Value Added Taxation adjustments in South Africa with reference to the transfer of agricultural land

T Oosthuizen

orcid.org/0000-0001-6416-183X

Mini-dissertation submitted in partial fulfillment of the requirements for the degree Masters of Commerce in South African and International Taxation at the North-West University

Supervisor: Mr DS van Romburgh
Co-supervisor: Prof DP Schutte

Graduation: May 2018
Student number: 26741814
ACKNOWLEDGEMENTS

First and foremost, thank you to my Lord and Saviour for grace, wisdom, perseverance and guidance.

Secondly, I would like to thank the following people:

- My wife for her prayers, patience, love, support and motivation, together with many early mornings and late nights through all the years of study;
- My parents for their love and support, guidance and prayers through all the years, providing me with the opportunities and for teaching me the importance of education;
- Ms Jenny Lake for her input and assistance with the language editing; and
- My supervisors, Mr DS van Romburgh and Prof DP Schutte, for their input, advice and encouragement.
KEY WORDS

Adjustment
Apportionment
Dwelling
Exempt
Farmland
Input
Output
Value Added Tax
ABSTRACT

With numerous studies having found that complexities in tax legislation could negatively affect economic growth and taxpayers’ willingness to comply with these laws, and against the backdrop of a pressured South African economy and tax collection, it is believed that possible complexities in this legislation should be identified, analysed and discussed with the aim of simplification. The VAT adjustments necessary upon sale or purchase of agricultural land in South Africa, as a result of the residential units situated on these properties, be it either the private residence of the farm owner or the housing provided to employees, constitute such a complication. Not only does the legislation require adjustments by both the purchaser and seller due to the deemed inclusion of these residences in the taxable supply, the basis or valuation of the adjustment also differs for the purchaser and the seller. In the case of the seller, the adjustment should be based on the historical cost of the expenditure, necessitating extensive record keeping to ensure the accuracy of the adjustment together with increasing the room for error. The purchaser, on the other hand, should base the adjustment on the market value of the units and would probably need the assistance of an expert which could not only result in increased cost but also creates room for error and manipulation.

The study provides a critical analysis of the South African legislation and highlights the said complexities and provisions in the VAT Act, furthermore identifying possible challenges inherent in the legislation. Based on this analysis possible solutions for the mentioned complexities in the South African legislation are sought through comparison with the Australian and New Zealand legislation. The analysis identified the simplified treatment of similar transactions in other jurisdictions, especially Australia, as a possible alternative to the complexities highlighted. The researcher suggests that the subject of simplification of the South African legislation warrants further research.
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<th>Full Form</th>
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<tr>
<td>ATO</td>
<td>Australian Taxation Office</td>
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<td>DTC</td>
<td>Davis Tax Committee</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GST</td>
<td>Goods and Services Tax</td>
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<td>IRD</td>
<td>Inland Revenue Department</td>
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<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
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<td>SARS</td>
<td>South African Revenue Services</td>
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<tr>
<td>SMME’s</td>
<td>Small, Medium and Micro-sized Enterprises</td>
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CHAPTER 1

1.1 INTRODUCTION

Agriculture is commonly rated the hardest to tax of all hard-to-tax sectors (Rajaraman, 2004:1) and therefore certain complexities are a given. However, based on the results of various studies which have shown that these potential complexities could have an adverse effect on the fiscus, the discussion and consideration of the inherent complexities could yield positive outcomes. Not only does the literature reviewed indicate the negative effect of complex legislation on factors such as taxpayers’ compliance and costs, but some studies have also found that tax provisions do indeed impact on farm growth rates (Bravo-Ureta, 1981:147). With this being said, evidence has also suggested that Value Added Tax (VAT), as a form of taxation, is vulnerable to fraud and tax evasion (Betliy, 2014:18).

The VAT adjustments necessary on the historical costs and current value relating to private- and employee housing on agricultural land, when these properties are sold or transferred, would seem to be such a complexity in the case of both the transferor and the transferee, whereby extensive adjustments are necessitated as a result of the initial VAT treatment of these expenses, and the deemed inclusion, as part of a taxable transaction, resulting from the transfer of these properties.

These complexities will be highlighted through the critical evaluation of the South African VAT legislation and through a comparison of the identified provisions with similar provisions in the Goods and Services Tax (GST) legislation of Australia and New Zealand. The aim of the comparison and analysis is to determine whether alternative VAT treatment of these transactions exists and to consider whether an amendment of the South African VAT legislation surrounding these transactions presents an advisable solution to the identified complexities. As international evidence has shown that there are several existing approaches towards value added taxation of agriculture (Betliy, 2014:15), the researcher believes that the study could
provide a valuable contribution towards simplification of the VAT legislation relating to the transfer of agricultural land in South Africa.

1.2 LITERATURE REVIEW AND BACKGROUND

In 2016, South Africa’s tax compliance measured by tax revenue as a percentage of gross domestic product (GDP) was 8.2% lower, at 26.2% of GDP, than the 2014 average of the Organization for Economic Co-operation and Development (OECD) member countries at 34.4% of GDP (National Treasury, 2016) (ATAF, 2016). This compliance indicator, measured together with the estimated tax gap for 2014 of between 15% and 30% of tax revenue (Van der Merwe, 2016), highlights concerning factors regarding tax compliance and tax revenues in South Africa.

As is evident from media reports and discussions by government, two of the major challenges faced by the South African government concern raising the tax revenue collected every fiscal year, together with stimulating economic growth. According to Fuzile (2016) (cited by Odendaal, 2016). “The biggest challenge that most countries face, including our own, is that our economies are not growing fast enough, certainly post the 2008/9 financial crisis.” In his budget speech for 2017, former finance minister Pravin Gordhan stated that South Africa needs to collect an additional R28 billion of tax revenue during the new fiscal year (ENS, 2017).

The question therefore arises as to what effect, if any, our current tax legislation could have on economic growth in South Africa and whether tax legislation could affect the collection of tax revenue in any way.

1.2.1 Possible effect of legislation on tax revenue collection

According to Kemp (2002) (cited by Oberholzer and Stack, 2014:3), non-compliant individual taxpayers contribute to the vast majority of the “tax gap” in South Africa.
Franzoni (2008) stated that “by distancing statutory taxes from effective payments, tax evasion defines a specific revenue deficiency, known as the ‘tax gap’.” Many studies have been conducted to determine the reasoning behind taxpayers’ non-compliance. The reasons for tax evasion have been explored by both economists and psychologists (Oberholzer and Stack, 2014:2).

In a study by Richardson (2006:151) which analysed the data from 45 countries, he found that non-economic determinants have the strongest impact on tax evasion, with the complexity of legislation being the most important determinant. These findings also correspond with those of a study by Oyewole et al. (2014:579) which revealed that tax complexity is negatively related to tax compliance, meaning that the greater the tax complexity, the lower compliance will be, or the greater non-compliance will be amongst taxpayers. It was also found that “complex and ambiguous tax laws may give rise to greater tendency for taxpayers to take questionable deductions than if the tax laws were precise and explicit” (Nugent, 2013:1480).

A survey and analysis by Long and Swingen (1988) (cited by Richardson and Sawyer, 2001:187) found a significant relationship between the level of complexity and corresponding level of compliance, and that greater complexity increases both intentional and unintentional non-compliance. It could therefore be said that tax complexity reduces not only a taxpayer’s ability to comply with the tax laws, but also his or her willingness to do so.

Many other studies (Oberholzer and Stack 2014; Saad, 2014; Milliron, 1985; Faridy, et al. 2014) have confirmed the findings that tax complexity does in fact negatively affect tax compliance and that the complexity of tax legislation should be kept in mind by governments across the globe. Efforts aimed at reducing the complexity of legislation could therefore be an avenue for increasing tax revenue.
1.2.2 Possible effect of legislation on economic growth

A deterring factor for business creation and growth in developing and transitional countries is the compliance costs, added to fines, penalties and risks of onerous inspections and demands for bribes. In addition to the burden of tax payments, businesses – especially small ones – often face heavy costs in the process of preparing, filing and paying taxes (Coolidge, 2010:1).

It is reported that one of the greatest restraints to business expansion in South Africa is the overregulation and red tape associated with such expansion, with 44% of South African businesses stating this factor as a hindrance (Grant Thornton, 2016). Further, due to the increased risk associated with VAT, the compliance and administration cost of VAT inevitably increases which could have, as stated above, a deterring effect on the economy. In a study to determine the estimated annual tax compliance costs for small businesses in South Africa, it was found that “from the perspective of time and cost, preparing, completing and submitting VAT returns takes the longest and costs the most” (in comparison with the other four key taxes) (Smulders and Stiglingh, 2008:354). This fact was also stated by Professor Jackie Arendse who agreed that VAT is considered to be the biggest cost of compliance for Small, Medium and Micro-sized Enterprises (SMME’s) in South Africa (Pillay, 2014).

It is reported that, in an effort to balance their books, governments around the world use consumption taxes such as VAT to make up for shortfalls. This increased focus on VAT compliance and enforcement has inevitably resulted in an increase in the compliance burden and associated tax risk (Jooste, 2010).

With all the above being said the question arises whether the complexity of certain sections of the Value Added Tax Act No. 89 of 1991 (herein referred to as the VAT Act) together with the application thereof does not add additional weight to an already overburdened system and whether alternatives are available which could contribute to easing taxpayers’ administrative and compliance burden together with
simplifying the legislation in such a manner that compliance thereto is promoted. The answer to this question could also be in line with the government’s aim to streamline tax administration and tax legislation to promote small and medium businesses (DTC, 2014b:5).

