

CHAPTER 6

SIMPLIFICATION LESSONS FROM NEW ZEALAND

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Abstract

This chapter describes the concept of tax simplification, offering New Zealand as a case study to provide potential guidance for South Africa. Specifically, this chapter examines both the rewriting of legislation project and tax policy development, discussing why New Zealand took this approach, including its successes and shortcomings. The chapter then turns its focus to the South African situation, examining the areas in greatest need of simplification, along with a review of what has occurred so far. From the principles and lessons established from the New Zealand analysis, the chapter evaluates those principles with a view to determining their relevance for South Africa.

1 Introduction

1.1 An overview to tax simplification

The quest for simplicity – or at least some move towards simplification – has been a fixation of governments and others for many years, but little appears to have been achieved. Tax simplification is the most widely quoted but the least widely observed of the usually stated goals of policy (equity and efficiency being the others).¹

Tax simplification, at first, may appear to be both a straightforward concept and a desirable objective to facilitate taxpayers' compliance and understanding of their obligations. The experience of jurisdictions that

* This chapter states the relative country positions with respect to tax simplification as at 31 May 2019. We would like to thank participants at the *Tax Simplification: An African Perspective* symposium held in Pretoria from 9-11 October 2018, for their helpful comments and suggestions. The authors also wish to thank the anonymous reviewers for their valuable comments and Dr Peter Mellor for his comprehensive editing work on an earlier version of this chapter. Any remaining errors are ours.

1 C Evans *et al* (eds) *Tax simplification* (2015) volume back cover summary.

have undertaken major simplification initiatives would suggest the opposite. Furthermore, the desire for legislative simplification is nothing new, having been around in the English-speaking world for over 400 years. It is reported that Edward VI decreed that the statutes should be brought together 'and made more plain and short' so that 'men [sic] might better understand them'.²

As Tran-Nam and Evans observe:³

Tax complexity is a multidimensional concept and as such it cannot be easily defined or uniquely measured. It apparently means different things to different people depending on their biases, perspectives or research interests.

Tax simplification is also a misunderstood concept. There is much more to simplification than just rewriting the legislation. Tran-Nam suggests that there is both legal simplicity (how difficult is a tax law to read and understand) and effective simplicity (how easy is it to determine the correct tax liability).⁴ The tax rewrites in Australia, New Zealand and the United Kingdom (UK), which occurred from the mid-1990s to the late 2000s, all focused on the former and largely neglected the latter. Furthermore, Krever observes that the rewrite in Australia's case revealed that the real major cause of the former law's complexity was its 'wholly irrational and inconsistent policy base'.⁵

Cooper⁶ suggests there are at least seven key concepts that should inform an evaluation of tax simplification:

- 1 Predictability. In this context, a rule would be simple if that rule and its scope were easily and accurately understood by taxpayers and their advisers.
- 2 Proportionality. A rule would be simple if the complexity of the solution were no more than reasonably necessary to achieve the intended aim.
- 3 Consistency. This would apply where a rule deals with similar issues in the same way and without the need to make arbitrary distinctions.
- 4 Compliance. A rule would be simple if it were easy for taxpayers to comply with without incurring excessive costs.
- 5 Administration. A rule would be simple if it were easy for a revenue authority to administer.

2 Report by the Committee appointed by the Lord President of the Council (Rt Hon Sir (later Lord) David Renton, chair) (Renton Committee) *The preparation of legislation* Cmnd 6053 (London, May 1975) para 28.

3 B Tran-Nam & C Evans 'Towards the development of a tax system complexity index' (2014) 35(3) *Fiscal Studies* 341-345.

4 B Tran-Nam 'Tax reform and tax simplification: Some conceptual issues and a preliminary assessment' (1999) 21(3) *Sydney Law Review* 500.

5 R Krever 'Taming complexity in Australian income tax' (2003) 25(4) *Sydney Law Review* 467-493.

6 GS Cooper 'Themes and issues in tax simplification' (1993) 10(4) *Australian Tax Forum* 417.

- 6 Co-ordination. A rule would be simple if it fitted appropriately with other tax rules; it would be complicated if its relationships with other rules were obscure.
- 7 Expression. A rule would be simple if it were clearly expressed.

Cooper also suggests that simplification can be viewed at any one of four levels. The levels are: the choice of the tax base; design of the rules to be applied to the tax base; expression of those rules, and administrative requirements imposed on taxpayers.

Tran-Nam and Evans⁷ suggest that an alternative approach is to classify tax complexity by where it occurs during different stages of the operation of the tax system. According to this approach, it is possible to distinguish between:⁸

- policy complexity: complexity that arises primarily because of the choice of policy by the policy-maker (perhaps too often with the intention of using tax policy for non-revenue-raising purposes);
- statutory complexity: complexity that arises due to the drafting of the tax laws;
- administrative complexity: complexity that arises from the rules and practices of the tax administrators;
- compliance complexity: complexity that arises from the tax computation and tax planning behaviour of business and individual taxpayers.

Tran Nam and Evans then posit that:⁹

Because tax complexity has several different meanings, so has tax simplification. To simplify a tax law/system could mean any combination of the following:

- to improve the tax legislation/system in the linguistic and structural sense;
- to make the tax legislation/system simpler in the content or conceptual sense;
- to lower the burden of tax administrative requirements;
- to reduce the operating costs (in an absolute or relative sense) of the tax law/system.

James and Edwards¹⁰ take a different stance, suggesting that a strategic approach is necessary. This approach captures much more than just rewriting the legislation, namely:

7 Tran-Nam & Evans (n 3 above) 346.

8 Tran-Nam & Evans (n 3 above) 346.

9 Tran-Nam & Evans (n 3 above) 346-347.

10 S James & A Edwards 'Developing tax policy in a complex and changing world' (2008) 38(1) *Economic Analysis and Policy* 35-47.

- 1 Identifying the aims of taxation;
- 2 Establishing different methods of achieving the aims;
- 3 Analysing in terms of economic criteria;
- 4 Specifying the administrative constraints;
- 5 Identifying different risks;
- 6 Analysing behaviour;
- 7 Considering the relationship between different policies;
- 8 Developing strategies;
- 9 Planning and implementing strategies including intended outcomes; and
- 10 Monitoring and evaluating the performance of the strategies against the plan.

A number of previous studies have recognised complexity of tax laws as a potential factor in tax non-compliance and that reductions in complexity may increase levels of compliance.¹¹ Long and Swingen provide a comprehensive definition of complexity that includes:¹²

... the ambiguity of tax laws; the need for numerous calculations; the frequency of change in the tax laws; the excessive detail in the tax laws, such as rules and exceptions to the rules; the obligation to keep the records; and taxpayer forms and instructions.

It is also important to define what is meant by compliance. A number of definitions are provided in the literature; for the purposes of this chapter we will use the definition of compliance provided by Roth *et al.*¹³

Compliance with reporting requirements means that the taxpayer files all required tax returns at the proper time and that the returns accurately report tax liability in accordance with the Internal Revenue Code, regulations, and court decisions applicable at the time the return is filed.

Complexity is also correlated with compliance costs principally through increasing such costs. As James *et al* observe:¹⁴

In addition, overly complex and obscure legislation might *reduce the willingness of taxpayers to comply voluntarily with the requirements of the tax system*. This is particularly important with a system of self-assessment. To the extent that complexity impedes clarity it may also *make the estimation of future revenue and costs more difficult and will therefore make economic decision-making harder*.

