

Chapter 2

History of Tax

“In this world nothing can be said to be certain, except death and taxes” (Franklin, Benjamin Letter to Jean-Baptiste Le Roy, 13 November 1789. Available at http://www.notable-quotes.com/f/franklin_benjamin.html [Accessed 01/12/14]) – Benjamin Franklin (1706–90) (Franklin, Benjamin (1706–90), “*American statesman, inventor and scientist. A wealthy printer and publisher, he was one of the signatories to the peace between the USA and Great Britain after the American War of Independence*”. [*Oxford English Reference Dictionary (Second Edition) (1996) (“Oxford English Reference Dictionary”)*. Oxford University Press. p550]).

Abstract Is tax a means of extracting money from the people by the government, or is it a fee we pay for the privilege of living in an organised society? The trite point at issue is that taxes represent a payment imposed by governments to raise funds. Tax evasion is a form of resistance to mandatory taxation.

Tax is a cultural phenomenon. While British income tax represents the vanguard of modern tax, the first known records of tax date back to Ancient Egypt in the reign of King Scorpion I. A tax is rarely rescinded, however, there are historical records of such practices.

VAT is a modern tax but sales tax and customs duties date back to the Roman Empire. VAT, first devised in post WWI Germany to replace ‘cascading’ turnover tax, has evolved into a multi-stage VAT system. In the 1960s less than ten countries had adopted VAT. Today technology and globalisation have precipitated the dissemination of VAT to more than 130 countries.

The technological revolution has compelled a re-examination and ‘reconceptualisation’ of traditional principles of taxation and application, and has engendered the challenge of implementing and enforcing an international taxing regime subject to the authority of international organisations, for example, the OECD.

2.1 Introduction

Regardless of the reasons or motivation for the imposition of tax, taxation has been *“implemented by different empires in different places and time; perhaps like temple and monument construction, taxation is a common phenomenon of human society”*.¹

A review of the history of taxation and a synopsis of its development in ancient economies provides a foundation for the study and understanding of the reasons for the development of VAT. In turn, an understanding of the motivation for the implementation of a new taxing system in the twentieth century is essential to the argument for VAT as an effective taxing system. Furthermore, a review of the history of tax through to the development of international tax promotes the understanding of the necessity for taxation and international tax co-ordination.

2.2 History of Taxation, Globalisation and International Trade

It is trite that taxes represent a payment, a financial charge, imposed by governments to raise funds for direct and indirect benefits. Otherwise referred to as ‘direct taxes’ and ‘indirect taxes’, the former is generally imposed for the provisioning for, maintenance and administration of the public sector, and the latter is associated with the *“benefit [which the taxpayers] gain from their link with that country”*.²

Throughout the history of taxation, the collection of taxes has been a method by means of which a government may exact money from the citizens of that country. And while some may define taxation as a *“compulsory levy made by public authorities for which nothing is received directly in return”*,³ a more apt definition may be *“the dues that we pay for the privileges of membership in an organised society”*.⁴

Due to poor historical records, coupled with the diverse social and cultural structures of ancient civilizations, it is uncertain when the first system of taxation was actually implemented.⁵ The oldest taxation records were unearthed with the discovery of King Scorpion the I’s tomb. The discovery of these tax records was not only significant for the history of taxation, but also for written language. Indeed, the unearthed records have the *“oldest use of writing with symbols*

¹Lymer, Andrew & Hasseldine, John *The International Taxation System* (2002) (“*International Tax System – 2002*”), USA, p22.

²ibid p2.

³supra.

⁴Roosevelt, Franklin D. Available at <http://thinkexist.com/search/searchquotation.asp?search=tax&page3> [Accessed 8 May 2008].

⁵op cit, Lymer & Hasseldine p21.

representing constancies and forming syllables – hieroglyphics".⁶ Gunter Dreyer, the archaeologist who unearthed the tomb of King Scorpion I, observed that *"writing emerged as an innovation because of economic necessity rather than from creative expressions of mankind"*.⁷ 'Economic necessity' may here be defined as an exigent need for efficient tax collection and as such was a major component in the development of writing!⁸

Resistance to mandatory taxation has always taken the form of tax evasion. Indeed, the phenomenon of cockney slang allegedly derives from the rigorous implementation of income taxation in Britain by the British government. It has been reported that cockney slang was devised by barrow sellers in an attempt to confound tax collectors and evade taxation.⁹ Thus it may be contended that the development of writing and the inception of a distinguishing class of dialects derive directly from the evolution and promulgation of taxation.

