

Making the value added tax happen

Michael D'Ascenzo AO*

Abstract

Political will and a persuasive and well-marketed rationale are required to secure community acceptance of a value added tax (VAT), also termed a goods and services tax (GST). Allied to this political dimension, the capabilities of businesses and their agents are critical considerations in the introduction of a GST/VAT.

From the public's perspective, the merit of a government's decision to introduce a GST/VAT is measured by the net impact of the tax reform measures and their costs of compliance. These in turn are influenced by the design of the GST/VAT and the efficiency and effectiveness of its implementation by the public sector and its administration by the tax authority.

By examining how the GST was introduced in both New Zealand and Australia this article concludes that an ongoing focus on the interdependent trinity of: (1) politics, policy and legislative design; (2) taxpayer acceptance and readiness; and (3) administration, remains essential for making a GST/VAT happen and prosper.

Key words: Value added tax policy; Australian GST; New Zealand GST; legislative design; community acceptance; tax administration

* Former Australian Commissioner of Taxation; Adjunct Professor, School of Taxation and Business Law, UNSW Sydney.

1. FOREWORD

In 2006 I had the privilege of speaking at a conference in New Zealand hosted by the Victoria University of Wellington to mark the 20th anniversary of the introduction of New Zealand's goods and services tax (GST). On the 20th anniversary of the introduction of Australia's GST, I am again privileged to share insights on how to make a value added tax (VAT) work in practice.

As a former tax administrator and Commissioner of Taxation, any observations I may have on the political and policy processes for the introduction of the GST in Australia are at best peripheral. These rest mainly in the domain of government. Even my insights on the administrative challenges associated with its implementation are limited in personal experience, given that my predecessor Commissioner, Michael Carmody, and others including Rick Matthews (administration) and Bruce Quigley (legislative design), played leading roles on these matters at the Australian Taxation Office (ATO).

Nevertheless, on one important aspect of the intersection of policy, community readiness, and administration I played a modest role – that is, in the development, through the ATO's Public Rulings Panel, of the foundation public rulings associated with the introduction of the GST in Australia. These public rulings provided certainty to the community on the ATO's position on a range of GST issues that had proven vexed in other countries. These public rulings were also the tax technical basis for the ATO's guidance endeavours and products.

In addition, as Commissioner, I had shared stewardship responsibilities with Treasury for the health of the GST, and accountability for the delivery of the ATO's commitments under the then GST Administration Performance Agreement between the Commissioner and the Council on Federal Financial Relations.¹

More recently I have had the opportunity to advise other jurisdictions on making the VAT happen or on improving its operation.

2. INTRODUCTION

A value added tax is a consumption tax placed on a product or service whenever value is added at each stage of the supply chain to the point of supply. VAT is levied on transactions in the production process, but registered parties in the production chain other than the final consumer are entitled to input tax credits (and refunds where the

¹ In Australia the GST is a federal (Commonwealth) tax but the net revenue collected is currently distributed to the States and Territories under the Intergovernmental Agreement on Federal Financial Relations of July 2011 (IGA), available at: http://www.federalfinancialrelations.gov.au/content/intergovernmental_agreements.aspx (accessed 28 June 2020). The IGA is the current successor to the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations made prior to the commencement of the GST on 1 July 2000, set out as Schedule 2 to the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999* (Cth), enacted on 10 September 1999. The Commonwealth Grants Commission distributes the GST revenue to the States and Territories with a view to achieving Horizontal Fiscal Equalisation amongst the States and Territories. The IGA (Schedule A) requires as an accountability mechanism a GST Administration Performance Agreement between the Commissioner of Taxation and the Council on Federal Financial Relations. Schedule A of the current GST Administration Performance Agreement of 2017 contains performance outcome measures and Schedule B outlines the GST Budget for specified administrative activities. The ATO reports twice yearly to the Council through the GST Policy and Administration Sub-Group and the GST Administration Sub-Committee of the Council.

input tax credits exceed the tax payable). In Australia the VAT is referred to as a goods and services tax, to better describe its coverage.

At the time the GST was proposed by the Howard Government in Australia there were 128 countries which operated a consumption tax known as the value added tax. This trend has continued.

In broad and simplified terms, making the VAT happen has three key interdependent and related dimensions. These are:

1. politics, policy and legislative design;
2. community acceptance and readiness; and
3. effective, efficient and fair administration.

The purpose of this article is to impart some wisdom, based on practical experience and the historical record, on how to make a GST/VAT happen. Hopefully the guidance provided will be of benefit to countries which are considering the introduction of a GST/VAT or seeking to refine their VAT policy or administration. This article seeks to achieve this purpose by:

- distilling the lessons learnt from the way the GST legislation was enacted in New Zealand and Australia, and from the way the GST was implemented in Australia; and
- highlighting from this historical perspective the interdependent and non-sequential nature of the processes associated with the introduction and administration of a GST/VAT.

3. POLITICS, TAX POLICY AND LEGISLATIVE DESIGN

‘Things like GST do not just happen. People make them happen. And they do so because ideas, thoughts and knowledge accumulate to a point where choices narrow and the available paths forward become clearly delineated.’²

3.1 The New Zealand experience in introducing the GST

‘The success of the GST [in New Zealand] can be traced to five key process elements: political will, the right people, the way in which the proposal was packaged, an effective consultative process, and an effective communication process.’³

The introduction of a major new tax such as a VAT plays out first in the realm of politics and tax policy. These are matters mainly in the domain of the government of the day.

² Ian Dickson, ‘The New Zealand GST Policy Choice: An Historical and Policy Perspective’ in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) 45.

³ Hon Sir Roger Douglas, ‘The New Zealand GST Policy Choice and its Political Implications’ in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) 3. See also Jeff Todd, ‘Implementing GST – Information, Education, Co-ordination’ in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) 40.

In the case of New Zealand there was a public perception that tax reform was well overdue.⁴ Previous reports on and reviews of the tax system had highlighted the problems and limitations of the existing system. It was generally accepted that the existing system did not deliver enough revenue to fund the government's expenditure agenda; that the tax system was not neutral; and that its overwhelming reliance on personal income tax had resulted in high marginal tax rates.⁵

In political terms, it is perhaps more accurate to add to the claim that the decision to implement a VAT is a matter for government, that governments will in their decision-making have regard to the likely voter acceptance of a new, major tax. Governments therefore are inclined to, and indeed need to, focus upfront on community acceptance and readiness when considering the introduction of a VAT. This was recognised in the development of the policy parameters of the GST in New Zealand – a new tax that represented a significant change to New Zealand's tax mix. The nature of the work of the Advisory Panel and Consultative Committees that were established to support the introduction of the GST was all about promoting community acceptance and readiness for the tax. They engaged extensively with key business, industry, community and professional representative bodies and marketed the potential benefits of the reform package. The adoption of this approach was in a sense ground-breaking in that it placed considerable emphasis on participation by interested parties as to both the content and operation of the proposed changes.⁶

In the New Zealand context, the features that were vital to its passage through Parliament and for obtaining public support for the tax included the following:

- packaging of the tax reform measures provided the flexibility needed to demonstrate that the costs to consumers associated with the introduction of the GST would be offset by worthwhile gains through lower personal taxes and increased social welfare benefits.⁷ This was especially important in obtaining the support of charities and religious organisations, as well as acceptance of the tax by the general public;
- the Advisory Panel and the Consultative Committees that were established helped to create a bond of understanding between business and government as well as advising the government on the policy and legislative design of the new tax. Perhaps the most significant advice provided by the Advisory Panel was

⁴ Todd, above n 3, 27. See also Dickson, above n 2, 47 who notes that the fiscal deficit had increased to 9 per cent of GDP by 1984.

⁵ Robert Stephens, 'The Economic and Equity Effects of GST in New Zealand' in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) 66:

A significant amount of preparatory work had been undertaken [P McCaw, *Report of the Task Force on Tax Reform* (Wellington: Government Printer, 1982); New Zealand Planning Council, *Agenda for Tax Reform* (Wellington: Government Printer, 1982)]. The electorate was reasonably well informed on the problems and limitations of the tax system, with acceptance that the tax system did not deliver sufficient revenue to finance government expenditure; that the tax system was not neutral in respect of production, consumption, work, and investment decisions; and that too much reliance had been placed on a single base – personal income tax.

