

Cambridge University Press

978-0-521-61656-0 - Value Added Tax: A Comparative Approach

Alan Schenk and Oliver Oldman

Frontmatter

[More information](#)

VALUE ADDED TAX

This book integrates legal, economic, and administrative materials about value added tax. Its principal purpose is to provide comprehensive teaching tools – laws, cases, analytical exercises, and questions drawn from the experience of countries and organizations around the world. It also serves as a resource for tax practitioners and government officials that must grapple with issues under their VAT or their prospective VAT. The comparative presentation of this volume offers an analysis of policy issues relating to tax structure and tax base as well as insights into how cases arising out of VAT disputes have been resolved. In the new edition, the authors have expanded the coverage to include new VAT-related developments in Europe, Asia, Africa, and Australia. A new chapter on financial services has been added as well as an analysis of significant new cases.

Alan Schenk teaches VAT at Wayne State University and has taught VAT at other universities such as Harvard University, the University of Michigan, and the University of San Diego. For the past eight years, Professor Schenk has served as Technical Advisor for the International Monetary Fund, drafting and reviewing legislative proposals for sales and value added tax for several countries in Africa and for emerging economies of Eastern Europe. He is the author of four books and has published many articles on VAT including several involving the taxation of financial services.

Oliver Oldman is Learned Hand Professor of Law, Emeritus, at the Harvard Law School. For twenty-five years until July 1989, he was the Director of the School's International Tax Program. He has been a member of the Law School Faculty since 1955 when he began directing the Tax Program's training activities and was appointed Professor of Law in 1961. He began teaching about value added taxes in his Comparative Tax Policy course in the 1960s and offered his first separate course on the value added tax in 1979. He has taught the course continuously at Harvard Law School since then. Professor Schenk has been a frequent guest lecturer.

Cambridge University Press
978-0-521-61656-0 - Value Added Tax: A Comparative Approach
Alan Schenk and Oliver Oldman
Frontmatter
[More information](#)

Value Added Tax

A COMPARATIVE APPROACH

Alan Schenk
Wayne State University

Oliver Oldman
Harvard Law School



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
 978-0-521-61656-0 - Value Added Tax: A Comparative Approach
 Alan Schenk and Oliver Oldman
 Frontmatter
[More information](#)

CAMBRIDGE UNIVERSITY PRESS
 Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press
 32 Avenue of the Americas, New York, NY 10013-2473, USA
www.cambridge.org
 Information on this title: www.cambridge.org/9780521851121

© Alan Schenk and Oliver Oldman 2007

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2007

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Schenk, Alan.
 Value added tax : a comparative approach / Alan Schenk, Oliver Oldman. – [Rev. ed.].
 p. cm.
 Includes bibliographical references and index.
 ISBN-13: 978-0-521-85112-1 (hardback)
 ISBN-10: 0-521-85112-2 (hardback)
 ISBN-13: 978-0-521-61656-0 (pbk.)
 ISBN-10: 0-521-61656-5 (pbk.)
 1. Value-added tax – Law and legislation. 2. Spending tax – Law and legislation. 3. Taxation of articles of consumption – Law and legislation. I. Oldman, Oliver. II. Title.
 K4573.S337 2006
 343.05'5 – dc22 2006008216

ISBN-13 978-0-521-85112-1 hardback

ISBN-10 0-521-85112-2 hardback

ISBN-13 978-0-521-61656-0 paperback

ISBN-10 0-521-61656-5 paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Cambridge University Press
978-0-521-61656-0 - Value Added Tax: A Comparative Approach
Alan Schenk and Oliver Oldman
Frontmatter
[More information](#)

To
Jared, Ethan, Daniel, Jordan & Rae
AS

Sumi & Robyn
OO

Contents

<i>List of Tables, Figures, and Charts</i>	<i>page</i> xxiii
<i>List of Cases</i>	xxv
<i>Preface to the Revised Edition</i>	xxxiii
1 SURVEY OF TAXES ON CONSUMPTION AND INCOME, AND INTRODUCTION TO VALUE ADDED TAX	1
I. Introduction	1
II. Development of Taxes on Consumption – A Brief Review of History	2
III. Direct and Indirect Taxes on an Income or Consumption Base	5
A. Direct and Indirect Taxes	5
B. Income and Consumption Base for Tax	8
IV. Tax Structures in Developed and Developing Economies	13
V. Broadening the Base of a Tax System	16
VI. The Value Added Tax	16
VII. The Proliferation of VATs	17
VIII. Glossary of VAT Terms	19
IX. Outline of Issues Pertaining to Consumption Taxes	23
X. Discussion Questions	24
 APPENDIX A: DEVELOPMENT TAXATION	25
I. Introduction	25
II. The Reform of Indirect Taxation	27
	vii

viii	<i>Contents</i>	
	III. Taxing Imports	27
	IV. Taxing Exports	28
2	FORMS OF CONSUMPTION-BASED TAXES AND ALTERING THE TAX BASE	30
	I. Forms of Consumption-Based Taxes	30
	A. Introduction	30
	B. Consumption-Based Direct Tax on Individuals	30
	C. Single and Multistage Sales Taxes	33
	II. Overview of the Value Added Tax	33
	A. In General	33
	B. Jurisdictional Reach of the Tax	35
	C. Inclusion of VAT in Tax Base	35
	D. Inclusion of Capital Goods in Tax Base	36
	III. Methods of Calculating VAT Liability	38
	A. Credit-Invoice VAT	38
	B. Credit-Subtraction VAT That Does Not Rely on VAT Invoices	41
	C. Sales-Subtraction VAT	42
	D. Addition-Method VAT	43
	IV. Methods of Altering the Tax Base	46
	A. Entity Exemptions	48
	B. Zero Rating	50
	C. Transaction Exemption	52
	D. Alteration of Base by Granting or Denying Credits	54
	E. Multiple Rates	54
	V. Discussion Questions	55
3	VARIETIES OF VAT IN USE	58
	I. Introduction	58
	II. European Union: A Mature VAT Resistant to Change	59
	A. VAT in the European Community	59
	B. European Court of Justice	63
	C. Application of the EU Sixth VAT Directive	64
	1. History and proposal for recodification	64
	2. When is a tax on consumption not a turnover tax or VAT in violation of the sixth directive?	64