The Ancient Egyptian concept of taxation was espoused by Ancient Greece. Hence *"ideas about taxes, developed in a particular time and place, were transported to and adopted in other times and in other places"*.¹⁰

The espousal of the concept of tax was significant in that it distinguished levels of civilisation in the ancient world. *"In the ancient civilisations, taxation arose independently such that taxes, like writing, characterised civilised society. Yet, it is the uncivilised acts of war that often seems to be the impetus for developing or adopting a new form of tax"*.¹¹ The Ancient Greeks imposed various forms of taxation, including a special tax during times of war. Furthermore, the Ancient Greeks were one of the first and few *"societies that were able to rescind the tax . . . [after] the emergency . . . [or war] was over"*.¹²

British income tax represents the vanguard of modern tax. Analogous to Ancient Greece, Britain formulated an income tax to finance her engagement in the Napoleonic wars. With the resolution of the wars against Napoleon after the Battle of Waterloo in 1816, Britain rescinded the income tax. Opponents to the tax attempted to destroy all records of the income tax, including the repealing thereof, as it was contended that the sole purpose for such a tax was to finance war. However, complete destruction of the records was prevented as *"copies were retained in the basement of the tax court"*.^{13,14}

⁶supra.

⁷supra.

⁸supra.

⁹Goldswain, George Kenneth *Remission of Penalties in Income Tax Matters*. Available at <http://etd.unisa.ac.za/ETD-db/theses/available/etd-08242004-114134/unrestricted/02dissertation.PDF> [Accessed 18 November 2006].

¹⁰idem, p22.

¹¹supra.

¹²Tax World 'Tax World . . . A History of Taxation'. Available at <http://www.taxworld.org/History/TaxHistory.htm> [Accessed 30 June 2010].

¹³supra.

¹⁴supra.

Furthermore, during the Second War of Independence in 1812¹⁵ the USA (brandishing the watchword of the American Revolution, “[t]axation without representation is tyranny”¹⁶) considered implementing an income tax based on the British Tax Act of 1798. Thus in addition to archival preservation of the British War tax records, other countries had already studied the British model, therefore making it impossible to strike the model from record. However, implementation of such income tax in the USA was postponed due to the Treaty of Ghent in 1815 which ended hostilities and, therefore, the urgent necessity for such a tax. The postponement of imposing such an income tax in the USA was temporary as finance was required for the Civil War. The USA Tax Act of 1861 proposed that “*there shall be [tax] levied, collected, and paid, upon annual income of every person residing in the U.S. whether derived from any kind of property, or from any professional trade, employment, or vocation carried on in the United States or elsewhere, or from any source whatever*”.^{17,18}

2.3 The Rise of VAT

The twentieth century generated mounting revenue requirements which could not be met by traditional indirect taxes and income tax systems. The concept of VAT was first devised in Germany post World War I. Prior to the introduction of VAT, a “*cascading turnover tax was imposed every time . . . goods were transferred in the process of production and distribution to the consumer*”.¹⁹ Other forms of indirect taxes included sales taxes and customs duties.

While VAT is a modern tax, sales taxes and customs duties date back to the Roman Empire. *Portorium*, customs duty and tax imposed on imports and exports, was one of the earliest taxes to be implemented in the Roman era. The concept of indirect taxes was defined with the imposition of sales tax during the reign of Julius

¹⁵Kelly, Martin About.com Guide to American History. About.com: American History. Available at <http://americanhistory.about.com/od/warsanddiplomacy/u/warsandevents.htm> [Accessed 12 September 2010].

Kelly summarises the War of 1812 as follows:

The war of 1812 has sometimes been called the Second War of Independence and was fought between the United States and Great Britain. During the war, Washington D.C. was taken over, and president Madison was forced to flee. The war ended in 1815 essentially restoring the status quo between the two countries.

