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Demystifying the Value-Added Tax Act implications of fixed property transactions in South Africa

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1. INTRODUCTION

'*Knowledge is a process of piling up facts; wisdom lies in their simplification*'.

reference to section 10(4) in relation to the special value of supply for connected persons. Furthermore, section 10(4) does not contain any instances of circular referencing, such as making a reference to subsection 9(2) of the VAT Act.

The VAT Act contains important provisions that must be taken into account when a VAT vendor purchases second-hand fixed property. These provisions include section 1, existing literature and semi-structured interviews. The primary objective is to show how these guidelines can be implemented in order to effectively demonstrate how the layout, design and structure of the VAT Act can be enhanced with regard to fixed property transactions, thereby facilitating simplification.

Section 2 of the article presents a concise overview of the literature review pertaining to tax complexity. In addition, it discusses empirical studies that provide evidence of the correlation between an incoherent tax structure and the presence of tax complexity. Furthermore, this section offers guidelines for simplifying the tax structure. Section 3 provides a description of the research methodology utilised in this study, which is followed by section 4, which outlines the key findings derived from the interviews and analysis. The conclusion is presented in section 5.

2. LITERATURE REVIEW

This study aims to elucidate the theoretical underpinnings of tax complexity. In this context, the literature review commences with a discussion of existing literature pertaining to enhancements in legal complexity, with particular emphasis on logical structure. The review then delves into specific literature findings regarding the presence of incoherent structure in VAT legislation, both on an international scale and in relation to the South African VAT Act. Lastly, the review encompasses a comprehensive analysis of general literature concerning guidelines for logical structure in the realm of legal drafting.

2.1 Tax complexity

The concept of tax simplification pertains to the endeavour of enhancing the comprehensibility of the tax system (Tran-Nam, Oguttu & Mandy, 2019). Consequently, the determination of the concept of tax simplification is contingent upon the constituents of tax simplicity, or conversely, tax complexity. The concept of tax complexity, despite its extensive utilisation, lacks a universally agreed-upon definition, measurement or consensus. Tax complexity arises as tax legislation becomes increasingly intricate (Richardson & Sawyer, 2001). There are, however, different approaches to characterising tax complexity. Some authors describe tax complexity

organisation of related concepts and the arrangement of components in a coherent and rational manner.

One instance of inadequate organisation can be observed when a substantial statute lacks proper division into sections, thereby compelling the reader to conduct a comprehensive search throughout the entire statute in order to locate the pertinent provisions (Thuronyi, 1996). According to Thuronyi (1996), a tax statute that is well written often contains various cross-references, both explicit and implicit. Explicit cross-references refer to specific sections or provisions in the statute, while implicit cross-references involve the use of terms that are defined elsewhere in the statute.

Modifying legislation structurally can make it more visually appealing and easier for readers to understand (Hunt, 2002). Recommendations in this regard involve organising provisions in a sequential order and grouping together provisions with the same subject (Hunt, 2002, p. 25).

According to Petelin (2010, pp. 212-213), a recommended approach to enhancing clarity in writing involves initially constructing a profile of the target audience and prospective readers. Petelin (2010) provides a comprehensive set of guidelines categorised under the headings of ‘substance and structure’ and ‘style (verbal and visual)’. According to Petelin (2010), substance and structure encompass a coherent and logical arrangement of information, with a suitable sequence that follows the order of presenting general information before specific details and exceptions. This should be

performance'. According to SAIT,[4] the institution 'contributes to the development of world class professional practises and people'.

Table 1 presents a summary of the number of interviews conducted with each of the four stakeholder groups.

Table 1: Summary of Interviews with Each Stakeholder Group

Stakeholder group	**Number of interviews**
Academics	7
Advisors	5
SARS	2
National Treasury	1
Total	**15**

The collection of detailed demographic information from the participants was deemed unnecessary for the purposes of this study. A duration of one hour was allocated for each interview. The shortest interview lasted 45 minutes, while the longest lasted one hour. The compilation of essential inquiries comprised a total of 10 questions. A subset of primary inquiries encompassed a series of additional questions. The primary focal points of the inquiries encompassed issues related to the lack of coherence in structure, use of plain language, sentence length, employment of active or passive voice, presence

