

# The case for specific exemptions from the goods and services tax: what should we do about food, health and housing?

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## ***Abstract***

The Australian goods and services tax (GST) was introduced in 1999, somewhat later than other developed countries. This article examines the GST provisions in the context of three ‘exemptions’ from GST: the supply of basic food, healthcare and the supply of residential housing (both rented and sold). It examines the arguments for these exemptions on the basis of equity and also considers other arguments in their favour, including health considerations relating to unhealthy eating and the public perception that imposing tax on basic food, health and homes is unjust and unfair.

It commences with a background discussion of the main forms of taxation that combine to make up our tax system. It then moves on to a discussion of tax policy and the policy rationales for GST exemptions for food, healthcare and housing. It canvasses some arguments against the exemption and finishes with concluding thoughts on the exemptions.

**Key words:** GST, exemptions, zero-rating, food, healthcare, residential premises

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## 1. INTRODUCTION

*'Of all the preposterous assumptions of humanity over humanity, nothing exceeds most of the criticisms made on the habits of the poor by the well housed, well warmed and well fed.'*<sup>1</sup>

In 1975 the Taxation Review Committee argued, in what is generally referred to as the Asprey Report, that in a complex society where there is a high level of government spending, it is necessary to raise revenue through a variety of taxes as no one form of tax can hope to raise sufficient revenue in the most appropriate manner for all purposes.<sup>2</sup> This Report, along with other reports and researchers, also stated that the key criteria to evaluate a taxation system are equity, simplicity and efficiency.<sup>3</sup> The difficulty exists, as Justice Graham Hill argued, in that 'these criteria are often, and probably always, incompatible with each other'.<sup>4</sup>

This article examines the Australian goods and services tax (GST), introduced in 1999 and effective from 2000,<sup>5</sup> in the context of three 'exemptions' from GST: the supply of basic food, healthcare and the supply of residential housing (both rented and sold). It examines the arguments for these exemptions on the basis of equity and other arguments in their favour, including health considerations relating to unhealthy eating and the public perception that imposing tax on basic food, health and homes is unjust and unfair. The author also examines some of the arguments against exemptions, with a particular focus on tax simplicity and the conflict between equitable considerations and simplicity. However, the main aim of the article is to analyse whether or not these exemptions are equitable within the tax policy term.

The article commences with a background discussion of the main forms of taxation that combine to make up our tax system. It then moves on to a discussion of tax policy and the policy rationales for GST exemptions for food, healthcare and housing. It canvasses some arguments against the exemption and finishes with concluding thoughts on the exemptions.

## 2. AUSTRALIA'S TAX MIX

Before the author commences this discussion of the consumption tax it is necessary to briefly consider Australia's tax mix. Australia has a large number of taxes; however, only four are significant in terms of the amount of revenue collected: income tax

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<sup>1</sup> Herman Melville, *Poor Man's Pudding and Rich Man's Crumbs* (1854), reproduced in *Billy Budd and Other Stories* (Wordsworth Editions, 1998) 39, 46.

<sup>2</sup> Taxation Review Committee (Justice Kenneth Asprey, chair), *Full Report* (January 1975) [3.3] (Asprey Report).

<sup>3</sup> *Ibid* [3.6]; Graham Hill, 'Tax Reform: A Tower of Babel; Distinguishing Tax Reform from Tax Change' (2005) 1(2) *Journal of the Australasian Tax Teachers Association* 1; Kathrin Bain, 'Exemptions and Concessions in the Australian Tax System: Equity at the Expense of Simplicity' (2010) 5(1) *Journal of Australasian Tax Teachers Association* 66.

<sup>4</sup> Hill, above n 3.

<sup>5</sup> *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act).

(including income tax on companies), the GST, excise duties, and pay-roll tax.<sup>6</sup> Personal income tax counts for nearly 40 per cent of revenue and the GST for 13 per cent.<sup>7</sup>

The Mid-Year Economic and Fiscal Outlook for 2018/19 forecasts that total GST revenues will be AUD 71,650 million, the GST revenue as a percentage of total Commonwealth tax revenue will be 15 per cent and that GST revenue as a percentage of gross domestic product (GDP) will be 3.5 per cent.<sup>8</sup> Furthermore, Organisation for Economic Co-operation and Development (OECD) data indicates that, in the 2016-17 income year, the proportion of total Commonwealth tax to GDP was 22.2 per cent compared to the OECD average of 34.3 per cent, Value Added Tax (VAT/GST) as a proportion of GDP in Australia was 3.4 per cent as compared with an OECD average of 6.3 per cent and the OECD average VAT/GST revenue as a percentage of total tax was 34.5 per cent compared to 16.3 per cent for Australia.<sup>9</sup>

In 2011-2012 most individual taxpayers had taxable incomes below AUD 80,000 per year. Table 1 demonstrates which taxable income brackets paid which amounts of income tax. This shows that our taxation system is essentially a progressive one.<sup>10</sup>

**Table 1: Australia, proportion of individual taxpayers and total income tax by taxable income band, 2011-12**

| <b>Taxable income band</b> | <b>Percentage of individual taxpayers</b> | <b>Percentage of Net Income Tax</b> |
|----------------------------|---|-------------------------------------|
| \$16,000 or less           | 18.3                                      | 0                                   |
| \$16,001-\$37,000          | 27.3                                      | 3.7                                 |
| \$37,001-\$80,000          | 37.6                                      | 32.8                                |
| \$80,001-\$180,000         | 14.5                                      | 37.4                                |
| \$180,001 and more         | 2.3                                       | 26.1                                |
| Total                      | 100.00                                    | 100.00                              |

It is currently reported that individual taxpayers are paying more in income tax than they would have in the past. Eslake states that ‘in 2017, Australian households in aggregate paid 19.5% of their taxable incomes in income and other direct taxes – the

<sup>6</sup> In 2014 the taxes that generated the most revenue were individual income tax at AUD 170 billion or 39.3 per cent of all revenue collected in Australia, income tax on enterprises at AUD 77 billion or 17.7 per cent of all revenue, GST at AUD 55.5 billion or 12.8 per cent of all revenue, and excise taxes at AUD 26.4 billion or 6.1 per cent of all revenue. Payroll tax generated AUD 21 billion or 4.9 per cent of all taxes. See John Freebairn and Helen Hodgson, ‘FactCheck: How Much of Australia’s Tax is Collected by States and Territories?’, *The Conversation* (12 November 2015), <https://theconversation.com/factcheck-how-much-of-australias-tax-is-collected-by-states-and-territories-50457> (accessed 13 July 2020); Australia’s Future Tax System Review Panel (Dr Ken Henry, chair), *Australia’s Future Tax System, Report to the Treasurer* (December 2009). (Henry Review).

<sup>7</sup> Freebairn and Hodgson, above n 6.

<sup>8</sup> Australian Treasury, *Mid-Year Economic and Fiscal Outlook 2018-19* (December 2019).

<sup>9</sup> OECD, *Revenue Statistics 1965-2016* (2017).

<sup>10</sup> Australian Treasury, *Re:think – Tax Discussion Paper* (2015) 41 (Re:think).

highest proportion since 2005, and continuing a steady rise since 2011'.<sup>11</sup> This is confirmed by representatives of the Reserve Bank of Australia,<sup>12</sup> with Ellis stating that 'the tax revenue collected from households has grown solidly in recent years'.<sup>13</sup>

As it comprises approximately 13 per cent of overall tax, GST accounts for the second largest amount of revenue.<sup>14</sup> GST-based revenues were expected to increase over time;<sup>15</sup> however, due to factors such as changes in consumer spending and GST exemptions, the amounts collected in GST have varied in the almost two decades since its inception. In 2000, when the tax was first introduced, GST receipts were 3.4 per cent of GDP. In 2003-04, this lifted nominally to 3.8 per cent of GDP, before dropping back to 3.4 per cent in 2016-17.<sup>16</sup>

### 3. PRINCIPLES OF TAX POLICY

It is widely acknowledged that there are five main policy principles that should underpin a good tax system. The review of the Australian tax system, *Australia's Future Tax System: Report to the Treasurer* (the Henry Review), stated that the design principles of a good tax system should consider equity, efficiency, simplicity, sustainability and policy consistency.<sup>17</sup> These policy perspectives are universally recognised as important aspects of a good tax system, but it is also recognised that they are often in conflict.<sup>18</sup>

In this article the author has chosen to analyse the exemptions from the GST of specific items on the basis of equity and simplicity. There are three reasons why these two canons of tax design were specifically chosen. First, they are both highly valued by reviewers and commentators in the area of tax policy.<sup>19</sup> 'Equity, or fairness, is a basic criterion for community acceptance of the tax system' and people generally expect that a tax system is fair.<sup>20</sup> In 1975, the Asprey Committee referred to 'simplicity' as being, after equity, 'perhaps the next most universally sought after of qualities in individual taxes and tax systems as a whole'.<sup>21</sup>

Second, equity and simplicity are often seen to be in competition. The Henry Review put it this way: equity encompasses the idea that the tax system should 'treat individuals

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<sup>11</sup> Saul Eslake, 'Budget Policy Check: Does Australia Need Personal Income Tax Cuts?' *The Conversation* (24 April 2018), <https://theconversation.com/budget-policy-check-does-australia-need-personal-income-tax-cuts-94500> (accessed 13 July 2020).

<sup>12</sup> Luci Ellis, 'What's Up (and Down) With Households?' (Speech, Housing Industry Association March Industry Outlook Breakfast, 26 March 2019), <https://www.rba.gov.au/speeches/2019/sp-ag-2019-03-26.html>.

<sup>13</sup> *Ibid* 14.

<sup>14</sup> Freebairn and Hodgson, above n 6.

<sup>15</sup> Henry Review, above n 6, Pt 2, Vol 1, 274.

<sup>16</sup> Parliamentary Budget Office, *Trends Affecting the Sustainability of Commonwealth Taxes*, Report No. 2/2018 (18 July 2018) 4.

<sup>17</sup> Henry Review, above n 6, Pt 1, [2.1].

<sup>18</sup> *Ibid*; Ken Henry, 'How Much Inequity Should We Allow?' (Speech, Australian Council of Social Service National Conference, 3 April 2009).