VAT is levied in terms of the VAT Act, after its commencement on 30 September 1991. The South African VAT Act was based on the New Zealand VAT law as model – a new model referred to as the “Modern VAT law” after New Zealand’s implementation of Value Added Tax in 1986. The “Modern VAT” was widely promoted by international tax experts after New Zealand’s implementation thereof, due to its simplified compliance and administrative characteristics when compared to the traditional VAT law implemented in Europe (Krever, 2008:18).

In South Africa, VAT has been the second largest contributor to the total tax revenue of the country over the past few fiscal years and accounted for an estimated 27.7% of the total tax revenue of 2014/15 (DTC, 2014a:15). VAT is therefore the second most important source of revenue in South Africa and ensuring compliance thereto is of the utmost importance. This in turn could bring about increased administrative requirements as well an increase in the compliance burden and tax risk associated with its collection.

1.2.3 Value Added Tax adjustments

Section 18 of the VAT Act governs the adjustments necessary when an asset’s use or purpose changes (wholly or partly) from being an asset used for the making of taxable supplies to an asset used for the making of exempt supplies or vice versa. These adjustments aim to adjust and align the VAT treatment of the initial input VAT deduction allowed or denied and to streamline this with the intended use of the asset once a change in its use has taken place. One could agree that the adjustment of any VAT amount based on a change in use could constitute a rather complex transaction.
The VAT Act contains certain adjustment provisions since the purpose of certain assets does not necessarily remain fixed over the period for which the asset is utilised. A vendor could therefore be in a situation where input VAT might have been denied as the asset was not used for the making of taxable supplies and during the course of use, applied the asset in such a manner that it is used in the making of taxable supplies. An example would be where a vendor purchases an asset for private use and subsequently starts using the asset for his trade in the making of taxable supplies. The vendor will now be entitled to a section 18 adjustment as the use of the asset has since changed and, had the vendor initially purchased the asset for its current use, the input tax deduction would have been allowed. It can therefore be said that the change in use adjustments seek to align the VAT treatment of an asset to the use thereof, irrespective of the initial treatment or use of the asset.

Another example of the need for the adjustment provisions is where a deemed change in use occurs due to the substance of a transaction or manner in which a contract is concluded. This could normally be seen in cases where an enterprise uses an asset for the making of both taxable and exempt supplies and sells the asset as part of a going concern. A transaction concluded as a sale of a going concern is seen as a taxable supply but at a rate of zero per cent (SARS, 2010:1). Therefore as the asset is now sold as part of a taxable supply, a deemed change in use has occurred. Had the asset initially been purchased solely for the making of taxable supplies, the vendor would have been entitled to the full input tax deduction – a deduction that would have been apportioned since the asset was used for the making of both taxable and exempt supplies. The vendor is now entitled to a change in use adjustment as per the VAT Act. This adjustment, governed by section 16(1)(h) of the VAT Act, now allows for an input tax adjustment for the seller in order to “align” the input tax to the substance of the transaction as VAT will be levied on the full selling price of the asset – even though it amounts to zero as a result of the zero rate when section 11(1)(e) is applied, in accordance with the going concern principles.

However, should the purchaser of the asset use the asset in the same manner as the seller, the question arises as to how this correction of input VAT will affect them.
The purchaser also drew benefit from the application of section 11(1)(e), as VAT was levied at a rate of zero per cent, but will also use the asset for the making of taxable and exempt supplies. In such a case, the purchaser is now required to make a section 18A adjustment in terms of the VAT Act whereby he is required to pay an amount of output VAT on the value of the part of the asset which will be used for the making of exempt supplies. As exempt supplies or private use are seen to fall “out of the VAT net”, this adjustment aims to align the VAT treatment of the asset and corresponding deduction to legislation, as the zero-rate provision only applies to a “part of the asset”.

1.2.4 Value Added Tax adjustments in an agricultural environment

The above adjustments are particularly relevant to the selling or transfer of agricultural properties in South Africa. When agricultural properties are sold, inherited or transferred in any other manner, one should consider whether an adjustment in accordance with the above sections of the VAT Act might be required. This is due to a large number of farms in South Africa providing accommodation to farm workers and their families as well as holding the residential houses of the land owners. According to the VAT Act, the supply of accommodation by an employer to an employee is an exempt supply and the VAT calculated on any expense relating thereto will not be deductible from output VAT. No deduction of input VAT will further be allowed on any expense relating to the owner’s private dwelling on the farm as this is seen as a private expense.

The challenge arises, however, when these properties are sold by a vendor. Should the whole farming enterprise, including the land, be sold as a going concern, the adjustments per section 16 and section 18 of the VAT Act need to be made by both the seller and the purchaser as the private dwelling and employee housing will be included in the sale at a rate of zero per cent. Therefore, both the seller and the purchaser will have to perform these calculations relating to the value or cost of the buildings on the farms in order to either claim an additional input VAT amount (by the
seller) or to adjust the output VAT amount (the purchaser) when concluding the transaction at a rate of zero per cent.

Should the vendor only sell his farmland (with buildings and residential units situated thereon) and not his farming enterprise as a whole, output tax will be levied on the selling price as this will be seen as a taxable supply with VAT being levied at 14% as a result of the disposal not being a going concern. The house and employee housing is normally not separately specified and sold and therefore is included in the price on which the total output VAT is calculated and paid by the purchaser. As the sale is seen as a taxable supply, the seller will be deemed to have a change-in-use in the building previously seen as exempt- and private expenses. Once again, the seller will be entitled to an input tax adjustment as per section 16 of the VAT Act. On the other hand, the purchaser will not be allowed to claim the full input VAT paid for the farm as a portion of the consideration will be related to the private dwelling and employee housing. The purchaser will therefore have to add back, by way of an output VAT adjustment in terms of section 18, the VAT on the value of the dwelling and employee housing, should the total amount of input VAT be claimed or, will have to proportion the total input VAT to the different parts of the property and claim the VAT accordingly.

The input tax adjustments allowed by the VAT Act to the seller will further be on the lesser of the adjusted cost and open market value. This therefore entails that certain documentary proof of costs will be required in order to substantiate the value used for the adjustment required by the VAT Act. It could therefore be the case that these documents and records are no longer available as the cost might have been incurred years ago. This could also be relevant in cases where these farming properties were inherited by one generation from another. As the Tax Administration Act (28 of 2011) requires retention of these documents for a period of five years after submission, their detailed proof and calculation might no longer be accessible and could result in major challenges when calculating the adjustment values.
1.2.5 Motivation of topic actuality

According to statistics, South Africa had 39,966 commercial farming units in 2007, demonstrating a decline when compared to 1993 when South Africa had 57,980 commercial farming units (Department of Agriculture, Forestry and Fisheries, 2016). A commercial farm is defined as a farm producing agricultural products intended for the market, usually registered for VAT and income tax (Stats SA, 2010). It could therefore be held that the adjustments required by the VAT Act will be applicable to a large number of commercial farming units sold throughout South Africa.

During the course of 2016 alone, a total of 2,994 transactions where tracts of land in excess of 50ha were sold, were registered across South Africa (Landbou.com). It could therefore be said that there were a possible 2,994 transactions where VAT adjustments might have been necessary by either the seller or purchaser, or by both.

Furthermore, according to the 2011 Census performed by Statistics South Africa, 2,078,723 people in South Africa live on farms. These people live in 592,298 households on farming property and land (Visser and Ferrer, 2015:i). It could therefore be said that almost 4% of the total South African population, being 51,8 million people in 2011, resided on farms in units and buildings that would be classified as residential properties and, should such properties be sold, donated, inherited or transferred by way of land claims, this would necessitate VAT adjustments as explained in the prior paragraphs.

The calculation of the apportionment of input VAT and the mechanisms available to calculate these apportionments have been seen as a challenge from the inception of VAT in South Africa (Ritchie, 2014:1). These challenges, together with the administrative burden and corresponding cost implication, trigger the question of whether there is alternative VAT treatment relating to farms or alternative VAT treatment of these transactions. Secondly, should these alternatives be applied, how will this compare with the current status quo?
The basis of this study is an analysis of the complexity of the adjustment legislation and associated administrative burden and compliance to the legislative requirements relating to the sale of particularly agricultural and farming properties.

The current legislation of the South African VAT Act will be compared to the legislation and corresponding requirements of the Australian New Tax System (Goods and Services Tax) Act No. 55 of 1999 (herein referred to as the Australian GST Act) as well as the New Zealand Goods and Services Tax Act No. 141 of 1985 (GST Act). The Australian and New Zealand legislation were chosen as the basis for comparison as the acts are also defined as modern VAT systems, similar to South Africa. The GST Act was implemented in Australia nine years after implementation of the VAT Act in South Africa, whereas the New Zealand GST Act was implemented five years prior to the implementation of the VAT Act in South Africa. The New Zealand GST Act is further described as the ‘purist’ form of VAT/GST systems in operation anywhere in the world (Sawyer, 2017:11) with the South African VAT Act having been adopted, with very little change, based on the New Zealand GST legislation in 1991 (Muir, 1993:1). The Australian GST Act in turn is described as a consumption tax midway between the EU and the New Zealand version, with several studies discussing the possible reform of the Australian GST Act, being based on the New Zealand GST model (Sawyer, 2017:16).

Although all three acts are described as modern VAT systems, the fact that they share many similarities could result in the differences between the acts providing valuable insight into the possible treatment of VAT in relation to agricultural and farming properties.