Cambridge University Press
978-0-521-61656-0 - Value Added Tax: A Comparative Approach
Alan Schenk and Oliver Oldman
Frontmatter
[More information](#)

<i>Contents</i>	ix
III. Japanese Consumption Tax	67
1. Credit-subtraction VAT without invoices	67
2. Movement toward invoice-method VAT	68
IV. New Zealand Goods and Services Tax	69
A. Broad Tax Base	69
B. Taxation of Government Services	69
C. Taxation of Casualty and Other Nonlife Insurance	70
D. Global Reach of the New Zealand GST	70
V. African Experience Expanding Base to Tax Financial Services	71
VI. Commonlaw and Civil Law Approaches	71
4 REGISTRATION, TAXPAYER, AND TAXABLE BUSINESS ACTIVITY	73
I. Introduction	73
II. Registration	73
A. In General	73
B. Mandatory Registration	74
1. General rules	74
2. Promoters of public entertainment	75
3. Registration regardless of turnover	76
C. Registration Threshold and the Small Business Exemption	77
1. In general	77
2. What is the business?	80
3. Splitting a business and the related person rules	81
4. Severing value from the business	84
D. Voluntary Registration	86
E. Cancellation of Registration	87
F. Transition to Registration and Cancellation of Registration	88
G. Registration of Branches and Group of Companies	88
H. Electronic Commerce	89
I. Telecommunication Services	91
III. Person Liable for Tax	93
A. General Principles	93
B. Person Treated as Seller	94
1. In general	94
2. Electronic commerce and telecommunication services rendered by nonresidents	95
3. Auctions	96
4. Other sales by nonowners	96
5. Local government services	97
C. Tax Collectible from Third Persons	98

x	<i>Contents</i>	
	IV. Business Activity Subject to VAT	98
	A. Taxable Activity	98
	B. Personal Sales	102
	C. When Does a Business Begin?	106
	D. Employee Not Engaged in Taxable Activity	108
	V. Discussion Questions	109
5	TAXABLE SUPPLIES OF GOODS AND SERVICES, AND TAX INVOICES	111
	I. Introduction	111
	II. Sales of Goods and Services	111
	A. What Is a Sale or Supply?	112
	1. Nonsupplies or supplies other than in the course of taxable activity	113
	2. Sales for consideration	116
	3. Transactions or transfers deemed to be supplies for VAT purposes	122
	a. Cease to conduct taxable transactions	122
	b. Diversion of business assets to personal or employee use	123
	c. Change in the use of goods or services	124
	d. Repossession of goods sold in a taxable transaction	124
	B. Goods or Services	124
	C. Supply of Goods	125
	D. Supply of Services	126
	E. What Is “the” Supply for VAT Purposes? – Single, Mixed, and Composite Supplies	130
	F. Vouchers	137
	III. The Tax or VAT Invoice	138
	A. Role of VAT Invoice	138
	B. Who Receives VAT Invoices?	139
	C. Contents of Required VAT Invoices	139
	D. Waiver of Required VAT Invoices	140
	IV. Discussion Questions	140
6	THE TAX CREDIT MECHANISM	141
	I. Tax Credit for Purchases	141
	A. Basic Input Tax Credit Rules	141
	1. Allowance of credit – general rules	141
	2. Credit for input VAT on capital goods	143
	3. Conditions to claim credit for input VAT	144
	4. Credit denied on purchases for exempt and other nontaxable transactions	149

<i>Contents</i>	xi
B. Impact of Subsidies on Allowable Input Credits	158
C. Pre-opening Expenses and Posteconomic Activity	159
D. De Minimis Rule	161
E. Transactions Involving Shares and Debt	161
F. Bad Debts	166
II. Treatment of Excess Input Credits – Carry Forward, Offset, or Refund	167
III. Impact of Change from Exempt to Taxable Status	171
IV. Used Property	172
A. Business-to-Business Sales of Used Property	172
B. Sales of Used Property in Nontaxable Transactions	172
V. Postsale Price Adjustments and Refunds	175
A. In General	175
B. Returns and Allowances – Credit and Debit Notes	175
C. Postsale Rebate by Pre-retail Registered Business to Final Consumer	176
VI. Casual Sales by Consumers	176
VII. Japan’s System to Calculate Input Credits	177
VIII. Calculation of Tax Liability and Special Schemes	178
IX. Discussion Questions	179
7 INTRODUCTION TO CROSS-BORDER ASPECTS OF VAT	180
I. Introduction to International Trade	180
II. Vocabulary of Interjurisdictional (Cross-Border) Aspects of VAT	181
III. Taxonomy of Broad-Based Sales Taxes on International Trade	181
IV. Origin Versus Destination Principle	182
A. In General	182
B. Double Taxation of Consumer-to-Consumer Imports	184
V. Place of Supply Rules in International Trade	188
A. Basic Rules on the Place of a Supply of Goods and Services	188
B. Recent Developments in the EU on the Place of Supply	195
C. Territorial Versus Global Reach of a VAT	195
VI. Imports	202
A. Imports of Goods	202
B. Imports of Services	203