<sup>19</sup> Henry Review, above n 6, Pt 1, [2.1]; Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations* (Methuen & Co, 1776), Chapter II; Graeme Cooper, 'Themes and Issues in Tax Simplification' (1993) 10(4) *Australian Tax Forum* 417; Richard Krever, 'Taming Complexity in Australian Income Tax' (2003) 25(4) *Sydney Law Review* 467.

<sup>20</sup> Review of Business Taxation (John Ralph, chair), *A Strong Foundation: Establishing Objectives, Principles and Processes, Discussion Paper* (1998) [39]; Henry Review, above n 6, Pt 1, 29.

<sup>21</sup> Asprey Report, above n 2, [3.19]-[3.20].

with similar economic capacity in the same way', but with an eye on complexity and associated costs and risks.<sup>22</sup>

Third, the GST is often argued to be preferable from a simplicity perspective. When introducing the GST, the Howard Coalition government stated that the existing tax system was 'out of date, unfair, internationally uncompetitive, ineffective and unnecessarily complex'.<sup>23</sup> It was argued that the GST would address this by providing economic security, consistency, simplicity and work incentives.<sup>24</sup>

There are two major approaches to equity in the literature; namely, ability to pay and benefit principles.<sup>25</sup> Over the years, most tax policy-makers and researchers have been inclined to accept ability to pay as the basic principle of equity.<sup>26</sup> Under the ability to pay principle, there are two commonly recognised dimensions to the quality of equity; horizontal and vertical equity. Horizontal equity means that people in the same position should be taxed equally. Vertical equity means that those who are in different tax positions should be treated differently, and where they are in a more favourable position they should be taxed more.<sup>27</sup> The Henry Review states the policy rationale behind equity as:

The tax and transfer system should treat individuals with similar economic capacity in the same way, while those with greater capacity should bear a greater net burden, or benefit less in the case of net transfers. This burden should change more than in proportion to the change in capacity. That is, the overall system should be progressive. Considerations about the equity of the system also need to take into account exposure to complexity and the distribution of compliance costs and risk.<sup>28</sup>

Regarding simplicity, the Review put it in context like this:

In forming its recommendations the Review has drawn on the latest developments in economic theory and rigorous evidence-based analysis of the impact of taxes and transfers ... Translating this information into policy design has, of necessity, required the Review to make judgements about its relevance in the Australian context and about the trade-offs that arise between the goals of fairness, efficiency, simplicity, sustainability and policy consistency ...

Policy settings should be coherent and reflect a greater emphasis on simplicity and transparency than is presently evident.<sup>29</sup>

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<sup>22</sup> Henry Review, above n 6, Pt 1, [2.1].

<sup>23</sup> See Australian Treasury (circulated by Hon Peter Costello (Treasurer)), *Tax Reform: Not a New Tax, A New Tax System: The Howard Government's Plan for a New Tax System* (1998) 5 (ANTS Paper). See also Kathryn James, 'We of the "Never Ever": The History of the Introduction of a Goods and Services Tax in Australia' [2007] 3 *British Tax Review* 320.

<sup>24</sup> ANTS Paper, above n 23, 15.

<sup>25</sup> Asprey Report, above n 2, [3.7]; Henry Review, above n 6, Pt 1, Overview, 23; Binh Tran-Nam, 'Tax Reform, Tax Simplification: Some Conceptual Issues and a Preliminary Assessment' (1999) 21(3) *Sydney Law Review* 500.

<sup>26</sup> Henry Review, above n 6, Pt 1, Overview, 23; Asprey Report, above n 2, [3.7]; Tran-Nam, above n 25.

<sup>27</sup> Henry Review, above n 6, Pt 1, [2.1]; Asprey Report, above n 2, [3.7].

<sup>28</sup> Henry Review, above n 6, Pt 1, 17.

<sup>29</sup> *Ibid*, Pt 1, 15-16.

An easily understood tax-transfer system that makes it easier for people to understand their obligations and entitlements<sup>30</sup> also tends to encourage taxpayers' voluntary compliance. This may be regarded as a fundamental attribute of a successful modern tax system.

A potentially useful approach to analysing tax simplicity is to distinguish between legal simplicity and effective simplicity.<sup>31</sup> Legal simplicity includes both statutory and procedural (administrative) simplicities. Statutory simplicity refers to the ease by which a tax law can be read, understood, applied and resolved in cases of dispute. Procedural simplicity refers to the ease by which tax administrative requirements can be met by taxpayers and tax administrators. An example of procedural simplicity is the number of dealings that taxpayers must have with government departments in order to comply with their tax obligations. Legal simplicity is clearly of particular interest to tax lawyers and tax practitioners and also those who wish to argue against a specific interpretation of tax legislation.

An alternative way of looking at tax simplicity involves shifting from comprehensibility to applicability. This approach emphasises the ease with which the correct tax liability can be determined. Surrey and Brannon state that 'simplicity is the characteristic of a tax which makes the tax determinable for each taxpayer from a few readily ascertainable facts'.<sup>32</sup> Thus, effective or economic simplicity can be measured in terms of the value of resources expended by the society in raising some amount of tax revenue. In this sense, a tax is considered to be effectively simpler than another (revenue equivalent) tax if the operating costs, which are defined as the sum of administrative and compliance costs of the first tax, are lower than those incurred in raising the same amount of revenue by the second tax, all other things being equal.<sup>33</sup> In 1975, the Asprey Committee considered that a tax is simple relative to other taxes if the ratio of its operating costs to the tax revenue is small compared to other types of taxes.<sup>34</sup>

Budak, James and Sawyer reviewed the literature on tax simplification from 11 countries and concluded that there are a number of ways of conceptualising tax simplification. It can be viewed as simplification of tax systems. This includes reducing the number of taxes, tax bases, exemptions and structures of tax rates. The second approach is simplification of tax law. Simplifying legislation does lead to some improvement; however, this is of limited success. Reform of the legislation does not address broad ranges of complexities within tax systems. Examples include Australia (Tax Law Improvement Project) which engaged in rewriting the income tax legislation and created a parallel regime instead of unifying legislation, New Zealand (New Zealand Rewrite Project) which improved readability and understandability but not overall simplification and the United Kingdom (Tax Law Rewrite project) which aimed to rewrite major tax laws. This was an overly ambitious project that eventually lost political support. A third approach is simplification of taxpayer communications. Improving taxpayer communication to increase public understanding and engagement with the tax system can assist in simplification. A fourth approach is simplification of

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<sup>30</sup> Ibid, Pt 1, [2.1].

<sup>31</sup> See, for example, Chris Evans and Binh Tran-Nam, 'Managing Tax System Complexity: Building Bridges through Pre-filled Tax Returns' (2010) 25(2) *Australian Tax Forum* 245, 251-252.

<sup>32</sup> Stanley S Surrey and Gerard N Brannon, 'Simplification and Equity as Goals of Tax Policy' (1968) 9(4) *William and Mary Law Review* 915, 915.

<sup>33</sup> Tran-Nam, above n 25, 500, [3B].

<sup>34</sup> Asprey Report, above n 2, [3.20].

tax administration. This includes electronic filing of tax returns and automatic deductions of taxation at source. The final idea discussed is longer term approaches to simplification which have been successful in New Zealand, but the authors point out that this is a smaller economy and therefore may be easier to overhaul.<sup>35</sup> This article considers the first approach to tax simplicity, in other words whether or not reducing GST exemptions would lead to greater simplicity. All OECD countries except the United States have adopted consumption taxes.<sup>36</sup> Consumption taxes are taxes on the supply of a broad range of goods and services that are consumed by everyday taxpayers.<sup>37</sup> While intended to be a tax on final consumption, in practice consumption taxes are levied on all goods and services supplied by businesses for consideration.<sup>38</sup> In its purest form, this tax also allows businesses to claim back any consumption taxes incurred in the making of these taxable supplies.<sup>39</sup> The consumption tax is therefore passed onto the consumer. The regressive nature of this tax is clear when we consider that a broad-based GST takes a higher proportion of the income of those on low incomes, compared to those on higher incomes. A broad-based consumption tax with no exceptions is regressive because it applies uniformly, and those on lower incomes spend a higher proportion of their income on essential goods and services than those on higher incomes.<sup>40</sup> This begs the question of what should be done to redress the regressive nature of consumption taxes, bearing in mind that these taxes are often part of the price of essential goods and services for everyday consumers.

When discussing the term exemption in the context of consumption taxes, it is first necessary to define what an exemption is. The term exemption in the GST context is usually said to refer to supplies that do not bear GST but which are also ineligible for the supplier to claim back the input GST that went into the supply. In other words, the supplier cannot claim the input tax credits.<sup>41</sup> In Australia the legislation refers to these supplies as input taxed.<sup>42</sup> However, other researchers also use the term exemption when discussing supplies that in Australia are referred to as GST-free.<sup>43</sup> This is because these supplies, although eligible for the claiming back of relevant GST from the revenue authorities, are charged at the rate of zero per cent. In many countries they are therefore

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<sup>35</sup> Tamer Budak, Simon James and Adrian Sawyer, 'International Experiences of Tax Simplification and Distinguishing between Necessary and Unnecessary Complexity' (2016) 14(2) *eJournal of Tax Research* 337.

<sup>36</sup> Dylan Gowans and Simon Richards, *Consumption Taxes in Canada: Revenue, Rates and Rationale*, Canadian Library of Parliament (23 March 2017), <https://hillnotes.ca/2017/03/23/consumption-taxes-in-canada-revenue-rates-and-rationale/> (accessed 13 July 2020).

<sup>37</sup> Rita de la Feria and Herman van Kesteren, 'Introduction to this Special Issue – VAT Exemptions: Consequences and Design Alternatives' (2011) 22(5) *International VAT Monitor* 300.

<sup>38</sup> *Ibid* 300.

<sup>39</sup> *Ibid*.

<sup>40</sup> Patricia Apps and Ray Rees, 'Raise Top Tax Rates, Not the GST' (2013) 28(3) *Australian Tax Forum* 679.