1.3 PROBLEM STATEMENT

VAT vendors, particularly trading in the agricultural sector, seem to be heavily burdened by the adjustments necessary when Agriculture land is transferred or when a change in ownership takes place. The current VAT treatment of the expenses relating to private- and employee housing on agricultural land, together with the VAT
adjustments required when these types of properties undergo a change in ownership do not seem to mirror the simplified compliance and administrative characteristics of the modern VAT law.

The question therefore arises as to whether there is alternative treatment relating to these expenses and whether it is applied in other countries and, if so, whether these alternatives would in fact, if applied in South Africa, reduce the complexity of the application of the VAT adjustments in these transactions.

1.4 RESEARCH OBJECTIVES, DESIGN AND METHOD

1.4.1 Research objectives

The primary objective of this study is:

- To analyse the complexity of the VAT adjustments required as a result of change in ownership in agricultural properties. A critical evaluation will be performed to analyse whether the legislation could be deemed as unnecessarily complex and the possible corresponding application of the legislation.

The secondary objectives of this study focus on:

- Determining whether alternative VAT treatment of these expenses, whether on initial input or when these properties are sold, is implemented in other countries; and
- Considering whether the application of the alternative legislation in South Africa could result in the desired outcome as per the identified research problem.

1.4.2 Research design

According to McKerchar (2008:6) the paradigm choice is by and large a reflection of how the researcher views the world (ontology) and believes that knowledge is
created (epistemology). This means that these implicit beliefs, along with the researcher’s disciplinary focus and past experiences, will influence his or her philosophical approach to research.

**Ontology**

A relativist view of the world and knowledge will be followed in this study. Relativism is roughly put as the view that truth and falsity, right and wrong, standards of reasoning and procedures of justification are products of differing conventions and frameworks of assessment, and that their authority is confined to the context from which they arose (Anon., 2015).

**Epistemology**

A specific answer or result is sought through conducting this study. The knowledge to be gained seeks to obtain a better understanding of a phenomenon and participants’ view thereof, and whether the opinion of the researcher could be substantiated by the knowledge gained.

1.4.3 Research methodology

It is said that the primary goal of VAT should be revenue and revenue alone, and that the major design principle follows from the view that the role of VAT is to tax all goods or services consumed in a country and that exemptions should be restricted to those deemed absolutely necessary on administrative grounds (Cnossen, 2017:3). Therefore, in suggesting alternative treatment of certain transactions in the VAT Act, sufficient information of improved or alternative treatment should be presented.

Qualitative research is described as a means for exploring and understanding the meaning that individuals or groups ascribe to a social or human problem. The research process involves data analysis inductively building from particular to
general themes, and the researcher making interpretations of the meaning of the data (Creswell, 2009:4). The research paradigm, as interpretivism, provides an understanding of the social reality that is based on the subjective interpretation of the researcher (McKerchar, 2008:7).

The research method of this study is to critically analyse the legislation regarding the VAT treatment of certain expenditure in the case of the selling and purchasing of agricultural land and farms in South Africa, and the adjustments necessary as a result of the residential units on these properties. Based on the literature review in paragraph 1.2, it is held that the highlighted complexities could adversely affect the fiscus in the ways stated and that alternative treatment of these transactions could offer a possible solution to the stated problem. This study will therefore seek to identify and suggest an alternative to the current legislation.

An in-depth analysis (Zelenak, 1989) of the South African VAT legislation relating to these transaction types will assist in obtaining a deep understanding of the VAT treatment of the cost of private residences and employee housing and the adjustments necessary when the agricultural land is transferred, since the legislation would seem to temporarily deem a private or exempt asset as part of the vendor’s trade. This analysis will then provide a basis for evaluating the legislation of other jurisdictions in order to identify alternative treatment of these expenses or transactions.

The legislation of Australia and New Zealand will be analysed, based on the in-depth analysis of the South African legislation, in order to determine the GST treatment of these types of transactions, with a detailed comparison (Ram Pillarisetti, 1995) assisting to determine whether the GST treatment in these jurisdictions could provide a solution to the highlighted complexities. Both Australia and New Zealand are OECD member countries and form part of the OECD’s “attempt to achieve a degree of international harmonisation” relating to good VAT design (James and Ecker, 2017:1). Although South Africa is not an OECD member country (OECD, 2017), the
country forms part of several non-member countries aiming to strengthen their co-operation through enhanced engagement.

As very few studies seem to have been conducted on this topic, this study aims to provide additional knowledge in the field. Due to the paucity of relevant studies, the researcher relied strongly on the analysis of legislation as a form of secondary data collected. Secondary data, defined as primary data that was collected by somebody else (Harris, 2001) in the form of books, journal articles as well as published reports and internet resources, will also be analysed to support the researcher in identifying certain shortcomings and solutions.

The research method will be descriptive in an attempt to offer solutions to the highlighted complexities in the critical analysis of the South African legislation and in order to determine whether the alternative treatment could in fact be the sought solution itself. The conclusion will also aim to suggest possible further research on the topic in order to find alternatives to the highlighted complexities and the corresponding application thereof in practice.

1.5 CHAPTER OVERVIEW

The preliminary chapters of this mini-dissertation will be structured as follows:

Chapter 1:

1.1 Introduction
1.2 Literature review and background
1.3 Problem statement
1.4 Research objectives, design and method
1.5 Chapter overview.
Chapter 2:

2.1 Analysis of the South African VAT adjustments relating to the transfer of agricultural land

Chapter 3:

3.1 Analysis of the Australian GST legislation relating to the transfer of agricultural land

Chapter 4:

4.1 Analysis of the New Zealand GST legislation relating to the transfer of agricultural land

Chapter 5:

5.1 Summary and conclusion
CHAPTER 2

ANALYSIS OF THE SOUTH AFRICAN VAT ADJUSTMENTS RELATING TO THE TRANSFER OF AGRICULTURAL LAND

2.1 Introduction to VAT in South Africa

The South African VAT system is an indirect, destination-based tax, levied on the consumption of goods and services in South Africa. The government requires certain traders to register as vendors and charge VAT on taxable supplies for the benefit of the National Revenue Fund (SARS, 2017a:1). The VAT Act was implemented in South Africa on 30 September 1991 with VAT currently being levied at 14%. Upon introduction, VAT was seen as a superior tax, largely overcoming the deficiencies of the GST system it replaced, and is seen as one of the most significant tax developments to ever take place in South Africa (Silver, 2017:3).

Section 1 of the VAT Act, read together with section 23(1)(a), states that any person carrying on any enterprise where the total value of taxable supplies by that person in a period of 12 months ending on that month has exceeded R1 million, becomes liable to register as a vendor. According to section 1 of the VAT Act, “supply” is defined as the “performance of a sale, rental agreement, instalment credit agreement and all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is effected, and any derivative of “supply” shall be construed accordingly”. The term supply is therefore very broad and would seem to include almost any type of transaction that could be entered into.

Section 7(1) of the VAT Act, providing the basis for how VAT is imposed, states that “subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as value-added-tax –
(a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course of furtherance of any enterprise carried on by him”.

In order to consider the VAT treatment of the sale of agricultural land, the consideration concerns whether the sale of the farming property or the sale of the whole farming enterprise as a going concern would be seen as a supply for the furtherance of the vendor’s enterprise.

Section 1 of the VAT Act defines an enterprise as “in the case of any vendor, any enterprise or activity which is carried on continuously or regularly by any person in the Republic or partly in the Republic and in the course or furtherance of which goods or services are supplied to any person for a consideration, whether or not for profit, including any enterprise or activity carried on in the form of commercial, financial, industrial, mining, farming, fishing, municipal or professional concern or any other concern of a continuing nature in the form of an association or club”.

The term “enterprise” and the interpretation thereof is seen as a challenge due to uncertainties and non-clarification of requirements of the term, such as “activities” and “continuously or regularly” (Botha, 2015:36). If a farming enterprise sells all the land and equipment as part of winding up, proviso (i) of the term “enterprise” will apply stating that “anything done in connection with the commencement or termination of any enterprise or activity shall be deemed to be done in the course of furtherance of that enterprise or activity”. The sale will therefore be a supply, as defined.

However, it could be argued that, should a farming enterprise, being a vendor, not continuously or regularly sell land, the sale will not be seen as a supply for the furtherance of the enterprise of the vendor especially if the sale is not part of the
termination of the enterprise, as a farming enterprise does not regularly trade in property, therefore falling outside the scope of the above proviso.

2.2 Transfer of agricultural land in South Africa

The selling of commercial farms in South Africa is most commonly structured in one of the following two ways:

(1) The whole farming enterprise is sold and/or transferred as an on-going economic unit whereby the farmland, equipment, produce in hand and/or livestock are sold as part of the transaction; or

(2) The farmland is sold and or transferred separate from the equipment, produce and/or livestock.

Section 8 of the VAT Act defines certain types of supplies that are deemed to be taxable supplies in the course of the enterprise of a vendor with subsection (7) stating that “the disposal of an enterprise as a going concern, or a part thereof which is capable of separate operation, shall for the purposes of this Act be deemed to be a supply of goods made in the course or furtherance of such enterprise”.

Therefore, should a vendor dispose of the entire farming enterprise as a going concern, which would result in the sale of the land, equipment and livestock, the sale would be a deemed a supply in terms of section 8(7) in the furtherance of the enterprise of the vendor and would be a taxable supply in terms of section 7(1), subject to the exemptions, exceptions, deductions and adjustments as referred to.