xii	<i>Contents</i>	
	VII. Exports	205
	A. Exports of Goods	205
	B. Exports of Services	205
	VIII. Telecommunications, Electronically Supplied Services, and E-Commerce	209
	A. Introduction	209
	B. Place of Supply of Services Involving Telecommunications, Electronically Supplied Services, and E-Commerce	210
	1. Telecommunications services	210
	2. Radio, television, and electronically supplied services	212
	3. Electronic commerce	216
	IX. International Transportation Services	219
	X. Proposals to Fund Relief of Disaster Victims or Poverty with an International Tax	220
	A. Introduction	220
	B. Professor Kaneko's Proposal to Fund Disaster Relief with an International Humanitarian Tax	220
	C. Proposals by President Chirac and Others to Fund Poverty Relief Efforts, the Fight against AIDs, or Development Projects with a Dedicated Tax	222
	XI. Discussion Questions	223
8	TIMING AND VALUATION RULES	224
	I. The Timing Rules	224
	A. Accrual, Invoice, and Cash Methods – in General	224
	1. Imports	226
	2. Accrual method	227
	3. Invoice method	234
	4. Cash method	235
	B. Effects of Length of Taxable Period	236
	1. Taxable period – in general	236
	2. Variations in length of period	237
	3. Time to file returns and pay tax	238
	4. Cash-flow effects	238
	C. Special Rules for Certain Sales	239
	1. Installment or deferred payment sales	239
	2. Goods diverted to personal use	241
	3. Other special cases	241
	II. Transition Rules	241
	A. Introduction	241

Cambridge University Press
978-0-521-61656-0 - Value Added Tax: A Comparative Approach
Alan Schenk and Oliver Oldman
Frontmatter
[More information](#)

<i>Contents</i>	xiii
B. Transition Rules Applicable to Repealed Sales Tax	242
C. Timing Differences between Sales Tax and VAT and Supplies Straddling the VAT Effective Date	243
D. Pre-effective Date Contracts Not Specifying VAT	246
III. Valuation Rules	246
A. Taxable Amount or Value of a Supply – General Rule	246
B. Sales Free of Charge or for a Nominal Charge	251
C. Discounts, Rebates, and Price Allowances	252
D. Pledged Goods and Repossessions	254
E. Postsale Adjustments	254
F. Related Party Transactions	256
G. Margin Schemes	257
H. Sales to Door-to-Door Sellers and Similar Independent Contractors	258
I. Self-Supply Transactions	259
J. Taxable Amount – Imports	260
1. General rule	260
2. Imports placed in a bonded warehouse	260
3. Imports of previously exported articles	261
4. Imports from unregistered persons	261
IV. Discussion Questions	262
9 ZERO RATING AND EXEMPTIONS AND GOVERNMENT ENTITIES AND NONPROFIT ORGANIZATIONS	263
I. Introduction	263
II. Zero-Rated Sales	263
A. In General	263
B. Zero-Rated Exports	266
C. Authority to Zero Rate Other Transactions	267
III. Exempt Sales	268
IV. Allocation of a Single Price between Supplies with Different Tax Consequences	279
V. A-B-C Transactions	280
VI. Governmental Entities and Nonprofit Organizations	282
A. Introduction	282
B. Various Approaches to the Taxation of Governments and NPOs	285
C. Taxation in New Zealand	289
D. Taxation in the European Union	290

xiv	<i>Contents</i>	
	VII. Special Treatment for Diplomats, Embassies, and International Organizations	298
	VIII. Discussion Questions	299
10	GAMBLING AND FINANCIAL SERVICES (OTHER THAN INSURANCE)	301
	I. General Introduction	301
	II. Gambling, Lotteries, and Other Games of Chance	301
	III. Financial Services Involving Money and Financial Products (Other than Insurance)	304
	A. Introduction	304
	B. Variety of Transactions Involving Financial Services	305
	C. Financial Intermediation Services	306
	D. Principles to Guide the Taxation of Financial Services	313
	E. Interest Paid on Credit Sales to Consumers	314
	F. Exemption for Financial Intermediation Services as Implemented in the EU	314
	1. Introduction	314
	2. Exemption for financial services in the EU followed elsewhere	315
	3. Effects of exemption at an intermediate or retail stage	317
	G. Vertical Integration and Outsourcing	317
	H. Input Tax Credits and the Allocation of the Credits Between Taxable and Exempt Activities	324
	1. Introduction	324
	2. Methods of allocating disallowed credits	325
	3. Credit denied for VAT on purchases by consumers: credit when purchase is made for investment	327
	I. Departures from EU in the Taxation of Financial Services	327
	1. Introduction	327
	2. Israel and Argentina	328
	3. South Africa	329
	4. Singapore, New Zealand, and Australia	331
	a. Singapore's zero rating of financial services rendered to taxable customers	331
	b. New Zealand zero rates some financial services rendered by financial service providers	331
	c. Australia's treatment of financial services	333
	5. Italy's subtraction-method IRAP imposed at the subnational level	335

<i>Contents</i>	xv
IV. Proposals to Tax Financial Intermediation Services	335
A. Introduction	335
B. Canadian Flirtation with Taxation of Intermediation Services	335
C. Proposals in the United States	336
D. The Poddar–English Proposal	337
E. Zee’s Modified Reverse-Charging Approach	339
V. Discussion Questions	341
11 INSURANCE	343
I. Introduction	343
A. International Insurance Services	344
B. Domestic Insurance Services	344
II. Broad-Based Tax on Casualty Insurance	345
III. Exemption for Insurance Other than Life Insurance	346
IV. New Zealand Taxation of Insurance	348
A. Application of the N.Z. Taxation of Casualty Insurance to Policyholders in Business	351
B. Application of the N.Z. Taxation of Casualty Insurance to Policyholders Who Are Consumers	353
C. Are Warranties “Insurance” in New Zealand?	354
V. Australia’s Taxation of Insurance	355
VI. A U.S. Proposal – The Nunn–Domenici USA Tax System	356
VII. Discussion Questions	356
12 INTERJURISDICTIONAL ASPECTS OF VAT IN FEDERAL COUNTRIES AND COMMON MARKETS	358
I. Introduction	358
II. EU’s Commitment to Intra-Union Borderless Trade	361
A. Introduction	361
B. Selected Provisions of the Treaty Establishing the European Community	362
C. Timetable to Move Toward a Definitive VAT Regime	364
D. EU Required Exchange of Tax Information	364
III. EU Member States Limited to One VAT	365
Letter to the President of the European Court of Justice Concerning the Italian IRAP and the European VAT	367