<sup>41</sup> Rita de la Feria and Richard Krever, 'Ending VAT Exemptions: Towards a Post-Modern VAT' in Rita de la Feria (ed), *VAT Exemptions: Consequences and Design Alternatives* (Wolters Kluwer, 2013) 3, 11.

<sup>42</sup> GST Act, s 9-30(2).

<sup>43</sup> Re:think, above n 10, 136; PricewaterhouseCoopers (PwC), 'A Guide to VAT/GST/SUT in the Americas 2018: Indirect Tax Guidance of 21 Countries in the Americas' (2018), <https://www.pwc.com/gx/en/tax/indirect-taxes/assets/guide-to-vat-gst-sut-in-the-americas-2018-indirect-tax-guidance-of-21-countries-in-the-americas.pdf> (accessed 13 July 2020); Paul Kenny, 'The GST Food Exemption' (2000) 3(6) *Journal of Australian Taxation* 424; Fiona Martin, 'The Application of the Australian Goods and Services Tax to Real Property in Australia' (2015) 18 *Comparative Law Journal of the Pacific* 179, 180-181.

referred to as zero-rated.<sup>44</sup> In this article the term exemption will be used to refer to both scenarios.

#### 4. CONSUMPTION TAXES, EXEMPTIONS AND FOOD

Australia is one of only five OECD member countries that applies a zero rate exemption to specific food items, the other countries being Canada, Mexico, Ireland and the United Kingdom. The majority of European countries do, however, apply reduced rates to various food items, or exempt them from GST (or value added tax (VAT) as it is called in many countries) as input taxed supplies.<sup>45</sup>

The equity issue of taxing food at a flat rate occurs because of the greater proportional cost of food to the income of low income earners as opposed to high income earners. Given the necessity of food expenditure, a GST without an exemption for food is considered highly regressive.<sup>46</sup>

There are different ways to address the regressive nature of a consumption tax. The most common method is to either exempt certain goods and services (generally those that are considered 'necessities') or tax them at a lower rate than other 'luxury' goods and services. Alternatively, a tax credit method could be used, whereby lower income taxpayers are reimbursed 'for the tax paid on a minimal or essential level of consumption'.<sup>47</sup> A further solution would be to provide low income families with a direct payment.<sup>48</sup> Carlson and Patrick argue that taxing certain items at a lower or zero rate is 'probably the most frequently used method of alleviating the regressivity of a consumption tax'.<sup>49</sup>

The interaction between low income earners and consumption taxes has been the subject of a large number of research reports and other publications. A 2007 study looked at the average European Union consumption shares for household groups divided into quintiles (quintiles are from the lowest income to the highest income numbered from 1 to 5). It showed that consumption patterns are rather similar for most sectors, except for food and utilities like electricity and heating. For those sectors, low-income consumption was on average almost twice (1.83 and 1.71) the corresponding high income consumption. The researchers therefore concluded that retaining reduced VAT rates on food would benefit high income households, but be comparatively beneficial for low income households because they spend a significantly larger share of their income on food.<sup>50</sup>

In Australia, food is a significant proportion of the cost of living for all households. Figure 1 below extracted from an Australian Bureau of Statistics survey for 2015-2016, shows that, after housing costs, people in the lowest net worth quintile spend the largest proportion of their household income on food and non-alcoholic beverages. People in

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<sup>44</sup> Martin, above n 43, 180-181.

<sup>45</sup> Australian Treasury, *International Comparison of Australia's Taxes* (3 April 2006) 249.

<sup>46</sup> Bain, above n 3.

<sup>47</sup> George Carlson and Melanie Patrick, 'Addressing the Regressivity of a Value-Added Tax' (1989) 42(3) *National Tax Journal* 339, 345.

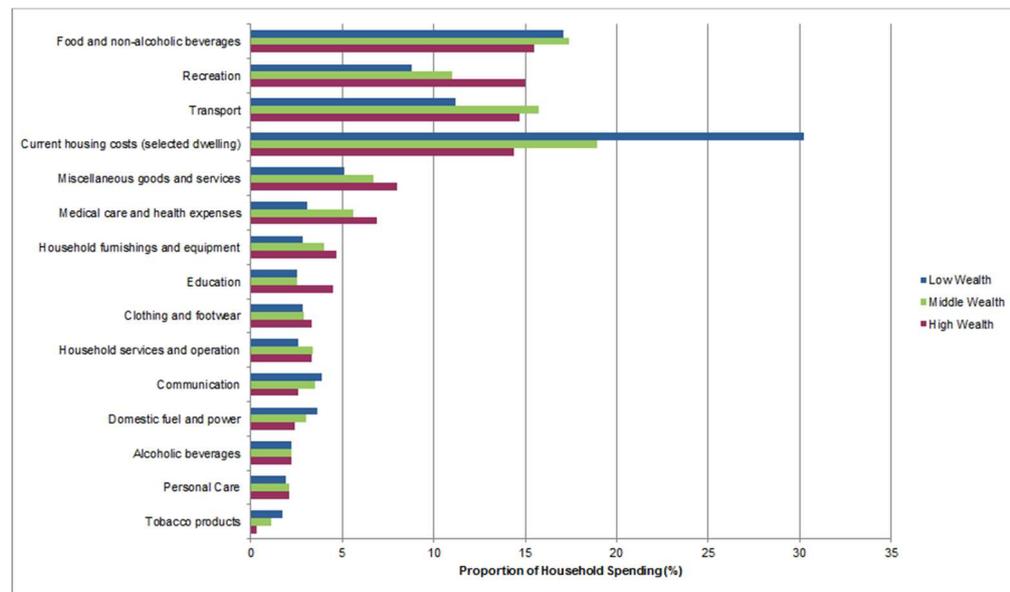
<sup>48</sup> Binh Tran-Nam, 'Assessing the Revenue and Simplification Impacts of the Government Tax Reform' (1999) 2(5) *Journal of Australian Taxation* 329, 343.

<sup>49</sup> Carlson and Patrick, above n 47, 344.

<sup>50</sup> Copenhagen Economics, *Study on Reduced VAT Applied to Goods and Services in the Member States of the European Union, Final Report*, Report 6503 DG TAXUD (21 June 2007) 30.

the highest quintile actually spend most on food, but this is only slightly more than they spend on recreation, with transport and housing costs their third and fourth highest areas of expenditure.<sup>51</sup>

**Fig. 1: Proportion of Weekly Household Spending on Goods and Services, by Low, Middle and High Wealth, Australia 2015-16<sup>52</sup>**



This is a shift from 1993-1994 when low income earners in Australia spent five times as much of their income on food as people in the highest income quintile.<sup>53</sup>

Like Australia, Canada applies a zero rate on basic food, and like most other OECD countries, general consumption taxes (federal and provincial) account for an increasingly large share of total tax revenue and social security contributions.<sup>54</sup> The Canadian Government has followed the view that general consumption taxes are regressive because they have a greater effect on individuals with low incomes. Zero-rating of basic foods is thus a way of mitigating this regressive effect of a GST.<sup>55</sup>

<sup>51</sup> The terms quintile, decile and percentile are used. If a distribution, such as household income, is put in order from lowest to highest, and then divided into 100 equal groups, each group is a percentile. Ten percentiles make up a decile (ten equal groups) and 20 percentiles make up a quintile. Australian Bureau of Statistics, *Household Expenditure Survey, Australia: Summary of Results, 2015-16: Explanatory Notes*, Cat. 6530.0 (13 September 2017), <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6530.0Explanatory%20Notes12015-16?OpenDocument>.

<sup>52</sup> Ibid.

<sup>53</sup> Kenny, above n 43, 425.

<sup>54</sup> Gowans and Richards, above n 36.

<sup>55</sup> Ibid.

Like Australia and Canada, Ireland gains a significant proportion of its revenue from its VAT.<sup>56</sup> The Irish standard VAT rate is 23.0 per cent, which is above the OECD average of 19.2 per cent.<sup>57</sup> In Ireland basic food and drink for human consumption is zero-rated.<sup>58</sup> This applies to items such as fruit, vegetables and milk, but not alcoholic beverages or confectionary.<sup>59</sup> Ireland also applies reduced VAT rates of 4.8 per cent, 9 per cent and 13.5 per cent to a number of goods and services.<sup>60</sup>

A study using the 2004/2005 Household Budget Survey conducted by researchers at Trinity College Dublin found that Irish households in the lowest equivalised income decile expended about 16 per cent of their disposable income in VAT. The richest households on the other hand spent only about 6 per cent in VAT. As the worst off were those in the lowest income decile, the authors concluded that the then VAT system in Ireland was highly regressive.<sup>61</sup> The study also concluded that increasing the VAT would increase the regressive effect of the tax, particularly on those persons on the lowest income decile, rural households, single adult households with children and households with six or more people.<sup>62</sup> The Irish government ignored this research and increased the highest rate of VAT, although it maintained the zero rate for basic foods and beverages.<sup>63</sup>

The standard rate of GST in Mexico is 16 per cent.<sup>64</sup> Among the supplies that are zero-rated are the supply of non-industrialised animals and vegetables, as well as certain specific food products, patent medicines and fertilisers.<sup>65</sup> It appears that the original policy behind zero-rating basic food was similar to other countries in that the GST was considered to impact more harshly on low income households.<sup>66</sup> However, Cotis' research into the Mexican economy suggests that:

zero-rating of basic staples, such as food and medicine, is a very inefficient way of using taxes for redistribution. People at higher income levels are actually compensated more in absolute terms than low-income people. They are being heavily subsidised by the non-taxation of food in particular.<sup>67</sup>

Dalsgaard agrees with this.<sup>68</sup> However, a contrary argument exists in that there are many micro businesses in Mexico that may operate outside the tax system and, as many low

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<sup>56</sup> OECD, *Consumption Tax Trends 2016 – Ireland* (2016), <https://www.oecd.org/tax/consumption/consumption-tax-trends-ireland.pdf>.

<sup>57</sup> Ibid.

<sup>58</sup> Irish Tax and Customs, 'Zero Rate of VAT' (2 August 2018), <https://www.revenue.ie/en/vat/vat-rates/what-are-vat-rates/zero-rate-of-value-added-aax-vat.aspx>.