- 11 See B Jackson & V Milliron 'Tax compliance research: Findings, problems and prospects' (1986) 5 *Journal of Accounting Literature* 125; M Richardson & A Sawyer 'A taxonomy of the tax compliance literature: Further findings, problems and prospects' (2001) 16 *Australian Tax Forum* 137.
- 12 See S Long & J Swingen 'The role of legal complexity in shaping taxpayer compliance' in P Van Koppen *et al* (eds) *Lawyers on psychology and psychologists on law* (1988) 132.
- 13 JA Roth *et al* (eds) *Taxpayer compliance, vol I: An agenda for research* (1989) 21.
- 14 S James *et al* 'Tax simplification: A review of initiatives in Australia, New Zealand and the United Kingdom' (2015) 13(1) *eJournal of Tax Research* 280 284 (emphasis added).

It may also generate unfairness because, for example, *not everyone is equally able to take advantage of the various complexities of a tax system*. There is also a more general point: that the main purpose of most taxes is to pay for public expenditure. A tax system that is *very complicated and difficult to understand might reduce public support for the improvement of important public services*. Furthermore a high level of complexity in a tax system can make discussion of tax policy and the introduction of improvements more difficult.

James *et al*¹⁵ outline the importance of not only simplifying the tax law, but also simplifying the tax system, taxpayer communications, tax administration, and take a longer-term view. In this longer-term view a strategic approach needs to be taken that addresses the range of factors that lead to complexity. The authors of that article suggest the establishment of a permanent body to oversee tax policy development, including that of simplification. Critical to success in this area is to incorporate simplification into the tax policy process itself.

The most comprehensive single source of discussion of tax simplification is the edited work of Evans *et al*.¹⁶ In this work, the various contributors explore all aspects of tax complexity and simplification, ranging from policy through law to practice. The topics covered point to the multifaceted nature of tax complexity:

- theoretical perspectives explaining tax complexity;
- ideological underpinnings of tax complexity;
- causes of tax complexity;
- ways of measuring tax complexity;
- tax compliance costs studies;
- institutional monitoring of tax complexity;
- implications of complexity for judicial review;
- the role of vested interests;
- administrative and technological drivers of tax simplification; and
- institutional and other pathways towards improved simplification.

One recent development from the Office of Tax Simplification in the UK is the creation of a tax complexity index.¹⁷ The Office for Tax Simplification's approach is based on the usability framework, which identifies three key areas of importance: legislative complexity; effectiveness, and resource efficiency. These three broad areas are then

15 James *et al* (n 14 above) 298-301.

16 Evans *et al* (n 1 above).

17 Office of Tax Simplification *The Office of Tax Simplification complexity index* (2012), <http://taxsimplificationblog.files.wordpress.com/2012/12/ots-complexity-index-met-hodology-paper1.pdf>; Office of Tax Simplification *The OTS complexity index* (2017), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/603479/OTS_complexity_index_paper_2017.pdf.

explained by seven factors: legislative complexity; HM Revenue and Customs guidance complexity; number of taxpayers impacted by the legislation; average ability of taxpayers involved in the area; avoidance risk; costs of compliance; and HM Revenue and Customs operating costs. From these factors, a complexity score is developed, ranging from 1 to 10, where 1 is the least complex and 10 the most complex. This is a weighted average of scores of the seven factors (with the scores ranging from 1 to 5). Ultimately, this weighted score becomes a measure for ranking UK tax legislation by its degree of complexity.

Tran-Nam and Evans¹⁸ critically review the Office for Tax Simplification's complexity index, along with other potential measures, suggesting that the focus should be on an index that facilitates time-based comparisons of the overall level of tax complexity in a particular country. They also suggest there could be an index for business taxpayers separate to that for personal taxpayers. The simplification efforts in New Zealand have not extended to developing or testing any form of complexity index. Before looking at what has happened in New Zealand regarding simplification, a brief comment is made on the methodological approach used in this chapter.

1.2 Case study research and methodology

It is well known that case study research involves an in-depth, detailed study of an individual or a small group of individuals or an event. Such studies are typically qualitative in nature, resulting in a narrative description of behaviour or experience. Case study research, however, is often maligned and considered to be a non-scientific approach to undertaking research. Notwithstanding this view, case study research is used extensively in academic enquiry in traditional social science disciplines as well as practice-oriented fields, with the design and analysis considerations of prime importance, more often than the description of events or the scenario under review.¹⁹ This chapter applies the case study method comparing developments in tax law rewriting and policy design in New Zealand with the current situation in South Africa.

In terms of a theoretical perspective, this chapter loosely adopts an institutional theory perspective. By institutional theory, we are focusing on the effects of institutions in society on political outcomes, including policy formation.²⁰ It is not the intention of this chapter to provide a detailed overview of institutional theory and its application to tax research.

18 Tran-Nam & Evans (n 3 above).

19 RK Yin *Case study research design and methods* (6th ed 2019).

20 See further the discussion of institutional theory by L Marriott *The politics of retirement savings taxation: A trans-Tasman comparison* (2010).

The remainder of the chapter is structured as follows: section 2 describes New Zealand's experiences with tax simplification; section 3 then follows with a brief overview of some tax reforms to date in South Africa, but more importantly attention is drawn to those areas of the tax system most in need of simplification. Section 4 highlights principles and lessons that were established from the New Zealand experience and in section 5 these principles are evaluated with a view to determining their applicability to the South African context. The final section presents the conclusion to the chapter and recommendations for tax simplification efforts in South Africa are suggested.

2 Background – New Zealand's experience with tax simplification

2.1 New Zealand's approach to tax simplification

Within tax policy development generally, New Zealand has a well-respected and unique process for developing tax policy, namely the Generic Tax Policy Process.²¹ It also operates a Broad Base Low Rate framework that aims to create a simple, understandable and coherent framework for determining tax policy and tax bases. This should mean that all areas of the economy are taxed reasonably consistently, that economic distortions are reduced, the key aspects of the tax system are understood by the public, and the tax system is durable through being coherent and simple. Practice suggests there are deficiencies, including gaps in the base (an absence of any form of wealth taxation, for example).

From a simplification perspective, New Zealand's Taxpayers' Simplification Advisory Board was established to provide New Zealanders with an active voice in simplifying, modernising and transforming the way taxes are paid.²² Chartered Accountants Australia and New Zealand state in a submission to a 2015 tax review in Australia that:²³

...we observe New Zealand is often highly regarded when it comes to tax simplification and note that that country has been able to manage this without the need for some type of [tax complexity] metric.

21 For reviews of the GTPP, see M Dirkis & B Bondfield 'At the extremes of a "good tax policy process": A case study contrasting the role accorded to consultation in tax policy development in Australia and New Zealand' (2005) 11(2) *New Zealand Journal of Taxation Law and Policy* 250; A Sawyer 'Reviewing tax policy development in New Zealand: Lessons from a delicate balancing of "law and politics"' (2013) 28(2) *Australian Tax Forum* 401.

22 See further: <https://www.ird.govt.nz/aboutir/commitment/tax-simplification-panel.html>.

23 Chartered Accountants Australia New Zealand 'Submission on Re:think Tax Discussion Paper, March 2015' (12 June 2015) 77, available at: <https://cdn.tspace.gov.au/uploads/sites/52/2015/06/Chartered-Accountants-Australia-and-New-Zealand.pdf>.

Sir Anthony Mason, former Chief Justice of the High Court of Australia, argues that a number of factors are necessary for tax simplification. He promotes New Zealand as an example where tax legislation is successfully developed through the following:²⁴

...coherent and consistent policy formulation, transparent consultation, drafting by a drafting unit within the Policy and Advice Division of the Tax Office (not by Parliamentary Counsel or Treasury), purposive clauses and extra-statutory references, general rules to overarch more specific rules and a commitment to modern drafting techniques and to plain language.