⁶ Richard Green, 'Consulting the Public in Developing a GST' in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) 16.

⁷ See Dickson, above n 2, 62: '[t]hrough the GST campaign, the Treasury calculated the likely inflation effects of the switch at around 5-5.5%. Various academics made the estimates between 6% and 8%, which turned out to be closer to the mark'.

the recommendation to adhere to a single rate of GST with minimal exemptions.⁸ The rationale for this advice was a desire to reduce compliance and administrative costs. While this issue was outside the Panel's terms of reference, submissions to the Panel had almost unanimously advocated for such an approach. It was considered that multiple rates and exemptions would increase complexity, whereas a single-rate broad-based tax would minimise the costs of accounting for the tax and the cost of levying it;

- the GST Co-ordinating Office grew naturally out of the government's public relations strategy. The government recognised that the introduction of the GST needed a very extensive information, education and promotional effort from many people. For example, coordination was required to ensure consistent messaging from Government Ministers and the various relevant elements of the bureaucracy, including Treasury, Inland Revenue, Social Welfare and Customs.⁹ In addition, and importantly, other key constituencies such as industry, charitable and tax professional bodies were drawn into the marketing and education campaigns;¹⁰
- the mandate of the GST Co-ordinating Office was to market the GST so as to promote community acceptance and readiness for the tax. It was considered that such an Office could independently market the concept of the tax separately from taxpayer education, which the Inland Revenue Department would do.¹¹ This perceived independence may have had two possible benefits. It might have made the marketing exercise more persuasive and trustworthy in the eyes of the public, without any negative connotation associated with Inland Revenue. Secondly, it catered for the relative independence of the tax authority from government which means that the former should not engage in marketing campaigns which are clearly political in nature, although the line is often difficult to draw;
- the GST Co-ordinating Office also played a crucial role in dealing with complaints, questions and problems associated with the GST;
- a feature of the way in which New Zealand introduced its GST was the extent to which it engaged with stakeholders through consultative processes. These processes sought to balance business compliance costs and simplicity with revenue and equity considerations. However, these consultations were mainly about improving the government's design rather than a wholesale change to the fundamental parameters of the proposed GST.¹² New Zealand was fortunate that there was general support for a single-rate broad-based GST.

Jeff Todd attributed the successful implementation of the GST in New Zealand to

a bold government with a strong mandate, committed to sound tax reform principles; a fair, simple, 'clean' tax with minimal exemptions; a genuine commitment to public consultation; widespread dissatisfaction with the current

⁸ Green, above n 6, 18.

⁹ Todd, above n 3, 29, 31.

¹⁰ Ibid 29.

¹¹ Dickson, above n 2, 62.

¹² Douglas, above n 3, 8.

tax system and a public reasonably willing to contemplate radical change; and a small, committed, ‘public-private’ team with a strong mix of talent and plenty of energy and imagination.¹³

3.2 The Australian experience: a historical perspective

*‘The Senate inquiry [associated with the Australian introduction of the GST] had again highlighted the fact that the proposed GST has sharply divided the opinion of tax academics and professionals. There appears to be equally strong support for and opposition to the GST amongst leading tax experts...’*¹⁴

*Nothing in recent times has divided the opinions of Australians as the GST.’*¹⁴

Often it can take a long time to make substantial changes to a tax system, and the Australian experience with the introduction of the GST demonstrates that it is not only a ‘slow burn’ but also a repeat game. In Australia, the GST saga was played out through numerous attempts over three decades. It was first proposed in the findings of the Asprey Committee with unsuccessful attempts to introduce such a tax in 1985 and in 1993.¹⁵ It was only on 1 July 2000 that the government introduced a GST based on the value added tax model, as part of a broader package of taxation reform.

The Australian experience has been that successive initiatives to introduce a GST prior to 2000 failed on political terms.¹⁶ Nevertheless, as was the case in New Zealand, in the period prior to the introduction of the GST there was a groundswell of support for tax reform, led by several business and community organisations.¹⁷ In 1997, the Howard Coalition Government established both an Interdepartmental Committee, headed by Treasury, as a Taxation Task Force to prepare options for tax reform, and a Tax Reform Consultative Task Force as a mechanism for public input.

The existing tax system was viewed as complex and costly to administer. Many saw it as inequitable and economically inefficient, failing in terms of revenue adequacy and

¹³ Todd, above n 3, 40.

¹⁴ Binh Tran-Nam, ‘Assessing the Revenue and Simplification Impacts of the Government’s Tax Reform’ (1999) 2(5) *Journal of Australian Taxation* 329, 329, 343.

¹⁵ Taxation Review Committee (Justice Kenneth Asprey, chair), *Full Report* (1975); Sam Reinhardt and Lee Steel, ‘A Brief History of Australia’s Tax System’ (Paper presented at the 22nd APEC Finance Ministers’ Technical Working Group Meeting, Vietnam, 15 June 2006).

¹⁶ John Kehoe, ‘GST: The Reform That Divided a Nation’, *Australian Financial Review* (30 June 2010): Australian political history was littered with failed attempts to introduce a single tax on most goods and services levied at the point of purchase. As treasurer in the Fraser government, Howard was rebuffed in 1981 when he proposed a broad-based indirect tax. In 1985, Paul Keating was forced to back down on a 12.5 per cent retail sales tax. In 1993, John Hewson was infamously defeated by an unpopular Labor government after promising to introduce a 15 per cent GST... Hewson, on the cusp of dethroning prime minister Paul Keating at the 1993 election, infamously came unstuck when he struggled to explain how a GST would affect the price of a birthday cake.

¹⁷ Neil Warren, *Tax: Facts Fiction and Reform* (Research Study No. 41, Australian Tax Research Foundation, 2004) 66. For a chronology of the GST debate up to September 1997, see John Harrison, ‘The GST Debate – A Chronology’ (Australian Parliamentary Library Background Paper 1, 1997-98, 22 September 1997),

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/Background_Papers/bp9798/98bp01#INTRO; Kathryn James, *The Rise of the Value-Added Tax* (Cambridge University Press, 2015) 247-259.

susceptible to tax avoidance.¹⁸ A GST was considered by some as a necessary element of a new tax mix which could ameliorate some of these problems. Nevertheless, even though there was widespread dissatisfaction with the existing tax system, the introduction of a GST was still a divisive issue. As it turned out, the pros and cons of a GST were the subject of heated debate in the run up to its introduction.

Over the next 12 months Prime Minister Howard and Treasurer Costello orchestrated the development of the *Tax Reform: Not a New Tax, A New Tax System* (ANTS) package:

The tax reform plan set out in this document constitutes generational change in the Australian taxation system. The changes proposed in personal income tax rates and thresholds, in business tax, in assistance for families, in Commonwealth-State financial relations, in simplifying and streamlining the indirect tax system, in reducing business costs (including reducing fuel costs), in making private health insurance more affordable, and in many other areas constitute historic breakthroughs.¹⁹

As a feature of the 1998 federal election, the proposed GST was made one of the major political battle lines. Despite a strong anti-GST campaign, the Coalition Government narrowly won the 1998 election.

The election battle was won, but not yet the war. The passage of the GST through Parliament was 'torturous'. Treasurer Costello introduced a comprehensive package of 14 Bills to Parliament on 2 December 1998. The measures in the Bills were intended to give effect to the Government's A New Tax System package and covered matters such as the Australian Business Number (ABN), Pay As You Go (PAYG),²⁰ GST (including Transition, Administration and Imposition Bills), personal tax cuts and increased family assistance.