Section 11(1)(e) of the VAT Act states that a sale, as stated in option 1, could qualify as a taxable supply at a rate of zero per cent should the supplier and the recipient conclude, in writing, that the enterprise will be disposed of as a going concern, that the enterprise will be an income-earning activity on date of transfer and that all the
assets necessary for carrying on such enterprise are disposed of by the supplier to the recipient.

Should only the farmland be sold, the supply will be taxable in terms of section 7(1) as the farmland was used for the production of taxable supplies and will form part of the enterprise of the vendor. Even in a case where a farm is expropriated, section 8(21) of the VAT Act will apply, stating that “compensation or any other payment, other than an amount contemplated in section 12(a), received by a vendor in consequence of the expropriation of fixed property, is deemed to be received in respect of a supply of goods made in the course or furtherance of an enterprise unless that fixed property forms no part of the assets held or used by the vendor for the purposes of an enterprise.” This supply will be a deemed supply and also be taxable in terms of section 7(1) as with all property sales in the case of a farmer where the property formed part of the vendor’s trade.

The importance of the classification of a transaction, whether or not it will be a taxable transaction, relates to the deductibility of the input tax levied on expenses incurred in relation to the transaction. “Input tax” is defined in section 1 of the VAT Act as “tax charged under section 7 and payable in terms of that section by –

(i) A supplier on the supply of goods or services made by that supplier to the vendor …

where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of section 17) that the goods or services concerned are acquired by the vendor for such purposes”.

Section 16(3) states that ‘the amount of tax payable by the vendor shall be calculated by deducting from the sum of output tax of the vendor which is attributable to that period, the input tax on supplies of goods and services to that vendor during
that tax period’. Input tax can therefore only be claimed from SARS to the extent that it is incurred in the production of taxable income.

Should a supply thus fall within the scope of section 12 of the VAT Act, the supply will be exempt and will not be a taxable supply. In essence, the fiscus collects no VAT on the value added by the supplier of exempt goods or services resulting in the person making the supply, not being entitled to deduct any input tax paid on goods or services acquired and utilised by him in the production of the exempt supply (Silver, 2017:109).

### 2.3 VAT treatments of private- and employee housing on agricultural land

When considering the VAT treatment of expenses relating to the erection, improvement or maintenance of employee housing as well as other residential housing on agricultural land, one would have to consider whether or not the expenses are in the furtherance of the vendor’s enterprise.

The cost of any erection, improvements or maintenance of employee housing would relate to a dwelling, which is basically defined as a “building or part thereof which is used, or intended to be used, as the residence of a natural person” (SARS, 2017a:49). Section 12(1)(c) of the VAT Act states that the supply of a dwelling under an agreement for the letting and hiring thereof together with the provision of lodging by an employer to the recipient, where the recipient is entitled to occupy the accommodation as a benefit of his or her office or employment, would be exempt and no tax would be levied thereon. The supply of a dwelling by an employer to an employee is therefore an exempt supply and no VAT is levied thereon.

Furthermore, any expenses relating to the erection, improvement or maintenance of other residential properties such as the farm owners’ dwellings will qualify as expenses relating to a private residence which is “used outside of the enterprise
activity” (SARS, 2016a:5). SARS illustrates these principles through an example of transfer duty stating that “the sale of a vendor’s private residence, or the sale of property used by a vendor for the purpose of employee housing will be subject to transfer duty as these supplies are not used in the course or furtherance of the enterprise carried on by the vendor” (Ferreira, 2012:27). Specifically excluded from the definition of “enterprise” is any activity that involves the making of exempt supplies. These activities are defined as “non-enterprise activities” and are “out-of-scope” supplies on which no input tax can be deducted (SARS, 2016a:5). The non-deductibility of input tax on supplies relating to these residential properties is expanded to all cost incurred which is directly attributable to these properties and would include the initial erection costs, additions and improvements, maintenance as well as general monthly “running costs”, all of which will be seen as “out-of-scope” supplies. In essence, the VAT Act requires the vendor to separate the buildings used for residential purposes, affixed to the land, and treat these as not forming part of the farming property (commercial property) since the use of the buildings does not form part of the enterprise of the vendor but is treated as a residential property although being situated on the farmland forming part of the enterprise.

Even though the terms “residential property” and “commercial property” are not defined in the VAT Act, the distinction between these property types is vital as it affects the VAT treatment of supplies relating to these properties.

Commercial property is defined in the Cambridge Dictionary as “a building or piece of land used for business”. Based on the definition it would seem as if the determining factor, in classification of the property, could be the use of the property and not the property itself. Commercial property can therefore be seen as property used in the “business world which is not suitable or practical for residential use” (Ferreira, 2012:30).

Residential property is defined in section 1 of the Transfer Duty Act No. 40 of 1949 (herein referred to as the Transfer Duty Act) as “any dwelling-house, holiday home,
apartment or similar abode, improved or unimproved land zoned for residential use in the Republic (including any real right thereto), other than –

(b) Any “fixed property” of a “vendor” forming part of an “enterprise” as defined in section 1 of the Value Added Tax Act, 1991”.

Fixed property is defined in section 1 of the VAT Act as “land” (together with improvements affixed thereto).

In the case of agricultural land, the farming property is part of the enterprise of the vendor as the land is used for the furtherance of the vendor’s trade. In accordance with the definition of “residential property” in the Transfer Duty Act, these properties will be excluded from the term “residential property”. This treatment also corresponds with the VAT treatment in the case where these properties are sold.

However, there seems to be a possible departure between the essence of “fixed property” and the VAT treatment of private- and employee housing in terms of agricultural land. When considering the treatment of the input tax in isolation, the non-deductibility of these costs is in agreement with the requirements of the VAT Act. However, when considering the definition of “fixed property” in terms of the VAT Act, together with the definition of “residential property” in terms of the Transfer Duty Act, the question arises as to whether the requirement to treat the buildings and all costs relating thereto is in actual fact what is intended in the VAT Act. This treatment would seem to be in conflict with the definition as it seems to treat the buildings and all costs as not being part of the property and not being affixed to the land while the definition of residential property specifically included all improvements affixed to the land.

This separation or split of the property, due to the varying consumption thereof is almost impossible. According to Conrad and Grozav (2008:81), “separating the investment component from the consumption component of real property for VAT
purposes is effectively impossible, thus making the VAT treatment of the consumption of real property services problematic.” As set out above, it would seem as if the VAT Act instead provides for the total disallowance of any input tax on any expenditure relating to these properties on agricultural land, than to consider the “problematic consumption issues”, as stated above, and then provide for the adjustment and alignment of these expenses upon sale or transfer of these properties. As these adjustments could affect both the seller and the purchaser when these properties are transferred, consideration thereof in the case of both parties will be necessary.

2.4 VAT treatment of the sale of agricultural land and the necessary adjustments

2.4.1 Seller of the agricultural property

As discussed earlier, two of the most common transactions for the transfer of agricultural property in South Africa, be it as a sale, an inheritance or any other transfer, are deemed supplies for the furtherance of a vendor’s enterprise or activity. This results in taxable transactions in both instances. As the supply is a taxable transaction, wholly for the furtherance of the enterprise, all expenses relating to this supply will fall within the scope of the definition of “input tax” and will be an permissible deduction. This would therefore imply that the vendor will be allowed to deduct input tax on all expenses relating to the agricultural property, even the employee- and private houses. As it was previously denied, the vendor will now be entitled to deduct the VAT paid on the erection and improvement of the employee- and private infrastructure. This adjustment is generally referred to as the “claw-back” of input tax (SARS, 2016a:38).

In the case of a sale as a going concern as governed by section 11(1)(e) of the VAT Act, the vendor is entitled to make a deduction of input tax previously denied in accordance with section 16(3)(h) of the VAT Act, as the part of the enterprise that was used for the making of exempt supplies (employees- and private housing) are
deemed to form part of the going concern in terms of proviso (ii) to section 11(1)(e) (SARS, 2010:8).

Section 16(3)(h) defines the deduction to be included in the amount of input tax, deducted from output tax, “in the case of a vendor who has supplied goods or services during the tax period otherwise than in terms of section 18(2), an amount determined in accordance with the formula:

\[ A \times B \times C \]

In which formula–

“A” represents the tax fraction;

“B” represents the lesser of –

(i) (aa) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of the goods or services; or

(ii) the open market value of the supply of the goods or services at the time those goods or services are deemed to be supplied.

“C “ represents the percentage that, immediately before the time of the supply, the use or application of the goods or services for the purpose other than that of making taxable supplies was of the total use or application.

As the erection or improvement of these infrastructure types was seen as “out-of-scope”, it was completely disallowed resulting in the percentage referred to in “C” being 100%. The vendor will therefore be allowed to deduct input tax on 100% of the lesser of adjusted cost or market value of the employee housing and facilities as well as the private residences on these agricultural properties.

The input tax “claw-back” referred to is also applicable in cases where the agricultural land is not sold as a going concern as the sale will also be a taxable
transaction. As the vendor is required to account for output tax on the full consideration received for the land, the vendor is also entitled to deduct the VAT paid on the acquisition of these goods or services. In both cases, these adjustments need to be made in the tax period during which the goods or services are supplied (SARS, 2016a:38).

With reference to the adjustment formula, the definition of “B” and the reference to ‘adjusted cost’ may pose a significant challenge. Section 1 of the VAT Act defines ‘adjusted cost’ as “the cost of any goods or services where tax has been charged or would have been charged if section 7 of this Act had been applicable prior to the commencement date, in respect of the supply of goods or services or if the vendor was or would have been entitled to an input tax deduction in terms of the definition of ‘input tax’”.