Why should New Zealand be used as a comparative benchmark for South Africa when it comes to tax simplification? To answer this question the chapter now turns to focus on the major components of New Zealand tax simplification efforts, commencing with the tax rewrite project of 1995-2014.

2.1.1 *Rewriting tax legislation*

Much has been written about New Zealand's simplification efforts over the last 25 years or so, including contributions from one of the authors of this chapter. An overview is provided by Sawyer in a recent contribution to the work by James *et al* on the complexity of tax simplification.²⁵ New Zealand's current tax system had its foundations laid in the mid-1980s by the Fourth Labour Government. As Sawyer states:²⁶

The newly elected Labour Government in 1984 faced an economy in crisis and in need of a radical overhaul. Much of what occurred over the following three years (1984-1987) can be seen as a radical economic liberalisation experiment that was facilitated by perfect conditions, namely: an economy in desperate need of a radical overhaul; a new government with an electoral mandate to implement change; and a Minister of Finance with a clear plan to overhaul the economic environment. *Importantly, tax reform was an integral part of the reform process.*

The key tax policy reform was a dramatic reduction in income tax rates, and introduction of the world's most efficient goods and services tax, along with the Broad Base Low Rate approach as the basis for future policy development. In the early 1990s, the Generic Tax Policy Process was

24 A Mason, Opening address to the Atax 7th International Conference on Tax Administration, 20 April 2006, quoted in Taxation Institute of Australia submission 40.1 (22 September 2006) to Joint Committee of Public Accounts and Audit inquiry into a range of taxation issues within Australia, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/jcpaa/taxation06/subs (accessed 26 May 2019).

25 A Sawyer 'Complexity of tax simplification: a New Zealand perspective' in S James *et al* (eds) *The complexity of tax simplification: experiences from around the world* (2016) 110.

26 Sawyer 'Complexity of tax simplification' (above n 25) 111 (emphasis added).

developed through the organisational review of Inland Revenue,²⁷ chaired by Sir Ivor Richardson. Subsequent governments have continued to adopt the Generic Tax Policy Process model via Cabinet directive, with some temporal departures.²⁸ In the few evaluations of the Generic Tax Policy Process undertaken to date, the outcome has been largely positive, with the consequences of the instances of failures to utilise the Generic Tax Policy Process highlighted.²⁹ Further guidance on intended tax policy and remedial reform is available through the Tax Policy Work Programme that is updated at least annually.³⁰

Research in New Zealand has also examined compliance costs, especially in relation to small and medium enterprises. The findings are not entirely consistent, with Inland Revenue commissioned research indicating the level of compliance costs is falling,³¹ while some other research suggests these costs remain significant.³²

Perhaps the area of simplification for which New Zealand is the most well-known (and where there is considerable literature) is the rewriting of tax legislation in an effort to improve readability and understandability. New Zealand has been a world leader in its efforts to reduce complexity through rewriting and reorganising its income tax legislation.

New Zealand's tax rewrite project utilised a novel approach, namely first a reorganisation of the key statutes, in addition to establishing the Rewrite Advisory Panel, chaired by an eminent retired tax judge, Sir Ivor Richardson.³³ The Rewrite Advisory Panel consisted of one representative each from the New Zealand Institute of Chartered Accountants, the New Zealand Law Society, Inland Revenue, and the New Zealand Treasury. The Rewrite Advisory Panel was disestablished by the then Minister of Revenue in late 2014.

The first step incorporated the reorganisation of the Income Tax Act 1976 and the Inland Revenue Department Act 1974. The outcome was

27 Rt Hon Sir I Richardson *et al* *Organisational review of the Inland Revenue Department: Report to the Minister of Revenue* (1994).

28 See, eg, P Vial 'The Generic Tax Policy Process: A "jewel in our policy formation crown"?' (2012) 25(2) *New Zealand Universities Law Review* 318.

29 See Vial (n 28 above) and Sawyer 'Reviewing tax policy development in New Zealand' (n 21 above), respectively.

30 See further: <http://taxpolicy.ird.govt.nz/work-programme>.

31 Research New Zealand & National Research Unit of Inland Revenue *SME tax compliance costs 2013: evaluation report 1* (June 2014); Research New Zealand & National Research Unit of Inland Revenue *SME tax compliance costs 2004 to 2013: Evaluation report 2* (June 2014) (both reports on file with first named author).

32 R Gupta & A Sawyer 'The costs of compliance and associated benefits for small and medium enterprises in New Zealand: Some recent findings' (2015) 30(1) *Australian Tax Forum* 135.

33 For a review of the contributions of the Rewrite Advisory Panel, along with its founding chair, Sir Ivor Richardson, see A Sawyer 'RAP(ping) in taxation: A review of New Zealand's Rewrite Advisory Panel and its potential for adaptation to other jurisdictions' (2008) 37(3) *Australian Tax Review* 148.

three new statutes: the Income Tax Act 1994; the Tax Administration Act 1994, and Taxation Review Authorities Act 1994. The second phase was rewriting the core provisions in the Income Tax Act 1994, followed by rewriting the major income, deduction and timing provisions (plus the definitions). These appeared in a completely new statute, the Income Tax Act 2004. Finally, the Tax Rewrite Project addressed the remaining parts of the Income Tax Act 2004, being rewritten as the Income Tax Act 2007. Inland Revenue continues to consider addressing unintended legislative consequences from rewriting the law within its remedial work programme.

As part of the Tax Rewrite Project, a schedule of intended policy changes (and their associated sections) was included as part of each iteration of the Income Tax Act. Unintended changes were reviewed by the Rewrite Advisory Panel. This approach made it easier to ascertain when previous case law, binding rulings and analysis could not be used when interpreting the rewritten legislation. The Rewrite Tax Project did not address any significant policy issues as these were strictly outside the terms of reference of the project. Should significant policy issues arise, they could be considered through the usual annual tax work programme and worked through as part of the Generic Tax Policy Process.

The Tax Rewrite Project did not extend to other major tax statutes, such as the Tax Administration Act 1994 and the Goods and Services Tax Act 1985. Notwithstanding a call from a then member of the Supreme Court to rewrite the Goods and Services Tax Act, there has been no subsequent tax rewrite activity:³⁴

... it is to be hoped that once the redrafting exercise on the Income Tax Act is completed the team will move on to the [Goods and Services Tax Act 1985], which is not, and never has been, a user-friendly statute.

Evaluations of the rewrite project commenced with the early work of Tan and Tower, which examined the state of income tax legislation prior to the commencement of the tax rewrite project.³⁵ The tools used have been predominantly readability tools available through most word processing packages, such as the Flesch Reading Ease Score and Flesch Kincaid Grade level, amongst others.³⁶ In undertaking this evaluation, tax legislation, along with Inland Revenue's Tax Information Bulletins and binding rulings were also tested for their readability.

34 Rt Hon P Blanchard 'Some basic concepts of New Zealand GST' in R Krever & D White (eds) *GST in retrospect and prospect* (2007) 91 92.

35 LM Tan & G Tower 'The readability of tax laws: An empirical study in New Zealand' (1992) 9(3) *Australian Tax Forum* 355.

36 For a discussion, see for example M Richardson & A Sawyer 'Complexity in the expression of New Zealand's tax laws: An empirical analysis' (1998) 14 *Australian Tax Forum* 325; A Sawyer 'Enhancing compliance through improved readability: Evidence from New Zealand's rewrite "experiment"' in ME Gangi & A Plumley (eds) *Recent research on tax administration and compliance: Selected papers given at the 2010 IRS research conference* (2011) 221.