<sup>59</sup> *Value-Added Tax Consolidation Act 2010* (Ireland) sch 2, part 2.

<sup>60</sup> OECD, *Consumption Tax Trends 2016 - Ireland*, above n 56.

<sup>61</sup> Eimear Leahy, Sean Lyons and Richard S J Tol, 'The Distributional Effects of Value Added Tax in Ireland' (2011) 42(2) *The Economic and Social Review* 213, 219-220.

<sup>62</sup> Ibid.

<sup>63</sup> OECD, *Consumption Tax Trends 2016 - Ireland*, above n 56.

<sup>64</sup> PwC, above n 43, 115.

<sup>65</sup> Ibid; José A Tijerina-Guajardo and José A Pagán, 'Valued-Added Tax Revenues in Mexico: An Empirical Analysis' (2000) 28(6) *Public Finance Review* 561.

<sup>66</sup> Thomas Dalsgaard, 'The Tax System in Mexico: A Need for Strengthening the Revenue-Raising Capacity' (Working Papers No. 223, OECD Economics Department, 2000) 19-20, [https://www.oecd-ilibrary.org/economics/the-tax-system-in-mexico\\_713001800850](https://www.oecd-ilibrary.org/economics/the-tax-system-in-mexico_713001800850).

<sup>67</sup> Jean Philippe Cotis, 'What are the OECD's Views about the Mexican Tax Reforms' (14-15 October 2003) 4, <https://www.oecd.org/mexico/22425199.pdf> (accessed 13 July 2020).

<sup>68</sup> Dalsgaard, above n 66.

income consumers purchase food from these suppliers, they would not pay GST on food, even if it was taxable.<sup>69</sup>

The top rate of VAT in the United Kingdom is 20 per cent; however most food and children's clothes are zero-rated.<sup>70</sup> This policy is based in history as the United Kingdom had a VAT prior to joining the European Union and was allowed to continue with zero-rating anything that was zero-rated at that time.<sup>71</sup> As Rita de la Feria states, '[t]he decisions were based on evidence available in 1972 ... In order to keep the zero rates, the United Kingdom basically had to stop in time'.<sup>72</sup> Accordingly, the United Kingdom continues to zero-rate anything considered healthy (such as basic food and beverages) but not luxury goods such as biscuits, achieving the policy of protecting lower income households.<sup>73</sup>

A 2018 OECD report found that reduced VAT rates for basic food 'provide in general greater support to the poor than the rich as a proportion of household income or expenditure'.<sup>74</sup> However, despite this progressive effect, the report argues that reduced VAT rates are a very poor distributive tool. Indeed, better-off households tend to benefit more in absolute terms from reduced VAT rates, as their consumption of the tax-favoured goods and services is generally greater than that of poorer households, as they tend to consume comparatively more expensive products and in greater quantities.<sup>75</sup>

Some believe that the impact of a consumption tax should be assessed over the lifetime of an individual and not on an annual basis.<sup>76</sup> In theory, annual income is low when an individual is young, because that individual is still in school or is just starting employment. It should peak in middle age and then start decreasing in old age because of a loss of efficiency or retirement. Analysing the impact of VAT on the basis of annual income thus presents a more regressive result for the young and old, whereas the same analysis carried out over a lifetime's income might lead to a different conclusion.<sup>77</sup> This analysis assumes, however, that all individuals have the same life expectancy and earn on average the same income. The salary of a lower qualified person may not reach a peak at middle life.<sup>78</sup> Furthermore, it does not take into account the fact that women continue to be disadvantaged by a gender pay gap despite years of working.<sup>79</sup>

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<sup>69</sup> Ibid 7; OECD, 'Mexico Policy Brief' (OECD Better Policies Series, January 2017), <https://www.oecd.org/mexico/mexico-raising-productivity-in-small-traditional-enterprises.pdf>.

<sup>70</sup> United Kingdom, 'VAT Rates', *Gov.uk* (2019), <https://www.gov.uk/vat-rates>.

<sup>71</sup> European Union, Sixth Council Directive 77/388/EEC of 17 May 1977 on the Harmonization of the Laws of the Member States relating to Turnover Taxes - Common System of Value Added Tax: Uniform Basis of Assessment [1977] OJ L 145/1.

<sup>72</sup> Camila Ruz and Maisie Smith-Walters, 'The Mysterious World of Zero-Rates of VAT', *BBC News Online* (28 October 2015), <https://www.bbc.com/news/magazine-34649495> (accessed 13 July 2020).

<sup>73</sup> Ibid.

<sup>74</sup> OECD, *Consumption Tax Trends 2018: VAT/GST and Excise Rates Trends and Policy Issues* (OECD Publishing, 2018) 47.

<sup>75</sup> Ibid.

<sup>76</sup> Neil Warren, 'A Review of Studies on the Distributional Impact of Consumption Taxes in OECD Countries' (Working Paper No. 64, OECD Social, Employment, and Migration, 24 June 2008) 24.

<sup>77</sup> Ibid.

<sup>78</sup> Alain Charlet and Jeffrey Owens, 'An International Perspective on VAT' (2010) 59(12) *Tax Notes International* 943, 950.

<sup>79</sup> Workplace Gender Equality Agency, 'The Gender Pay Gap' (2018), <https://www.wgea.gov.au/topics/the-gender-pay-gap> (accessed 13 July 2020): 'The full-time total remuneration\* gender pay gap based on the 2018-19 WGEA data is 20.8%, meaning men working full-

#### 4.1 The exemption for food and low income households in developing nations

Research over the last decade has examined the impact of VAT/GST exemptions on low income households within the context of developing nations. Peru has a VAT/GST equivalent, although basic food is zero-rated.<sup>80</sup> A 2013 study found that indirect taxes such as VAT/GST have a significant effect on incomes across the wealth distribution. However, their effects are higher among those with higher incomes. This is likely to be a result of high informality levels, as richer households usually buy from formal establishments, while poorer households are more likely to buy products in informal conditions, such as from street vendors or in informal markets, thus not paying any VAT/GST.<sup>81</sup>

An earlier study by Younger and others<sup>82</sup> in Madagascar suggests that most taxes in that country are progressive. Younger and Sahn<sup>83</sup> reached the same qualitative conclusion for Côte d'Ivoire, Guinea, and Tanzania. These studies indicate that the consumption taxes in these countries impact more on the wealthier households. However, this result cannot be assumed for all developing countries. A study in Bangladesh found that while zero-rating food would greatly mitigate the adverse impact of replacing the pre-existing indirect tax regime by a VAT/GST, it would not eliminate it.<sup>84</sup> A South African study found that poor South African households spend around 61 per cent of their income on food as opposed to high-income households which spend 15 per cent.<sup>85</sup> In this context, Charlet and Owens argue that 'the poor would suffer more from a VAT on food'.<sup>86</sup>

#### 4.2 Health and zero-rating of food

There is some limited research about the implications of a rise in the price of fruits and vegetables for the Australian diet and consequently health. Estimates of the price elasticity of demand for fruits and vegetables in the United States conclude that the removal of zero-rating in Australia would mean that fruit consumption would decline by 4.9 per cent and vegetable consumption by 4.8 per cent.<sup>87</sup> Veerman and Cobiac argue that reduction in fruit and vegetable consumption is associated with an increase in the incidence of ischaemic heart disease (IHD), ischaemic stroke, and cancer of the lung, oesophagus, stomach and colon, leading to increased prevalence of disease and mortality in later years. They calculate that adding GST to fruits and vegetables could

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time earn \$25,679 on average a year more than women working full-time. The full-time base salary gender pay gap for 2018-19 is 15.5%, which means that men working full-time earned \$15,176 on average more than women. ... \*Total remuneration includes full-time base salary plus any additional benefits – bonus payments, performance pay, superannuation, discretionary pay, overtime, other allowances and benefits, for example share allocations'. The gender pay gap is consistent across industries in Australia.

<sup>80</sup> Miguel Jaramillo Baanante, 'The Incidence of Social Spending and Taxes in Peru' (Working Paper No 9, Commitment to Equity, Tulane University, October 2013) 1.

<sup>81</sup> Ibid 13.

<sup>82</sup> Stephen D Younger, David Sahn, Steven Haggblade, and Paul A Dorosh, 'Tax Incidence in Madagascar: An Analysis Using Household Data' (1999) 13(2) *World Bank Economic Review* 303.

<sup>83</sup> Stephen D Younger and David E Sahn, 'Fiscal Incidence in Africa: Microeconomic Evidence' (Working Paper No. 91, Cornell Food and Nutrition Policy Program, 1998).

<sup>84</sup> Liam Ebrill, Michael Keen, Jean-Paul Bodin and Victoria Summers, *The Modern VAT* (International Monetary Fund, 2001) 109-110.

<sup>85</sup> Delfin S Go, Marna Kearney, Sherman Robinson, and Karen Thierfelder, 'An Analysis of South Africa's Value Added Tax' (Working Paper No. 3671, World Bank Policy Research, August 2005) 19.

<sup>86</sup> Charlet and Owens, above n 78, 950.

<sup>87</sup> J Lennert Veerman and Linda J Cobiac, 'Removing the GST Exemption for Fresh Fruits and Vegetables Could Cost Lives' (2013) 199(8) *Medical Journal of Australia* 534, 535.

cost about 100,000 healthy life-years over the lifetime of the 2003 Australian adult population, due to an additional 90,000 cases of IHD, stroke and cancer. This extra disease burden could add AUD 1 billion in health care costs over the same period.<sup>88</sup>

This research suggests that abolishing the GST exemption for fruits and vegetables could have a large detrimental impact on health and health care budgets. It is also noted, however, that the removal of all zero-rating would result in complex shifts in diet that have not been rigorously studied.