The Bills included a Regulation Impact Statement for the GST.²¹ However, some of the conclusions made in the Regulation Impact Statement were subject to debate.²²

There was substantial Parliamentary scrutiny of the Bills, with four Senate committees examining the legislation, and a lengthy Senate session – the second longest in history. At the time, the government did not have control of the Senate (one of Australia's two houses of Parliament) and numerous amendments to the Bills were made to secure

¹⁸ Harrison, above n 17. See also Australian Treasury (circulated by Hon Peter Costello (Treasurer)), *Tax Reform: Not a New Tax, A New Tax System* (August 1998) 3, <https://treasury.gov.au/publication/tax-reform-not-a-new-tax-a-new-tax-system>, which refers to the then existing tax system as failing Australia: '[t]he existing taxation system is out of date, unfair, internationally uncompetitive, ineffective and unnecessarily complex. It is a system that is preventing the development of a more efficient, relevant and accountable framework for Commonwealth-State financial relations'.

¹⁹ Australian Treasury, above n 18.

²⁰ The PAYG scheme replaced 11 existing payment and reporting schemes including provisional tax, company and superannuation fund instalments, pay-as-you-earn (PAYE), and the prescribed payments and reportable payment systems. PAYG has two distinct components – instalments and withholding. The instalment regime replaced provisional tax and company tax instalment. The withholding regime replaced PAYE.

²¹ Regulation Impact Statement for the Introduction of a Goods and Services Tax (1998) 8.

²² See Ross Guest, 'The GST Package: Has the Senate Resolved the Controversies?' (1999) 2(6) *Journal of Australian Taxation* 419.

passage of the legislation.²³ The most significant amendment was the removal of ‘basic’ food and beverages from the GST base.²⁴

The legislation was passed on 28 June 1999 as *A New Tax System (Goods and Services Tax) Act 1999*. It gained Assent on 8 July 1999 and came into operation on 1 July 2000.

As a postscript to these events, during the 2001 federal election campaign, Labor made a ‘GST rollback’ a centrepiece of its election platform, but the narrow scope of its rollback proposals, which applied only to gas and electricity, failed to attract widespread public support. Labor lost the election and, while the September 11 attacks and the so-called Tampa affair, about ‘children overboard’ and the influx of illegal refugees to Australia, dominated the campaign, the electoral loss effectively ended all serious attempts to undo the GST.

While the GST became part of Australia’s tax mix, there was nevertheless ongoing political sensitivity and scrutiny on the administration of tax reform, including the GST. A possible adverse impact may have been the government’s general reluctance to amend the GST legislation for unintended consequences.²⁵ The government, chilled by criticism from the Opposition that the speed of the GST’s introduction had resulted in an imperfect product, was reluctant to make changes to the GST law. The GST remained a political football for some time and impacted on the administration of the GST. The ATO could address some but not all of the unintended consequences or problems raised as a result of the operation of the GST in practice, through clarification of the law using its purposive approach to interpretation, or by adjusting its processes, forms and procedures. However, there were matters that were beyond the Commissioner’s power to remedy.²⁶ These ‘inconvenient’ outcomes nevertheless reflected the proper interpretation of the GST Act,²⁷ and it would have been *ultra vires* for the Commissioner to have acted in a way that was inconsistent with the law.

Notwithstanding recent changes to the GST system,²⁸ a ‘root and branch’ review of the GST system in Australia remains largely off the political agenda.²⁹

²³ The Bills were originally drafted with one rate and a broad base like the New Zealand legislation.

²⁴ There were polarised opinions on the inclusion or exclusion of basic food and beverages from the GST net, with business groups generally arguing for no exemption and religious and welfare groups arguing for a narrower base. The view of the ATO was made public by the then Commissioner of Taxation, Michael Carmody, who said in a speech: ‘any attempt to draw a line around food will lead to costly disputation and greatly increased costs for the community in administering the GST’: Michael Carmody, ‘Preparing for Tax Reform and the New Millennium: Don’t Draw the GST Line Around Food’ (1999) 2(4) *Tax Specialist* 170. See also Tran-Nam, above n 14, 343. However, others have argued that equity considerations outweigh any additional compliance costs: see Paul Kenny, ‘The GST Food Exemption’ (2000) 3(6) *Journal of Australian Taxation* 424.

²⁵ Justice D Graham Hill, ‘To Interpret or Translate? The Judicial Role for GST Cases’ (2005) 5(11) *Australian GST Journal* 225, 238.

²⁶ Bruce Quigley, ‘Interpreting GST Law in Australia’ in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) 113, 118-120.

²⁷ *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act).

²⁸ GST now applies to sales of low value imported goods, and to imported digital products and services. Tampons and other sanitary goods are now GST-free.

²⁹ For example, the Terms of Reference of the 2008-9 Australia’s Future Tax System Review (Dr Ken Henry, chair) (Henry Review) excluded consideration of the GST.

3.3 The copybook

‘With its unicameral legislature and majority government in the mid-1980s, unfettered by second houses of Parliament or state or provincial counterparts, New Zealand was able to adopt what many consider to be the world’s purest value added tax.’³⁰

Australia had the benefit of New Zealand’s experience when it introduced the GST. In fact, many of the features of New Zealand’s successful implementation of its GST were replicated in Australia.

Following the New Zealand example, the introduction of the GST was part of a package of tax reform. The introduction of the GST was accompanied by significant changes to personal income taxes and social security payments. Adjustments were also made to excise taxes and some specific indirect taxes to adjust for the removal of the wholesale sales tax and the imposition of the GST.

As a point of departure from the New Zealand experience, the government made several compromises to achieve passage through Parliament. The most notable of these was the removal of ‘basic’ food and certain personal products from the GST base.

Consistent with the New Zealand experience, considerable effort was made by the government to bring key stakeholders within the advising and consultative tent. The ANTS documents highlighted the importance and benefit to be derived from a range of consultative processes.³¹ The post-election consultation and implementation strategy for the GST included:

- the Prime Minister and Treasurer meeting with all Premiers, Chief Ministers and State Treasurers to discuss the proposed reform to Commonwealth-State financial relations. This process was assisted by a Working Group of Commonwealth and State officials under the chairmanship of the Commonwealth Treasury;
- the Taxation Task Force continued, supported by a group of working committees, to consult on outstanding areas of policy and associated legislation;
- a New Tax System Advisory Board was appointed to advise on all aspects of the implementation of the New Tax System. It was tasked to pay particular attention to ensuring that the new tax arrangements could be implemented effectively whilst minimising costs and transitional difficulties. The Board advised the government on what help business and the community sector would need in implementing the GST;³²
- a GST Start-Up Assistance Office was established within Treasury to administer the AUD 500 million assistance set aside by the government to assist the readiness of small and medium enterprises, the community sector and

³⁰ Richard Krever and David White, ‘Preface’ in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) viii.

³¹ Australian Treasury, above n 18, 31.

³² Hon Peter Costello (Treasurer), ‘The New Tax System Advisory Board’ (Media Release No. 042, 21 July 1999).

education institutions to deal with their obligations under the GST.³³ Its website contained guides, manuals, media and organisational information.

As can be seen from the above, the government was conscious of the importance of community readiness and of obtaining public acceptance of and support for the GST. These consultation processes were also designed to minimise compliance costs for businesses. Amendments to the Bills were made as a result of consultation with business, industry groups and other stakeholders. However, some of these amendments had the opposite effect of introducing complexity or narrowing the GST base. The amendment to the GST provisions relating to insurance, which had originally been modelled on the New Zealand approach, provides an example.

The ATO was also brought within the tent of policy advisers to advise government and Treasury on the practicalities and potential implications of various policy options, including their feasibility and compliance cost impacts. At the time the ATO was responsible for the development of drafting instructions to the drafters, the Office of Parliamentary Counsel (OPC). The ATO worked closely with Treasury and OPC in relation to the legislative design of the GST.

In terms of legislative design, the framework of the GST borrowed heavily from the New Zealand template.³⁴ But there were some uniquely Australian elements in the legislation. These included provisions dealing with time of supply and place of supply, as well as the introduction of the concept of reduced input tax credits.