Fig. 1: VAT Implications in Relation to Fixed Property

OMV = open market value as defined in section 1 of the VAT Act, read with section 3

According to section 1 of the VAT Act, the term 'goods' encompasses fixed property. Therefore, fixed property as defined includes land and real rights in such land, unit, *Interpretation of the standard rule*

At the outset, it must be mentioned that the transfer of immovable property is either subject to VAT or transfer duty (Franzsen & Van de Merwe, 1996). The transaction is subject to VAT in the case where the seller is a registered VAT vendor who transfers immovable property in the course and furtherance of its enterprise activities. The term ‘fixed property’ as defined in section 1 of the VAT Act refers to any property or real right associated with it. This definition applies when the property is transferred. The transfer of ownership of immovable property (or any right in immovable property) is done by way of registration in a deeds registry. The transfer of immovable property is regulated by the *Alienation of Land Act, 1981*. As mentioned, such alienation is either subject to transfer duty in terms of the Transfer Duty Act, or VAT. The parties cannot choose which Act applies. The VAT Act applies only where the requirements in the VAT Act are met. The time of supply for fixed property transactions is the earlier of registration or on the date when any payment related to the consideration is made. This is outlined in sections 9(3)(d), 16(4)(a) and 16(4)(b). Case ITC 1623, 59 SATC 342 confirmed that a right to the deduction of input tax arises at the time of ‘supply’. For fixed property, section 9(3)(d) specifies that the ‘supply’ occurs on the date of registration of transfer. In Case ITC 1622, 52 SATC 334, it was necessary for the Court to establish the timing of the disposal (not the time of supply) of fixed property to determine if it constituted the disposal of a business as a going concern. In 1992, the vendor obtained the right to buy specific fixed property. The option was executed, and the property was transferred in 1994. The vendor argued that the disposal of the fixed property to took place in 1992 when the option was initially obtained. However, the Court disagreed, stating that ‘the grant of an option does not dispose of anything at all. An option is no more than an offer’ (52 SATC 334, p. 337).

The aforementioned condition does not encompass a ‘deposit’, as it is not considered a form of ‘any payment’ until the seller can utilise it as a means of payment for the provision of goods or services. In a similar vein, it should be noted that a payment held in trust by an estate agent or attorney does not qualify as a payment made, as the seller is unable to utilise the funds to fulfil their existing obligation at that particular moment (SARS, 2022). This is because the seller becomes entitled to the money upon registration of the property in the purchaser’s name at the deed office. At this stage, the parties have reciprocal personal rights. That is, the seller may demand payment after registration in the purchaser’s name, and the purchaser may demand delivery by way of registration of the r of i5g3005200557<0050>pnBT/ 284.33 Tm0 gpse5er g0>pnBT/ 25( )-86(i)-4 rule for fixed property transactions can be found in sections 16(4)(a) and (b). This observation serves to emphasise the lack of logical coherence in the design of the VAT Act.

It should be noted that in cases where the special value of supply rule is applicable to connected persons, the standard rule for fixed property transactions is not applicable. In this particular scenario, the specific value supply rule pertaining to connected persons will be given priority over the general rule governing fixed property transactions.

4.1.2 Transactions between connected persons

The VAT Act encompasses overarching rules pertaining to the timing and valuation of supplies. Connected persons are subject to specific rules regarding the timing and valuation of supply. The application of a unique provision in the supply rule is primarily activated in situations where connected persons engage in transactions that do not adhere to the principle of arm's length dealing.

Summary of the VAT implications

In cases where there is a sale of fixed property to a connected person, the aforementioned standard rule for transactions involving fixed property does not apply. In this particular scenario, the specific value of supply rule pertaining to connected persons will be given priority over the general rule governing fixed property transactions.

The law

The relevant sections of the VAT Act that pertain to the sale of fixed property to a connected person are section 1, which defines 'fixed property', section 9(3)(d), which specifies the special time of supply for fixed property, and section 10(4), which outlines the special value of supply for connected persons.

Interpretation of transactions between connected persons

A 'connected person' is defined in section 1 of the VAT Act and includes, but is not limited to, natural persons and their relatives; a company and any other company that has control or the shareholders that are substantially the same (therefore a company that has control over its subsidiary companies); a company and any of its branches or divisions that are separately registered for VAT; a company and any natural person

4.1.3 Second-hand fixed property: notional input tax

Summary of the VAT implications

On the acquisition of second-hand fixed property from a non-VAT vendor, i.e., where transfer duty is applicable, the purchaser is entitled to a notional input tax.

