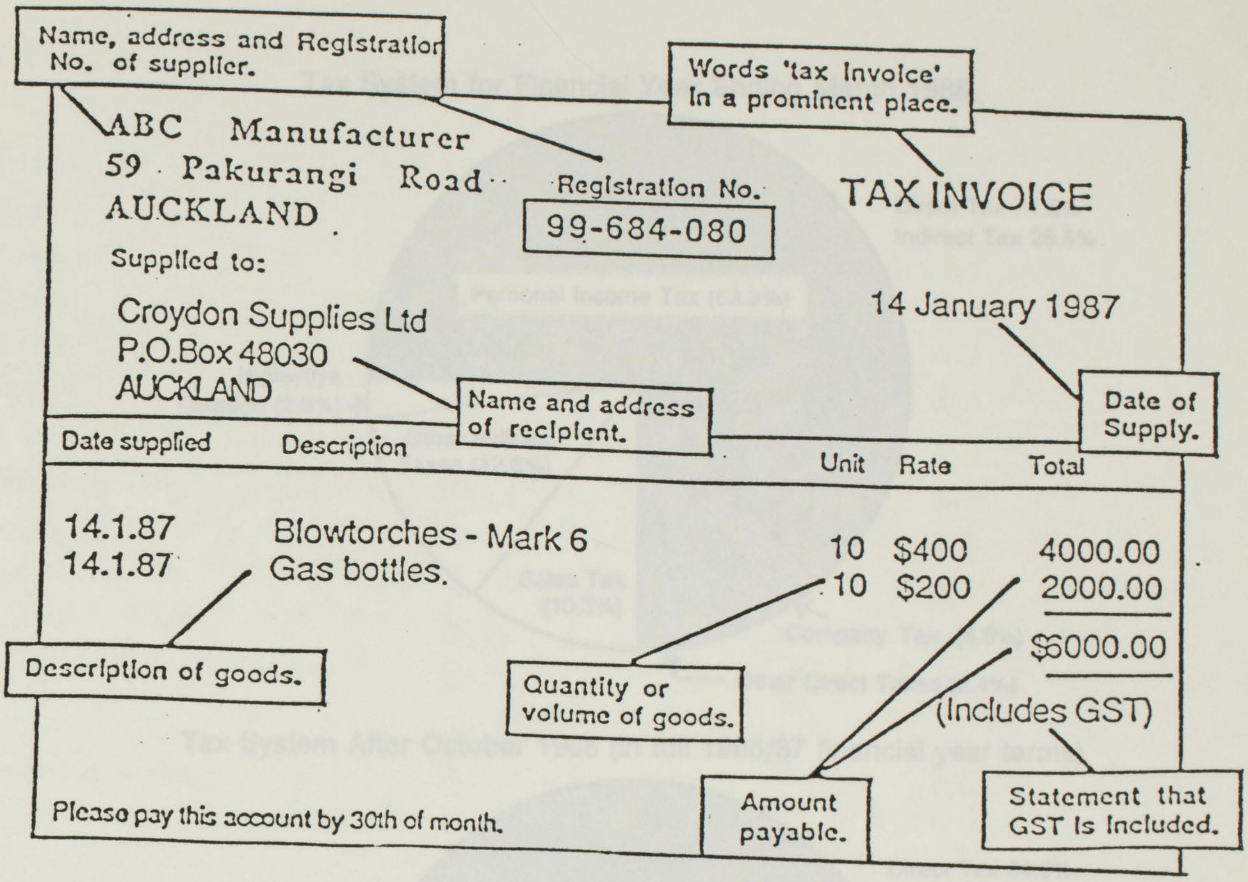
194

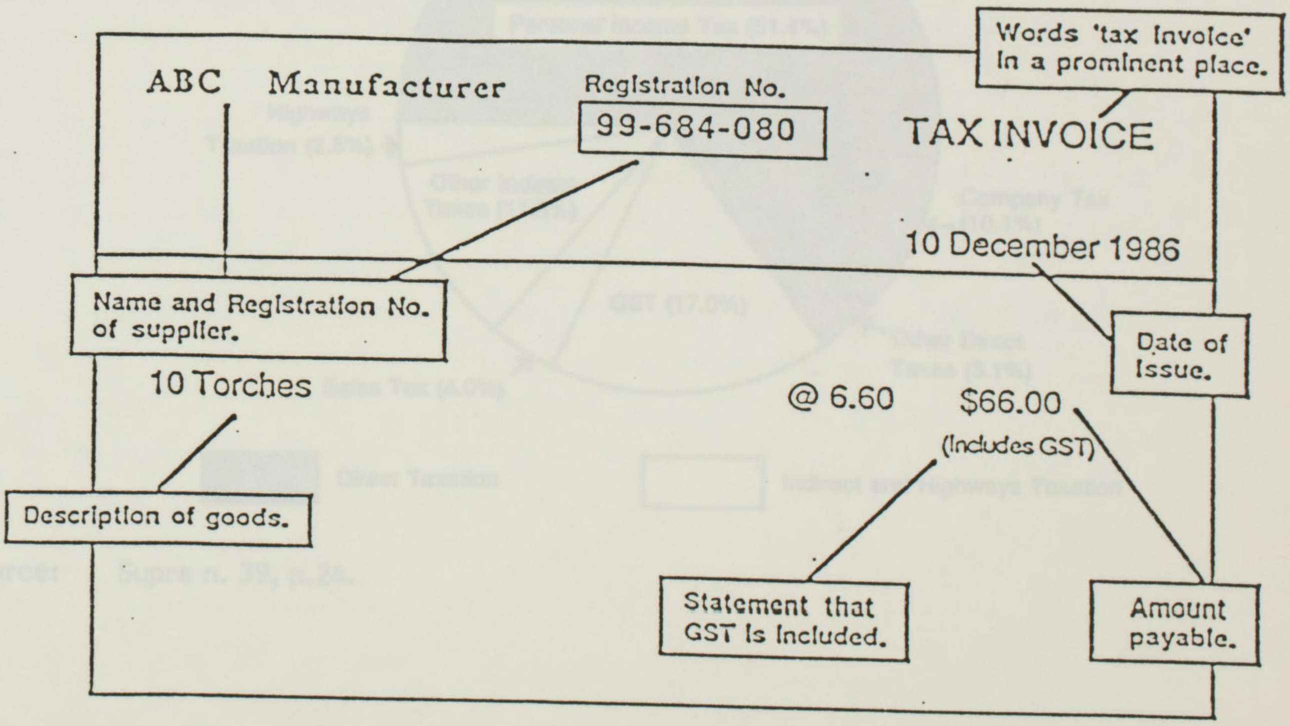
To
Tax Service
Postbox 297

Copenhagen V

Space reserved

APPENDIX A12 - GST TAX INVOICES

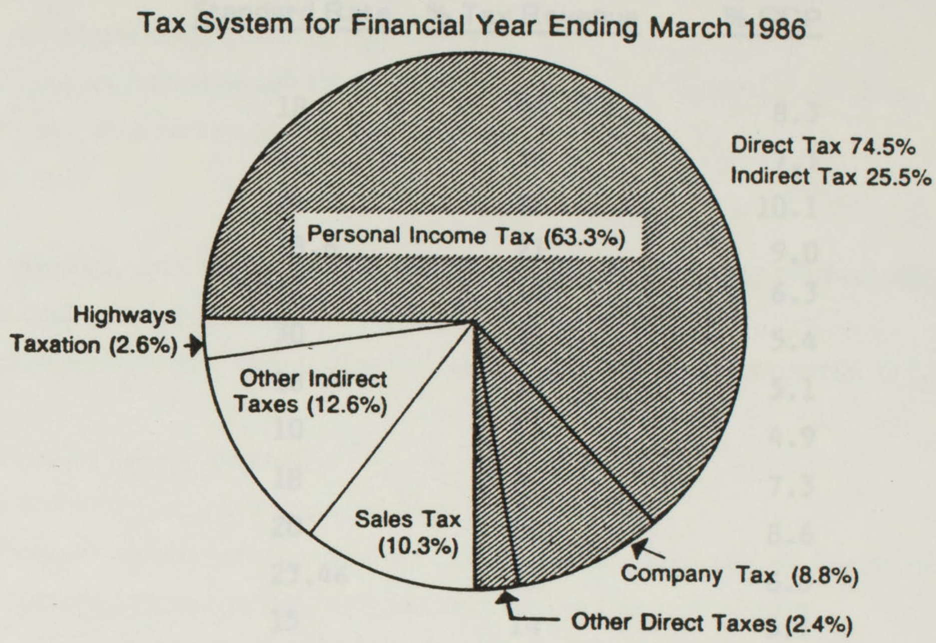


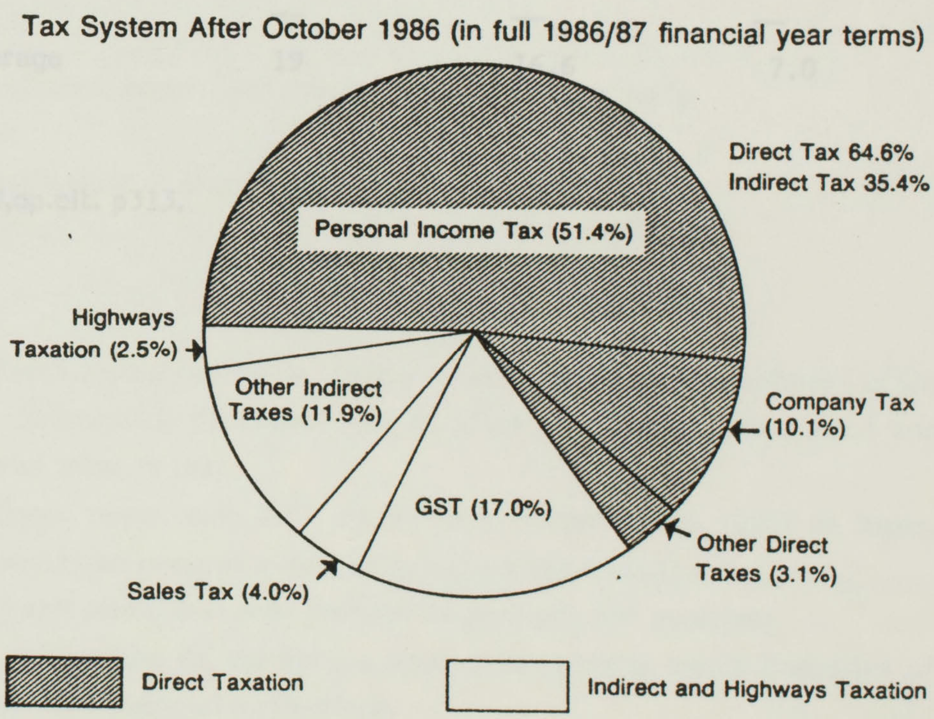


Source: IRD

APPENDIX A13 - CHANGE IN THE COMPOSITION OF TAX RECEIPTS IN NZ

Percent of Total Tax Revenue





Source: Supra n. 39, p.24.

APPENDIX A14 - VAT AS A PERCENTAGE OF REVENUE OVERSEAS IN 1983

	Standard Rate	% Tax Revenue	% GDP
Austria	18	20	8.3
Belgium	17	16	7.3
Denmark	22	22	10.1
France	18.6	21	9.0
Germany	13	17	6.3
Ireland	30	15	5.4
Italy	18	16	5.1
Luxembourg	10	11	4.9
Netherlands	18	16	7.3
Norway	20	18	8.6