In terms of drafting, the GST Act contains a broad overview of the legislation, defined terms, and boxed descriptions of the purpose and effect of the relevant Divisions. Chapter 2 of the Act provides the basic rules and Chapter 3 outlines exemptions from the GST base. The drafting style uses plain English – for example, ‘you’ is used throughout the Act, and a supply other than goods or real property is connected with Australia ‘if the thing is done in Australia’. The language used in the drafting is also intended to be descriptive; for example a taxable supply at a rate of zero is termed GST-free. However, underlying these simple words are concepts that have potential application across the whole gamut of commerce and consumption. Their application (as is the case with all VAT systems) can give rise to difficult and complex issues of interpretation in some cases. Hence, the importance for taxpayer certainty of the protection afforded by the public and private ruling systems.

³³ Hon Peter Costello (Treasurer), ‘GST Start-up Assistance: Program, Office and Advisory Panels’ (Media Release No. 047, 13 August 1999):

The Office, working to the supervision of the New Tax System Advisory Board and including private sector advisory panels, will help small and medium enterprises, charities and education bodies prepare for the introduction of the GST. The GST Start-Up Office will administer the delivery of \$500 million in Government assistance for small and medium enterprises, charities, education bodies through:

- An education and information program on business skills for The New Tax System;
- Assisting key industry and professional organisations to deliver information and assistance to their members;
- A ‘train the trainer’ program to increase the number of people able to train others to provide advice on business skills and the GST; and
- Direct assistance to individual enterprises to prepare for the GST.

³⁴ Hill, above n 25, 225: ‘[s]econd, there is the fact that much of the Australian GST legislation has been based upon the GST or VAT laws of other countries of which the major example is the NZ legislation, although there are signs of Canadian and European Union (EU) influence’.

In seeking to engage interested parties on the content and operation of the proposed changes, the ATO established industry partnerships as a channel for ATO/Treasury and industry to discuss and address GST issues impacting on each sector. The objective was to clarify areas of uncertainty and where necessary to co-design appropriate solutions, whether in the drafting or the administrative procedures that would give effect to the proposed new tax. In all, through these industry partnerships the ATO and Treasury worked through and clarified a plethora of issues, while providing feedback to government.

In a federation such as Australia, the federal government also needs to secure the support of the States and Territories where changes are proposed to State taxes and federal/State financial sharing arrangements. The upshot in Australia of the government's discussions with States and Territories was the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations, which envisaged the elimination of specified inefficient State and Territory taxes that were considered to impede economic activity.³⁵

Taken together, these multifarious, multi-party interactions supported the political process for the introduction of the GST in Australia, and highlighted matters necessary for community readiness and the administration of the new tax system. Nevertheless, the process seemed more torturous and less bipartisan than had been the case in New Zealand. The outcome in Australia was a less efficient GST, with the extra complexity adding to the compliance and administrative burden.

3.4 Lessons

As a matter of economic theory, a single-rate and broad-based design is seen as desirable to improve efficiency and to reduce the compliance costs of a VAT system. The New Zealand GST is often held up as an efficient system.³⁶

The introduction of the GST in New Zealand and Australia provides several political and policy lessons:

- first, the importance of a persuasive rationale for the introduction of a VAT. The community should be provided with enough explanation of the changes to allow them to make sound judgements – ‘never fall into the trap of selling the public short’;³⁷
- a clear majority in Parliament and/or community acceptance of the need for the tax reform package is desirable. The VAT is usually part of a revenue neutral tax reform package to garner community acceptance – such a package could

³⁵ Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations, above n 1, Part 2 Reform Measures, 3 and Appendix A – Taxes Subject to Reform, 11.

³⁶ In measuring the efficiency of a VAT, a C Index (VAT Coverage Ratio) is used – VAT systems that are broad based with single rates are more efficient in policy terms. Hon Josh Frydenberg (Assistant Treasurer), ‘An Efficient and Resilient GST’ (speech to the *Future of Australia's GST: Good Design for the Real World* Conference, Tax and Transfer Policy Institute, Canberra, 16 September 2015): ‘[b]ased on 2012 data, Australia's GST has a coverage ratio of 47 per cent, the OECD average is 55 per cent, and New Zealand has one of the best ratios in the world at 96 per cent’.

³⁷ Douglas, above n 3, 10.

include income tax cuts, abolition of the wholesale sales tax and other taxes and increases in welfare benefits,³⁸

- marketing and communication of the reform package should be done in partnership with key stakeholders such as business, industry, tax professional and community groups;
- wide consultation with the community and key stakeholders improves community acceptance of a new tax and has the potential to minimise taxpayer compliance costs. Hence the three ‘C’s of consultation, collaboration and co-design with key stakeholders are desirable attributes of any well-managed introduction of a VAT, or refinements to an existing VAT.³⁹ However, the consultation process should focus on the ‘public interest’⁴⁰ – making the legislative design better rather than as a consensus building exercise;⁴¹
- maintain political will – ‘don’t blink’ – because any lack of commitment or consistency on the part of the government will reduce public confidence in the proposed tax or may encourage lobbying for a narrower base;
- the policy and legislative design should be kept simple, and it should seek to resolve interpretational and practical problems that have arisen because of the form of the legislation in other countries.⁴² Where in the operation of the GST unintended consequences arise because of the drafting of the law, these should be fixed promptly through amendments to the law;
- consideration needs to be given upfront to community readiness and the capacity of the tax administration to implement the VAT. Given the wide-ranging impacts on the community and the tax administration of a VAT, the time between the passage of the law and its date of effect should take into consideration the preparatory work that is necessary on the part of taxpayers and the tax agency.

The politics in Australia, including a strong anti-GST campaign which had its roots in the successful derailing of the *Fightback!* package incorporating the proposed GST associated with the 1993 federal election; a lack of control of the Senate by the

³⁸ As a VAT is generally regarded as a regressive tax, its introduction is usually accompanied by a support package, including income tax cuts and increased welfare benefits. See also Alan A Tait, ‘VAT Policy Issues: Structures, Regressivity, Inflation, and Exports’ in Alan A Tait (ed), *Value Added Tax: Administrative and Policy Issues* (International Monetary Fund, 1991) 7:

The question of VAT regressivity and inequity is not simple. It deserves a more thoughtful treatment than simplistic use of exemptions and zero rating. Basically, instead of trying to amend and distort the VAT, its strengths should be used to generate revenue that will enable the government to help the poor in more effective ways. This is probably a more positive way to tackle the issue of regressivity than throwing out the VAT or manipulating the new tax until its merits are eroded.

³⁹ Graham Holland, ‘Planning for VAT’ in Alan A Tait (ed), *Value Added Tax: Administrative and Policy Issues* (International Monetary Fund, 1991) 19.

⁴⁰ See generally Board of Taxation, *Post-Implementation Review of the Tax Design Review Panel Recommendations* (December 2011).

⁴¹ Douglas, above n 3, 8.

⁴² Hill, above n 25, 225: ‘[a] perusal of the GST Act shows that in many cases consideration was given to problems in the legislation of other countries and a solution to these problems legislated for’.

government;⁴³ lobbying on equity and sectoral grounds; and the reluctance of the States and Territories to eliminate the full range of specified inefficient taxes, meant that concessions were made on GST policy, and that federal and State taxes were not simplified as much as they could have been.

4. COMMUNITY ACCEPTANCE AND READINESS

*'A comprehensive education and training program – getting things right first – minimises compliance costs.'*⁴⁴

A focus on taxpayer readiness is essential politically for community buy-in in relation to the new tax. An efficient transition to the new tax also makes it more likely that it can be ensured that the VAT will achieve its revenue purpose while minimising the dead weight of compliance costs. Therefore, a major community change program is required to cope with the introduction of a VAT.⁴⁵ Such a program needs to address fundamental behavioural and attitudinal changes as well as business practices such as pricing, accounting and cash flow management. Different strategies are necessary when engaging with small business and large businesses, and in relation to different industries and economic sectors, because they each have different capacities for change. Moreover, the registration, lodgement, reporting and payment processes must cater for the different needs and practices of these sectors. For example, large businesses are usually better able to adopt on-line monthly reporting requirements than many small businesses.