xvi	<i>Contents</i>	
	IV. EU Commitment to an Origin VAT: Its Problems and Proposals	373
	1. In general and early proposals	373
	2. The Keen and Smith VIVAT for intra-EU trade	374
	V. Canadian VATs and the Bird/Gendron Dual VAT	376
	A. Introduction	376
	B. Variety of Canadian Sales and Value Added Taxes	376
	C. Bird and Gendron Dual VAT Proposal	378
	D. Application of Dual VAT Concept to the EU	380
	VI. Brazil and the Varsano “Little Boat Model”	381
	A. Brazil’s Tax Structure in General	381
	B. Varsano’s “Little Boat Model”	382
	C. McLure’s CVAT Modification of Varsano Proposal	384
	D. Comparison of the Features of the CVAT, VIVAT, and Dual VAT Proposals	388
	VII. Subnational VATs in India	390
	A. Enacted State-Level VATs	390
	B. Prepaid VAT Proposed for India by Poddar and Hutton	392
	VIII. Origin-Based Business Value Tax (BVT) to Finance Subnational Government	393
	IX. Reform of Subnational Taxes in the United States	395
	A. Coexistence of Federal VAT and State Retail Sales Tax	397
	B. Subnational VATs in Use and Proposed for the United States	398
	1. Michigan single business tax	400
	2. West Virginia’s proposed single business tax	401
	3. New Hampshire business enterprise tax	403
	C. Streamlined Sales and Use Tax	404
	D. Ainsworth’s Digital VAT	405
	X. Discussion Questions	406
13	REAL PROPERTY	408
	I. Introduction	408
	II. Array of VAT Treatment of Real (or Immovable) Property	408
	III. EU Approach to the Taxation of Real (or Immovable) Property	411
	A. In General	411
	B. Exemption for Leasing and Terminating a Lease	412
	1. What is a “lease” or “letting” of immovable property?	412
	2. Disposition or transfer of a lease	417

Cambridge University Press
978-0-521-61656-0 - Value Added Tax: A Comparative Approach
Alan Schenk and Oliver Oldman
Frontmatter
[More information](#)

<i>Contents</i>	xvii
C. Mixed Business–Personal Use	425
D. Tax-Motivated Transactions	428
IV. Proposals for the Taxation of Real Property	429
V. Discussion Questions	431
14 PROPOSALS FOR U.S. TAX ON CONSUMPTION	433
I. Introduction	433
II. President Bush’s Advisory Panel on Tax Reform	435
A. Introduction	435
B. Value Added Tax Considered	436
C. The Growth and Investment Tax Plan	437
III. Gibbons and Graetz VATs Replacing Most Income Tax	440
IV. The USA Tax System: Coordinated Consumption-Based Individual and Business Taxes	442
A. Introduction	442
B. The Business Tax	443
C. The Income Tax	445
V. The Flat Tax	448
A. Hall-Rabushka Flat Tax	449
B. Shelby Flat Tax	449
VI. National Retail Sales Tax	451
A. Introduction	451
B. The Chambliss Bill	452
1. Basic framework and scope of the tax base	452
2. Special treatment for government entities and nonprofit organizations	453
3. RST credits	454
4. Rebate to low-income households	455
5. Taxation of financial intermediation services	455
6. Timing rules	456
7. State authority to collect tax and federal support	456
VII. Elective Flat Rate Income Taxes	457
VIII. Discussion Question	458
APPENDIXES	459
Appendix A VATs Worldwide	459
Appendix B Commonwealth of New Vatopia Value Added Tax Act	463
Part I. Preliminary	463

Cambridge University Press
978-0-521-61656-0 - Value Added Tax: A Comparative Approach
Alan Schenk and Oliver Oldman
Frontmatter
[More information](#)

xviii	<i>Contents</i>	
	Part II. Administration	463
	Part III. Imposition of Tax	463
	Part IV. Registration	463
	Part V. Tax Period, Returns, and Calculation of Tax Payable	464
	Part VI. Payment, Collection and Recovery	464
	Part VII. Refund of Tax and Tax Relief	464
	Part VIII. Assessments	464
	Part IX. Objections and Appeals	464
	Part X. Representatives and Special Cases of Taxable Persons	464
	Part XI. Records and Investigation Powers	465
	Part XII. Offences and Penalties	465
	Division I: Criminal Offences	465
	Division II: Civil Penalties	465
	Part XIII. Miscellaneous	465
	SCHEDULES	465
	BILL FOR AN ACT TO PROVIDE FOR THE IMPOSITION AND COLLECTION OF VALUE ADDED TAX	466
	Part I. Preliminary	466
	1. Short Title and Commencement	466
	2. Interpretation	466
	3. Meaning of "Fair Market Value"	470
	4. Meaning of "Supply"	471
	5. Taxable Activity	473
	6. Meaning of "Taxable Person"	473
	Part II. Administration	473
	7. Powers and Duties of Commissioner	473
	8. Secrecy	474
	Part III. Imposition of Tax	475
	9. Imposition of Tax and Persons Liable	475
	10. Time of Supply	475
	11. Time of Import	476
	12. Place of Supply	476
	13. Value of Supply	477
	14. Value of Import	478
	15. Zero Rating	479
	16. Exempt Supply	479
	17. Exempt Import	479
	18. Import Declaration and Payment of Tax for Importation of Goods	479
	19. Import Declaration and Payment of Tax for Importation of Services	480