Sweden	23.46	13	6.6
UK	15	14	5.1
Unweighted Average	19	16.6	7.0

Source: Head,op.cit. p313.

APPENDIX A15 - OTHER INDIRECT TAXES IN EUROPEAN COUNTRIES WITH VATS

Austria

- excises on minerals, oils, tobacco, and alcohol;
- immovable property acquisition tax;
- two percent tax on share capital.

Belgium

- excises on alcohol, carbonated drinks, sugar and sugar products, mineral oils, benzoil, natural gas, tobacco;
- registration duty on the acquisition of title of immovable property (12.5 percent);
- one percent tax on share capital;
- some taxes on documents and stamp duties;
- separate turnover taxes: stock exchange tax, securities tax, tax on insurance contracts, hunting tax, advertisement tax and tax on the sale of cars.

Denmark

- excises on alcohol, sugar, perfume, tobacco and motor fuels;
- stamp duty;
- tax on contributions of share capital;
- customs duty.

France

- special indirect (usually turnover) taxes: forestry products tax, editors tax (on publishing companies), parafiscal tax (e.g. on textiles, watches etc.) and manufactured tobacco tax;
- special indirect taxes using VAT mechanism: slaughter tax, taxes on sugar, tax on oil, surtax on mineral water, and resinous products tax;
- registration and stamp duties on immovable property and vehicles;
- "Taxe sur les encours de credits": a special tax on the credit liabilities of banks and certain financial institutions.