#### 4.3 Reducing VAT on food and increasing employment

In 1999 the European Union allowed Member States to set a reduced VAT rate for no more than three years on a limited number of items that are labour-intensive services. These were home renovations, small repair services such as shoe repairs, home cleaning, domestic care services and hairdressing.<sup>89</sup> The policy rationale was that this would stimulate employment in these areas, and would also reintegrate small businesses which had largely drifted out of the tax system back into it.<sup>90</sup> However, a subsequent review of the impact of the VAT reduction demonstrated that the reduced rate had very little, if any, impact on prices or job creation. The review concluded that a reduction in VAT rates ‘would therefore seem to be a waste of budget resources which could be deployed more usefully elsewhere’.<sup>91</sup>

A 2007 study by Copenhagen Economics raises some theoretical elements in favour of reduced consumption tax rates impacting positively on employment rates provided that specific circumstances are met. The report argues that reduced VAT rates applied in carefully targeted sectors may increase employment of low-skilled local workers. Where there are many low-skilled workers and high levels of unemployment, for example in food retail, hospitality and food production, reducing the VAT on food can lead to an increase in demand for this labour force.<sup>92</sup> However, the report concluded that this increase was very slight.<sup>93</sup>

#### 4.4 Self-supply and underground activities

Services that are often provided by microbusinesses and which can be alternatively provided by consumers (eg, house cleaning, haircuts) may be sensitive to the imposition of a consumption tax. Piggott and Whalley argue that taxation at the full tax rate may actually encourage self-supply of these services, thereby reducing employment and not raising the expected revenue.<sup>94</sup> This argument could also apply to the production of basic foods, a proportion of which could be grown at home.

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<sup>88</sup> Ibid.

<sup>89</sup> Tina Weber, ‘Reduction of VAT on Labour-Intensive Services Agreed’ *Eurofound* (27 September 1999), <https://www.eurofound.europa.eu/publications/article/1999/reduction-of-vat-on-labour-intensive-services-agreed> (accessed 13 July 2020); Ebrill et al, above n 84, 77.

<sup>90</sup> Weber, above n 89.

<sup>91</sup> European Commission, ‘Preparation of Eurogroup and Informal Council of Economics and Finance Ministers’ (Memo 03/173, European Commission, 12-13th September 2003) 3, [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_03\\_173](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_03_173) (accessed 13 July 2020).

<sup>92</sup> Copenhagen Economics, above n 50, 69.

<sup>93</sup> Ibid.

<sup>94</sup> John Piggott and John Whalley, ‘VAT Base Broadening, Self-Supply and the Informal Sector’ (Working Paper No. 6349, National Bureau of Economic Research, 1998).

If some supplies which are difficult to tax when provided by small scale suppliers, such as small scale construction, are added to the consumption tax base, Piggott and Whalley argue that one effect may be to stimulate underground or outside market activities which avoid tax.<sup>95</sup> Again, this argument is also applicable to purchasing fruit and vegetables from local markets as these businesses are usually family-owned/operated and difficult to fully capture in the tax base.

#### 4.5 The political importance of zero-rating food

Apart from the reasons discussed above, it is also likely that food is zero-rated in Australia, Canada, Ireland, Mexico and the United Kingdom because the potential political cost of increasing the consumption tax on food would be too high.<sup>96</sup> In Australia, food was considered one of the most essential GST-free categories in terms of equity by some groups, with the Australian Democrats refusing to support the GST legislation until the Liberal-National Coalition agreed to its GST-free or zero-rated status.<sup>97</sup> Several years before Australia introduced a GST, the Australian Council of Social Service (ACOSS), business groups and other peak bodies met to discuss tax reform.<sup>98</sup> They agreed in principle to the introduction of a broad-based consumption tax that would replace the existing wholesale sales tax and many of the existing State taxes, such as Financial Institutions Duty, Debits Tax, Payroll Tax and Franchise Taxes. Throughout the conference ‘emphasis was placed on the need to protect those on social security and those on low wages from any adverse changes’.<sup>99</sup>

Australia was one of the last of the OECD nations to introduce a GST. Although, as mentioned earlier, the Asprey Report recognised the need for a broad-based consumption tax back in 1975, it was not introduced until 2000. The idea of a GST was first mooted by John Howard (then Federal Treasurer) in 1980.<sup>100</sup> The GST was so politically unpalatable to the Australian public that it took the Liberal/National Coalition close to two decades to actually introduce it. As noted above, the eventual GST system was only able to be passed by the Australian Senate (upper House) on the basis that food was GST-free. The political situation was so sensitive that it was also agreed that any change to the GST rate or base would require the unanimous support of the State and Territory governments, the endorsement of the Australian Government and the passage of relevant legislation by both Houses of the Australian Parliament.<sup>101</sup>

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<sup>95</sup> Ibid.

<sup>96</sup> Leahy, Lyons and Tol, above n 61, 231 n 13.

<sup>97</sup> Josh Gordon, ‘Costello “Impeded GST Deal”’ *The Age* (20 June 2005), <https://www.theage.com.au/national/costello-impeded-gst-deal-20050620-ge0di7.html> (accessed 13 July 2020); see also John Harrison, ‘The GST Debate – A Chronology’ (Background Paper 1 1997-98, Australian Parliamentary Library, 22 September 1997), [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Publications\\_Archive/Background\\_Papers/bp9798/98bp01](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/Background_Papers/bp9798/98bp01); Peter Hill, ‘Taxation of Goods and Services: Past, Present and Future’ in Chris Evans and Richard Krever (eds), *Australian Business Tax Reform in Retrospect and Prospect* (Thomson Reuters, 2009) 547, 549-550; Julie Smith, *Taxing Popularity: The Story of Taxation in Australia* (Australian Tax Research Foundation, 2004).

<sup>98</sup> Harrison, above n 97.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Council on Federal Financial Relations, *Intergovernmental Agreement on Federal Financial Relations* (2011), [http://www.federalfinancialrelations.gov.au/content/intergovernmental\\_agreements.aspx](http://www.federalfinancialrelations.gov.au/content/intergovernmental_agreements.aspx), and the *A New Tax System (Managing the GST Rate and Base) Act 1999* (Cth).

## 5. GST AND HEALTHCARE

Traditionally, the concept of healthcare as a public or merit good has afforded it special treatment in terms of consumption tax. Healthcare is classified as a merit good because consuming it is beneficial not just to the consumer but to other members of society. For example, inoculation against a contagious disease ensures protection and a benefit to the individual but also means that inoculated individuals do not pass on the disease to those who are not vaccinated.<sup>102</sup>

Public health, which is the health of the collective, represents a classic example of shared gain from a shared good. As David Woodward and Richard Smith argue, even though a person (or group of people) is the primary beneficiary of his/her health, public health, as illustrated by the example of herd immunity, represents a collective benefit from which no one is excluded. No one can be excluded from the benefit of infectious disease reduction, and one person benefiting certainly does not prevent others from benefiting as well.<sup>103</sup>

Furthermore, as the world rapidly globalises, the interdependence of our health on the health of those in other countries suggests that the provision of public health is dependent on global public goods that may require universal solutions.<sup>104</sup> The Ebola and SARS epidemics made this abundantly clear. For example, no country can be excluded from benefiting from a reduction in carbon dioxide emissions which will slow global warming.<sup>105</sup>

Another aspect of this concept is that of health equity: the opportunity for all to live in conditions that promote health, and which minimise inter-group health differences. Health equity leads to a community where individuals live and work in a 'level playing field'.<sup>106</sup> The merit or public good of health care is the basis for exempting (input taxing) basic medical services from VAT in the European Union.<sup>107</sup>

Specific services by healthcare professionals such as doctors, dentists, optometrists and others, as well as hospital services, are GST-free in Australia.<sup>108</sup> When the GST was proposed by the Howard-led Liberal-National Party Coalition, specific health care services were always intended to be excluded from GST. In the policy document *Not a New Tax: A New Tax System* (ANTS Paper) it was envisaged that these services would be those attracting a Medicare benefit.<sup>109</sup> The ANTS proposal did not rely on merit as its argument for GST-free status of health care services. Instead, the rationale for the GST-free status of healthcare was competitive neutrality of the public and private

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<sup>102</sup> Economics Online, 'Healthcare as a Merit Good', [https://www.economicsonline.co.uk/Market\\_failures/Healthcare.html](https://www.economicsonline.co.uk/Market_failures/Healthcare.html) (accessed 13 July 2020).

<sup>103</sup> David Woodward and Richard D Smith, 'Global Public Goods and Health: Concepts and Issues; Is Health a GPG?' *World Health Organization* (2019), [https://www.who.int/trade/distance\\_learning/gpgh/gpgh1/en/index6.html](https://www.who.int/trade/distance_learning/gpgh/gpgh1/en/index6.html).

<sup>104</sup> Sandro Galea, 'Public Health as a Public Good' (Dean's Note, School of Public Health, Boston University, 10 January 2016), <https://www.bu.edu/sph/2016/01/10/public-health-as-a-public-good/> (accessed 13 July 2020).

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

<sup>107</sup> European Union, Sixth Council Directive 77/388/EEC, above n 71) art 13A; Catherine Whitby, 'First Do No Harm: GST and Health Care Services' (2000) 10(1) *Revenue Law Journal* 119.

<sup>108</sup> GST Act, Subdiv 38B.

<sup>109</sup> ANTS Paper, above n 23, 93.

sectors.<sup>110</sup> The proposal argued that in view of the fact that many public healthcare services were provided free or at small cost, ‘applying taxes to healthcare would place the private health sector with its heavier reliance on direct fees at a competitive disadvantage with the public health system’.<sup>111</sup> This policy proposal was originally raised in 1991, when a previous conservative Coalition, then in opposition, noted that it was not possible to apply GST to the public health system as no direct charge was made for its services.<sup>112</sup> It pointed out that although private services could be included in the tax base, ‘to do so would be highly arbitrary and discriminatory’.<sup>113</sup>

Before being legislated in 1999, the proposal for a GST in Australia had been examined by the Tax Consultative Committee (the Vos Committee).<sup>114</sup> The Committee’s terms of reference required it to limit discrimination between private and public provision of goods and services in the GST-free areas.<sup>115</sup> This Committee confirmed that the policy underpinning the recommendation that healthcare services were GST-free was maintenance of competitive neutrality.<sup>116</sup> Similar arguments have been used in respect of European countries exempting health from consumption tax.<sup>117</sup>

The author’s final argument in favour of exempting healthcare from VAT/GST is the possibility of what is termed ‘churning’ of VAT/GST. This is particularly relevant for Australia where health care is heavily subsidised by the Commonwealth government but actually provided by the States and Territories.<sup>118</sup> As Evans points out, taxing this expenditure may result in the increase in State and Commonwealth Government outlays necessary to cover the VAT/GST on purchases and an equal increase in VAT/GST revenues. This could involve unproductive churning as revenue would be collected and then returned to the states and territories.<sup>119</sup> In addition, where the VAT/GST revenue is shared amongst the States and Territories, as occurs in Australia, contributions to the revenue of some States by other governments may occur.<sup>120</sup>

Evans concludes that ‘taxing health and education would not appear to be a politically attractive proposition – nor would it be favoured by the States and Territories’.<sup>121</sup>

## 6. GST AND RESIDENTIAL HOUSING

Australia’s average net wealth per household is AUD 936,000, of which 39 per cent is held in the main home, 20 per cent in superannuation, 19 per cent in shares and other financial assets, 12 per cent in investment real estate, and 10 per cent in other non-

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<sup>110</sup> Ibid.