The studies of Richardson and Sawyer,³⁷ Pau *et al*,³⁸ and Saw and Sawyer³⁹ evaluated each stage of the tax rewrite project using readability measures. Each study showed further improvement in readability as measured by the Flesch Reading Ease Score. In particular, the results of Saw and Sawyer suggest that New Zealand's income tax legislation should now be more readable, such that a university undergraduate should be able to read and understand most of the sections in the Income Tax Act 2007. Saw and Sawyer, like Pau *et al*, also observe that in comparing the readability of the Income Tax Act 2007 with other tax-related materials, the average score is higher for the Income Tax Act 2007 and binding rulings, suggesting they are easier to read and understand compared to Inland Revenue's Tax Information Bulletins. Inland Revenue's drafters of the Tax Information Bulletins therefore need to re-examine the drafting style adopted.

Sawyer⁴⁰ reports on a study utilising the Cloze procedure, which is a process by which every 'nth' word is removed, and participants are requested within a set time frame to attempt to fill in the gaps. The greater the level of accuracy, then the more readable the text is considered to be. If the scores for correct inclusion of missing words exceeds 44% (the level suggested by Bormuth⁴¹), then the text is sufficiently readable. Stevens *et al*⁴² compare readability formulas (such as Flesch) with the Cloze procedure. They argue that readability formulas are inappropriate measures of adult reading comprehension and that the Cloze procedure should be the method of choice in assessing adult readers (which would include readers of the Income Tax Act).

Sawyer's research using the Cloze procedure selected four key sections from four versions of the Income Tax Act: the Income Tax Act 1976; the Income Tax Act 1994; the Income Tax Act 2004, and the Income Tax Act 2007. The four key sections were ones that the subjects (undergraduate taxation students in both an introductory and advanced tax class) should generally be familiar with. The sections covered the key areas of: tax residence for natural persons; sources of New Zealand income; the general deeming provision for income and exempt income, and the general permission for allowing deductions.

Overall, the subjects found the Income Tax Act 2004 version of the four sections easiest to understand, as measured by the level of correct

37 Richardson & Sawyer (n 36 above).

38 C Pau *et al* 'Complexity of New Zealand's tax laws: An empirical study' (2007) 22(1) *Australian Tax Forum* 59.

39 K Saw & A Sawyer 'Complexity of New Zealand's income tax legislation: The final instalment' (2010) 25(2) *Australian Tax Forum* 213.

40 Sawyer (n 36 above).

41 J Bormuth 'Comparable Cloze and multiple-choice comprehension test scores' (1967) 10(5) *Journal of Reading* 291.

42 KC Stevens *et al* 'A response to "Measuring readability: A comparison of accounting textbooks"' (1993) 11(2) *Journal of Accounting Education* 287.

responses. The Income Tax Act 2007, the final version of the rewritten legislation, came in a close third behind the Income Tax Act 1976 (the pre-written version)! In only one instance did a specific version exceed 44%; this was the Income Tax Act 2004 for the advanced taxation class. Overall the advanced tax class performed better than those in the introductory class. These results were comparable to an earlier Australian study by Woellner *et al.*⁴³ Earlier studies conducted on behalf of Inland Revenue utilised officials and tax practitioners to test the understandability of the Income Tax Act 2004. These tests produced an average score of 68.1% and were marginally more understandable than were extracts from the Income Tax Act 1976 (average score 62.5%). In Woellner *et al.*'s study, tax experts scored over 70% on both the Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997, an outcome which is comparable to the results of Harrison.⁴⁴

The discussion now focuses on more recent tax policy developments in New Zealand.

2.2.2 *Recent developments: tax administration and policy*

While not strictly a recent development, the effects of decisions made in the late 1980s have been pivotal to subsequent simplification efforts. Most New Zealand individual taxpayers do not need to file tax returns where they receive income that is appropriately taxed at source (this includes wage and salary earners in the main). This came about through the removal of deductions for work-related expenses and superannuation deductions, along with withholding for interest and dividends. Those taxpayers with income not taxed at source (for example, those with rental income) must still file a return, in addition to those in business or who are self-employed. A separate form for claiming rebates for payments made to approved charitable organisations and school donations (but not school fees) can be made by individuals, including non-filing taxpayers; the credit is worth 33% of qualifying expenditure.

The New Zealand Government and Inland Revenue have continued to regularly review the tax system and propose reforms directed at making it simpler for taxpayers, especially for small business taxpayers. This is anticipated to continue to reduce compliance costs. Furthermore, Inland Revenue has made progress at simplifying the ways it communicates with taxpayers and tax practitioners. The growth in use of electronic formats, coupled with technological advances, has facilitated Inland Revenue's website(s) to be the principal source of information and interface with

43 R Woellner *et al.* 'Can simplified legal drafting reduce the psychological costs of tax compliance? An Australian perspective' [2007] 6 *British Tax Review* 717.

44 J Harrison *The readability of the Income Tax Act 2004: A report to Inland Revenue for the Rewrite Advisory Panel* (2006). No further Cloze procedure testing of experienced tax professionals has been undertaken in New Zealand to the knowledge of the authors.

taxpayers and tax practitioners.⁴⁵ The New Zealand Government has created a single point of contact for new business taxpayers, for which Inland Revenue is a partner agency. This is through the New Zealand Business Number, a 13-digit number, a single identifier which, over time, is intended to become the only number that businesses use to interact with a range of government agencies and other businesses.

Inland Revenue has more than 1.7 million customers registered for secure online services through Inland Revenue's MyIR portal, which allows people to check their tax details, child support, *Working for Families* and KiwiSaver accounts, as well as to submit Goods and Services Tax returns online. In 2012 Inland Revenue introduced a mobile web app which gives customers access to their account information 24 hours a day, seven days a week. Notwithstanding these developments, in most situations, formal communication by Inland Revenue with taxpayers and tax practitioners is principally through written letters. This is facilitated through use of electronic formats and/or the postal service.

Inland Revenue is conducting a multi-year change programme to modernise New Zealand's tax system. The Business Transformation Project is a multi-stage change programme intended to modernise New Zealand's tax service to make it simpler and faster for New Zealanders to pay their taxes and give more certainty that taxpayers will receive their entitlements.⁴⁶ The aim of the Business Transformation Project is to serve as the roadmap for future work by Inland Revenue for simplifying aspects of the New Zealand tax system. To provide some context, the Business Transformation Project is designed to enable new features to be added to what is an outdated computer system first launched in the early 1990s. It underpins Inland Revenue's focus on utilising an electronic platform as the basis for communicating and interacting with taxpayers and tax practitioners. This project has an estimated cost of NZD 1.6 billion and is not without its risks.

Legislation enacted in March 2019 sees changes that simplify the end-of-year tax processes for individuals.⁴⁷ From the commencement of the 2019-20 income year (1 April) many salary and wage earners who are due refunds will receive them automatically, rather than having to apply for them as they will have done in the past. This includes an estimated 750,000 individuals who have been eligible for refunds but have not applied for them.

45 Inland Revenue's two principal websites are: <http://www.ird.govt.nz> and <http://taxpolicy.ird.govt.nz>.

46 See further: <http://www.ird.govt.nz/transformation/>.

47 See Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019, introduced on 29 June 2018, Assent 18 March 2019.

Work going forward, indirectly at least, includes efforts to distinguish between necessary (or fundamental) complexity and unnecessary complexity. Sherwood,⁴⁸ when in the role of head of the Office for Tax Simplification in the UK, defined necessary complexity as ‘the minimum complexity needed to deliver the broad policy aims’. Examples include: political/social aims; economic aims; fairness; certainty; avoidance measures, and the like. On the other hand, Sherwood provided examples of unnecessary complexity as: ‘poor policy design, (for example, artificial boundaries); too many special cases; badly worded law; poor guidance; complicated and expensive processes, etc’. Further discussion is necessary in order to achieve some form of consensus over what path(s) should be taken to reduce (unnecessary) tax. Budak *et al*⁴⁹ suggest that the Delphi technique should be applied to moving the discussion forward towards a consensus.