Cambridge University Press
978-0-521-61656-0 - Value Added Tax: A Comparative Approach
Alan Schenk and Oliver Oldman
Frontmatter
[More information](#)

<i>Contents</i>	xix
Part IV. Registration	481
20. Registration	481
21. Registration Procedure	482
22. Cancellation of Registration	483
Part V Tax Period, Returns, and Calculation of Tax Payable	484
23. Tax Period	484
24. Returns	484
25. Extension of Time	485
26. Calculation of Tax Payable for Tax Period	485
27. Input Tax Deduction	485
28. Input Tax Deduction Allocation and Disallowance Rules	487
29. Postsale Adjustments	488
30. Bad Debt	489
31. Interest on Unpaid Tax	490
32. Tax Invoices and Sales Invoices	490
33. Tax Credit and Debit Notes	491
Part VI. Payment, Collection, and Recovery	491
34. Due Date for Payment of Tax	491
35. Allocation of Payments among Tax, Interest, and Penalties	492
36. Recovery of Tax as Debt Due	492
37. Recovery of Tax from Persons Leaving Vatopia	493
38. Security	493
39. Preferential Claim to Assets	493
40. Seizure of Goods and Vehicles	494
41. Distress Proceedings	495
42. Recovery of Tax from Recipient of Supply	495
43. Recovery of Tax from Third Parties	496
44. Duties of Receivers	496
Part VII. Refund of Tax and Tax Relief	497
45. Carry Forward of Excess Deductions and Refund of Tax	497
46. Interest on Overpayment	499
47. Others Eligible for Tax Refund	499
Part VIII. Assessments	500
48. Assessments	500
49. General Provisions Relating to Assessments	501
Part IX. Objections and Appeals	501
50. Objections	501
51. Appeal to Commissioner of Appeals	502
52. Appeal to High Court	503
53. Burden of Proof	503

xx	<i>Contents</i>	
	Part X. Special Cases	503
	54. Persons Acting in a Representative Capacity	503
	55. Power to Appoint Representatives	504
	56. Branches	504
	57. Bodies of Persons (Other than Incorporated Companies)	505
	58. Death or Insolvency of Taxable Person; Mortgagee in Possession	505
	59. Trustee	505
	Part XI. Records and Investigation Powers	506
	60. Meaning of “Records”	506
	61. Record-keeping	506
	62. Access to Records, Computers, Goods, and Vehicles	506
	63. Records Not in Vatopian Language	507
	64. Notice to Obtain Information or Evidence	507
	Part XII. Offences and Penalties	508
	Division I: Criminal Offenses	508
	65. Power to Bring Criminal Charges	508
	66. Time Limits for Proceedings to Be Taken	508
	67. Tax Evasion	508
	68. False or Misleading Statements	508
	69. Obstructing Taxation Officers	509
	70. Offences by Taxation Officers	509
	71. Offences by Companies, Aiders, and Abettors	509
	72. General Penalty	510
	73. Compounding of Offences	510
	Division II: Civil Penalties	510
	74. General Provisions	510
	75. Penalty for Making False or Misleading Statements	511
	76. Recovery or Remission of Penalties	511
	77. Temporary Closure of Business Premises	511
	Part XIII. Miscellaneous	512
	78. VAT Registration Number	512
	79. Forms and Notices; Authentication of Documents	512
	80. Service of Notices	513
	81. Tax-Inclusive Pricing	513
	82. Schemes for Obtaining Tax Benefits	513
	83. Currency Conversion	514
	84. International Agreements	514
	85. Registration of Certain Goods Prohibited in Certain Circumstances	514

Cambridge University Press
978-0-521-61656-0 - Value Added Tax: A Comparative Approach
Alan Schenk and Oliver Oldman
Frontmatter
[More information](#)

<i>Contents</i>	xxi
86. Auctioneer and Agent	515
87. Regulations	515
88. Variation of Consideration on a Change in Rate	516
89. Application of Increased or Reduced Rate	516
90. Orders to Amend Schedules or Change Amounts or Tax Rate	517
91. Repeal of Laws and Interpretation	517
92. Transitional	517
Schedule I	
Zero-Rated Supplies for Purposes of Section 15	519
Schedule II	
Exempt Supplies for Purposes of Section 16	521
Schedule III	
Exempt Imports for Purposes of Section 17	523
Schedule IV	
Tax Invoices, Tax Credit Notes, and Tax Debit Notes for Purposes of Sections 32 and 33	523
Schedule V	
Registration Threshold, Interest Rates, and Other Amounts for Purposes of Various Sections of the Act	524
Schedule VI	
Repeal of Laws and Interpretation for Purposes of Section 91	524
<i>Index</i>	525

List of Tables, Figures, and
Charts

CHAPTER 1		
Table 1	Turnover Tax Nonintegrated and Vertically Integrated Business	<i>page 4</i>
Table 2	Improved Turnover Tax Nonintegrated and Vertically Integrated Business	5
Figure 1	Income and Product Flows Under Income and Consumption Tax Bases	11
Table 3	Flows of Factor Payments to Households and Tax Bases of Firms	12
Table 4	Select OECD Countries – 2002	13
Table 5	U.S. Federal Tax Receipts as Percentage of GDP	14
Table 6	Total Taxes as % of GDP	14
Table 7	Total Tax on Goods and Services as Percentage of GDP (the date in parenthesis is the date VAT was introduced or became effective)	15
CHAPTER 2		
Table 1	Gross Domestic Product and Personal Consumption Data for 2004 (in billions)	37
Table 2	Output Tax/Input Credits (Net VAT)	40
Table 3	Output Tax/Input Credits (Net CT liability)	41
Table 4	Taxable Sales (Purchases allowable as deductions)	42
Table 5	Taxable Sales (Expenses for VAT purposes)	43
Table 6	Wages, Interest, and Rent Expenses	44
Table 7	Data Set	44
Table 7	Calculation of Base under Gross Product, Income, and Consumption VAT	45
Table 8	Illustration of Car Rental Firm Renting Only for Personal Consumption	46
Table 9	Possible Sales Tax Bases and Tax Payments (10% rate)	47
Table 10	Adapted from “The Value-Added Tax in Developing Countries”	53
		xxiii