Building community readiness is not solely the responsibility of government and the tax administration – it is best achieved in partnership with business and professional organisations. Ideally, in the delivery of major tax changes, the government and the bureaucracy, especially Treasury and the tax administration, should share responsibility with business, industry, tax professional and community bodies for marketing the changes and educating businesses, their agents and the broader community.

There is a strong interdependence between administration and taxpayer readiness, as there is with the policy design and vice versa. Even before the enactment of VAT legislation, the tax administration's tasks associated with community communication, education and consultation; targeted guidance to business, intermediaries and industries; outreach activities; walk-in, call centre and fieldwork assistance; fact sheets, booklets and guides; and website development, are all essential ingredients in promoting community readiness.

In large measure the success of a VAT is dependent on the ability of businesses to cope with the new tax obligations.⁴⁶ This is especially the case for small businesses and their

⁴³ See generally James, above n 17, 255-259.

⁴⁴ Cedric Sandford, 'Minimising the Compliance Costs of the GST' in Chris Evans and Abe Greenbaum (eds), *Tax Administration – Facing the Challenges of the Future* (Prospect Media, 1998) 130.

⁴⁵ Commissioner of Taxation, *Annual Report 1999-2000* (2000) 1: '[t]here can be little doubt that the introduction of the new tax system from 1 July 2000 involved one of, if not the most, extensive community change programs ever tackled in Australia'.

⁴⁶ Countries typically include special VAT rules for small businesses. Certain small businesses may not be required to register and pay VAT, often achieved using a high VAT threshold; or may be entitled to use simplified procedures to calculate tax liability (for example cash-based accounting); or may have reduced record keeping and/or simplified invoices requirements; or have longer accounting periods (that is, a

agents, because they generally have the greatest difficulty in adapting to the new tax and suffer disproportionately higher start-up costs than large businesses relative to their turnover, even though they may not contribute the same level of VAT revenue. The existing level of sophistication in the use by businesses of digital accounting, invoice and payment systems will influence the ease with which they can transition to a VAT. The availability of technological tools and support for businesses and their agents such as accounting packages that facilitate record keeping and reporting helps to minimise compliance costs and to embed good compliance habits. Thus, the level of adoption of modern technology by business and their propensity and ability to do so has a significant influence on the success of a VAT system. In introducing a VAT, the opportunity exists for government to promote a more digitally savvy business community, even though the mandating of on-line processes is itself a decision with its own political risks.

In addition, the interface between businesses and their agents and the tax administration contributes to the ease of compliance with the VAT. It is therefore important for the tax authority to have seamless (and preferably digital) processes that allow businesses and their agents to register for the VAT; to file VAT returns within the relevant statutory periods; to pay VAT liabilities on time; and to claim and receive refunds where appropriate.

4.1 The Australian experience

*'Australian business faces probably its most profound tax changes in several generations. Within this major reform, the new PAYG and GST systems are of critical importance. The effects are likely to vary from industry to industry and business to business. However, it is reasonable to assert that nearly all businesses will need revised and improved management accounting systems to deal with this change.'*⁴⁷

The administration of the new tax system, including the task of promoting community readiness for the GST, started well before the enactment of the GST.⁴⁸ The responsibilities of the tax authority and the task of promoting community readiness are closely intertwined. Prior to the GST receiving Assent, the ATO understood the criticality of taxpayer readiness for the successful implementation of a VAT. As can be seen from the Commissioner's 2000 and 2001 Annual Reports, substantial activities were directed towards taxpayer education:

- the ATO distributed more than 12 million publications, fact sheets and booklets. These materials included registration kits, record keeping guides, booklets and checklists, as well as a GST curriculum for practitioners. An interim guide on GST was also mailed to tax agents;
- more than 50 key rulings covering general principles and complex areas of the operation of the New Tax System were developed. Drafts of these rulings were

reduced number of returns required each year). However, the effectiveness of these measures is difficult to quantify when measured against a neutral and non-distortive system.

⁴⁷ Jeff Pope, 'Tax Compliance Costs: The Value of Cash Flow Benefits to Business and the Effect of Pay As You Go and the GST' in Michael Walpole and Chris Evans (eds), *Tax Administration in the 21st Century* (Prospect Media, 2001) 303, 311.

⁴⁸ Commissioner of Taxation, *Annual Report 1999-2000*, above n 45, 1-2, 55, 60-68.

released for comment and consultation, with the final public rulings being issued after the enactment of the GST law;

- the ATO responded to more than 2.4 million telephone enquiries and about 39,000 written or email enquiries. ‘Reply-in-5’ was launched to expedite written requests (email, fax, letters) for advice on the GST. This facility responded to 36,500 pieces of correspondence. However, even though the problems that arose were largely at the margin, the program attracted strong criticism where the five-day turnaround target could not be met, as well as concerns about the consistency of replies;
- in the order of 1,000 seminars were run by the ATO and these were attended by more than 200,000 people;
- relevant educational material was added to the ATO’s tax reform website which had more than 100 million hits. Treasury’s tax reform website also provided information on the GST;
- an extensive program of field visits was directed primarily to assisting businesses and tax agents on site with any issues associated with the GST, Business Activity Statement, ABN and PAYG.

The ATO’s focus on community readiness did not stop there. For example the ATO worked closely with peak industry organisations and appointed industry teams covering mining and energy, manufacturing, construction, tourism, accommodation, cafes and restaurants, cultural and recreational, sport and entertainment, transport and storage, communications, banking and finance, insurance and superannuation, property services, motor vehicles, personal, business and other services, primary production, government, charities, religious organisations and public benevolent institutions, health and education.⁴⁹ These teams worked through thousands of issues with these bodies, and developed industry specific publications, as well as providing feedback to government.

The ATO concentrated a great deal of effort on the business sector because the scope of the new tax system meant virtually every business transaction that occurred in Australia would have to be recorded and the record keeping practices of many small businesses were poor.⁵⁰ This meant that they faced the daunting challenge of introducing or upgrading their business systems to deal with the more rigorous and regular recording and reporting requirements of the GST. In order to assist these businesses, and to promote more efficient processes, the ATO assisted software developers on record keeping and accounting packages designed to ease the compliance burden associated with the GST, and to update their software products used by tax agents to include GST.⁵¹ In the interim while these packages were being developed at reasonable costs to firms, and to reduce compliance costs for micro-businesses, the ATO distributed around one million copies of its free record-keeping software package called e-Record.⁵²

⁴⁹ Michael D’Ascenzo, ‘Y2K Relationships – The ATO and You Post 2000’ (Paper presented at the 38th Victorian State Convention, Taxation Institute of Australia, 1999) 132.

⁵⁰ Leigh Edmonds, *Working for All Australians: A Brief History of the Australian Taxation Office 1910-2010* (Australian Taxation Office, 2010) 226.

⁵¹ D’Ascenzo, above n 49, 132.

⁵² Edmonds, above n 50, 226.

While marketing the benefits of the GST rested mainly in the political realm, the ATO marketed the need, and developed processes, for GST registration. This was a high priority for the ATO, because businesses need an ABN to trade, and required GST registration if they were above the turnover threshold for voluntary or mandatory registration. The ATO used a variety of media channels to advise businesses of the new tax system's dependence on the ABNs, and about the registration requirements associated with the GST.⁵³

In order to register businesses for the ABN and GST, the ATO had to build new infrastructure such as the Australian Business Register (ABR).⁵⁴ It then had the task of registering around 2.8 million taxpayer applications for an ABN, and about 2 million businesses were registered for the GST. While it was expected that many business would seek registration close to the date of commencement of the GST, it was still a challenge to respond to these applications in a timely way.⁵⁵ In anticipating this workload, the ATO encouraged the use electronic registration, with 62 per cent of registrations being lodged through the Business Entry Point (15 per cent) or the ATO's Electronic Lodgement Service (47 per cent).⁵⁶ More generally, the ATO sought to promote digital processes by issuing 137,000 digital signature certificates for lodging Business Activity Statements (BASs) on-line.