The most recent contribution comes from the New Zealand Government’s Tax Working Group, which publicly released its interim report on 20 September 2018 and its final report on 21 February 2019.⁵⁰ Specifically the New Zealand Government has the following objectives for the New Zealand tax system:⁵¹

- a tax system that is efficient, fair, simple and collectable;
- a system that promotes the long-term sustainability and productivity of the economy;
- a system that supports a sustainable revenue base to fund government operating expenditure around its historical level of 30% of Gross Domestic Product;
- a system that treats all income and assets in a fair, balanced and efficient manner, having special regard to housing affordability;
- a progressive tax and transfer system for individuals and families; and
- an overall tax system that operates in a simple and coherent manner.

The Tax Working Group was required to report to the New Zealand government on:⁵²

48 J Sherwood ‘Tax simplification in a complex world’, UNSW Business School Thought Leadership Lecture (2015), available at: <http://www.slideshare.net/JeremySherwood/1/thought-leadership-lecture-2015-jeremy-sherwood>.

49 T Budak *et al* ‘International experiences of tax simplification and distinguishing between necessary and unnecessary complexity’ (2016) 14(2) *eJournal of Tax Research* 337.

50 Tax Working Group *Future of tax: interim report* (September 2018), available at: <https://taxworkinggroup.govt.nz/resources/future-tax-interim-report>. Tax Working Group *Future of tax: final report* (February 2019), available at: <https://taxworkinggroup.govt.nz/resources/future-tax-final-report>.

51 See New Zealand Government *Tax Working Group – terms of reference* (23 November 2017), available at: <https://www.beehive.govt.nz/release/towards-fairer-tax-system-tax-working-group-terms-reference-announced>.

52 New Zealand Government (n 51 above).

- whether the tax system operates fairly in relation to taxpayers, income, assets and wealth;
- whether the tax system promotes the right balance between supporting the productive economy and the speculative economy;
- whether there are changes to the tax system which would make it more fair, balanced and efficient; and
- whether there are other changes which would support the integrity of the income tax system, having regard to the interaction of the systems for taxing companies, trusts, and individuals.

In examining these points, the Tax Working Group was requested to consider the following:⁵³

- the economic environment that will apply over the next 5-10 years, taking into account demographic change, and the impact of changes in technology and employment practices, and how these are driving different business models;
- whether a system of taxing capital gains or land (not applying to the family home or the land under it), or other housing tax measures, would improve the tax system;
- whether a progressive company tax (with a lower rate for small companies) would improve the tax system and the business environment; and
- what role the taxation system can play in delivering positive environmental and ecological outcomes, especially over the longer term.

In considering the matters above, the Tax Working Group was expected to have due regard to the overall structure of the New Zealand tax system to ensure it is fair, balanced and efficient, as *well as simple for taxpayers to understand and comply with their tax obligations*.⁵⁴

The following areas were expressed to be outside the scope of the Tax Working Group's review:⁵⁵

- increasing any income tax rate or the rate of the Goods and Services Tax;
- inheritance tax;
- any other changes that would apply to the taxation of the family home or the land under it; and
- the adequacy of the personal tax system and its interaction with the transfer system (this is part of a separate review of *Working for Families*).

53 New Zealand Government (n 51 above).

54 New Zealand Government (n 51 above) (emphasis added).

55 New Zealand Government (n 51 above).

In addition, the focus of the Tax Working Group was not to be on more technical matters already under review as part of the Tax Policy Work Programme, including:⁵⁶

- international tax reform under the Base Erosion and Profit Shifting agenda, and
- policy changes as part of the Inland Revenue's Business Transformation Project.

In its interim report the key recommendations for which consultation was sought are:⁵⁷

- *The taxation of capital income.* The Tax Working Group's work on capital income is not yet complete. The Interim Report sets out two potential options for extending capital income taxation: extending the tax net to include gains on assets that are not already taxed; and taxing deemed returns from certain assets (known as the risk-free rate of return method of taxation). Feedback on these options will inform the recommendations in the Group's final report in February 2019. The Tax Working Group is not recommending the introduction of wealth taxes or land taxes.
- *Environmental and ecological outcomes.* The Tax Working Group sees significant scope for the tax system to sustain and enhance New Zealand's natural capital. Short-term opportunities include expanding the Waste Disposal Levy, strengthening the Emissions Trading Scheme, and advancing the use of congestion charging.
- *Housing affordability.* The Tax Working Group has found that the tax system is not the primary cause of unaffordable housing in New Zealand but is likely to have exacerbated the house price cycle. The Group's forthcoming work will include consideration of the housing market impacts of the options for extending capital income taxation.
- *Goods and Services Tax.* The Tax Working Group is not recommending a reduction in the Goods and Services Tax, or the introduction of new Goods and Services Tax exceptions. Instead, the Tax Working Group believes that other measures (such as transfers) will be more effective in supporting those on low incomes.
- *Business taxation.* The Tax Working Group is not recommending a reduction in the company rate or the introduction of a progressive company tax. The Tax Working Group is still forming its views on the best ways to reduce compliance costs and enhance productivity.
- *The administration of the tax system.* The Tax Working Group has identified a number of opportunities to improve tax collection such as increasing penalties for non-compliance as well as recommending a single Crown debt collection agency to ensure all debtors are treated equally. A taxpayer

56 New Zealand Government (n 51 above). The current Tax Policy Work Programme can be found at: <http://taxpolicy.ird.govt.nz/work-programme>.

57 Tax Working Group 'Tax Working Group publishes interim report' media release (20 September 2018), <https://taxworkinggroup.govt.nz/resources/tax-working-group-publishes-interim-report>.

advocate service is also recommended to assist small businesses in disputes with Inland Revenue.

While it is not the purpose of this chapter to evaluate the Tax Working Group's reports, the initial public comment was mixed, ranging from relief that a number of key aspects of the New Zealand tax system will not be changed (for example, no exemptions from the Goods and Services Tax base), to disappointment that there is no clear direction with respect to the taxation of capital gains.

The 'picture' became clearer following the release of the Tax Working Group's final report in February 2019.⁵⁸ Amongst its recommendations, the Tax Working Group, by majority, set out a comprehensive capital gains tax proposal. This would be a realisation-based tax that is applied to capital gains on a broad range of assets, at full rates, with no allowance for inflation. A number of choices or options are provided to support the proposal.

The New Zealand Government released its response to the Tax Working Group's final report on 17 April 2019.⁵⁹ It outright rejected the proposal for a capital gains tax (or for the development of any alternative form of such a tax). A number of recommendations form part of the Government's Tax Policy Work Programme.⁶⁰ Recommendations from the Tax Working Group for no change to various aspects of New Zealand's tax system were accepted. In all, it would be fair to conclude that there will be little in the way of (significant) reform resulting from the Tax Working Group.

The chapter now moves on to examine tax simplification in South Africa.