xxiv	<i>List of Tables, Figures, and Charts</i>	
CHAPTER 4		
Table 1	Illustration of the Problem of Small Business Under a Credit-Method VAT	80
CHAPTER 6		
Figure 1	Excess Input VATs	168
CHAPTER 7		
Table 1	Options for the Taxation of Domestic and International Trade	182
Table 2	Example of Destination and Origin Principles	184
CHAPTER 9		
Table 1	Wholesale Stage/Retail Stage Zero Rating Scale	264
Table 2	Wholesale Stage/Retail Stage Exemption Scale	269
CHAPTER 10		
Table 1	Percent Value Added Tax with Financial Intermediaries Excluded from the Tax Base	311
CHAPTER 11		
Table 1	Ideal Casualty Insurance Co. Pro Forma Profit Statement for VAT Purposes for the Year Ending December 31, 2005	350
Table 2	VAT Return Ideal Casualty Insurance Co. for the Year 2005	351
Table 3	New Zealand Casualty Insurance Co. Pro Forma Profit Statement for GST Purposes for the Year Ending December 31, 2005	352
Table 4	GST Return New Zealand Casualty Co. for the Year 2005	353
CHAPTER 12		
Chart 1	A Corporation Sale to Domestic B Corporation	375
Chart 2	A Corporation Intraprovince Sale to B Corporation	379
Chart 3	A Corporation Intrastate Sale to B Corporation	385
CHAPTER 13		
Chart 1	Summary of Tax Treatment of Real Property under the Model Act	430

List of Cases

Cases listed by name of the taxpayer or, for action by the European Commission, the country. Highlighted cases are main textual cases.

Addidas New Zealand Ltd v. Collector of Customs
 Alan Ridley v. Commissioners of Custom and Excise
 Edmond Michael Alexander v. The Commissioners of Customs and Excise
 Apple and Pear Development Council v. Commissioners of Customs and Excise
 Argos Distributors Ltd v. Customs and Excise Commissioners
Armbrrecht, Finanzamt Uelzen v.
 Arthur Andersen & Co. Accountants, Staatssecretaris van Financien v.
 ASBL Office des Produits Wallons v. Belgium State
 Assurandor-Societet, acting on behalf of Taksatorringen v. Skatteministeriet
 Atlantic Smoke Shops, Ltd. v. Conlon, [1943] A.C. 550, at 551
 Atlas Marketing v. Commissioners of Customs and Excise
 Aubrett Holdings Ltd. v. H.M. The Queen
 Auckland Institute of Studies Ltd v. Commissioner of Inland Revenue
 A-Z Electrical v. The Commissioners of Customs & Excise
 Banca Popolare di Cremona v. Agenzia Entrate Ufficio Cremona
 Barclays Bank PLC v. The Commissioners
 BAZ Bausystem AG v. Finanzamt Munchen fur Korperschaften
 Bay Ferries Ltd. v. The Queen
 Bebenhams Retail plc v. Revenue and Customs

Cambridge University Press
 978-0-521-61656-0 - Value Added Tax: A Comparative Approach
 Alan Schenk and Oliver Oldman
 Frontmatter
[More information](#)

xxvi

List of Cases

Gunter Berkholz v. Finanzamt Hamburg-Mitte-Altstadt
 Beynon (Dr.) and Partners v. Customs and Excise Commissioners
 BLP Group plc v. Customs and Excise Commissioners
 The Boots Company plc v. Commissioners of Customs & Excise
 British Airways plc v. Commissioners of Customs and Excise
 British Telecommunications plc, Commissioners of Customs and Excise v.
 Cablelink Limited, Cablelink Waterford Limited and Galway Cable Vision,
 DA Mac Carthaigh, Inspector of Taxes v.
 Canadian Airlines International Ltd v. The Commissioners of Customs and
 Excise
 Cantor Fitzgerald International v. Commissioners of Customs and Excise
 Card Protection Plan Ltd v. Customs and Excise Commissioners
 (Careda SA) Federacion nacional de operadores de maquinas recreativas y
 de azar, (Femara) and Asociacion Espanola de empresarios de maquinas
 recreativas, (Facomare) v. Administracion General del Estado
 Carlton Lodge Club v. Customs and Excise Commissioners
 Carpaneto Piacentino (Comune di) and Others v. Ufficio Provinciale Imposta
 Sul Valore Aggiunto di Piacenza (Provincial VAT Office, Piacenza)
 Case 38,253 (Hoge Road, Netherlands)
 Case N23 (N.Z. 1991)
 Case N46 (N.Z. 1991)
 Case P22 (N.Z. 1992)
 Case T2 (N.Z. 1997)
 Case T35 (N.Z. 1996)
 Chef on the Run Franchise Division Ltd. v. The Queen
 Ch'elle Properties (NZ) Ltd v. Commissioner of Inland Revenue
 College of Estate Management v. Customs and Excise Commissioners
 Colour Offset Ltd, Customs and Excise Commissioners v.
 Complete Cuisine & Fine Foods to Go (1988) Ltd. v. The Queen
 Containers Ltd v. Customs and Excise Commissioners
 Cooperatieve Aadappelenbewarplaats G.A., Staatssecretaris van
 Financiën v.
 Co-operative Retail Services Ltd v. Commissioners of Customs and Excise