The ‘adjusted cost’ is therefore the original cost but is limited to costs which bore VAT or would have borne VAT if VAT had been applicable prior to 30 September 1991 or costs which would have been subject to a notional input deduction, i.e. second-hand goods (Silver, 2017:144). It would therefore seem as if the adjusted cost would only include costs on which output tax was levied or would have been levied. Had the farmer therefore built all the employee housing and facilities or the private residence by purchasing the materials himself and paying seasonal contractors to erect the properties, the adjusted cost would probably only include the actual materials purchased as VAT would not have been charged by the various informal contractors who most probably would not have been registered for VAT after implementation of the VAT Act in 1991. It would seem as if he would therefore not have been entitled to an input tax deduction as these contractors were not registered for VAT. However, had the vendor contracted a professional builder to erect the properties, chances are that output tax would have been levied on the total cost of the buildings and therefore entitle the vendor to include the total cost of these properties as the ‘adjusted cost’. Furthermore, other expenses such as finance charges, being exempt, would also have to be excluded if applicable (Silver, 2017:144). In addition to the above, had the goods or services been acquired by the
vendor from a connected person for a consideration less than the market value, and the consideration for the previous acquisition was deemed to be the then open market value, the cost is deemed to be the open market value when the goods or services were previously acquired. Lastly, should a vendor previously have been required to make either an input or output tax deduction as a result of a change in taxable usage, the cost of the goods or services would be the amount used for purposes of the adjustment (Silver, 2017:144).

As is evident from the above, the term ‘adjusted cost’ and the determination of the amount thereof could result in detailed calculations and the necessity for proper records to be available. It doesn’t seem to be a mere calculation of multiplying the cost of the building or infrastructure by the tax fraction. It is further held that this type of record keeping could pose a major challenge for vendors in the agricultural sector.

According to section 29 of the Tax Administration Act, the taxpayer must keep records, books of account or documents that enable the person to observe the requirements of a tax Act. The maximum retention period of these records however, is five years after submission and finalisation of the return or assessment. Furthermore, in addition to the requirements of the Tax Administration Act, section 55(1)(a) of the VAT Act also specifies the records to be kept, e.g. invoices, records of all goods or services supplied to the vendor etc. for a period of five years after submission of the return (SAICA, 2016:26). It is therefore strongly possible that the detail that seems to be required by the definition of ‘adjusted cost’ is no longer available. In the context of agriculture in South Africa, the challenge relating to the retention of this information and the calculation of the cost could further be increased by the multi-generational nature of the agricultural industry. The South African farming industry had approximately 50 000 large commercial family farmers in 2014 with the prime objective of commercial farm families being to pass on control of a sound and improved business to the next generation (Van Niekerk et al., 2015:66). Most of the larger farming enterprises in South Africa are family farms (Anon., 2016) and the passing on of these enterprises from one generation to the next could result in very little information being available about the original cost and method in erection of these properties. This gives rise to the question of, should the detail of
the actual original cost of these infrastructures not be available, how this would affect the taxpayers' ability to claim the input tax they are entitled to.

One could argue, however, that the information and detailed breakdown of the cost of these buildings and infrastructure should be available from the accountants or auditors of these entities and one should be able to request them. According to the International Standard on Quality Control (ISQC 1), an auditor is required to retain the working papers and documents for a period not shorter than five years after completion of the auditor's report (SAICA, 2016:7). Another factor to consider is the fact that the enterprise could have changed accountants or auditors during the years, which could further complicate the availability of records. In a survey conducted by SAICA in 2014 amongst 213 of its members, 67% of the respondents reported not having any succession planning in place and considered “assisting their clients with transition to other firms” as one of the best options relating to any succession planning. Furthermore, only one in ten sole practitioners had a formal business succession plan in place (Kriel, 2014). It could therefore be held that, especially in the case where farming enterprises have been passed on from one generation to the next, a change in accountant or auditor has likely taken place over the years. This possibility is also strengthened with several surveys showing that staying with the same accounting firm is not a given, with between 15% to 20% of small business clients leaving their accounting firms each year (Accounting Today, 2014). These statistics reduce the probability of being able to request information or records from several years ago from the professional advisors of these enterprises.

As is evident from the above, the fact that the input tax deduction should be based on the lower of the ‘adjusted cost’ or market value, could pose a significant challenge and increase the risk of errors or incorrect input tax claims. Section 102 of the Tax Administration Act states that the “taxpayer bears the burden of proof” in ensuring that the correct amounts are claimed and that he/she is entitled to the deduction. The complexity of the provisions noted above could therefore result in penalties and interest imposed on the vendors should SARS not agree with the calculation, or should the documentation available be insufficient.
Furthermore, as the input tax “claw-back” is not a standard VAT claim based on the normal set of documents, the vendor must ensure that the documents used to substantiate the calculation are acceptable to SARS. In the case of a claim in terms of section 16(3)(h) of the VAT Act, for goods or services acquired on a date prior to a period of five years immediately preceding the date of the adjustment, SARS requires a copy of the asset register, a copy of the financial statements together with a calculation reflecting the determination of the amount of the deduction (SARS, 2016b:5). The question therefore arises concerning what documents the vendor should submit as documentary proof substantiating the claim should the asset register not provide sufficient detail on the cost of the buildings and the basis of the calculation.

“Should the vendor experience difficulty in obtaining the documentary proof as required by the Commissioner the vendor may apply to the Commissioner for approval to use alternative documents in accordance with Binding General Ruling (VAT) No. 36 dated 24 October 2016” (SARS, 2016b:8). The process for the application of approval is that of a VAT Ruling in accordance with section 75 to 90 of the Tax Administration Act (SARS, 2016c:2). As the burden of proof in substantiating the claim lies with the taxpayer, should the vendor not be sure whether the calculation would be acceptable and whether the documentary proof available would be acceptable, the above process should assist the vendor in ensuring that the input tax “claw-back” is acceptable to the Commissioner. The average application cost of such a ruling is however between R2 500 and R14 000 with the cost recovery of between R10 000 and R105 000 (SARS, 2017b).

Based on the above analysis, it is held that the current legislation relating to the input tax “claw-back” in relation to employee housing and facilities as well as private residences on agricultural land, could pose a significant challenge to the vendors selling these properties as there seems to be room for error together with the complexity in application of the provisions of section 16(3)(h).
2.4.2 Purchaser of the agricultural property

As in both of the cases, the sale or transfer of the land will be a taxable transaction and therefore the purchaser should consider the implication of the employee housing and facilities together with the private residence(s) on the farmland purchased. “A principle of VAT is that the vendor is only entitled to deduct input tax to the extent that goods or services are acquired to be used, consumed or supplied by the vendor in the course of making taxable supplies” (SARS, 2010:10).

In the acquisition of an enterprise as a going concern, the transaction is taxable at a rate of zero per cent. Should the purchaser of the agricultural enterprise use the land and building affixed thereto in the same manner as the seller, he will only be using the land partly for the use, consumption and supply for the furtherance of taxable supplies. “The vendor is therefore effectively obtaining an undue input tax deduction” (SARS, 2010:10) and in order for consistent VAT treatment, an output tax adjustment is required by the vendor in terms of section 18A of the VAT Act.

Section 18A(2) of the VAT Act states that the output adjustment shall be the full cost of the vendor of acquiring the enterprise, reduced by the amount which bears to the amount of such full cost, to the same ratio as the intended use or application. Should this ratio of intended use however be equal to and not less than 95 per cent of the total use of the enterprise, the adjustment will not be necessary as it will be regarded as having been wholly for the purpose of making taxable supplies in terms of section 18A(1). The use as referred to in section 18A(1) and (2) is calculated on the value of the employee housing and facilities together with the private residences as a percentage of the total value of the enterprise. This apportionment ratio, whereby a yield of more than 95 per cent is considered wholly for the furtherance of the enterprise, is referred to as the de minimis rule (SARS, 2013). Therefore, should the value of the infrastructure be more than five per cent of the total value of the enterprise, the exclusion in terms of section 18A(1) will not apply. Furthermore, should the sale or transfer take place between connected parties such as families,
trusts managed by families etc., the cost shall be deemed to be the open market value of such enterprise.

In the case of a vendor purchasing the farmland only, the transaction will be a standard taxable transaction at the rate of 14%. However, as the residential building again forms part of the land, by deducting the full input tax the vendor will also be obtaining an undue advantage. The vendor is therefore required to declare output tax on the goods or services subsequently used for personal purposes, exempt or out-of-scope supplies should the full amount of input tax have been deducted or have to apportion the input tax to the different parts of the property and claim the VAT accordingly. The output tax is calculated in accordance with section 18(1) of the VAT Act and is calculated on the open market value of the goods or services concerned (SARS, 2016a:35). The application of this section would imply that, after purchasing the property, the vendor should calculate the market value of the employee housing and facilities together with the residence(s) on the farmland and declare output tax on the value thereof.

In the case of a sale or transfer as a going concern, a valuation of these buildings and facilities will also be necessary as the ratio of the value of these buildings to the total value of the enterprise needs to be calculated in order to determine the output to be declared. However, the question arises as to how the value of the buildings on the farmland will be determined. In the case of a normal taxable transaction whereby the agricultural property is supplied at the normal rate of 14%, the value of the adjustment should be based on the open market value of the asset.

Section 3 of the VAT Act defines the term ‘open market value’ as the value of a “similar supply in relation to a supply of goods or services”. Section 3(2) states that the “open market value of any supply of goods or services at any date shall be the consideration in money which the supply of those goods or services would generally fetch if supplied in similar circumstances at that date in the Republic, being a supply freely offered and made between persons who are not connected persons.” The
problem, however, is that farm buildings and improvements are seldom purchased or sold separately from the land in a bona fide market transaction (Suter, 1981:384).