3 Tax simplification in South Africa – what has been done and what needs to be done

3.1 An overview of the tax system in South Africa and its associated complexity

South Africa's tax system can be said to be a 'typically modern system' which in nature is complex and dynamic. Tran-Nam's conceptualisation of a complex tax system includes elements relating to processes, practices,

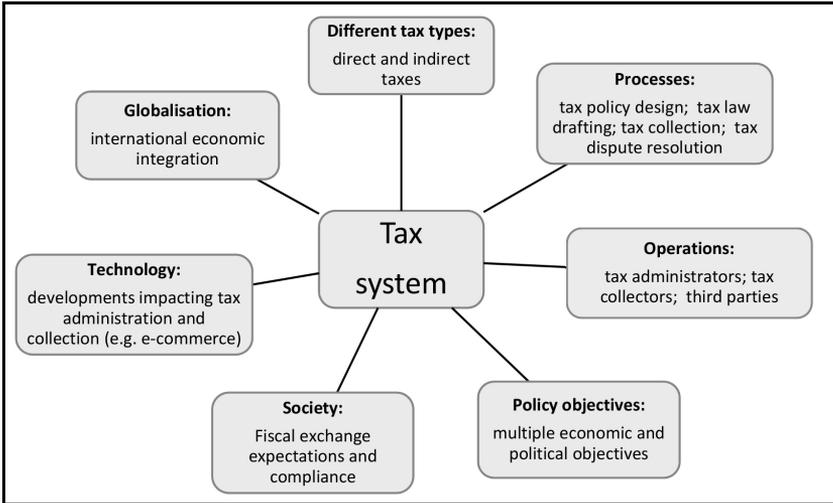
58 Tax Working Group *Future of tax: final report* (n 50 above), vol 1.

59 New Zealand Government, 'Government responds to TWG recommendations' *media release* (17 April 2019), available at: <http://taxpolicy.ird.govt.nz/news/2019-04-17-government-responds-twg-recommendations>.

60 See <http://taxpolicy.ird.govt.nz/work-programme>.

policy, society, and economic influences.⁶¹ Figure 1 provides a summary of how different factors contribute to the complexity of the tax system.

Fig. 1: Factors contributing to the complexity of a tax system



Source: Authors' illustration of Tran-Nam's conceptualisation of a complex tax system: B Tran-Nam 'Tax reform and tax simplification: conceptual and measurement issues and Australian experiences' in S James *et al* (eds) *The complexity of tax simplification: experiences from around the world* (2016) 11.

All the factors shown in Figure 1 are present in the South African environment and add to the complexity of the South African tax system. The South African tax system is briefly described below in the context of these factors.

Tax policy objectives reflect a government's commitment to promote equality and equity, and to provide funding for South African Government's efforts in supporting poverty alleviation and growth. It further aims to ensure that the tax system remains fair, efficient, equitable and progressive.⁶² Steyn and Stiglingh point out that tax policy objectives in South Africa are almost always focused on equity rather than efficiency

61 B Tran-Nam 'Tax reform and tax simplification: Conceptual and measurement issues and Australian experiences' in S James *et al* (eds) *The complexity of tax simplification: Experiences from around the world* (2016) 11.

62 South African Revenue Service *Annual report 2016-2017* (2017), available at: <http://www.sars.gov.za/About/Pages/Annual-Reports-and-Strategic-Plans.aspx>.

and administrative ease.⁶³ Tran-Nam argues that simplicity is ‘a desirable property of the tax system’ rather than an ultimate objective.⁶⁴

The South African Revenue Service (SARS) is South Africa’s tax collecting authority. Established in terms of the South African Revenue Service Act 34 of 1997 as an autonomous agency, it is responsible for administering the South African tax system and customs service.⁶⁵ National Treasury is responsible for drafting and amending South Africa’s taxation laws around tax policy matters, while SARS is responsible for drafting and amending administrative and customs laws. SARS meets frequently with National Treasury, the Department of Trade and Industry, the Department of Labour, the Department of Mineral Resources and tax practitioner organisations to help improve tax legislation and regulations.⁶⁶

Numerous taxes form part of the tax system. Although South Africa places a strong reliance on indirect taxes (approximately one-third of gross tax revenue), the primary source of tax revenue is direct taxes. In terms of revenue sources, personal income tax accounts for 37% of revenue, with value-added tax making up 25%. Company tax accounts for 18%, followed by the fuel levy (6%), customs duties (4%), other sources (4%), excise duties (3%) and dividend tax (2%) for the 2016/17 fiscal year.⁶⁷

SARS’ operations involve relations and partnerships with taxpayers, traders, intermediaries and third-party data providers. South Africa’s tax register continues to grow annually. The 2017 tax statistics show that South Africa had almost 20 million individuals registered as taxpayers – an increase of 4.7% from 2016. Most individuals receive their income as salaries or wages (69.6%), pension or annuity payments and investment income (interest, taxable dividends or capital gains). Some individuals may also have business income collected as provisional tax. Income tax (Pay-As-You-Earn) is withheld from employed individuals with employers acting as agents to withhold and remit employees’ tax to SARS. Close to 490,000 employers were registered for Pay-As-You-Earn in 2017 – an increase of 6.9% from 2016. The number of vendors registered for value-added tax also increased by 5% from the previous year to just more than 742,000 vendors in 2017. Added to this, companies and trusts registered for income tax amount to more than 3.7 million and 345,000, respectively in 2017.⁶⁸

63 T Steyn & M Stiglingh ‘The complexity of tax simplification: Experiences from South Africa’ in S James *et al* (eds) *The complexity of tax simplification: Experiences from around the world* (2016) 157.

64 Tran-Nam ‘Tax reform and tax simplification’ (n 4 above) 514.

65 South African Revenue Service ‘What SARS does’, available at: <http://www.sars.gov.za/About/Pages/default.aspx> (accessed 26 May 2019).

66 SARS *Annual report 2016-2017* (n 62 above).

67 SARS *Annual report 2016-2017* (n 62 above) 77.

68 National Treasury and the SARS *2017 tax statistics* (2017), available at: <https://www.sars.gov.za/About/SATaxSystem/Pages/Tax-Statistics.aspx>.

Technology as a factor impacting tax system complexity is a reality in South Africa, both as an external factor influencing the type and complexity of transactions and an internal factor influencing the way SARS operates and communicates with taxpayers, intermediaries and third-party data providers. Cross border e-commerce or online platforms facilitating transactions continue to expand worldwide.⁶⁹ SARS' 2016 strategic plan refers to a 2015 study commissioned by First National Bank and PayPal that reveals that almost 80% of online shoppers in South Africa could be 'cross-border shoppers in the coming years'.⁷⁰ As an internal factor, the use of technology solutions to detect and combat tax crimes, to improve communication and services to taxpayers and to interact with third parties means that SARS continuously needs to enhance its information services and technology infrastructure.⁷¹ Recently, the IT Strategy Executive of SARS, Andre Rabie, claimed that their IT infrastructure and the technology used for the e-filing platform is outdated and that a crash is imminent. For reasons still unknown, the modernisation programme was 'put on ice' in 2014 and Rabie estimates that it will cost approximately ZAR 1 billion to fix problems with the revenue service's digital systems.⁷²

Global tax concerns and international trade also affect South Africa's tax environment. The use of sophisticated schemes by multinational corporations to exploit gaps and mismatches in local tax legislation and to avoid or minimise tax obligations in countries where they operate is a continuing phenomenon globally.⁷³ These complex schemes require specialised skills and add to the complexity of tax administration. Further to this, 'the frequency and complexity of foreign deals, sometimes between several multi-national parties, are likely to increase compliance time substantially and attract additional audits and need for supporting documentation'.⁷⁴

'Society' as a factor impacting the tax system relates to the culture of compliance (or non-compliance) of taxpayers. South Africans have mostly been praised for their high tax morale, as is evident from some previous years' budget speeches by the Minister of Finance and in the SARS annual reports. But recently, a number of high-profile economists and analysts

69 Organisation for Economic Cooperation and Development (OECD) *Tax challenges arising from digitalisation – interim report*, Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project (2018).

70 SARS *Strategic plan 2016/17–2020/21* (2017) 24, available at: <http://www.sars.gov.za/About/Pages/Annual-Reports-and-Strategic-Plans.aspx>.