List of Cases

xxvii

- CSR Ltd. v. Hornsby Shire Council
- d'Ambrumenil (Peter) and Dispute Resolution Services Ltd v. Commissioners of Customs & Excise
- Debenhams Retail plc v. Revenue and Customs Commissioners
- Debouche (Etienne) v. Inspecteur der Invoerrechten en Accijnzen
- Empire Stores Ltd v. Commissioners of Customs and Excise
- Faxworld Worgrundungsgesellschaft Peter Hunninghausen und Wolfgang Klein Gbr, Finanzamt Offenback am Main-Land v.
- Fazenda Publica and Solisnor-Estaleiros Navais SA
- FDR Ltd, Customs and Excise Commissioners v.
- Fine Art Developments plc v. Customs and Excise Commissioners
- Ist internationale Sprach- und Studienreisen GmbH, Finanzamt Heidelberg v.
- First National Bank of Chicago, Commissioners of Customs and Excise v.
- Fonden Marselisborg Lystbadehavn v. Skatteministeriet
- Förvaltnings AB Stenholmen v. Riksskatteverket
- French Republic, Commission of the European Communities v. (Case C-40/00)
- French Republic, Commission of the European Communities v. (Case C-429/97)
- Gabalfria SL and Others v. Agencia Estatal de Administración Tributaria, joined cases
- Gaston Schul Douane-Expeditieur BV, Staatssecretaris van Financiën v.
- Ghent Coal Terminal NV, Belgium v.
- Germany, Re VAT on Postal Transport: EC Commission v. Germany**
- Germany (Federal Republic of), Commission of the European Communities v. (Case C-287/00)
- Germany (Federal Republic of), Commission of the European Communities v. (Case C-427/98)
- GIL Insurance Ltd and Others v. Commissioners of Customs and Excise
- Gold Star Publications Ltd v. Commissioners of Customs and Excise
- Goods and Services Tax (Reference re)
- Greenall
- Glassborow and Another, Commissioners of Customs and Excise v.

xxviii *List of Cases*

- Gulf Harbour Development Ltd, Commissioner of Inland Revenue v.
 Ha and anor v. State of New South Wales & ors; Walter Hammond & Associates v. State of New South Wales & ors
 Halifax plc, Leeds Permanent Development Services Ltd, County Wide Property
 Halifax plc and others v. Customs and Excise Commissioners
 Hans V. Hundt-Eßwein, Case C-25/03, Finanzamt Bergisch Gladbach v.
Haydon-Baillie (W. G.) v. Commissioners of Customs and Excise
 Hellenic Republic, Commission of the European Communities v.
 Hotel Scandic Gasaback AB (Scandic') v. Riksskatteverket
 Howard v. The Commissioners of Customs and Excise
 Huddersfield Higher Education Corporation (University of) v. Commissioners of Customs and Excise
 Ian Flockton Developments Ltd v. Commissioners of Customs and Excise
 Intercommunale voor zeewaterontzilting (Inzo), in liquidation v. Belgian State
 International Bible Students Association v. Commissioners of Customs and Excise
 Investments Ltd v. Commissioners of Customs & Excise, Case C-255/02
 I/S Fini H v. Skatteministeriet (Danish Ministry of Taxation)
 Italian Republic, Commission of the European Communities v. (Case C-78/00)
 Italian Republic, Commission of the European Communities v. [1990]
 Itel Containers Int'l Corp. v. Huddleston
 Kandawala v. The Queen
 KapHag Renditefonds 35 Spreecenter Berlin-Hellersdorf 3. Tranche GbR v. Finanzamt Charlottenburg
 Keeping Newcastle Warm Ltd v. Commissioners of Customs & Excise
 Kingcrest Associates Ltd, Montecello Ltd v. Commissioners of Customs & Excise
 Köhler, Antje v. Finanzamt Dusseldorf-Nord
 KPMG Peat Marwick McLintock v. The Commissioners of Customs and Excise

List of Cases

xxix

- Kommanditgesellschaft in Firma KG HJ Glawe Spiel-und Unterhaltungs-
 gerate Augstellungsges MbH & Co v. Finanzamt Hamburg-Barmbek-
 Uhlenhorst
- Kretztechnik AG v. Finanzamt Linz
- Edith Linneweber, Finanzamt Gladbeck v.; and Finanzamt Herne-West v.
 Savvas Akritidis
- Lubbock Fine & Co. v. Commissioner of Customs and Excise
- Luxembourg (Grand Duchy of), Commission of the European Communities
 v. (Case C-90/05)
- Lipjes (D.), Staatssecretaris van Financiën v.
- Maierhofer (Rudolf) v. Finanzamt Augsburg-Land
- Maritime Life Assurance Company (The) v. HM The Queen
- Mazet (SA Etablissements Louis) et autres v. Ministere d'Economie, Finances,
 et de l'Industrie
- Mohr (Jurgen) v. Finanzamt Bad Segeberg
- Marner and Marner, Commissioners of Customs and Excise v.
- Marshall v. C & E Commissioners, 1975 VATTR 98
- Mirror Group plc v. Commissioners of Customs & Excise
- Mitchell Verification Services Group Inc. v. HM The Queen
- MKG-Kraftfahrzeuge-Factoring GmbH, Finanzamt Groß-Gerau v.
- Montgomery (Jane) Ltd, Customs and Excise Commissioners v.
- Moonrakers Guest House Ltd., Customs & Excise Commissioners v.
- Multi-Choice (U) Ltd. v. Uganda Revenue Authority
- Muys' en DeWinter's Bouw – en Aannemingsbedrijf BV v. Staatssecretaris
 van Financien
- National Bellas Hess, Inc. v. Department of Revenue of Illinois
- National Educare Forum v. Commissioner, South African Revenue Service
- National Society for the Prevention of Cruelty to Children (The) v. Customs
 and Excise Commissioners
- Naturally Yours Cosmetics Ltd v. Customs and Excise
- NDP Co. Ltd v. The Commissioners of Customs and Excise
- Notaries and Bailiffs (Re): EC Commission v. Netherlands
- Oliver, Customs and Excise Commissioners v.
- O'Meara v. Commissioner of Taxation, [2003] FCA 217

xxx *List of Cases*

Open University v. The Commissioners

Optigen Ltd, Fulcrum Electronics Ltd and Bond House Systems Ltd v. Commissioners of Customs & Excise

Pelleted Casehardening Salts Ltd v. The Commissioners of Customs and Excise

Pennystar Ltd., Customs & Excise Commissioners v.