The law

The relevant sections of the VAT Act that require consideration are section 1, which provides the definition of 'fixed property' and 'second-hand goods'; section 16(3)(a)(ii)(bb), which outlines the special time of supply for second-hand fixed property; and section 16(3)(a)(ii)(aa) in conjunction with paragraph (b) of the definition of 'input tax' in section 1, which pertains to notional input VAT.

In addition to the sections in the VAT Act that must be evaluated, SARS Interpretation Note 92 must also be consulted, which sets out the documentary proof prescribed by the Commissioner, including the taxable supply of fixed property and second-hand fixed property acquired under a non-taxable supply (SARS, 2016).

Interpretation of second-hand fixed property

The definition of 'goods' in section 1 of the VAT Act includes second-hand goods. Second-hand goods (including real property) are previously owned and used items (section 1 of the definition in the VAT Act of 'second-hand goods'). Certain items, such as animals, gold, gold coins, gold-containing goods and 'old order' mining rights, are excluded from the definition.

For the acquisition of second-hand goods pursuant to a non-taxable supply, vendors may only deduct the notional input tax to the extent that they have paid the consideration for the supply, irrespective of whether they are registered on the invoice basis or the payments basis (SARS, 2022). The notional input tax is claimed in accordance with section 16(3)(a)(ii)(aa), when read in conjunction with subsection (b) of the definition of 'input tax' in section 1 of the VAT Act, i.e., on the lower of the consideration or the open market value, both of which are defined in the VAT Act. Before 10 January 2012, the notional input tax deduction for fixed property purchased from a non-vendor was restricted to the amount of transfer duty that was paid. Vendors can now claim a notional input tax deduction under the VAT Act, calculated based on the tax fraction of the consideration paid or the property's open market value (National Treasury, 2012, citing the Taxation Laws Amendment Act No. 22 of 2012).

If the second-hand goods are fixed property, the vendor cannot claim the input tax until the transfer of the fixed property has been recorded in a deeds office (section 16(3)(a)(ii)(bb) of the VAT Act). Consultation must also be made with SARS Interpretation Note 92, which outlines the documentary evidence prescribed by the Commissioner, such as the taxable supply of fixed property and second-hand fixed property acquired under a non-taxable supply (SARS, 2016).

In summary, it is necessary to assess various sections scattered throughout the VAT Act when examining the consequences of fixed property transactions, contingent upon the

or event. The primary emphasis of this article is on fixed property transactions, thereby excluding an evaluation of VAT adjustments and imported services.

4.3 Guidelines for an improved logical structure in the VAT Act

The authors questioned the interviewees about the design considerations that must be taken into account when designing a solution for the incoherent structure. The concept of grouping with headings was mentioned by interviewees for highly complex transactions such as fixed property.

Regarding grouping, an interviewee from the academics group made the following comment:

> [W]e have a general rule and then a grouping per concept and like fixed

sections of the VAT Act, making interpretation of the sections exceedingly complex (Young, 2021). The UK Tax Law Rewrite initiative, undertaken at the same time as the NZ Rewrite project, aimed to reorganise UK tax legislation by using clear signposting (Budak & James, 2018). When calculating the complexity index, the OTS considered the distribution of sections, i.e., cross-referencing to definitions (OTS, 2017). A well-written tax statute contains explicit and implicit cross-references (i.e., the use of a term whose meaning is defined elsewhere in the statute) (Thuronyi, 1996).

The interviewees, therefore, expressed their agreement with the concept of grouping and use of headings, which is also substantiated by existing literature (see Kimble, 1996-1997; Petelin, 2010; Thuronyi, 1996). The authors submit that these guidelines, which consist of grouping with headings and cross-referencing, are appropriate for fixed property transactions due to the legal team's consideration of the VAT implications when drafting legal contracts for such transactions.