In the Australian context, the high dependence of businesses, especially small businesses, on tax agents (and BAS agents), put a sharp spotlight on their capabilities, and well as on the inadequacies of the ATO's interface with them. In introducing a VAT or in refining an existing system, consideration needs to be given to the capabilities of intermediaries, and targeted support needs to be provided to them so that they can effectively assist their clients.

The introduction of the GST was a particularly massive challenge for businesses and their agents who struggled to cope with the requirements of the new tax. It was also a challenge for the ATO.⁵⁷ The ATO felt the strain of implementing what was a politically charged tax package. The task of establishing a GST administrative capability was itself complex and difficult from an organisational perspective. Adding to this complexity was the level of political and public scrutiny of the ATO's performance in implementing the new tax system.⁵⁸ The political sensitivity of the GST put the ATO under intense

⁵³ Commissioner of Taxation, *Annual Report 1999-2000*, above n 45, 65: '[t]o convey the importance of timely registration, we used conventional communication channels such as advertising, publications and public-relations, as well as other media such as websites, workshops, Sky Channel broadcasts, talk-back radio, educational videos, and advisory visits to businesses'.

⁵⁴ Ibid 63-68. The ABR was developed as a comprehensive database of Australian Business Number (ABN) registrations. An entity needs an ABN before it can register for GST. Under the New Tax System, the ABN became the new single identifier for business and a key element of the new tax system. The ATO was made responsible for implementing the ABN and the ABR because it 'had the foundations of an appropriate infrastructure, strong partnerships with tax agents and industry groups, and national registration and service centres that registered businesses for taxes': *ibid*. The ABN is searchable by the public via the online ABN Lookup facility. This facility allows buyers and sellers to know whether their counterparty is registered for GST.

⁵⁵ Edmonds, above n 50, 232.

⁵⁶ Commissioner of Taxation, *Annual Report 1999-2000*, above n 45, 65.

⁵⁷ The ATO had just completed work on Y2K and faced serious challenges and intensive public scrutiny of its handling of mass marketed tax avoidance schemes. It also had to implement the tax changes associated with the Review of Business Taxation (John Ralph, chair) (RBT).

⁵⁸ Tom Sherman, *Report of an Internal Review of the Systems and Procedures relating to Private Binding Rulings and Advance Opinions in the Australian Taxation Office* (Australian Taxation Office, 2000) 6:

public scrutiny – a reflection of the interplay of politics, community acceptance/readiness and administration.

Following the introduction of the new tax system (and other tax changes), the confidence of tax agents in the ATO reached a low ebb. A major new tax, together with issues associated with mass marketed tax avoidance schemes, reduced community confidence in the ATO. In response, in 2002 the ATO launched its *Listening to the Community* program.⁵⁹ This program influenced the ATO's decision in 2004 to turn a need for new information technology (IT) into an opportunity to transform the ATO into a more user-centric organisation.⁶⁰

An early significant deliverable of the ATO's 'Change Program'⁶¹ was the Tax Agent Portal which provided tax agents with a secure on-line interface with the ATO and revolutionised the relationship between tax agents and the ATO. Subsequently, the Business Portal allowed business to interact with the ATO online, reducing compliance costs.

4.2 Lessons

The effectiveness of implementation processes for a VAT is highly dependent on the readiness of the business community, especially small business and their agents. Special attention needs to be given to supporting their transition to a new tax regime.

It is important to get things right up front:

- there must be both widespread and targeted communication on the VAT. A focus on VAT registration requirements is a necessary prelude and prerequisite to the operation of a VAT system. The communication campaign should cover the basics of the VAT system such as thresholds for registration, requirements in relation to tax invoices, record keeping obligations, pricing issues (VAT inclusive or exclusive requirements), activity statement reporting (for example, usually monthly with electronic lodgement for large business, and quarterly for others), payment and refund arrangements, and transitional matters;
- the extent of taxpayer education is on a grand scale and multiple communication channels should be used;
- the communication should be tailored to the needs of different audiences – for example different industries, firms with different capabilities (usually a

'[a]n important added complexity [was] the increased political sensitivity of tax administration as the major political parties [drew] one of their major battle lines on tax reform and administration'.

⁵⁹ Edmonds, above n 50, 230.

⁶⁰ Greg Farr, former Second Commissioner of Taxation, speech to the *Government Technology World Conference 2006*, cited in Michael D'Ascenzo, 'Modernising the Australian Taxation Office: Vision, People, Systems and Values' (2015) 13(1) *eJournal of Tax Research* 361, 369:

[To transform the ATO] from an organisation-centric body into a user-centric one – putting the needs of the community first, standing in their shoes, getting to know them better and working with taxpayers and their representatives – tax agents and the IT industry and others – to work together in developing better services and products to make one of life's certainties just that much easier.

⁶¹ *Ibid.*

dichotomy between large and small business), and different market segments (for example government and charities);

- industry partnerships should be established to provide targeted education specifically tailored to the relevant industries. These industry partnerships facilitate consultation and co-design on GST processes to reduce compliance costs. They are also a channel for conveying to government specific VAT issues relating to these industries;
- the tax authority must provide easily accessible guidance or advice on the operation of the VAT and ensure that the guidance or advice provided clearly addresses the needs of the taxpayer or their agent. In other words, it should clarify matters and assist the taxpayer or their agent in a practical way – it should not just repeat the words contained in the law;
- it is important to listen to suggestions made by taxpayers and their representatives and respond to the concerns of the various stakeholders. The response could be by way of co-designing administrative processes to reducing compliance costs or by providing feedback to government on possible amendments to the law;
- it makes good sense to support key intermediaries such as tax agents and software developers so that they can assist their clients in managing the obligations under the VAT. By helping tax agents, the tax authority is able to multiply the beneficial impact of its education of tax agents, with tax agents using that knowledge to assist their clients. Tax agents also provide a channel for on-line reporting to the tax authority. By working with software firms, the tax agency can promote better record keeping and a more digital commercial environment. All this is important for a VAT system to prosper because, in the context of a VAT, the invoice and record keeping practices of businesses are core elements of a viable tax base, and online reporting and payment processes reduce compliance costs;
- in assisting businesses, especially small business, it is worthwhile to highlight the managerial benefits associated with the VAT and to encourage greater take up of digital and on-line processes.

5. ADMINISTRATION

‘Some of the basic requirements for successful administration of a VAT are the following: an appropriate taxpayer identification system; a simple VAT return form which does not request information that cannot be processed in a timely fashion; an effective taxpayer assistance program; a reliable electronic data processing (EDP) system, which provides accurate and timely information; systems for cross-checking information in VAT returns with information from other sources to detect underreporting; an enforcement system that applies different strategies to different kinds of noncompliance; and, finally, a sound and effectively applied penalty system.’⁶²

⁶² Milka Casanegra de Jantscher and Carlos Silvani, ‘Guidelines for Administering a VAT’ in Alan A Tait (ed), *Value Added Tax: Administrative and Policy Issues* (International Monetary Fund, 1991) 31.

Effective implementation of any major tax is critical to its successful operation. The public sector organisations who have responsibilities for implementing the VAT are likely to require additional funding to effectively deliver the desired outcomes. All the necessary implementation tasks require close attention and project management at senior levels. Moreover, it cannot be assumed that the capabilities required for a smooth and efficient introduction of a VAT, including key multidisciplinary skills, will be readily available in these organisations, at least in the short term.

Given the widespread impact of a VAT across the economy, the capabilities of the public sector are likely to be tested when they are required to introduce a major change to the existing tax system. This was certainly the case for the ATO, which had primary responsibility for the implementation of a raft of new tax measures under ANTS and the Review of Business Taxation, as well as challenging ‘business as usual’ responsibilities.

5.1 Other administrators

It is useful to note up front that in focusing on administration of a VAT the tax administration is not the only public sector agency involved. To varying degrees, responsibility for implementing a VAT also involves other areas of government administration. It is therefore essential to ensure that these other agencies are prepared and capable of meeting their respective responsibilities. It is also important that there are good lines of communication and effective collaboration amongst these different arms of government.