<sup>111</sup> Australian Liberal Party, *Fightback! Taxation and Expenditure Reform for Jobs and Growth* (21 November 1991) 75.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Tax Consultative Committee (David Vos, chair), *Report of the Tax Consultative Committee* (13 November 1998) 2.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid 26.

<sup>117</sup> Ebrill et al, above n 84, 94.

<sup>118</sup> See generally Greg Smith, ‘GST as a Secure Source of Revenue for the States and Territories’, this issue.

<sup>119</sup> Michael Evans, ‘GST: Where to Next?’, this issue.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid section 5.2.2.

financial assets such as cars.<sup>122</sup> The family home is therefore a significant asset for the majority of Australians.

As was shown in Figure 1, which sets out the proportion of weekly household spending on goods and services, by low, middle and high wealth households, it can be seen that the lowest income households spend 30 per cent of their income on housing, compared to high income households who spend 13-14 per cent. Housing is the fourth highest area on which high income households spend their money. Those on low incomes, who are more likely to be renting, are also subject to housing insecurity given that the private rental market provides little long-term tenure. In fact, a 2018 report to the Commonwealth Government indicates that older women are the most vulnerable in Australian society to homelessness. The report states:

Australian women aged over 50 are at greater risk of financial and housing insecurity than older men. This has been linked to a number of compounding and systemic factors. Women in this older age group today did not benefit from compulsory superannuation at the beginning of their working lives, they were more likely to have been paid at a lower rate than their male counterparts and were likely to have taken time out of the paid workforce to have children and fulfil caring roles.<sup>123</sup>

## 6.1 Residential premises

Technically, real property is a ‘good’ within the VAT/GST regime that is consumed by customers through purchase, licence or rental. The GST Act defines real property as including: any interest in or right over land; a personal right to call for or be granted any interest in or right over land; or a licence to occupy land or any other contractual right exercisable over or in relation to land.<sup>124</sup> Therefore if GST on residential premises is considered from a legal perspective, the supply of real property should be taxed and characterised as a taxable supply with creditable acquisitions (for both business and private use), and there should be some form of consumption tax on the rental value. If the consumption of residential premises were taxed in the normal way then this would result in a large compliance burden. Every homeowner and tenant would (subject to turnover thresholds) need to register and GST would be imposed each year on the value of annual consumption of the owner-provided assets.

Australia, like many other countries, does not do this.<sup>125</sup> Instead the supply of residential premises (either sale or lease) in Australia will generally be input taxed (exempt) unless it is a newly constructed property or commercial residential premises.<sup>126</sup>

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<sup>122</sup> Australian Council of Social Service (ACOSS), *Inequality in Australia 2018* (Australian Council of Social Service and University of New South Wales, 2018), <https://www.acoss.org.au/inequality-in-australia-2018.html/> (accessed 13 July 2020).

<sup>123</sup> National Older Women’s Housing and Homelessness Working Group, *Retiring into Poverty, A National Plan for Change: Increasing Housing Security for Older Women* (2018) 4, <https://www.mercyfoundation.com.au/wp-content/uploads/2018/08/Retiring-into-Poverty-National-Plan-for-Change-Increasing-Housing-Security-for-Older-Women-23-August-2018.pdf>.

<sup>124</sup> GST Act, s 195-1.

<sup>125</sup> Ebrill et al, above n 84, 98.

<sup>126</sup> GST Act, s 40-65.

The policy rationale is to tax the value of housing consumption in a manner that equates the treatment of those who rent their dwellings with the treatment of owner-occupiers.<sup>127</sup> Owner-occupiers would not be subject to the GST when selling their residences as they would not be selling their house in the course of carrying on an enterprise, but actually selling their home.<sup>128</sup> The effect from a tax perspective is that they are making an input taxed supply – no GST is charged on the sale and no input tax credits can be claimed. To realise this policy objective, residential premises are input taxed only to the extent that they are actually used to provide accommodation outside the course of business, and then only to the point that accommodation is comparable with home ownership. To the extent that business-related activity is associated with either the use or supply of premises, housing supplies are taxable to enable both the commercial supplier and user of premises to claim a tax credit in respect of supply-related acquisitions, and hence ensure their immunity to the tax.<sup>129</sup>

As Ebrill et al state:

Owner-occupied housing is problematic, however, because this involves final consumption on which one would like the tax to ‘stick’. While attempts have been made in the past to impute value to services enjoyed from owner-occupation for the purposes of income tax, the experience has not been a success and is now rarely made. Thus services enjoyed from owner occupation are – with no exception that we know of – exempt from VAT. To avoid distorting the choice between house ownership and renting, the commercial leasing of residential property is commonly also exempt.<sup>130</sup>

Housing services are also widely exempt from consumption tax on the basis of regressivity.<sup>131</sup> This is particularly relevant when comparing owner occupation and renting as those on lower incomes are more likely to rent, and therefore be disadvantaged by increases in the cost of renting through the imposition of an indirect tax.<sup>132</sup>

The OECD points out that:

Access to good-quality affordable housing is a fundamental need and key to achieving a number of social policy objectives, including reducing poverty and enhancing equality of opportunity, social inclusion and mobility. Housing needs are frequently unmet, and today a significant number of people across

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<sup>127</sup> Explanatory Memorandum, A New Tax System (Goods and Services Tax) Bill 1998 (Cth) 5-164.

<sup>128</sup> The GST Act, s 9-5(b), states that a taxable supply must be made in the course of carrying on an enterprise; see Wei Cui, ‘Learning to Keep the Consumption Tax Base Broad: Australian and Chinese VAT Design for the Housing Sector’ in Christine Peacock (ed), *GST in Australia: Looking Forward from the First Decade* (Thomson Reuters, 2011) 367, 370; Michael Evans ‘The Value Added Tax Treatment of Real Property – An Antipodean Context’ in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) 243, 255-257.

<sup>129</sup> Martin, above n 43, 181-182.

<sup>130</sup> Ebrill et al, above n 84, 98.

<sup>131</sup> Ibid 99.

<sup>132</sup> See generally Judy A Kraatz, Johanna Mitchell, Annie Matan and Peter Newman, *Rethinking Social Housing: Efficient, Effective and Equitable, Progress (Report 1)* (Sustainable Built Environment National Research Centre, 2015).

the OECD are homeless and too many households live in low-quality dwellings or face housing costs they can ill afford.<sup>133</sup>

The OECD found that in 2013, housing-related expenditure constituted the single highest household expenditure item in OECD countries, at 22.9 per cent of final household consumption expenditure.<sup>134</sup> Furthermore, the likelihood of a household owning the dwelling (with and without outstanding mortgages) increases with income.<sup>135</sup>

The OECD reports that in 2016, 16 countries identified ensuring access to affordable housing as one of their key objectives. Australia was one of these countries, specifically referring to low income households and Indigenous Australian peoples as targeted groups.<sup>136</sup>

A final argument for exempting residential premises from a consumption tax is that home ownership is viewed in many jurisdictions as an important policy objective which is actually encouraged through various taxation incentives.<sup>137</sup> Australia has enacted a suite of tax concessions over the years that encourage home ownership. These include the First Home Owners Grant, First Home Saver Accounts Scheme,<sup>138</sup> and negative gearing, which is the ability to deduct expenses relating to renting residential premises from a taxpayer's other income, effectively encouraging investment in second and third properties.<sup>139</sup> Other significant tax concessions are the capital gains and land tax exemptions on owner-occupied housing, and the 50 per cent capital gains tax discount available to individuals who sell residential property that is not their home if it has been held for 12 months or more.<sup>140</sup> However, it can be noted that some of these concessions are actually counter to equity arguments; for example, low income earners are not a primary group who are able to take advantage of negative gearing.<sup>141</sup>

## 7. ARGUMENTS AGAINST EXEMPTING FOOD, HEALTHCARE AND HOUSING FROM THE GST

Although the objective of this article is to justify specific exemptions from the GST, like all arguments, there are always counter-arguments. Exemptions from the tax base significantly reduce the amount of revenue that can be collected by the government and then used to provide public goods and services.<sup>142</sup> In fact, a review of the Australian

<sup>133</sup> OECD, 'Affordable Housing Database' (2019), <https://www.oecd.org/social/affordable-housing-database.htm>.

<sup>134</sup> OECD, 'Affordable Housing Database, HC1.1 Housing Related Expenditure of Households', (2019), <https://www.oecd.org/social/affordable-housing-database.htm>.

<sup>135</sup> OECD, 'Affordable Housing Database, HM1.3 Housing Tenures' (2019), <https://www.oecd.org/social/affordable-housing-database.htm>.

<sup>136</sup> OECD, 'Affordable Housing Database, PH1.2 Housing Policy Objectives and Obstacles' (2019), <https://www.oecd.org/social/affordable-housing-database.htm>.

<sup>137</sup> Satya Poddar, 'Taxation of Housing Under a VAT' (2010) 63(2) *Tax Law Review* 443, 444.

<sup>138</sup> Australian Parliament, Senate Select Committee on Housing Affordability in Australia, *A Good House is Hard to Find: Housing Affordability in Australia* (Report, June 2008) 4.

<sup>139</sup> *Ibid* 2.

<sup>140</sup> *Ibid*.