¹⁶*The Penguin Dictionary of Quotations* (1970). Hazell Watson & Viney Ltd., Great Britain (“*Penguin Dictionary of Quotations*”). p276.2.

¹⁷idem Refer to footnote 15 of this paper [p24].

¹⁸supra.

¹⁹op cit Schenk, Alan and Oldman, Olivier *Value Added Tax, A Comparative Approach* (2007), USA, p3.

Caesar. By the reign of Caesar Augustus “the sales tax was 4 [four] per cent for slaves and 1 [one] per cent for everything else.”²⁰

In Germany Dr. Wilhelm von Siemens,²¹ upon recognising the problems with the existing turnover taxes, devised a new tax system which is commonly referred to today as VAT. It was deemed that a major flaw with the turnover taxes was that they were “cascading”. Simply stated, “cascading taxes cannot be reclaimed by the purchaser, so that the tax component of the price of goods becomes larger and larger the more stages there are between producer and consumer – with obvious distortionary effects as between highly integrated enterprises and other enterprises”.²² France extended this ‘new taxing system’ in 1954. The ‘new extended’ version of the ‘new taxing system’ was fondly labelled “value-added tax”.²³

Following Dr. Wilhelm von Siemens of Germany, Thomas Adams²⁴ discussed the concept of value added type taxation in the USA in 1921 based on “[t]he principle..[of] reduc[ing] the tax on sales by the tax already paid on business inputs in order to avoid the tax-on-a-tax effect and to remove the incentive to vertically

²⁰op cit, Tax World ‘Tax World . . . A History of Taxation’. Available at <http://www.taxworld.org/History/TaxHistory.htm> [Accessed 30 June 2010].

²¹Wilhelm von Siemens, a German businessman, invented VAT after World War I. “The main problem [Wilhelm von Siemens] was concerned with was cascading – taxes being levied on taxes – which was a common problem with manufacturers’ excise taxes. The VAT solved this problem by giving producers and distributors a credit for taxes previously paid so double taxation was eliminated.”. [Bartlett, Bruce. *VAT Time? A Money Machine that Conservatives Shouldn’t Oppose* (5 June 2009). *Forbes.com*. Available at <http://www.forbes.com/2009/06/04/value-added-tax-opinions-columnists-bartlett.html> [Accessed 19 September 2010]].

²²op cit, Schenk, Alan and Oldman, Olivier, p3.

²³Keen, Michael, *IMF Working Paper; VAT Attacks!* (2007) Introduction, p3. Available at <http://www.imf.org/external/pubs/ft/wp/2007/wp07142.pdf> [Accessed 12/08/2008].

²⁴Thomas S. Adams (1873–1933), an American economist, “is credited with much of the taxation policy of the World War I and post-war period”. The Wisconsin Historical Society provide the following bibliography of Thomas Sewall Adams:

economist, professor; b. Baltimore, Md. He graduated from Johns Hopkins Univ. (A.B., 1896; Ph.D., 1899). Except for a year spent teaching at Washington Univ., St. Louis (1910–1911), he was professor of economics at the Univ. of Wisconsin from 1901 to 1916. As a member of the Wisconsin Tax Commission (1911–1915), he helped draft the state income tax law of 1911. He was a professor at Yale Univ. from 1916 until his death. As an economic adviser to the U. S. Treasury (1917–1933), he is credited with much of the taxation policy of the World War I and post-war period. He was president of the National Tax Association (1922–1923), American Economic Association (1927), and member of the fiscal committee, League of Nations (1929–1933). Adams was the author of several books on economics and taxation. M. Curti and V. Carstensen, Univ. of Wis. (2 vols., Madison, 1949); Who’s Who in Amer., 17 (1932); [G. A. Boissard, comp.], In Appreciation of T. S. Adams [Madison, 1933]; Madison Wis. State Journal, Feb. 9, 1933; Madison Capital Times, Feb. 9, 1933.

integrate a business".²⁵ VAT has developed since its inception and is now commonly a multi-stage VAT. However, prior to the widespread use of the multistage VAT system, a single stage consumption tax was imposed by several countries and it is this single stage consumption tax that is still utilised at the retail level "*by almost all states in the United States and by several provinces in Canada*".²⁶ The single stage consumption tax is often referred to as sales tax.