The term ‘market value’ is defined in the Cambridge Dictionary as “the price at which something can be sold at a particular price at a particular place.” However, should the infrastructure situated on farming property very rarely be traded separately, the question arises as to what value will be acceptable as the open market value for these transaction types.

The method used by most estate agents for the valuation of residential properties is a comparative market analysis (CMA) which compares other similar properties that have been sold in the area with available ‘comparables’ such as size, design etc. (Goslett, 2011). However, this still seems to pose a major challenge as comparable properties in the case of employee housing and private residences on farms barely seem to be comparable with an urban residence. The International Valuation Standards (IVS) as adopted in South Africa, defines the term ‘market value’ in paragraph 30.1 as “the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeable, prudently and without compulsion.”

The valuation of farm buildings therefore presents one of the more difficult problems because the valuation of these buildings differs from farm appraisal both in theory and in technique. Most appraisals place a single value on the property and the land, buildings and improvements are valued together, the same as they are sold (Suter, 1981:383). It would therefore seem that, should the vendor require a specific valuation of the employee housing and the private residence, such valuation would need to be obtained in addition to the normal appraisal of the agricultural land resulting in increased compliance costs and the creation of room for error.
One is led to question how the value of employee housing and facilities will be valued as it seems improbably that these kinds of buildings or properties might be traded in an open market. In considering the valuation approach, the value of the buildings is also considered in ascertaining the contribution that the buildings make to the present value of the farm together with considering the extent to which the given building will be replaced in the event of a loss (Suter, 1981:384). In valuing these buildings, the cost approach would seem to be the most popular method with different costs considered in order to ascertain a reasonable value of the buildings (Green, 1995:28). When referring to the cost of these buildings, consideration is paid to the replacement cost (i.e. the cost of erecting a new modern-day property replacing the old) and the reproduction cost (i.e. the cost to reproduce the buildings with the same design and finishing), based on the subjective and quantitative judgement of the valuer (Green, 1995:29). The separate valuation of the buildings therefore seems to be possible but would most probably be based on the subjective view of a valuer. The process of determining the value of these buildings therefore seems to be dependent on an expert’s valuation. As the “burden of proof is borne by the taxpayer”, in terms of the Tax Administration Act, it would seem advisable to obtain a proper valuation in order to substantiate the values used for the adjustment.

One should bear in mind that, should the vendor purchasing the property one day sell or transfer the property, the vendor will then again be entitled to an input tax adjustment, as discussed earlier, resulting in the transaction being taxable. This adjustment will be made on the adjusted cost of the property. With reference to the definition of ‘adjusted cost’, as discussed earlier, the value of the output tax adjustment based on the market value is of the utmost importance as this value will be used in the calculation of the input tax adjustment.

2.5 Summary

It is stated that a key attraction of VAT is its potential for attracting economic neutrality by eliminating the tax burden on intermediary businesses and shifting the tax to the final consumer only (Krever, 2008:16). However, based on the above
discussion it would seem that the legislation relating to the handling of employee housing and facilities as well as private residences in the case of agricultural land in isolation, will almost never have a final consumer. It would seem as if the adjustments made upon purchase will be allowable on sale only for the purchaser to add another amount back again, which will be allowable in case of subsequent sale of these agricultural enterprises or land. Although VAT exemptions are considered to go against the core principles of VAT and as a tax on all consumption also undermine the efficiency and neutrality of the tax (DTC, 2014:29), consideration of other tax regimes and the possibility of exempting these kinds of transactions could assist in reducing the complexity of the current legislation and can provide a valuable contribution.

As the complexity of the legislation and the application thereof, as discussed above, could not only have an effect on the taxpayer’s willingness to comply to the legislation, it is held that the current legislation, both on the side of the selling vendor and purchasing vendor, creates room for error as well as manipulation and could increase the risk of non-compliance due to the stringent and costly process involved in obtaining approval for the documentary proof, the possibility of documents and records not being available as well as the possible costly exercise of valuating the buildings. It is further held that there is a major risk that the current legislation could result in financial loss for the Revenue Service due to the purchasing vendor not applying the legislation in declaring the output tax adjustments. Chances seem to be higher that the selling vendor will deduct the input tax deduction as this would be financially beneficial, but the cost factor of obtaining a proper valuation together with the complexity of the provision could motivate non-compliance on the side of the purchasing vendor.

Due to the possible effect of the complexities highlighted above, the legislation of other jurisdictions, namely Australia and New Zealand, will now be analysed to determine whether there is similar treatment of these expenses or whether the legislation of these countries provides an alternative treatment which could be a viable alternative to the South African legislation.
CHAPTER 3

ANALYSIS OF THE AUSTRALIAN LEGISLATION

3.1 Introduction to the Australian GST legislation

The Australian Act, A New Tax System (Goods and Services Tax) Act No. 55 of 1999 (GST Act) is a broad-based tax levied at 10% on most goods or services consumed in Australia. The GST Act became effective on 1 July 2000 according to section 1-2 of the GST Act and, being a consumption tax, is similar to the South African VAT Act. Vendors are required to register for GST should they be carrying on an enterprise with a turnover exceeding A$75 000 (ATO, 2017a).

Although the basic concepts of the GST Act are similar to the South African VAT Act, it is important to note that the terminology used to describe these concepts is different. In both Acts, taxable supplies are referred to as supplies on which VAT or GST is levied at the rate applicable. However, while the South African VAT Act refers to zero-rated supplies in the case of supplies whereby VAT is levied at a rate of zero per cent, with the vendor still being able to claim the input tax paid in relation to the supply, the Australian GST Act refers to GST-free sales. No GST is levied on the sale of goods qualifying as GST-free goods but the vendor is entitled to the input tax credits included in the price of the inputs. Furthermore, the supply of goods sold without GST included in their price, whereby the vendor is not entitled to claim any GST credits on the inputs, would be comparable with exempt supplies according to the South African VAT Act, and is referred to as ‘input taxed sales’ (ATO, 2013:23).

According to section 9-10 of the GST Act, a supply is any form of supply whatsoever, including the supply of goods, services, advice or information, the grant or surrender of any real property as well as the creation, grant, transfer, assignment or surrender of any right. A supply will be a taxable supply in accordance with section 9-5 of the GST Act if the supply is made for a consideration in the course or furtherance of the enterprise carried on by the vendor, that is registered or required to be registered for GST, and the supply is connected with Australia, meaning the physical land is
situated in Australia (ATO, 2000:14), except concerning the extent to which the supply is a GST-free or input-taxed supply.

The term ‘enterprise’ is broadly defined and includes activities where the taxpayer is engaged in business. Inputs for the furtherance of the enterprise of the vendor will be deductible to the extent that it is expensed for the furtherance of this enterprise. In the case between HP mercantile Pty Ltd v Federal Commissioner of Taxation (FCT), it was established that a connection and a relevant relationship needs to be present between the acquisition and the supply in order for the input to be deductible and to fall within the scope of section 11-15 governing the deductibility of input tax paid (Greening, 2011:89).

Property for GST purposes includes land, land and buildings, an interest in land, a right over land as well as a license to occupy land (ATO, 2014a:3) and is connected with Australia according to section 9-25(4) of the GST Act (if the property or land is situated in Australia). According to section 195-1 of the GST Act, the carrying on of an enterprise includes doing anything in the course of the termination of an enterprise. Hence, should a farm in Australia be sold for a consideration, whether it be a normal sale or as part of the vendor terminating the enterprise, the sale will be a taxable supply to the extent that the sale is not GST-free or input taxed. Although the overall treatment of these transactions seems to be similar to the South African VAT treatment, the deductibility of input tax relating to any residences on the farming properties as well as the GST treatment upon sale of these properties will now be discussed.

3.2 GST treatment of employee- and private housing

In order to determine whether a vendor will be entitled to an input tax credit on the costs relating to the erection, improvement or maintenance of employee- and private housing it should be considered whether the expense is a creditable acquisition for a creditable purpose.
Section 11-5 of the GST Act states that a creditable acquisition is made if it is acquired by the vendor who is registered for GST solely or partly for a creditable purpose with the liability to provide consideration for the supply, and the supply made to the vendor is a taxable supply. A creditable purpose is furthermore defined in section 11-15(1) as an acquisition made for the carrying on of the vendor’s enterprise. Section 11-15(2) states, however, that a thing is not acquired for a creditable purpose if the acquisition relates to the making of supplies that would be input taxed or inputs of a private and domestic nature.

Section 40 of the GST Act governs the different supplies classified as input-taxed supplies. The making of input-taxed supplies will result in no input tax credit being available for the vendor upon acquisition of the goods or services. Section 40-35(1) states that a supply of premises by way of lease, hire or license is input taxed if the supply is that of a residential premises other than a commercial residential premises with section 40-35(2)(a) stating that the supply is input taxed only to the extent that the premises are to be used predominantly for residential accommodation (regardless of the term of occupation).

A residential premises is defined in section 195-1 of the GST Act as land or a building that is occupied as a residence or for residential accommodation or is intended to be occupied, and is capable of being occupied, as a residence or for residential accommodation. The requirement in sections 40-35, 40-65 and 40-70 that a residential premises is to be used predominantly for residential accommodation is to be interpreted as a single test that looks into the physical characteristics of the property and to determine the suitability and capability for residential accommodation (ATO, 2012:2). In other words, the characteristics of the building should be considered in order to determine whether it would be classified as a residential premises. The premises should further provide a shelter and basic living facilities in order to be classified as a residential premises (ATO, 2016).
Furthermore, should accommodation be provided to employees as part of the salary package, it is considered that the premises is supplied to the employee by way of license as the employee has formal permission or an authority to reside in the premises (ATO, 2002). This supply will therefore also fall within the scope of section 40-35.