Germany

- Federal excises on mineral oil, tobacco, coffee, tea, sugar, salt, some alcohol, matches and electric light bulbs;
- "Grunderwerbsteuer": an immovable property transfer tax levied on transfers of title to immovable property situated in Germany at two percent;
- "Rennwett" and "Lotteriesteuer": turnover taxes on racing bets and lotteries;
- turnover taxes on insurance and contributions for share capital.

Ireland

- excises on alcohol, tobacco and related products, motorcars and parts thereof; licences and certificates; bets; petroleum products and televisions and records;
- stamp duties.

Italy

- excises on alcohol, oils, matches and lighters, coffee, electricity, cocoa, bananas, and methane gas;
- registration duties on written contracts;
- transfer and "cadastral" taxes on the transfer of immovable property;
- stamp duties.

Luxembourg

- excise duties;
- registration duties on land and buildings;
- duties on mortgages, fire and other insurance;
- taxes on motorcars;
- stamp duties.

Netherlands

- excises on alcohol, mineral oils, sugar, tobacco, gasoline, carbonated water etc;
- transfer tax of six percent on the acquisition of title of immovable property;
- one percent duty on share capital;
- 0.12% stock exchange duty;
- six percent insurance premium tax;
- tax on passenger cars.

Norway

- duties on alcohol, tobacco, confectionary, non-alcoholic beverages, cosmetics and motor vehicles.

Sweden

- tax on various sources of energy;
- confectionary and cosmetics sales tax;
- duties on tobacco, beer and tablewater;
- taxes on automobiles and motorcars;
- stamp and registration duties

UK

- excise duties on alcohol, tobacco and petroleum products;
- customs duties on imported goods;
- car tax of ten percent at wholesale level;
- stamp duties on share capital, transfers of securities, conveyances etc;
- local body rates.

Source: Supra n. 195.

BIBLIOGRAPHY OF IMPORTANT UK CASES

American Real Estate (Scotland) Ltd. v. CEC [1980] VATTR 88;

Archer v. CEC [1974] 1 VATTR 1;

Ashtree Holdings Ltd. v. CEC [1979] STC 818;

BBC v. CEC [1974] 1 VATTR 100;

Binder Hamlyn v. CEC [1983] VATTR 171;

British Airports Authority v. CEC [1977] 1 WLR 302;

Calor Gas Ltd. v. CEC [1973] 1 VATTR 205;

Carlton Lodge Club v. CEC [1975] 1 WLR 66;

CEC v. Apple and Pear Development Council Ltd [1985] STC 383;

CEC v. British Railways Board [1976] 1 WLR 1036;

CEC v. Glassborow [1975] QB 465;

CEC v. Guy Butler (International) Ltd. [1977] QB 377;

CEC v. Lord Fisher [1981] 2 All ER 147;

CEC v. Morrison's Academy Boarding Association [1978] STC 1;

CEC v. Oliver [1980] 1 All ER 353;

CEC v. Pippa-Dee Parties Ltd. [1981] STC 495;

CEC v. Scott [1978] STC 191;

CEC v. Sooner Foods Ltd. [1983] STC 376;

CEC v. Thorn Electrical Industries Ltd. [1975] 1 WLR 437;

CEC v. Tilling Managing Services Ltd. [1979] STC 365;

Church of Scientology of California v. CEC [1981] 1 All ER 1035;

C.J. Kiff Ltd v. CEC [1981] VATTR 88;

Cumbrae Properties (1963) Ltd. v. CEC [1981] STC 799;

David Wickens Properties Ltd. v. CEC [1982] VATTR 143;

Davies v. CEC [1975] 1 WLR 204;

Demor Investments Ltd. v. CEC [1981] VATTR 66;

English Speaking Union v. CEC [1980] VATTR 184;

Exeter Golf and Country Club Ltd. v. CEC [1981] STC 211;

Gardner Lohmann Ltd. v. CEC [1981] VATTR 76;

Greater London Red Cross Blood Transfusion Service v. CEC [1983] VATTR 241;

Hempsons (a firm) v. CEC [1977] VATTR 73;