It should be noted that the USA remains one of the few industrialised countries that has not adopted VAT. Another country without a central VAT system is India. The USA and India are the most populous countries without a central VAT system. It has been contended that "*it is unlikely to be a coincidence . . . that both are federal countries with a strong presence of the states in the levying of general consumption taxes . . .*".²⁷ Other countries which have not implemented VAT are primarily small countries with small economies and, therefore, the possible VAT gain over a broad-based tariff is relatively too diminutive to necessitate the implementation of VAT.²⁸

While this paper is aimed at examining the effectiveness of VAT as the eTax solution, a synopsis of the current retail tax system practised by most of the states in the USA is essential, because the USA is a huge commercial hub and a key player and participant in eCommerce. The USA indirect tax system is essentially a "*patchwork of [retail] sales tax utilization and sales tax rates*"²⁹ and will be discussed further.³⁰

The expansion of VAT accelerated in the late 1960s and the "*pace of VAT implementation . . . [has been described as remaining] rapid until the late 1970s, at which point it slackened for a decade before picking up again in the latter part of the 1980s and well into the 1990s*".³¹ The 'rapid rise' of VAT since its inception has been described as "*the most dramatic – and probably most important – development in taxation in the latter part of the twentieth century, and it still continues*".³² This 'rapid rise' flourished especially between the years 1987 to 1997, with many eastern

²⁵op cit, Schenk, Alan and Oldman, Olivier, p4.

²⁶supra.

²⁷op cit, Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul & Summers Victoria, *The Modern VAT*, USA, p7.

²⁸supra.

²⁹Duncan, Harley T *State and Local Retail Sales Taxes*, Federation of Tax Administrators April (2005), p1. Available at <http://www.taxadmin.org/fta/rate/taxreformpanel.pdf> [Accessed 27/03/2010].

³⁰Refer to Chap. 20 – United States of America, Part V of this paper [p240–253].

³¹op cit, Ebrill & Keen et al. p5.

³²Ebrill, Liam *Finance and Development*, quoted in Wendy H. Mason et al. *Value-Added Tax – The VAT Assessment Process, History of Value-Added Tax*. Available at <http://www.referenceforbusiness.com/management/Tr-Z/Value-Added-Tax.htm> [Accessed 12/08/2008].

European and Asian countries and the former Soviet Republic introducing VAT into their taxing systems.³³

Reasons and motivation for adopting VAT vary, but the following are indicative reasons:

In Western Europe, adoption of the VAT was intimately associated with the drive for greater economic integration among the member states of the European Communities: the VAT is particularly well suited to avoiding the trade distortions associated with the cascading indirect taxes that it replaced. In South America, the VAT was seen as a more efficient revenue-raising tax that would be consistent with the increasingly outward orientation of economic policies. The rapid adoption of the VAT in the transition economies reflected the need to replace the traditional sources of revenues... that were declining as a result of economic transformation with a tax regime geared to the emerging market economy; in some cases it may also have reflected the status of the VAT as a precondition for joining the European Union. In many developing countries, adoption of the VAT has been given additional impetus by the long-run revenue implications of trade reform – the economic efficiency arguments favouring the VAT have been bolstered as trade tax revenues have come under pressure with deepening trade liberalization commitments.³⁴

To date, more than 130 countries worldwide have introduced VAT into their national taxing systems compared to the late 1960s when less than ten countries had adopted the VAT system.³⁵ While diverse reasons for implementing an incontrovertible VAT system can be debated *ad nauseum*, perhaps the compelling allure of VAT is simply her ‘irresistible’ nature:

... the VAT 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.³⁶

The European VAT system influenced the adoption of VAT by NZ in 1985. However, NZ implemented VAT with a much broader taxing base. It may be said that NZ, in effect, adopted the European VAT system and then removed all recognised imperfections. South Africa adopted the NZ VAT system effective as of 30 September 1991. CAN implemented her VAT system in the same year as the RSA; however, CAN’s VAT system had to be adjusted to accommodate the taxing system implemented in her Native American reserves.³⁷ Japan implemented VAT in

³³Mason, Wendy H et al. *Value-Added Tax – The VAT Assessment Process, History of Value-Added Tax*. Available at <http://www.referenceforbusiness.com/management/Tr-Z/Value-Added-Tax.html> [Accessed 12/08/2008].