As both the private residences on farmland and employee housing will be classified as residential accommodation, the supply thereof is input taxed in accordance with the GST Act. As stated earlier, the relationship between the input and the supply determines the deductibility of the input tax. No input tax credit will therefore be deductible on any expense relating to the erection, improvement or maintenance of private- or employee housing on the farmland. The initial Australian GST treatment of these expenses is therefore similar to the South African VAT treatment of these expenses, being that no deduction from output tax is available as these costs are not seen as in the production of taxable income, but as exempt and private expenditure.

3.3 GST treatment of the sale of farmland

As stated earlier, the sale of farmland, whether it be upon termination of an enterprise or by an on-going enterprise, is a transaction deemed to be for the furtherance of the vendor’s enterprise and will be a taxable transaction unless to the extent that it is GST-free or input taxed. According to section 195-1 of the GST Act, the carrying on of an enterprise includes ‘anything done in the course of the enterprise’ including ‘activities carried out on the land together with other activities relating commencing, conducting and termination of the farming business’ (ATO, 2011:2).

Therefore, the sale of farmland will be fully taxable unless the transaction is specifically excluded in terms of section 38 of the GST Act, governing GST-free transactions, or section 40 of the GST Act, governing input-taxed transactions.
Subdivision 38-O of the GST Act contains certain provisions for the treatment of farmland with section 38-480 stating that ‘the supply of a freehold interest in, or the lease by an Australian government agency of or the long term lease of, land is GST-free if:

(a) The land is land on which a farming business has been carried on for at least the period of five years preceding the supply; and
(b) The recipient of the supply intends that a farming business be carried on, on the land.’

Therefore, should farmland be supplied, on which a farming business has been carried on for the preceding five years, the supply will be GST-free.

Subsection 38-475(2) states that an entity will carry on a farming business if it carries on a business of cultivating or propagating plants, fungi or their products in a physical environment, or maintain animals for the purpose of selling them or their bodily produce, or manufacture dairy produce from raw material that the entity produced, or plant or tend trees in a plantation or forest with the intention of being felled (ATO, 2009). Should the requirement of the above sections be fulfilled, the supply of these properties will be GST-free with no output tax being levied.

The definition of a ‘farming business’ would seem to cover most farming activities similar to those performed in South Africa. The focus of the exclusion from a taxable transaction interestingly enough focuses on the ‘use of the land as opposed to the ownership of it’ (ATO, 2014b). It does not matter who carries on the farming business, it need not be the vendor, as long as a farming business is conducted on the property, the exclusion will apply (ATO, 2015). Therefore, even if the land is under lease by the vendor and the lessee conducts a farming business, the supply thereof upon sale will be GST-free. Land further includes all fixtures attached to the land with the intention of becoming a permanent feature of the land and would include the residential premises and workers’ cottages (ATO, 2014b). The question therefore arises whether an adjustment would be necessary as the land, transferred GST-free, includes buildings and parts of land which are seen as input taxed and
private use expenses. These farming properties are therefore not being wholly used for farming activities.

The Primary Production Industry Partnership issues register (PPIP issues register) provides some guidance on the GST treatment in these cases. According to question 6.2.1(a) of the register, it is recognised that there will be some private use of farmland but that it needs to be determined whether ‘of all the activities on the land (including private use), farming is the predominant activity’. In other words, it needs to be determined whether the ‘land has the essential characteristics of farmland’ or whether ‘the other activities are so significant that the land cannot be considered to be farmland.’ Some of the characteristics considered in determining whether the land has the essential characteristics of farmland are the area of land used for the farm business in relation to the total area, the value of the land used for the farm business purposes in relation to the total value of the land and whether there is a business as opposed to a hobby, recreation or sporting activity (ATO, 2017b). Since fixtures such as the residential premises and workers’ cottages are part of the land, they will be included in the GST-free sale of the land if all the requirements of section 38-480 are met should they not be so significant that they do not affect the essential characteristics of the land (ATO, 2017b).

The term ‘significant’ is not defined in the GST Act and therefore the ordinary meaning as defined in the Macquarie dictionary has been adopted which defines significant as “important and of consequence; expressing a meaning and indicative; having a special or covert meaning and suggestive” (ATO, 2009).

Therefore, should the private residences and employee housing on farmland in Australia not be so significant that they affect the essential characteristics of the farmland, the properties will form part of the GST-free sale of farmland with no adjustment being necessary.
3.4 Summary

Based on the above discussion, it is evident that the initial treatment of expenses relating to the erection, improvement and maintenance of private residences and employee housing on farmland in Australia, and the deductibility of GST inputs on these expenses, correspond with the VAT treatment of these expenses in South Africa. However, when these properties are sold, the Australian GST treatment seems to be far simpler than the VAT treatment in South Africa.

The sale of these properties is GST-free (should the requirements be met) and no GST is levied on the supply. As no GST is levied, no adjustment is necessary on the inputs of the properties previously denied, as no output GST is levied. The residences and employee housing are always seen as input taxed and private, and are never deemed to form part of a taxable transaction upon which an adjustment is necessary by both the selling- and purchasing vendor.

As no input tax deductions are applied in order to account for “lost” inputs on these expenses, no undue input tax benefit seem to be obtained by the purchaser. Although the Australian GST Act also seems to correspond with the requirement of the South African VAT de minimis rule, with there being a focus on the significance of the residential properties compared to the value of the whole property, the Australian GST legislation is more focused on the total characteristics of the property. Although the value of the property forms part of the consideration of the significance of the property, it is not the sole consideration in determining whether the property was used “wholly” for the furtherance of the enterprise as is the case with the South African VAT legislation. The Australian GST treatment would seem to be far less complex than the South African VAT treatment for similar transactions and supplies.
CHAPTER 4

ANALYSIS OF THE NEW ZEALAND LEGISLATION

4.1 Introduction to the New Zealand GST legislation

Goods and services tax was introduced in New Zealand on 1 October 1986, the commencement date of the Goods and Services Tax Act, No 141 of 1985 (GST Act). GST is currently levied at 15% on most goods and services in New Zealand and vendors are liable to register for GST should their gross income from a taxable activity, for a period of 12 months, exceed NZ$60 000 (IRD, 2017). The New Zealand GST Act is perhaps the world's most efficient VAT system and very few countries adopting the modern VAT model have been able to achieve the same degree of purity as New Zealand (Krever, 2008:18). The New Zealand GST Act is widely considered to be the model for VAT/GST internationally (Greening, 2011:17).

As the South African VAT Act was designed using the New Zealand GST Act as its model, the inherent concepts of the two acts seem to be fairly similar. The New Zealand GST Act provides for three types of transactions similar to the South African VAT Act whereby a taxable supply includes a standard-rated supply where GST is levied at 15% and a zero-rated supply where GST is levied at zero per cent. The third supply is a non-taxable supply or exempt supply which is not seen as a transaction part of the taxable activity.

The term ‘supply’ is defined in section 5(1) and 5(2) of the GST Act as ‘all forms of supply’ and includes ‘any goods acquired or produced by a person that are sold under an exercisable power to another person towards the satisfaction of a debt owed by the first person’. The term supply is therefore very broad and seems to include almost any type of transaction whereby goods are transferred from one person to another.
In order for GST to be levied, a supply must be made by a person for the furtherance of a taxable activity. The term ‘taxable activity’ would therefore seem to be comparable to the term ‘enterprise’ in the South African VAT Act. The term ‘taxable activity’ is defined in section 6(1)(a) of the GST Act as ‘any activity which is carried on continuously or regularly by any person, whether or not for profit, and involves or is intended to involve the supply of goods and services to any other person for a consideration’. Section 6(2) further states that ‘anything done in connection with the beginning or ending, including premature ending, of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity’.

According to section 1 of the GST Act, the term ‘goods’ includes all kinds of personal or real property and would therefore include land sold as part of a supply. Should the land therefore be sold by a registered vendor in the ordinary course of business, the supply thereof would be a supply in terms of the GST Act and could be subject to GST. Should the land be sold in termination of the activity of the vendor, the sale will also be a supply in terms of section 6(2). The requirements in terms of an enterprise and supply therefore seem to correspond with the comparable provisions of the South African VAT Act. The treatment of the cost of private residences and employee housing as well as the GST treatment of these farming properties will now be considered.

4.2 GST treatment of employee- and private housing

According to section 20(3C) of the GST Act, input tax as defined in section 3A(1)(a) or (c) may be deducted to the extent to which the goods or services are used for, or are available for use in, the making of taxable supplies. In order for supplies to be taxable, the supplies will have to be made in the furtherance of a taxable activity as defined in section 6 of the GST Act. Section 6(3)(d) specifically excludes any activity to the extent to which the activity involves the making of exempt supplies as being part of a taxable activity and should an expense therefore relate to an exempt supply, no input tax deduction would be available in terms of section 20(3C).
Section 14 of the GST Act specifies certain supplies which would be considered as exempt and, with reference to section 6(3)(d), on which no input tax can be claimed on the expenses relating to the supply. Section 14(1)(c) states that the supply of accommodation in any dwelling by way of hire, a service occupancy agreement or a license to occupy, will be exempt from tax.