<sup>141</sup> Cameron Murray, 'Game of Homes: How the Vested Interests Lie About Negative Gearing' *The Conversation* (11 March 2019), <https://theconversation.com/the-game-of-homes-how-the-vested-interests-lie-about-negative-gearing-112222> (accessed 13 July 2020). Murray comments that the occupations most likely to negatively gear are surgeons and anaesthetists.

<sup>142</sup> Asprey Report, above n 2, [27.20].

2017 Tax Expenditures Statement reveals that of all the GST-free categories, food has the largest monetary impact. It was estimated in 2013-14 that making food GST-free cost AUD 6,200 million, expected to increase to AUD 7,900 million in 2020-21.<sup>143</sup> Significantly, there are other developed nations that apply their VAT/GST to all foods including Singapore<sup>144</sup> and New Zealand.<sup>145</sup>

The Singapore Government successfully argued that its VAT/GST should be comprehensive and this does not appear to have impacted adversely on those households on low incomes. The introduction of GST in Singapore was accompanied by other measures including personal income tax cuts and an increase in existing public assistance payments for low income families and individuals.<sup>146</sup> Significant researchers in the area have commented that distributive concerns arising from a GST are best addressed by directly compensating low income families outside the GST system where the country is a developed country such as Singapore.<sup>147</sup> Another important aspect of the Singapore system is that the government is transparent about reinvesting the tax collected into services such as education and aged care.<sup>148</sup> But it should also be remembered that most people in Singapore pay little income tax and that the VAT/GST is very low by OECD standards,<sup>149</sup> and lower than Australia.<sup>150</sup> Furthermore, the turnover registration threshold for the GST is comparatively high<sup>151</sup> which means that a significant proportion of supplies such as sales of food are potentially outside the input tax credit system. Compliance costs for small businesses are also minimised in this way.<sup>152</sup>

New Zealand introduced a GST in October 1986.<sup>153</sup> It was originally 10 per cent and has had several rate increases so that it is now 15 per cent.<sup>154</sup> It is a very broadly based consumption tax with very few exemptions, and food has always been included in the tax base.<sup>155</sup> It is considered by some researchers in the area that the New Zealand GST is the preferable approach.<sup>156</sup> David White and Richard Krever comment that:

<sup>143</sup> Australian Treasury, *Tax Expenditures Statement 2017* (January 2018) 133.

<sup>144</sup> Ministry of Finance (Singapore), 'Goods and Services Tax' (2019), <https://www.mof.gov.sg/Policies/Tax-Policies/Goods-and-Services-Tax>.

<sup>145</sup> *Goods and Services Tax Act 1985* (NZ).

<sup>146</sup> Andrew Maples and Adrian Sawyer, 'The New Zealand GST and Its Global Impact: 30 Years On' (2017) 23(1) *New Zealand Journal of Taxation Law and Policy* 9, 34 referring to Jeff Pope and Eng-Hin Poh, 'Compensating for the Goods and Services Tax: The Contrasting Policy Approaches of Singapore and Australia' (2001) 20(4) *Economic Papers* 1.

<sup>147</sup> Pope and Poh, above n 146, 5.

<sup>148</sup> Prime Minister's Office, Singapore 'The Straits Times Interview with DPM Tharman Shanmugaratnam: Social Policies, Spending and Taxes' (11 January 2018), <https://www.pmo.gov.sg/Newsroom/straits-times-interview-dpm-tharman-shanmugaratnam> (accessed 13 July 2020).

<sup>149</sup> The mean VAT rate for OECD countries in 2018 was 19.3 per cent: see OECD, *Consumption Tax Trends 2018*, above n 74.

<sup>150</sup> Prime Minister's Office, Singapore, above n 148. The current rate is 7 per cent although this is expected to increase to 9 per cent.

<sup>151</sup> Pope and Poh, above n 146, 4.

<sup>152</sup> *Ibid.*

<sup>153</sup> Statistics New Zealand, *How GST Affected Retail Sales in the 1980s* (July 2010), [http://archive.stats.govt.nz/browse\\_for\\_stats/industry\\_sectors/RetailTrade/historical-impact-gst-introduction-and-increase-on-retail-sales.aspx](http://archive.stats.govt.nz/browse_for_stats/industry_sectors/RetailTrade/historical-impact-gst-introduction-and-increase-on-retail-sales.aspx).

<sup>154</sup> *Ibid.*

<sup>155</sup> Christopher Ball, John Creedy and Michael Ryan, 'Food Expenditure and GST in New Zealand' (2016) 50(2) *New Zealand Economic Papers* 115.

<sup>156</sup> Maples and Sawyer, above n 146.

New Zealand was able to adopt what many consider to be the world's purest value added tax. The contrast with the European examples could not have been starker and the New Zealand model became the starting point for many of the world's modern value added taxes.<sup>157</sup>

This is certainly true from a tax simplicity perspective as the New Zealand GST legislation has few exemptions. This makes it easier to understand and to apply. It is also considered that this approach is consistent with the aims of a GST; a 2018 report of the New Zealand Inland Revenue Department and New Zealand Treasury states that GST exemptions are 'poorly targeted instruments for achieving distributional aims'.<sup>158</sup> It refers to research on food expenditure and the New Zealand GST which concluded that 'the absolute and relative gains and losses from a revenue neutral policy of zero-rating food in a GST are small relative to total expenditure, despite the fact that the policy can achieve some progressivity'<sup>159</sup> and 'a policy of raising transfer payments – even where these are received by everyone – is capable of producing more progressivity'.<sup>160</sup>

Any exemption provision, no matter how well drafted, can also lead to ambiguity at the margins, increasing complexity and consequently implementation costs.<sup>161</sup> Operational complexity can arise due to legal uncertainty. This operational complexity occurs 'when taxpayers do not fully understand what their true tax liabilities are – how certain transactions should be treated for tax purposes – and/or, if they do not understand the basis on which the tax authority comes to a different view how they should be treated if the authority challenges the tax return'.<sup>162</sup> A lack of consistency with definitions can reduce taxpayers' ability to understand their rights and obligations. This results in the need to engage a tax professional which also adds to their compliance costs, or alternatively results in their choosing not to comply.<sup>163</sup>

An example of the complexity of the legislation when referring to zero-rated supplies is the exceptions and exclusions that surround the supply of food. In Australia the supply of basic foods and beverages such as fruit, vegetables, milk and water are GST-free or zero-rated<sup>164</sup> which at first glance seems an easy object to achieve. However, the difficulties around foodstuffs, how they are delivered to the consumer and whether or not they are heated prior to sale has become so complex that the Australian Taxation Office (ATO) has created a comprehensive list of different types of foods and beverages

<sup>157</sup> David White and Richard Krever, 'Preface' in Richard Krever and David White (eds), *GST in Retrospect and Prospect* (Thomson Brookers, 2007) vii, viii.

<sup>158</sup> Inland Revenue Department and New Zealand Treasury, 'GST: Background Paper for Session 2 of the Tax Working Group' (Background Paper, February 2018) 14, <https://taxworkinggroup.govt.nz/sites/default/files/2018-09/twg-bg-gst.pdf>.

<sup>159</sup> Ball, Creedy and Ryan, above n 155, 121.

<sup>160</sup> Ibid. Also see Alida van Klink and Chye-Ching Huang, 'How to Zero-Rate the GST on Food: Best and Worst Practice from the United Kingdom, Canada, and Australia' (29 April 2012), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2048014](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2048014).

<sup>161</sup> Binh Tran-Nam, 'The Implementation Costs of the GST in Australia: Concepts, Preliminary Estimates and Implications' (2000) 3(5) *Journal of Australian Taxation* 331, 335. See also Bain, above n 3.

<sup>162</sup> David Ulph, *Measuring Tax Complexity* (January 2013) 8, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/193497/ots\\_david\\_ulph\\_measuring\\_tax\\_complexity.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/193497/ots_david_ulph_measuring_tax_complexity.pdf).

<sup>163</sup> Tracy Oliver and Scott Bartley, 'Tax System Complexity and Compliance Costs: Some Theoretical Considerations', *Economic Roundup* (Winter 2005), <https://treasury.gov.au/publication/economic-roundup-winter-2005/tax-system-complexity-and-compliance-costs-some-theoretical-considerations>.

<sup>164</sup> GST Act, ss 9-30, 38-2.

and whether or not they are taxable or GST-free.<sup>165</sup> An example of the complex and unusual operation of the GST is the supply of wine grapes that are used to make wine. Are grapes fruit and therefore GST-free or one of the ingredients of an alcoholic beverage which is a taxable supply? This issue so concerned the wine industry that its representations to the ATO have successfully resulted in the categorisation of wine grapes as GST-free.<sup>166</sup> As Peter Hill commented in relation to exemptions, ‘one of the results is that Australia is experiencing, once again, costly arguments over the indirect taxation status of things such as dietary supplements and frozen yoghurt’.<sup>167</sup>

However, to counter this, the ATO has issued a number of interpretative decisions<sup>168</sup> and the searchable list of foods referred to above to assist taxpayers. There are also five simplified accounting measures designed for food retailers who buy and sell a mixture of products where some are taxable and some not, so that these businesses can estimate their GST liability.<sup>169</sup> Van Klink and Huang argue that the combination of ATO guidance and the simplified accounting measures has resulted in lower compliance and administrative costs to businesses in Australia than have occurred in the United Kingdom and Canada.<sup>170</sup>

Turning to the GST and real property, there are a number of exceptions and provisos that relate to the GST exemption for residential premises. For example, in Australia the supply of new residential premises is a taxable supply.<sup>171</sup> These exemptions have led to complexity in the GST system which has meant that it is difficult to administer.<sup>172</sup> The complexities created by exempt treatment suggest that officials and politicians should aim for a simple GST system if they wish to reduce compliance costs both from a revenue perspective and a business perspective. Peacock argues that this is particularly necessary in developing countries where embryo tax administrations may struggle to administer a more complex system.<sup>173</sup>

Furthermore, the exemptions for residential premises and all the exceptions and carve-outs in this area, such as the imposition of GST on ‘new residential premises’ and the making of residential premises in retirement villages provided by charities GST-free,<sup>174</sup> are far more complex than would appear on a first reading of the legislation. As Evans<sup>175</sup>

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<sup>165</sup> Australian Taxation Office, ‘Detailed Food List: Details of the GST Status of Major Food and Beverage Product Lines’, Goods and Services Tax Industry Issue (17 January 2018), <https://www.ato.gov.au/law/view/document?DocID=GII/GSTIFL1/NAT/ATO/00001>.