³⁴op cit, Ebrill & Keen et al. p6.

³⁵OECD *Consumption Tax Trends, VAT / GST and Excise Rates, Trends and Administration Issues* OECD Publishers (2006) p18 & 20.

³⁶Tait, Alan *Value Added Tax: International Practice and Problems* International Monetary Fund (1988). Also, New York School of Law, *Value Added Taxation of Electronic Supply of Services*, Tait, Alan. Available at <http://www.jeanmonnetprogram.org/papers/01/013301-02.html> [Accessed 9 August 2008].

³⁷A ‘reserve’ is land over which a First Nation (Indian band) land (Canadian Native Nations) exercises governmental control, and taxable supplies made on such land to an Indian will not be subject to the Canadian type VAT, i.e. Goods and Services Tax. It may be of interest to note that

1989. Japan's VAT system is in effect different from other VAT systems³⁸ and will thus be discussed³⁹ separately in this work.

“[W]riting emerged as an innovation because of economic necessity rather than from creative expressions of mankind”,⁴⁰ the economic necessity being the exigency of effective imposition and collection of taxation. Just as the development of writing was impelled by the exigencies of taxation, so the stringent necessities of taxation are impelling a shift in our perception of the virtual world and our concept of and principles pertaining to ‘presence’. Principles of taxation and application are being continuously re-examined and ‘reconceptualised’ apropos of greater flexibility in the face of the technological revolution. New taxes have been introduced and the introduction of further taxes to combat this new phenomenon are urgent points at issue, the resolution of which will secure exponential growth in tax revenue; however, failure will result in unfathomable loss to government coffers.

Given the present challenge of economic commerce, it behoves to note that various economic exigencies over a long period have promoted taxation's ability to adapt. Tax has evolved progressively over thousands of years in a non-electronic world. However, the impact of technology has compelled an exponential evolution of tax in the last 100 years. Technology and globalisation have precipitated the dissemination of VAT to 130 countries globally in less than half a century – an inconceivable phenomenon prior to the industrial revolution. Technology has, furthermore, facilitated easier, quicker and more effective cross-border transactions, further promoting globalisation. Indeed, technology has precipitated a more rapid evolution of globalisation than was realised during the aeons since its conception. It is therefore necessary to comment, albeit briefly, upon the development of modern forms of globalisation.

2.4 Globalisation – Its Impact

While globalisation may have first been defined by Roland Robertson of the University of Pittsburgh as *“the compression of the world and the intensification of the consciousness of the world as a whole”*,⁴¹ it may be contended that the vision of globalisation was first conceived by Alexander the Great in his vision of a coalition of states. Alexander the Great's philosophy of war was to establish a confederation

“several band councils or other governing bodies of a First Nation adopted the First Nation GST (FNGST) [Goods and Services Tax]. The FNGST is comparable to the Canadian GST... Where enacted, the FNGST, not the Canadian GST, applies to taxable supplies on First Nation lands”. Ibid, Schenk & Oldman 19.

³⁸idem, p18.

³⁹Refer to 18.3.2. Japan, Part V of this paper [p215].

⁴⁰supra.

⁴¹Mainelli, Michael, Professor, of the Gresham College. Available at <http://www.gresham.ac.uk/printtranscript.asp?EventId=514> [Accessed 17 June 2008].

facilitating secure and stable trade. His vision was to forge an economic union in the known ancient world. Alexander the Great's vision of a global economy was precluded by his inauspicious death at the age of 33.