One of the present authors sent the interviewees the guidelines in order to collect additional qualitative data, i.e., the interviewees' opinions and any suggested improvements (see Bryman & Bell, 2014). Even though the interviewees were only asked to respond to the author's email if they had additional comments or suggestions, nine out of 15 interviewees responded to the request for suggestions and/or improvements. Five of the nine participants were academics, three were consulting professionals (from the advisors group) and one was from the National Treasury. The interviewees made no additional modifications to the guidelines.

4.4 Application of the guidelines

The authors applied the guidelines for grouping and introducing headings with cross-

Fig. 2: Improving the Logical Structure of the VAT Act in Relation to Fixed Property

[VAT 409]
1. Fixed property: Standard rule
Definition: Section 1, definition of "fixed property"
Seller
Time of supply: s9(3)(d)
Value of supply: s16(4)(a) and (b))
Purchaser
Value of supply: s16(3)(a)(iiA)

2. Fixed property: Connected persons
Definitions: Section 1, definition of "fixed property" and "connected persons"
Seller
Time of supply: s9(3)(d)
Value of supply: s10(4)
Buyer
Value of supply: s16(2) read with s20 and (3)(a)

3. Fixed property: Second-hand
Definitions: Section 1, definition of "fixed property" and "input tax"
Buyer
Time of supply: s16(3)(a)(ii)(bb)
Value of supply: s16(3)(a)(ii)(aa) read with para (b) of the definition of input tax in s1

This approach aims to streamline the complexity associated with fixed property transactions by directing the reader's focus towards the three potential scenarios for such transactions (i.e., employing the concept of grouping). In addition, it offers the reader a coherent structure for assessing these scenarios by using headings and sub-headings. It is recommended that the proposed enhancement depicted in Figure 2 be integrated into the introduction of the SARS VAT 404 guide.

5. Conclusion

The present study examined the lack of coherence in the structure of the VAT Act with a focus on fixed property transactions. This lack of coherence adds to the overall complexity of the Act, thereby posing challenges in terms of teaching, practical application and administration. The study consisted of two distinct phases, specifically a comprehensive review of existing literature and semi-structured interviews.

This study represents a new examination of the incoherent structure of the South African VAT Act as it pertains to fixed property transactions, making a significant contribution to the existing body of literature. The results, which are substantiated by existing scholarly sources, validate that the lack of a cohesive structure in the VAT Act contributes to its intricate nature. This study presents a primary contribution in the form of proposed guidelines for the restructuring of the VAT Act pertaining to fixed property transactions. The guidelines delineate the fundamental principles that must be integrated when improving the logical structure of the VAT Act in relation to fixed property. The universal guidelines encompass the use of headings and subheadings, the consolidation of intricate sections and explicit cross-referencing. Specifically, it is recommended that sections be consistently placed under their appropriate headings and exhibit clear signposting. The empirical findings of this study serve to enhance the current body of literature, in addition to contributing new insights, namely a practical illustration of the VAT implications for fixed property.

Generally, in interpretation of statutes, headings are not considered in the interpretation of a particular section. However, headings cannot be ignored completely. This is because in some cases they give meaning to the provisions. For example, the interpretation of subclauses may be impacted by headings, or subclauses may be drafted incorrectly, in which case headings may provide clarification. Thus, where headings are used for the simple purpose of grouping sections, the legislation must contain a provision to this effect. The structure of the TAA is divided into chapters which are further divided into parts. The table of provisions also makes it helpful to search for relevant sections. In addition, sections that are grouped together under such a heading must be grouped coherently. For example, under a heading 'fixed property' the provisions under the heading must refer to fixed property transactions only and cross-reference other sections that the provisions in question have an impact on, or to which these provisions are subject.

The primary objective of this study was to enhance the logical framework pertaining to fixed property transactions, considering their frequent occurrence in daily business operations. Consequently, the study did not consider the examination of other transactions that are similarly intricate under the VAT Act.

It is recommended that the proposed enhancement pertaining to the logical framework of the VAT Act with regard to fixed property transactions be included in the SARS VAT 404 guide. It is further recommended as an area for future research that the application of the guidelines used as a practical demonstration for fixed property transactions be extended to other instances of complexity cited in the VAT Act, such as VAT adjustments and imported services. If these practical illustrations were to be incorporated into SARSuidacti141.eo6(i)-4a9(t)-(r)-3(e s)7(i)6(m)-4(i)6(l)-4(ar)5(l)-4(y i)-4(n)11(t)-4(

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