For example, a VAT may result in ‘price gouging’ by businesses. When the GST was introduced in Australia, a transitional price oversight regime was established under special legislation which gave the Australian Competition and Consumer Commission (ACCC) special powers to ensure that businesses did not engage in price exploitation or misleading and deceptive conduct in relation to the New Tax System changes. The ACCC’s Annual Report for 2000-2001 noted that most businesses had acted properly, and that action had been taken in respect of inappropriate practices.⁶³

Depending on a country’s dependence on imports, the role of the Customs authority in the implementation and administration of a VAT can be critical.⁶⁴ For example, in some countries the customs authority collects a substantial proportion of VAT revenue. While

⁶³ Australian Competition and Consumer Commission, *Annual Report 2000-01* (2001) 16:

After one year of the GST the Commission found that most businesses have fully complied with its pricing guidelines. Businesses generally acted correctly in adjusting prices to take account of the tax changes. However, there were instances of inappropriate pricing and price representations. Commission staff investigated approximately 6000 matters and took five cases to court this year, resolving a further 31 matters with court enforceable undertakings.

⁶⁴ Casanegra de Jantscher and Silvani, above n 62, 36:

The customs administration should be ready to collect the VAT on all goods cleared either at import or the exbonded warehouse from the date the VAT is supposed to begin. In most developing countries collections of VAT by customs represent 40-60 percent of VAT revenue. The relevant customs forms will need to be amended to provide boxes for the calculation of the VAT (where chargeable) and for the insertion of the importer’s VAT registration number, if he is registered. Of course, the TIN for VAT should become the single identification number for all tax liabilities, including customs. The customs declaration form should relate to the VAT as well as to customs duties. The value for the VAT should be the customs value plus customs duties actually charged, if any (and any other amounts for fees, stamps, etc). Customs brokers and importers should be given timely notification of these requirements to allow them to calculate the VAT and fill out the new customs forms.

the share of GST revenue collected by the Australian Customs Service in the 2001 fiscal year was under 7 per cent of total GST revenue,⁶⁵ it was still a substantial amount, and the performance of Customs impacted on the efficiency of dealings at the border.

A design characteristic of VAT systems is the refundability of input tax credits that exceed the GST tax payable in a reporting period, although this requirement has been modified in some countries. In Australia special arrangements with the Reserve Bank of Australia were necessary to facilitate the prompt payment of refunds.

A major focus for the Treasury portfolio in 2001 fiscal year was the New Tax System reforms. The GST Start-up Assistance Office, the ATO and the Australian Competition and Consumer Commission (ACCC) all played major roles in the introduction of the New Tax System, with Treasury playing a central policy role in monitoring and advising on the implementation phase,⁶⁶ reflecting the coalescence of administration and policy.

5.2 The ATO experience

‘Operational procedures must be designed to identify and register traders, process returns, record payments, issue refunds, identify noncompliers, and collect arrears. Appropriate forms must also be drafted. An audit system must be developed to identify and assess noncompliers.’⁶⁷

As outlined in section 4 above, there is a clear link between many of the activities undertaken by the ATO and the readiness of the community, especially businesses and their agents. The ATO sought to assist taxpayer readiness through extensive education, information and support programs for businesses (including visits by field officers, call centre assistance and web sites to provide information and assistance), and education programs for consumers, as well as targeted activities designed to educate Australia’s multicultural communities on their obligations under the GST.⁶⁸ All this was done in relation to a highly emotive and politically sensitive matter – taxation.

In terms of legislative design, the drafting process for the new tax system was intensive. Highly skilled officers from the ATO, Treasury and the Office of Parliamentary Counsel were involved in translating policy to legislative design, with some 300 pages of legislation being written in very tight deadlines.

Work commenced early on interpretational issues with 50 public rulings being prepared through the Public Rulings Panel on the GST to help the tax industry understand how the ATO intended to interpret the new legislation.

Inside the ATO, its organisational structure had to be amended to include accountability for the various elements of the new tax system. New lines of responsibility and accountability had to be integrated within the existing organisational structure. For

⁶⁵ Commissioner of Taxation, *Annual Report 2000-01* (2001) 21: in the 2001 fiscal year, Customs collected \$1,702 million in GST revenue, with \$23,788 million collected by the ATO.

⁶⁶ Australian Treasury, *Annual Report 2000-01* (2001). For example, Treasury made constant enquiries of the ATO as to whether the GST revenue was tracking in accordance with Budget estimates.

⁶⁷ Holland, above n 39, 22.

⁶⁸ Edmonds, above n 50, 230: ‘[t]ax officers also visited 232,000 people and businesses, conducted around 27,000 interviews, spoke to some 1,500 groups, and answered 4.1 million telephone calls and more than 68,000 written requests for tax technical advice’.

example, a new Goods and Services Tax Division was established, and separate arrangements were made for the Australian Business Register.

The ATO had to recruit and train thousands of new staff – 3,600 additional staff were recruited during 1999-2000.⁶⁹ Additional accommodation had to be procured. New or expanded call centres were established, with scripts covering frequently asked questions, to handle public and tax agent enquiries. New or adjusted processes, forms and procedures were developed to cater for the new tax system.

New information technology systems had to be built and tested, and modifications made to the ATO's legacy IT systems, to accommodate the GST, ABN and PAYG. As Edmonds has noted:

In a normal year, amendments to legislation might result in about 500 program changes to ATO computer systems but over 4,000 program changes involving more than 17 million lines of computer code had to be made in preparation for the new tax system. At the same time a large body of tax officers went out into the community to educate and help anyone with problems in adjusting to the new tax system. And while all this was taking place the ATO still had to keep all its old systems running.⁷⁰

Once the GST received Assent, the ATO was responsible for its administration. This is an ongoing commitment. However, it often takes some time for new systems, procedures and forms to be fine-tuned to meet the expected or unexpected demands of the community and of the tax office.⁷¹ In the short term, this bedding-in period has implications for the community's post enactment acceptance of the VAT. This is so because the ease of compliance influences the community's attitudes about taxation and their willingness to comply with their statutory obligations. The ease of compliance under a GST system is partly a derivative of the policy parameters and legislative design of the law (for example, the level of registration threshold, the length of the GST reporting periods, the requirements in relation to invoices, whether electronic filing is mandatory, and of course the number of rates and the range of exclusions from the GST base). Ease of compliance is also partly a factor of the administrative processes that support the legislative design. Moreover, the ease with which taxpayers, particularly businesses, can interact with the tax system, has broader political implications. For example, during the implementation of the new tax system in Australia, the main concern of taxpayers was the costs imposed on businesses to comply with the system, especially the paperwork associated with completing the Business Activity Statement.⁷² Serious community complaint arose as people began filling out their first Business Activity Statements.⁷³ In response to these vocal concerns the government introduced BAS simplification measures in February 2001. Small businesses were given the option to use simplified reporting and instalment arrangements, with an end of year settlement. By the end of 2001, 11 per cent of the eligible BAS population had opted for the simplified BAS arrangements.⁷⁴ While this represented a significant percentage of GST registrants, it was lower than might otherwise have been the case because of the heavy

⁶⁹ Commissioner of Taxation, *Annual Report 1999-2000*, above n 45, 97.

⁷⁰ Edmonds, above n 50, 226.

⁷¹ *Ibid* 232.

⁷² Commissioner of Taxation, *Annual Report 2000-01*, above n 65, 1-2.

⁷³ Edmonds, above n 50, 226.

⁷⁴ Commissioner of Taxation, *Annual Report 2000-01*, above n 65, 1-2.

reliance by small business on tax agents (and the newly created BAS provider profession).