Actual implementation of globalisation was recorded during the Mongolian Empire 1206–1368.⁴² However, nineteenth century liberalisation is often referred to as the “*first era of globalisation*”.⁴³ The “*first era of globalisation*” collapsed after the Great War, followed by the “Gold Standard Crisis”.⁴⁴ Despite set-backs globalisation could not be halted, and since World War II globalisation “... *has been driven importantly by advances in technology. By lowering the costs of gathering information and conducting transactions, new technologies have reduced market frictions and provided significant impetus to the process of broadening world markets*”.⁴⁵ In effect globalisation may be “viewed as a centuries long process, tracking the expansion of human population and the growth of civilisation, that has accelerated dramatically in the past 50 years”.⁴⁶

Globalisation has resulted in critical international policy changes with regard to taxation as the “*pressure for tax rate convergence gravitating towards lower rates*”⁴⁷ mounts, otherwise referred to as ‘tax competition’. ‘Tax competition’ has resulted in the reduction of domestic “*governments’ ability to raise [national] revenue through taxes*”.⁴⁸ The primary reason for this reduction is due to the increased labour and capital mobility which has made it easier to destroy the tax base of governments around the world.⁴⁹

It has been asserted that economic superpowers of the past thrived, grew and existed as a consequence of their extensive and well established international trading. International trading has evolved into one of the aspects of modern day ‘globalisation’. A further sub-category of modern ‘globalisation’ is the Internet and eCommerce.

Prior to examining whether VAT is indeed the solution for eCommerce, an assessment of international tax viewed with the interest of the international economic tide is necessary. This involves an examination of the causes which gave rise to the institution of international tax and the development of international tax systems

⁴²Timeline of the Mongolian Empire, *The Mongolian Empire: A Historical Website*. Available at <http://www.geocities.com/Athens/Forum/2532> [Accessed 5 January 2009].

⁴³Lindsey, Brink, *The Decline and Fall of the First Global Economy, how nationalism, protectionism, and collectivism spawned a century of dictatorship and war* (December 2001) Reason.com. Available at <http://www.reason.com/news/show/28241.html> [Accessed 17 June 2008].

⁴⁴supra.

⁴⁵Greenspan, Alan, *Testimony of Chairman Alan Greenspan, Trade Policy Before the Committee on Finance, U.S. Senate. April 4, 2001*. Available at <http://www.federalreserve.gov/boarddocs/testimony/2001/200104042/default.htm> [Accessed 17 June 2008].

⁴⁶*The Financial Express*. Available at <http://www.financialexpress.com/news/No-boundaries/245732/> [Accessed 17 June 2008].

⁴⁷Nattrass, Nicoli, *Macroeconomics Theory and Policy in South Africa* (2003) p309.

⁴⁸supra.

⁴⁹supra.

and guidelines. The booming of international trade within eCommerce and the Internet provokes questions regarding ‘taxing rights’, definitions to be applied, etc. International taxation is concisely the “*international aspects of domestic laws*”.⁵⁰ Briefly stated, ‘international tax’ is a subject of study that deals with international tax treaties and international aspects of domestic tax laws. No international tax laws, *per se*, actually exist. However, when countries enter into double tax treaties or other multi-national agreements, such treaties and agreements approximate international law. The reason why such treaties and agreements only ‘come close’ to international law, and are not in fact international law, is because only the ‘Contracting States’ are obliged to follow these treaties or agreements.⁵¹ Thus, to understand international taxation one must understand the interaction between the two/multiple ‘Contracting States’ tax systems.⁵²

An important aspect of international tax is that it deals with the ‘domestic income tax laws’ of different countries and, as such, implementation and enforcement of an international taxing regime is a challenge as different jurisdictional authorities are involved. Intrinsic to the effective implementation of international tax guidelines, principles and rules is the establishment and common recognition of an international body which oversees, and is recognised as the authority of, such international tax laws. The OECD is such an international body. The OECD, within the context of this paper, is significant in respect of international tax and global regulation of tax. An outline of the history and development of the OECD as such an authority is essential to the understanding of the necessity for OECD-like institutions as a means of developing forms of global governance in the era of globalisation.

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⁵⁰Olivier, Lynette and Honiball, Michael, *International Tax, A South African Perspective (2008)* p1.

⁵¹Olivier, Lynette and Honiball, Michael, *International Tax, A South African Perspective (2005)*, p1.

⁵²Supra.

- Franklin, Benjamin. 1789, November 13. *Letter to Jean-Baptiste Le Roy*. Available at http://www.notable-quotes.com/f/franklin_benjamin.html. Accessed 1 Dec 2014.
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eCommerce and the Effects of Technology on Taxation

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