<sup>166</sup> See Paul Kenny, ‘The Grapes of Wrath: GST and Food’ (2002) 5(1) *Journal of Australian Taxation* 136, 136; Australian Taxation Office, ‘No Slug on Grapes’, *Media Release* (Nat 01/66 Tax Office, 10 August 2001); Australian Taxation Office, *Detailed Food List*, above n 165, 42.

<sup>167</sup> Hill, ‘Taxation of Goods and Services’, above n 97, 549-550.

<sup>168</sup> Australian Taxation Office, ‘GST, Food Classification’, Interpretive Decision ID 2008/132, <https://www.ato.gov.au/law/view/document?docid=AID/AID2008132/00001>.

<sup>169</sup> Australian Taxation Office, ‘GST for Food Retailers – Simplified Accounting Methods’ (23 October 2019), <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Food/GST-for-food-retailers---simplified-accounting-methods/>.

<sup>170</sup> Van Klink and Huang, above n 160.

<sup>171</sup> GST Act, s 40-65(2)(b).

<sup>172</sup> Christine Peacock, ‘Why Simple GST Treatment of Real Property is Important’ (2010) 13(4) *Tax Specialist* 216, 222.

<sup>173</sup> *Ibid.*

<sup>174</sup> GST Act, s 38-260.

<sup>175</sup> Evans, above n 128.

and Wolfers<sup>176</sup> have separately argued, a significant problem occurs because the legislation on GST and real property vacillates between a legal or juristic concept of real property and the physical characteristics of property. Issues around statutory interpretation in this area have been at the core of several court cases.<sup>177</sup>

Exemptions allow inroads into the legislation that tempt advisors to push the boundaries and make the exemptions wider. Exemptions can also lead to increased litigation costs, which arguably add to the administrative costs of businesses and the revenue, at least in the short term. This is demonstrated by the significant number of cases that have been referred by national courts in European countries to the European Court of Justice regarding interpretation of exemptions.<sup>178</sup> In Australia, issues regarding the GST on real property and residential premises have been the subject of the largest number of court and contractual disputes, ATO rulings, legislative changes and tax avoidance behaviours,<sup>179</sup> although this could also be because large sums of money are usually at stake. Furthermore, exemptions are often the subject of aggressive tax planning<sup>180</sup> which some might argue is also a cost to the revenue and which is not productive.<sup>181</sup> However it should be noted that litigation around areas that are genuinely in dispute, including ambiguous definitions in the legislation, is not necessarily a cost to society. As Tran-Nam and Walpole argue:

Finally it is worthwhile to note that tax disputes are not socially wasteful from a pure economic point of view. This is because the outcomes of the disputes may help to clarify the tax law, especially in test cases sponsored by the ATO. In this case, while tax disputes will increase the current operating costs of the tax system, it may reduce the future tax operating costs. On the negative side, however, tax disputes may indeed sometimes increase future tax operating costs, for example, if unclear/testable outcomes generate more cases.<sup>182</sup>

As has been discussed earlier in this article (section 6.1), one of the reasons that residential premises, both leased and sold, are exempt from VAT/GST is that it is administratively cumbersome to register and collect tax from all owner-occupiers of residential premises and all lessors of residential premises. In order to overcome this issue, some VAT/GST literature suggests that the correct approach for a pure VAT/GST system is to include imputed rent of a house or apartment in the indirect tax base.<sup>183</sup> Researchers argue that imposing VAT/GST on immovable property is in keeping with

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<sup>176</sup> Lachlan Wolfers, 'GST and Real Property in Australia' in Christine Peacock (ed), *GST in Australia: Looking Forward from the First Decade* (Thomson Reuters, 2011) 213, 214.

<sup>177</sup> See, eg, *Marana Holdings Pty Ltd v Federal Commissioner of Taxation* [2004] FCAFC 307, 57 ATR 521; *South Steyne Hotel Pty Ltd v Federal Commissioner of Taxation* [2009] FCAFC 155, 74 ATR 41; *Federal Commissioner of Taxation v Gloxinia Investments Ltd* [2010] FCAFC 46, 75 ATR 806; *Sterling Guardian Pty Ltd v Federal Commissioner of Taxation* (2005) 220 ALR 550, 60 ATR 502; *Sterling Guardian Pty Ltd v Federal Commissioner of Taxation* [2006] FCAFC 12, 62 ATR 119; *Brady King Pty Ltd v Federal Commissioner of Taxation* [2008] FCAFC 118, 168 FCR 558, 69 ATR 670.

<sup>178</sup> De la Feria and Krever, above n 41, 22.

<sup>179</sup> Ken Fehily, 'Residential Premises' in Christine Peacock (ed), *GST in Australia: Looking Forward from the First Decade* (Thomson Reuters, 2011) 201, 202.

<sup>180</sup> De la Feria and Krever, above n 41, 24.

<sup>181</sup> Ibid; Ebrill et al, above n 84.

<sup>182</sup> Binh Tran-Nam and Michael Walpole, 'Tax Disputes, Litigation Costs and Access to Tax Justice' (2016) 14(2) *eJournal of Tax Research* 319, 326.

<sup>183</sup> De la Feria and Krever, above n 41, 22.

the economic objective of an indirect tax,<sup>184</sup> and that the exemption should be removed. The way that this would work is that imputed rent would be included within the VAT/GST base. Imputed rent has been defined as the value of the benefit the owner would have received had their house or apartment been rented to another person.<sup>185</sup> This imputed rent would not be imposed at the time that the transactions between parties take place as this would not capture the full value of the benefit to the owner. Instead a valuation of the imputed rent would be made for a particular period, and this value, and therefore the VAT/GST, would be updated as the immovable property appreciates.<sup>186</sup>

As mentioned above, in Australia the supply of new residential premises is a taxable supply and therefore subject to the GST.<sup>187</sup> Peacock points out that the Australian system assumes that the value of new residential premises at the time of purchase is equal to the use and enjoyment (consumption) of the residential premises over its lifetime. But this is problematic where the value of residential premises appreciates over time (as the land usually increases in value). Clearly, the initial GST on new residential premises is insufficient to tax the flow of consumption.<sup>188</sup> She therefore argues in favour of a GST on all sales of residential premises; however, she does admit that this could lead to housing affordability concerns as the price for used houses would be likely to increase as a result of the GST.<sup>189</sup>

Bourassa and Grigsby argue that there are equity reasons against this as the VAT/GST has little relationship with capacity to pay and imposing this tax on homes will thus weigh more heavily on lower income taxpayers and elderly homeowners.<sup>190</sup>

## 8. CONCLUSION

This article has demonstrated that there are strong arguments on the basis of equity for lower consumption taxes on basic food and beverages, housing and health. Although such lower rates may also benefit the wealthier households, it is clear that low income households suffer when there is tax on food, due to the necessity to consume this item. Healthcare and housing exemptions similarly assist low income earners and it is arguable that, as they are already disadvantaged, increasing consumption tax on essential and merit goods would impact on these households to a disproportionate degree. Imposing a VAT/GST on residential housing, either sale or lease, has not been attempted in any developed nation, for both political reasons and the accepted high compliance costs this would bring.<sup>191</sup>

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<sup>184</sup> Ibid. Christine Peacock, 'Is There a Viable Way to Tax the Consumption of Immovable Property that is More Consistent with the Economic Objective of the VAT?' (2018) 13(1) *Journal of the Australasian Tax Teachers Association* 336.

<sup>185</sup> Peacock, above n 184, 342.

<sup>186</sup> Ibid.

<sup>187</sup> GST Act, s 40-65(2)(b).

<sup>188</sup> Christine Peacock, 'How Could Sales of Residential Premises Between Otherwise Unregistered Homeowners Be Brought Into the VAT Base?' (2019) 14(1) *Journal of the Australasian Tax Teachers Association* 151, 152.

<sup>189</sup> Ibid 165.

<sup>190</sup> Steven C Bourassa and William G Grigsby, 'Income Tax Concessions for Owner-Occupied Housing' (2000) 11(3) *Housing Policy Debate* 521, 528.

<sup>191</sup> Ebrill et al, above n 84, 98; Peacock, 'How Could Sales of Residential Premises Between Otherwise Unregistered Homeowners Be Brought Into the VAT Base?', above n 188, 152-155.

There are examples from overseas where minimising exemptions has been combined with greater income and other subsidies to low income persons and this has been successful. This has occurred in both Singapore and New Zealand. However, although at the time of the introduction of the GST in Australia the government lifted pensions and other payments by 4 per cent in order to compensate low income earners,<sup>192</sup> it did not apply across the board subsidies, but rather addressed issues of equity through the exemption of fresh foods.

Countering the arguments in favour of equity is the complexity of exemptions which leads to high compliance costs and the possibility of exploitation of loopholes and additional litigation. However, at least in Australia, it appears that these exemptions are now reasonably settled and that a combination of ATO rulings, guidelines, advice and publications from tax specialists means that the boundaries of these exemptions are now well defined. Furthermore, the political difficulty that occurred merely in introducing a GST in Australia, as described earlier in this article, indicates that any changes to the GST that impact negatively on consumers would be extremely difficult to introduce. This is particularly so given the need to seek approval by the States and Territories.

In conclusion, it seems unlikely that the voting public would consider favourably the removal of the exemptions for food, healthcare and residential housing as these items are considered essential to maintaining a reasonable standard of living in Australia. It therefore seems that the current GST exemptions relating to basic food, healthcare and residential premises will remain and this article has pointed out some strong arguments in favour of the status quo.

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<sup>192</sup> Peter Martin, 'Cabinet Papers 1998-99: How the GST Became Unstoppable' *The Conversation* (1 January 2020), <https://theconversation.com/cabinet-papers-1998-99-how-the-gst-became-unstoppable-128844> (accessed 13 July 2020).