Interbet Trading Ltd. v. CEC (No. 2) [1978] VATTR 235;

King v. CEC [1980] VATTR 60;

Landmark Cash and Carry Group Ltd. v. CEC [1980] VATTR 1;

Lean and Rose v. CEC [1974] 1 VATTR 7;

Linotype Machinery Ltd. v. CEC [1978] VATTR 123;

McCallum v. CEC [1980] VATTR 79;

Mear v. CEC [1981] VATTR 99;

National Coal Board v. CEC [1982] STC 863;

National Transit Insurance Co. Ltd. v. CEC [1974] 1 VATTR 158;

National Water Council v. CEC [1979] STC 157;

Normal Motor Factors Ltd. v. CEC [1978] VATTR 20;

Processed Vegetable Growers Association Ltd v CEC [1973] 1 VATTR 87;

R.H.M. Bakeries (Nthn) Ltd. v. CEC [1979] STC 72;

Rikarby v. CEC [1973] 1 VATTR 186;

Rowe and Maw (a firm) v. CEC [1975] 1 WLR 1291;

Schechita v. CEC [1974] 1 VATTR 24;

Sorell v. CEC [1980] VATTR 53;

Stirlings (Glasgow) Ltd. v. CEC [1982] VATTR 116;

Swindon Masonic Association Ltd. v. CEC [1978] VATTR 200;

Tallishire Ltd. v. CEC [1979] VATTR 180;

Tameside Metropolitan Borough Council v CEC [1980] VATTR 93;

Tarmac Construction Ltd. v. CEC [1981] VATTR 35;

Three H Aircraft Hire v. CEC [1982] STC 653;

Trewby v. CEC [1976] 1 WLR 932;

Tynewydd Labour Working Mens Club and Institute v. CEC [1979] STC 570.

BIBLIOGRAPHY OF IMPORTANT REFERENCES

H. Aaron (ed.) VAT - Experiences in Some European Countries (Kluwer, Deventer, 1982);

H. Aaron (ed.) VAT - Lessons from Europe (Brookings Institution, Washington D.C., 1981);

Australian Treasury Commonwealth Taxation of Goods and Services (Australian Government Printing Service, Canberra, 1974), Appendicies G-K;

C. Bakker and P. Chronican Financial Services and the GST (VUP, Wellington, 1985);

R.M. Bird Taxing Corporations (Institute for Research on Public Policy, Montreal, 1980);

D. Bond Butterworths Handbook on the VAT Act 1983 (Butterworths, London, 1983);

A. Broad and L. Bacica The Incidence of Indirect Taxes Vol 2 (VUP, Wellington, 1985).

CCH Guide on Sales, Goods and Services Taxes (CCH, Auckland) (looseleaf);

S. Crossen Comparative Tax Studies (North-Holland, Amsterdam, 1983);

S. Crossen "Sales Taxation in OECD Member Countries" (1983) 37 Bulletin for International Fiscal Documentation 147;

D.F.A. Davidson "Common Market : a Comparison of Taxes" [1972] SJ 873;

P. de Voil Value Added Tax (Butterworths, London);

J.F. Due Sales Taxation (Routledge and Kegan Paul, London, 1957), Chapter 7;

J.F. Due Indirect Taxes in Developing Countries (John Hopkins, Baltimore, 1970), Chapter 6;

J.F. Due "The Wholesale Tax in Australia and New Zealand" (1983) 31 Canadian Tax Journal 207;

A.J. Easson Tax Law and Policy in the EEC (Sweet and Maxwell, London, 1980);

H.F. Fuller "The Tax on Added Value" [1972] Law Forum 269;

R. Goode Government Finance in Developing Countries (Brookings Institution, Washington, 1984);

P. Groenewegen Australian Tax Policy (Longman Cheshire, Melbourne, 1980);

GST The Key to Lower Income Tax (Government Printer, Wellington 1985);

L. Hart-Wright "Personal, Living or Family Matters and VAT" (1983) 82 Michigan Law Review 419;

J.C. Head (ed.) Taxation Issues in the 1980s (Australian Tax Research Foundation, Sydney, 1983), Chapter 16;

A. Henderson "The Case for Indirect Taxation" (1948) 58 Economic Journal 538;

International Bureau of Fiscal Documentation Guides to European Taxation Volume 4 : VAT in Europe (Amsterdam) (looseleaf);