A ‘dwelling’ is defined in section 1 of the GST Act as a premises that the person occupies, or that it could be reasonably foreseen that the person will occupy as their principal place of residence and includes accommodation provided to a person who is occupying the same premises, or part of the same premises, as the supplier of the accommodation.

A ‘service occupancy agreement’ is defined in section 1 of the GST Act as ‘a license whereby a person occupies a dwelling for no consideration’ and grants a license for an employee to occupy a dwelling provided by the employer to better the performance of their work duties (Net Lawman, 2017). Therefore, the provision of accommodation by an employer to an employee, whether for a consideration or as part of their remuneration package, constitutes an exempt supply. The expenses relating to the erection, improvement or maintenance will therefore not be deductible in terms of section 20(3C) as it will not be seen as the furtherance of a taxable activity.

The treatment of the farm dwelling, being the private residence of the vendor, also seems to correspond with the above sections. The sale of a private property not used for business, such as a house, will not attract GST (IRD, 2012) and the supply of farm dwellings will normally be seen as exempt supplies in terms of section 14 (Busing Russell, 2014).

As both the private residence and employee housing will be defined as a dwelling and fall within the scope of section 14 of the GST Act, the input tax relating to the
expenditure of these properties will therefore not be in the furtherance of a taxable activity and would not qualify for deduction in terms of section 20(3C) of the GST Act. The input tax treatment of these expenses therefore seems to correspond with the VAT treatment of similar expenses in the case of South African farming enterprises.

4.3 GST treatment of the sale of farmland

As the sale of the farmland will be a transaction included in the definition of a supply, the transaction, whether it is for the termination of the taxable activity of the vendor or not, would be subject to GST imposed by section 8(1) of the GST Act at the standard rate as defined in the GST Act. However, after 1 April 2011 most supplies of land (and buildings) between GST-registered persons will be zero-rated after implementation of the compulsory zero-rating (CZR) of land transactions (Trombitas, 2014). The CZR, as referred to, relates to the provisions of section 11(1)(mb) of the GST Act stating that the supply, wholly or partly consisting of land, which is made by a registered person to another registered person with the intention of using such for the making of taxable supplies and a supply which is not a supply of land to be used as the principal place of residence of the person, will be zero-rated in terms of section 11 of the GST Act. Therefore, should a vendor sell the farmland to another vendor, the transaction will not be taxable at the standard GST rate as per section 8(1) of the GST Act, but at a rate of zero per cent.

The definition of land, as per section 1 of the GST Act, includes an estate or interest in land and things of a permanent nature situated on the ground, such as the buildings and any other structures that become a fixture and thus part of the land (IRD, 2010). It is further important to note that the provisions of section 11(1)(mb) refer to the ‘compulsory’ zero-rating and is not voluntary. Should a vendor therefore sell his property to another vendor, the transaction must take place at a rate of zero per cent. However, should the requirements of section 11(1)(mb) not apply, the supply would be a normal taxable supply at a rate of 15% (IRD, 2010). The requirements for the CZR rules are fairly similar to the requirements of section 11(m)
of the GST Act, also referred to as the going-concern provisions, whereby a taxable activity could be sold, at a rate of zero per cent, by one vendor to another should they agree, in writing, that the transfer is a going concern and the recipient carried on the activity as a going concern. Hence, should the requirements of section 11(1)(mb) not be met, no other provision should provide for the zero-rating of the sale of the farmland. Should the vendor therefore sell the farmland to a non-vendor, not all requirements of section 11(1)(mb) will have been met and the transaction will be taxable at a rate of 15%.

Section 5 of the GST Act defines the term ‘supply’ with subsection 15 stating that:

(15) When either of the following supplies are included in a supply, they are seemed to be a separate supply from the supply of real property that is included in the supply:

(a) a supply of a principal place of residence;
(b) a supply referred to in section 14(1)(d).

The taxable activity or property being purchased is the farmland and not the dwelling and, accordingly, the farmland is zero-rated for GST as the land is not the principal place of residence. The purchase of the dwelling is deemed to be a ‘second sale’ (Sheddan, 2012). This provision would result in the applicability of GST to the supply of the dwelling being considered separately from the other supply. Generally, GST will not be chargeable on the supply of the dwelling because it will not be supplied in the course or furtherance of the supplier’s taxable activity and will generally be a supply of a private or exempt asset (IRD, 1996). Therefore, the provisions of section 11(1)(mb)(ii) clarify that the supply of a principle place of residence is not subject to the zero-rating rules (IRD, 2010). As the sale of the dwellings (being the private residence and the employee housing) is classified as a separate supply, the value of the supply needs to be determined as a portion of the value of the whole asset, being the farmland on which it is affixed. Where mixed-use properties include a residential portion, the valuer is confronted with the possibility of sales of comparable
properties being quoted on either basis, but generally on a market value (PINZ, 2016).

The majority valuations of these supplies, are the comparison with prices paid for residential building sites in the nearest towns for a similar quality site, with upward or downward adjustments for quality, finishing etc. (Anon, 2017). The value of the private residence of the vendor as well as the employee housing is therefore determined in order for the zero-rating or standard tax fraction to apply only to the farmland. The value of the dwelling and other residential buildings is then deducted from the sale price of the farmland in order to provide the taxable value for the farmland alone. Should section 11(1)(mb) apply, no GST will be levied on the value calculated. However, should the transaction fall out of the provisions of section 11(1)(mb) of the GST Act, GST will be levied at 15% of the value of the farmland. As the sale will still be a taxable transaction, section 5(15) will continue to apply and the sale of the residential buildings will be a separate, exempt supply.

4.4 Summary

Based on the above analysis, it could be said that private residences and the employee housing on farmland and the GST treatment thereof on erection, improvement and the maintenance thereof correspond with the South African VAT treatment of similar expenditure. However, upon sale of the farming properties, these buildings are never deemed to be part of a taxable transaction in terms of the New Zealand GST Act (be it at a rate of zero per cent or at the standard rate of 15%) and retains the characteristics of a residential premises which is completely exempt for GST purposes which is different from the Australian GST Act where the property forms part of the farming land and no separate valuation is required. In order for the sale to be affected, these buildings are never adjusted for in terms of input tax denied only for the purchasing vendor to add it back. Based on the current legislation, it would also seem unlikely for the purchaser to obtain any undue input tax benefit as the private and exempt portion of the property is separately accounted for. As the buildings are never deemed to form part of a taxable transaction, no input tax deductions, problematic document retention and room for error seem to be
present. It would seem, however, based on the challenges listed relating to the valuation of these buildings, that the provisions of the New Zealand GST Act do not address all the complexities identified in the current South African VAT legislation.
CHAPTER 5

SUMMARY AND CONCLUSION

5.1 Summary

The purpose of the study was to highlight the complexity of the current VAT treatment of private residences and employee housing on farming enterprises when these properties are sold or transferred by a vendor, and to seek possible alternative treatment of these transactions.

This study found that the current South African VAT legislation and the treatment of VAT in the case of the selling vendor as well as in the case of the purchasing vendor could possibly be seen as overly complex and could pose a major challenge. Not only do the adjustments necessary create room for error and possibly affect the taxpayer’s willingness to comply with the provisions, it could almost be said that there is no final consumer when referring to the transfer of these properties and the corresponding VAT treatment of these components of the properties. With this treatment, the adjustments could indeed be described as a “ball passed from one vendor to another which never reaches the goal”.

The adjustments necessary upon sale of these properties could pose a major challenge for the seller as extensive records, documents and calculations would seem to be necessary in order to obtain the allowable adjustments. The purchaser is further required to adjust for the same reason, it being the residential nature of the properties, but should use a different value based on the value of the properties and apart from the challenge posed to obtain this value, the purchaser might also not know about the required adjustment. Considering that the purchaser will be entitled to the deduction once the property be sold in future again, the adjustments required seem to be overly complex.
The study further found that the complexity in the South African legislation lies in the treatment of the transactions and the relating input and output tax upon sale of the agricultural land, and that the initial VAT treatment of the erection, improvement or maintenance of these properties corresponds with the GST treatment of similar expenditure in Australia and New Zealand.

However, upon sale of these properties in Australia, the transaction is classified as a zero-rated sale should all requirements be met. The zero-rating of the transaction results in the residential components of the property never forming part of the “taxable transaction” on which VAT/GST should be levied and therefore no input tax adjustment would seem necessary. As no “undue input tax deduction” is then obtained by the purchaser, a further adjustment of output tax is not required. In the case of a sale in New Zealand, the residential components of these properties never form part of the taxable supply and are deemed to be a separate supply which is exempt from GST. Therefore, as these “buildings” also never form part of the taxable transaction, no input or output tax adjustments are required on either the purchaser- or seller’s side. As the separate supply of the residential components needs to be valued in order to determine the value of the supply, the provisions would still seem to be a bit complex even though no adjustments before or after the sale are required.

5.2 Conclusion

Based on the critical evaluation of the legislation in this study, it was found that although the provisions of both the Australian and New Zealand GST legislation could somewhat simplify the highlighted complexities of the South African legislation, the Australian GST treatment of these transactions could be seen as a comprehensive “solution” to the challenges identified should this system be applied in South Africa. Application of similar provisions would eliminate the apparent complex adjustments required in the South African VAT Act and result in the simplified treatment of the sale of agricultural land. In simplifying this treatment a positive effect on compliance and correct application of the provisions could be motivated.
The simplification of the South African VAT legislation relating to the sale of agricultural land thus warrants further research as it would appear that there is indeed a simplified alternative VAT treatment of these transactions and adjustments.
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