71 SARS *Strategic plan 2016/17–2020/21* (n 70 above).

72 See B Bateman 'Nugent Commission hears SARS IT infrastructure inadequate, outdated' *Eyewitness News* (16 October 2018), <https://ewn.co.za/2018/10/16/nugent-commission-hears-sars-it-infrastructure-inadequate-outdated> (accessed 26 May 2019).

73 SARS *Strategic plan 2016/17–2020/21* (n 70 above).

74 E Retief, quoted in South African Institute of Professional Accountants 'SA fares well in World Bank and PWC Paying Taxes 2018 report' (12 December 2017), available at: <https://www.saipa.co.za/sa-fares-well-world-bank-pwc-paying-taxes-2018-report/> (accessed 26 May 2019).

have remarked on the slippage in tax compliance and tax morale by South Africans. For example, in April 2018, then Finance Minister Nhlanhla Nene said that tax compliance was at levels last seen during the 2008-09 financial crisis.⁷⁵ At the same time, SARS acting Commissioner Mark Kingon said that compliance is of deep concern to SARS. He remarked that tax compliance is partly driven by perceptions with regard to SARS and perceptions of the country, although economic factors also play a role in the lower tax compliance currently seen. The same sentiment was also expressed by Kyle Mandy, Head of Tax Policy at PricewaterhouseCoopers South Africa.⁷⁶ Kingon indicates that the focus for SARS was to restore credibility after the President of South Africa, Cyril Ramaphosa, suspended the SARS Commissioner in March 2018 as a result of a loss of confidence in the Commissioner's ability to lead SARS. Edward Kieswetter was appointed as Commissioner for SARS on 1 May 2019. He has past experience as Deputy Commissioner of SARS between 2004 and 2009.

Adding to this dissatisfaction with the revenue service (and thus creating additional concerns for the tax administration) is the fact that a Commission of Inquiry into tax administration and governance at SARS is currently underway. The Commission, headed by Judge Robert Nugent, is investigating allegations of financial misconduct at the tax service⁷⁷ and to date has heard a range of evidence from SARS employees, the office of the Tax Ombud and senior officials from National Treasury.

In the 2018 Budget Review compiled by National Treasury, it is stated that corruption and wasteful expenditure in the public sector have eroded taxpayer morality in recent years. The social contract between taxpayers and the state has also suffered because of a lack of timely government response to allegations of corruption and poor governance.⁷⁸

It appears that the South African tax system is indeed complex owing to a variety of factors. It remains to be seen if and how some of these complexities can be addressed. During the 2013/14 Budget Speech delivered by the then Minister of Finance, it was announced that government will initiate a tax review '... to assess our tax policy framework and its role in supporting the objectives of inclusive growth,

75 S Menon 'Low tax compliance troubles SARS' *BusinessDay* (4 April 2018), available at: <https://www.businesslive.co.za/bd/national/2018-04-04-low-tax-compliance-troubles-sars/>.

76 Menon (n 75 above).

77 South African Government 'Commission of Inquiry into tax administration and governance by the South African Revenue Service' Proclamation 17 of 2018 by the President of the Republic of South Africa, 23 May 2018, Government Gazette No 41652 (24 May 2018), available at: https://www.greengazette.co.za/notices/constitution-of-the-republic-of-south-africa-1996-commission-of-inquiry-into-tax-administration-and-governance-by-the-south-african-revenue-service-sars_20180524-GGN-41652-00017-01.pdf.

78 National Treasury *Budget review* (2018), available at: www.treasury.gov.za.

employment, development and fiscal sustainability'.⁷⁹ The Committee should also evaluate the South African tax system against international tax trends, principles and practices, as well as recent international initiatives to improve tax compliance, amongst other things.⁸⁰ The Committee, the Davis Tax Committee, completed its work by the end of 2017, and tabled several reports before Parliament.⁸¹

In the 2014 SARS Strategic Plan, South Africans were promised that tax compliance would become easier. SARS aimed to achieve this by 'simplifying the tax code and tax return forms, simplifying our internal processes, and making more efficient and cheaper service channels available'.⁸² The next sections of the chapter now provide a brief review of some simplification efforts in the last decade in South Africa as they pertain to legislation (section 3.2), tax administration (including efforts to reduce compliance cost – section 3.3) and taxpayer communication (section 3.4).

3.2 Statutory simplification: complexity of the South African Income Tax Act 1962

3.2.1 General

The South African Income Tax Act 1962 (Act 58 of 1962), as amended (Income Tax Act), is just that: a single Act of Parliament (that was assented to and commenced in 1962) that has been regularly amended (by more than 100 amending Acts of Parliament and Government Notices) since 1962. Effectively, this means that if a taxpayer was to attempt to ensure accuracy and that the taxpayer was relying on the official, 'correct' version of the Income Tax Act (as duly promulgated by South Africa's legislature), such a taxpayer would need to be able to access not only the original 1962 Act, but all of the amending Acts (and Government Notices) that amend that original 1962 Act. Whilst there are a number of publishers which, from time to time (that is, usually annually and based on annual legislative amendments) publish a consolidated version of what the Income Tax Act could look like were it to be officially consolidated (for example, by an Act of Parliament), there exists no single official, 'correct' version of the Income Tax Act that is packaged in an easily accessible volume.

79 Hon P Gordhan (Minister of Finance) *2013 budget speech* (27 February 2013), available at: www.treasury.gov.za/documents/national%20budget/2013/speech/speech.pdf.

80 Tax Review Committee (Judge D Davis, chair) (Davis Tax Committee) *Terms of reference* (2013), available at: <http://www.taxcom.org.za/termsofreference.html>.

81 Davis Tax Committee *Closing report* (March 2018), available at: <http://www.taxcom.org.za/library.html>.

82 South African Revenue Service *Strategic plan 2014/15–2018/19* (2014) 18, available at: <http://www.sars.gov.za/About/Pages/Annual-Reports-and-Strategic-Plans.aspx>.

Clearly, accessing the official, 'correct' version of the Act is, for all intents and purposes, not practically possible. The effort involved in managing over 100 separate Acts for a taxpayer simply to ensure that he or she is reading the official version of a particular provision (introduced in, say, 2014) that is, for example, part of a section originally introduced by the original 1962 Act, would be so time consuming and full of opportunity for error as to be fruitless.

As a consequence, tax practitioners, academics, business people or government officials who wish to determine the tax treatment of a particular transaction will invariably rely on the one or more commercially available 'consolidated' versions of the Income Tax Act. Whilst this is not only convenient but also necessary, there are few who fully appreciate that what they are using is, effectively, a publisher's view of what the Income Tax Act would look like if it were to be officially consolidated.

3.2.2 'Unofficial' consolidation

The process of commercial, 'unofficial' consolidation described above gives rise to a number of problems. First, little or no account is taken of the fact that errors may have been made by the editors in performing any specific consolidation. Moreover, because no one relies on official versions of the amending Acts (and, to the extent that use is made of the amending Acts, this only takes place out of necessity during the period between the time that the amending Act is introduced in Parliament and the time that the amending Act is – unofficially – consolidated into the already-consolidated publisher's versions of the Income Tax Act), consolidation errors are invariably never detected. Once unofficially consolidated, these errors are perpetuated, invariably permanently.

3.2.3 The age of the Income Tax Act

A great deal of the complexity of the Income Tax Act arises simply as a result of its age. In order to remain effective, fiscal legislation needs to undergo frequent amendment. This is not only a result of the need to ensure that avoidance practices are adequately dealt with, but also simply to keep pace with changing commercial practices and a constantly evolving business environment. More than 100 different amending instruments – each not only potentially adopting its own style and conventions, but also potentially being underpinned by different policy objectives – have amended the Income Tax Act since 1962.