International Fiscal Association International Problems in the Field of General Taxes on Sales of Goods and Services (Kluwer, Rotterdam, 1983);

J.A. Kay and M.A. King The British Tax System (3 ed. Oxford University Press, Oxford, 1983);

G. Lindencrona Trends in Scandanavian Taxation (Kluwer, Deventer);

R.W. Lindholm "VAT : Review of the Literature" (1970) 8 Journal of Economic Literature 1178;

R.W. Lindholm VAT and Other Tax Reforms (Nelson-Hall, Chicago, 1976);

T.W. Lindholm The Economics of VAT (Lexington Books, Massachusettes, 1980);

M.R. McDaniel and S.S. Surrey International Aspects of Tax Expenditures : A Comparative Study (Kluwer, Deventer, 1985);

L. McKay "Direct or Indirect Taxation?" (1977) NZLJ 469;

R.A. and P.B. Musgrave Public Finance in Theory and Practice (4 ed., McGraw-Hill, New York, 1984), Chapter 20;

National Economic Development Office (NEDO) Value Added Tax (Her Majesty's Stationery Office, London, 1971);

J.S. Nolan "Advantages of VAT or Other Consumption Tax at the Federal Level" (1972) 25 National Tax Journal 431;

W. Oakland "The Theory of VAT : I-A Comparison of VAT Bases" (1967) 20 National Tax Journal 119;

W. Oakland "The Theory of VAT : II - Incidence Effects" (1967) 20 National Tax Journal 270;

OECD The Impact of Consumption Taxes at Different Income Levels (OECD, Paris, 1980);

A. Peacock and F. Forte (eds) The Political Economy of Taxation (Basil Blackwell, Oxford, 1981), Chapters 7, 10 and 11.

J.D. Petty VAT - A Study of its Practical Aspects (Taxation Institute Research and Educational Trust, Sydney, 1978);

Report of the Advisory Panel on the GST to the Minister of Finance (Government Printer, Wellington, 1985);

Report of the Royal Commission on Taxation 1966 (Volume 5) (Queen's Printer, Ottawa) (Carter Report);

Report of the Taskforce on Tax Reform (Government Printer, Wellington, 1982) (McCaw Report);

Taxation in New Zealand (Government Printer, Wellington, 1967) (Ross Report);

A. Robinson and C. Sandford Tax Policy-Making in the UK (Heinemann, Surrey, 1983);

T.M. Rybcznski (ed.) The VAT - the UK Experience and the European Experience (Basil Blackwell, Oxford, 1969);

C. Sandford Realistic Tax Reform (Chatto and Windus, London, 1971), Chapter 8;

C. Sandford et. al. Costs and Benefits of VAT (Heinemann, London, 1981);

J. Scherer and J.A. Papke (ed.) Public Finance and Fiscal Policy (Houghten Miffen, Boston, 1966), Chapters 14 and 15;

C. Scott and H. Davis The Gist of GST (VUP, Wellington, 1985);

C. Scott, P. Goss and H. Davis The Incidence of Indirect Taxes Volume 1 (VUP, Wellington, 1985);

Spicer and Oppenheim Personal Taxes around the World - Selected Countries (Spicer and Oppenheim, 1983);

C.K. Sullivan The Tax on Value Added (Columbia University, New York, 1965);

A. Tait Value Added Tax (McGraw-Hill, London, 1972);

A. Tait "The Value Added Tax : Why and How" [1984] Conference Report of the Canadian Tax Foundation 487;

"Taxation Law Reform 1985" (1985) 15 V.U.W.L.R. 191-271;

W.J. Turnier "Designing an Efficient VAT" (1984) 39 Tax Law Review 435;

U.S. Treasury Report to the Prsident on Tax Report for Fairness, Simplicity and Economic Growth 1984 Volume 3;

White Paper on Goods and Services Tax. NZ Parliament. Apendix to the journals, B. 27 (Government Printer, Wellington, 1985);

J. Wiseman Comparative Aspects of the Taxation of Business in the UK and Germany (Anglo-German Foundation for the Study of Industrial Society, London, 1980).

Other sources including various international and GST tax guides, the N.Z. Minister of Finance's Budgets and other statements, IRD pamphlets, UK VAT pamphlets, newspaper articles and the submissions on the GST Bill to the de Cleene Committee.