Polysar Investments Netherlands BV v. Inspecteur der Invverrechten en Accijnzen, Arnham

Portland College v. The Commissioners of Customs and Excise

Potters Lodge Restaurant Ltd v. Commissioners of Customs and Excise

Primback Ltd, Customs and Excise Commissioners v.

Professional Footballers' Association (Enterprises) Ltd, Customs and Excise Commissioners v.

Prokofiew (No. 1), R. v.

Quill Corp. v. North Dakota

Recaudadores de Tributos de la Zona Primera y Segunda, Ayuntamiento de Sevilla v.

Robertson v. The Queen

Rogers v. The Commissioners of Customs and Excise

Rompelman & Another v. Minister van Financiën

Royal Academy of Music v. The Commissioners of Customs and Excise

Scottish Solicitors' Discipline Tribunal v. The Commissioners of Customs & Excise

Seeling (Wolfgang) v. Finanzamt Starnberg

Shipping and Forwarding Enterprise Safe BV (Safe Rekencentrum BV), Staatssecretaris van Financien (Secretary of State for Finance) v.

Sinclair Collis Ltd v. Commissioners of Customs and Excise

Solieveld (H.) and J.E. van den Hout-van Eijnsbergen v. Staatssecretaris van Financiën

Solisnor-Estaleiros Navais SA, Case 130/96, [1997] ECR I-5053

Spain (Kingdom of), Commission of the European Communities v. (Case C-204/03)

Sparekassernes Datacenter (SDC) v. Skatteministeriet

Stirling v. The Commissioners of Customs and Excise

List of Cases

xxxi

- Sutter Salmon Club Ltd. v. Her Majesty The Queen
 Suzuki New Zealand Ltd v. CIR
 Telewest Communications plc and anor. v. Customs and Excise Commissioners
 Temco Europe SA, Belgium State v.
 Terra Baubedarf-Handel GmbH v. Finanzamt Osterholz-Scharmbeck
 Tolsma v. Inspecteur der Omzetbelasting
 Trinity Mirror plc (formerly Mirror Group Newspapers Ltd) v. Customs and Excise Commissioners
 Trustco Mortgage Co. v. The Queen
 Tulliasiamies (In) and Antti Siilin
 Turner v. Commissioners of Customs and Excise
 Turpin v. Burgess
 UFD Limited v. The Commissioners of Customs and Excise
 United Biscuits (UK) Ltd. v. The Commissioners of Customs and Excise
 United Kingdom of Great Britain and Northern Ireland, Commission of the European Communities v. (Case C-33/02)
United Kingdom of Great Britain and Northern Ireland, Commission of the European Communities v. (Case C-353/85)
 Unterpertinger (Margarete) v. Pensionsversicherungsanstalt der Arbeiter
Velker International Oil Company Ltd NV, Staatssecretaris van Financiën v.
 Wairakei Court Ltd v. Commissioner of Inland Revenue
 Wellington Private Hospital Ltd, Customs and Excise Commissioners v.
 Westminster, Lord Mayor and Citizens of the City of v. Commissioners of Customs and Excise
 Wilson & Horton Ltd v. Commissioner of Inland Revenue
 Wisselink and others v. Staatssecretaris van Financien, Case 94/88 [1988] ECR 2671, I-5053
Yoga for Health Foundation v. Customs and Excise Commissioners
Zinn and Another, Customs and Excise Commissioners v.
 Zita Modes SARL v. Administration de l'enregistrement et des domaines
 Zurich Insurance Company v. H.M. Revenue and Customs

Preface to the Revised Edition

Thanks to our students at Wayne State, Harvard, and Michigan law schools for their contributions to the revision of this book. Thanks to Dean Frank Wu and Wayne State University Law School, and to Georgia Clark, Director of the Wayne Law Library, and her staff for the support that made this revision possible. Thanks to our colleague Richard Ainsworth and the two anonymous readers who made helpful suggestions on how we could improve our first attempt at comparative value added tax. Thanks to Karen Kissinger for her very helpful research assistance. Thanks to our faculty assistants, Olive Hyman and Lise Berg, for their assistance with various aspects of the manuscript. Thanks to John Berger, our editor at Cambridge University Press, and Peggy Rote, Laura Lawrie, and Dianne Scent for their help in the process of converting our manuscript to final text.

The cutoff date for this book generally was March 31, 2006, although we have included some material published after that date. In particular, we included some European Court of Justice cases, including those covering the Italian subnational tax (IRAP) and some VAT-abusive transactions. This book is not intended to be exhaustive. It therefore does not include all significant cases in all countries or even all English-speaking countries. It is designed to illustrate, analyze, and explain the principal theoretical and operating features of value added taxes, including their adoption and implementation.

The European Union is in the process of revising its Sixth Directive that includes the principles that all member countries must adopt as part of their value added taxes. The Recast of the Sixth Directive, to enter into force, must be adopted by the EU Council of Ministers by unanimity. That action was not taken by this date. In some parts of the book, we included references not only to the Sixth Directive in its present form but also to the Recast.

Alan Schenk, Detroit, Michigan
Oliver Oldman, Cambridge, Massachusetts
June 1, 2006

Cambridge University Press
978-0-521-61656-0 - Value Added Tax: A Comparative Approach
Alan Schenk and Oliver Oldman
Frontmatter
[More information](#)

VALUE ADDED TAX