A feature of the bedding-in phase of the GST in Australia was the Commissioner's guarantee which promised the community that any education and assistance activities would have a help focus, with any other action generally off the agenda. In adopting this approach, the ATO took the opportunity to show a more supportive face to the community. Where inadvertent errors were made, the ATO's focus was on correction rather than penalising the business.⁷⁵ This was the approach adopted by a widely distributed field force which conducted 232,000 advisory visits and 27,000 one-on-one BAS assistance visits in 2000-2001.⁷⁶

Similarly, the ATO adopted a flexible administrative approach during this transitional period on lodgement deadlines, payment arrangements and taxpayer mistakes as well as an ongoing openness to reducing compliance costs for businesses where possible.⁷⁷ A distinction was made between those businesses trying to do the right thing, and those that were not. The latter included business with a poor compliance history, such as serial non- or late lodgers (in the absence of special circumstances). These strategies helped to build the goodwill necessary to sustain community acceptance of the new tax, and community trust in the tax authority.

While the ATO's priority was to support taxpayers and their advisors, refund processes and associated integrity checks needed to be established for the proper operation of the GST system. Work also started, based on the insights gained from the industry partnership, of potential risk areas, on the development of a longer-term compliance strategy (covering both help and enforcement activities), and for the upskilling of staff to undertake those tasks in a sensitive and professional manner.

VAT refund management is an early risk following the introduction of a VAT. The prompt recovery of tax by VAT-registered persons on business inputs is designed to remove VAT as a business cost so that the input VAT does not enter the pricing structure for those sales. Thus, the timely payment of legitimate refund claims is an implicit feature of normative VAT regimes and may be critical to the cash flow of a business. A focus on BAS refunds is also necessary to protect against fraudulent revenue leakage. The ATO's management of refunds involved the development of criteria against which the claims could be considered, and the triaging and follow-up of high-risk refund claims. The vast bulk of refunds were issued within 14 days, with most refund checks done by telephone.⁷⁸

As businesses became more familiar with the GST system, the ATO gradually shifted the focus of its field activities to verification programs rather than advisory visits, while continuing to give the benefit of any doubt to the taxpayer in respect of penalties.⁷⁹ There was also a shift of emphasis away from micro-businesses towards medium and large taxpayers. In the 2002 fiscal year these activities included about 50,000 field verification visits and a similar number of outbound telephone-based compliance

⁷⁵ Commissioner of Taxation, *Annual Report 1999-2000*, above n 45.

⁷⁶ Commissioner of Taxation, *Annual Report 2000-01*, above n 65, Table A1.8 Tax Reform.

⁷⁷ *Ibid* 2-3.

⁷⁸ D'Ascenzo, above n 49, 132.

⁷⁹ *Ibid* 2-3.

activities – all of which resulted in a net increase of AUD 363 million in GST and more than AUD 100 million in other taxes.⁸⁰

5.3 Lessons

In delivering a new tax, the ATO built a reasonably reliable IT system, recruited and trained additional staff,⁸¹ developed new forms, processes and procedures, settled complex issues of interpretation, developed guides and other educational material, and enhanced its call centre, outreach and marketing capabilities, amongst other essential activities. As it turned out the implementation workload for the ATO was greater than anticipated and additional funding was provided as a result.

The first point to make is that the implementation of a VAT is a major undertaking by the tax office and other relevant public sector organisations. The scale of change, especially within the tax administration, challenges the capabilities of the public sector, with any shortcomings likely to be highlighted in the public and political arena.

The relevant public sector organisations must be funded to carry out their functions effectively. Even with appropriate funding, substantial organisational changes, the acquisition of additional staff and different skills, and the training of staff takes time and requires the close attention of senior management.

The following infrastructure, activities and approaches should be built or undertaken by the tax authority in administering a VAT:

- a reliable IT system is necessary to cater for the registration, filing, and payment processes associated with a VAT;
- in the initial phases for the implementation of a VAT, the tax administration focus must be directed at supporting taxpayers and their agents;
- there should be ongoing consultation and co-design with stakeholders. In the reinvention of the ATO that followed the introduction of the GST, it became clear that greater buy-in from tax professional, business and industry representative bodies, and the community more generally, is a vital ingredient in the development of effective administrative strategies that achieve the policy intent and minimise compliance costs. A wide range of consultative forums were revamped or established for this purpose;
- refund management is important to ensure prompt refunds to legitimate registrants while protecting the revenue and the integrity of the VAT system;

⁸⁰ Commissioner of Taxation, *Annual Report 2001-02* (2002) 78.

⁸¹ Holland, above n 39, 21:

Once the main decisions have been taken on the policy, legislation, and operating systems, the VAT staffing needs can be estimated with reasonable precision. Various administrative matters will then have to be tackled; these relate to staffing, including recruitment, job grading, and job descriptions, as well as securing accommodation and transferring staff...[Training] is a major task, and to appreciate its size it must be understood that virtually none of the existing training material in any government department will be relevant to VAT.

- in the bedding down period for a VAT, a ‘softly-softly’ approach to compliance acknowledges the newness of the tax and is apt to reduce taxpayer backlash against the tax;
- to minimise the gap between the tax reported by taxpayers and the statutory tax due, a compliance plan must be developed and implemented. This plan should include a risk-based audit coverage of taxpayers, supported by an increasingly sophisticated analytical and data mining and matching capability.

As the Commissioner of Taxation commented in his Annual Report 2000-20001, ‘[i]t is also the case that the implementation period is not over yet as we work to improve our systems and processes to make compliance easier for taxpayers and their advisers’.⁸² In fact, once implemented, there is the ongoing responsibility of ensuring that the VAT system operates efficiently and effectively. This requires the tax administration to continually scope a new horizon which takes advantage of technological developments to modernise the administration of the VAT. This must be supported by a culture of assisting honest taxpayers while being vigilant (using sophisticated analytics) for abuses of the system.

6. CONCLUSION

The introduction of a major tax such as the VAT, or even its refinement, is an emotive issue. The politics and policy of a VAT are entwined and enmeshed around questions about the community’s acceptance and readiness for the tax, and the ability of the public sector to implement the tax in an effective, fair and efficient way. Each of these dimensions influences the others.

Political will and careful navigation of the political, policy and legislative design processes associated with a VAT is a prerequisite for the successful enactment of a VAT. Obtaining voter acceptance to a VAT usually requires a package of tax measures, including specific compensation for sectors likely to be disadvantaged by the tax. In addition, the benefits of the tax reform package must be communicated broadly to the community, preferably in partnership with other stakeholders.

Interrelated with the political dimension of the VAT is the state of the community’s readiness for major changes to the tax system. In introducing a VAT, the capabilities of businesses and their agents is a critical consideration. Considerable focus should be given to the ability of businesses, especially small businesses and their agents to meet the more stringent record keeping and reporting obligations under a VAT.

In implementing a VAT there is the opportunity for government and the public sector to mandate or encourage greater use of technology by businesses and their agents, although this may increase the start-up costs of the new tax.

The successful operation of a VAT is also dependent on the capabilities of the public sector, especially the tax authority. The tax agency has a subordinate but important role to play in the policy and legislative design of a VAT. In preparing for the introduction of a VAT the tax authority has an enormous responsibility. It must build the organisational and operational infrastructure necessary to support the new tax. A key external role for the tax authority during the implementation phase is to promote

⁸² Commissioner of Taxation, *Annual Report 2000-01*, above n 65, 1.

community readiness by educating businesses and their agents about the VAT and assisting them in their transition to the new tax regime.

Once the legislation is enacted, the tax authority should seek to optimise voluntary compliance by building trust in the VAT system and in its administration. It does this by effectively, efficiently and fairly managing the administrative and compliance risks to the health of the VAT system.

As a final comment on the value added tax, there has been a worldwide trend towards significant reliance on consumption taxes notwithstanding the political, community and administrative challenges associated with the introduction of a VAT. In terms of the global proliferation of VAT systems, it has been said of the VAT that it '*may be thought of as the Mata Hari of the tax world – many are tempted, many succumb, some tremble on the brink, while others leave only to return, eventually the attraction appears irresistible*'.⁸³

⁸³ Alan A Tait (*Value Added Tax: International Practice and Problems* (International Monetary Fund, 1988) 3), cited in Warren, above n 17, 80.