Frequent amendment over a lengthy period, in itself, should not give rise to complexity. However, when the length of the period is 56 years and little systematic and coordinated attempt is made during that period to consolidate the legislation and ensure uniformity, complexity increases almost exponentially.

Thus, the Income Tax Act reflects a plethora of different styles and conventions. Over the course of almost 60 years, many people (and groups of people, with different objectives and interests) have been involved in drafting and editing the Income Tax Act. Different conventions and different styles have been used in drafting provisions. It is the authors' view that many provisions appear to have been inserted into the Income Tax Act without any thought having been given to the overall structure and ordering of the Act (often, where a particular provision is inserted it is arguably based solely on convenience).

3.2.4 The approach of the South African Revenue Service to avoidance and enforcement⁸³

For a number of reasons, SARS has often taken the approach of settling disputes with taxpayers before a judicial decision is made and published. There are many reasons for this: SARS may not have sufficient evidence or (due to circumstances beyond its control) may not have prepared adequately for the matter, and therefore may not wish to risk losing the matter in court. It will therefore settle the matter with the taxpayer in order to safeguard at least some revenue (as opposed to losing the matter in court and thereby realising no revenue). In any litigious process (whether the process involves the application of fiscal legislation or not), simple prudence and economics dictate that litigants should weigh up the risk of losing in court and should act accordingly.

There are, however, circumstances in which settlement of a dispute with a taxpayer could, at least indirectly, result in complicating the Income Tax Act. For example, where the dispute involves an issue of interpretation, SARS might not be willing to pursue the matter until judgment is obtained and an appropriate judicial decision published. SARS might not wish an interpretive position adopted by a taxpayer to be upheld in court: other taxpayers would, on publication of the decision, be entitled to apply the decision to their tax matters. The net effect is that uncertainty is maintained, with a dearth of judicial involvement in the development of law and a shortage of the judicial provision of interpretive tools and guidelines.

In a similar vein, there are instances in which legislation has been 'over-drafted' (that is, drafted with a view to covering every single possible scenario of avoidance), in order to minimise the possibility of adverse judicial findings against SARS (as opposed to drafting in a simpler manner, which opens the possibility of such adverse judicial findings).

83 The comments in this subsection draw upon the professional experience of the third author.

3.2.5 *The Income Tax Act as a policy tool*

As is the case in almost all jurisdictions, the South African tax system is used to address market failures and advance non-fiscal policy objectives. Whilst political involvement and the efficiency of the tax system have been the main drivers behind such interventions and whilst it is inevitable that this will take place in any tax system, its effect on the complexity of legislation should not be underestimated.

3.2.6 *What has been done?*

As a first, and – arguably overdue – significant step in simplification of South Africa’s Income Tax legislation, the Tax Administration Act 28 of 2011 (Tax Administration Act), commenced operation on 1 October 2011. The Tax Administration Act is both a principal Act (that is, it introduced its own provisions and is a ‘stand-alone’ Act) and an amendment Act (that is, of the Income Tax Act and other fiscal Acts, by removing most procedural and administrative provisions from the Income Tax Act and other fiscal Acts). As such, the Tax Administration Act (simply by removing administrative provisions from the Income Tax Act and the other fiscal Acts so that they can be placed in one single Act) constitutes a significant step towards the overall simplification of South African fiscal legislation.

3.3 Tax administration

When countries embark on processes to reform and modernise their tax system, it is important that the rules of tax administration are in place. This is to ensure certainty and procedural fairness for taxpayers, as well as ensuring that the tax agency has the necessary powers to carry out its tax collection responsibilities.⁸⁴

The Tax Administration Act was introduced in 2011 in South Africa with the intention to simplify and provide greater coherence in South African tax administration law: a media report at the time noted that the Act ‘eliminates duplication, removes redundant requirements and aligns disparate requirements that currently exist in different tax Acts ranging in age from four to sixty-three years old. It creates a single, modern framework for the common administrative provisions of the tax Acts’.⁸⁵

84 M D’Ascenzo ‘Global trends in tax administration’ (2015) 1(1) *Journal of Tax Administration* 81.

85 SAnews ‘New bill to simplify SA tax administration law’ (5 July 2012), <https://www.sanews.gov.za/south-africa/new-bill-simplify-sa-tax-administration-law> (accessed 26 May 2019).

3.3.1 Compliance burden and ease of paying taxes

In order to efficiently and effectively administer the tax system, the tax agency usually needs to be sufficiently modern in its use of technology. Electronic filing of tax returns reduces the time and cost required to comply with tax obligations and can also lead to fewer errors being made on a return. Electronic systems for filing and paying taxes have become common worldwide and, by 2016, 92 jurisdictions had fully implemented electronic filing and payment of taxes.⁸⁶ South Africa is still one of the leaders when it comes to the number of tax payments made, due to the widespread use of electronic payments.⁸⁷

In its *Paying Taxes 2018* report which analyses data on tax systems of 190 countries, PwC shows that it takes the case study company 240 hours to comply with profit, labour and consumption taxes, and that it needs to make 24 tax payments annually. The number of payments to be made is an indicator of developments in online filing and payment. For South Africa it is reported that it takes a company on average 210 hours to comply and that seven tax payments need to be made.⁸⁸ This compares well with the rest of Africa, with the number of hours and number of payments well below the regional average of 285 hours and 34 payments and also compares well with other regions worldwide.

A post-filing index has been included in the *Paying Taxes* report since 2017 which looks at the process for claiming a value-added tax refund and correcting an error in a corporate tax return. The efficiency of these processes is scored using the post-filing index, with a score from 100 to 0, with 100 the most efficient and 0 the least efficient. The world average is 59.51.⁸⁹ South Africa scores 55.4, which places it below the world average and well below New Zealand which scored 96.9. The main contributor to the relatively weak performance in South Africa in this regard is the value-added tax compliance time of 8.5 hours (New Zealand – 2 hours), value-added tax waiting time of 26.6 weeks (New Zealand – 5.2 weeks) and company income tax compliance time of 11 hours (New Zealand – 4 hours).

An alarming discovery by the Nugent Commission with regard to value-added tax refunds is the allegation that SARS frustrated taxpayers by arbitrarily delaying tax refunds, particularly during the months preceding

86 PricewaterhouseCoopers (PwC) *Paying taxes 2018* (2018), available at: <http://www.pwc.com/payingtaxes>.

87 PwC South Africa 'Tax compliance gets easier, but new data highlights post-filing challenges' (2017), available at: <https://www.pwc.co.za/en/press-room/tax-compliance-gets-easier.html> (accessed 26 May 2019).

88 PwC *Paying taxes 2018* (n 86 above) 14.

89 PwC *Paying taxes 2018* (n 86 above) 6.

the end of each tax year since 2014.⁹⁰ These allegations were made by the Eric Mkhawane, Chief Executive Officer at the office of the Tax Ombud, as he revealed numerous cases where SARS was withholding tax refunds pending bank account verifications – despite a taxpayer having used the same account for years. In a sample analysis of the cases of refunds withheld by SARS they found that in all these cases refunds were delayed with more than 60 days, with the reasons for these delays being unclear.

SARS' filing and payment systems are generally regarded as user friendly and not overly time consuming. The primary area where improvement could be made is on corporate income tax, where South Africa's time to comply is above the world and Africa averages as a result of significant preparation time required before filing a return.⁹¹ The other area of concern highlighted in this section is the delays in refunds by SARS, which was also pointed out as a systemic issue by the Tax Ombud.⁹²

A systemic issue may exist when a trend in taxpayer complaints is observed and which is believed to possibly impact a large number of taxpayers or a segment of the population. These issues may be as a result of the way specific systems at SARS function; the way policies and procedures are drafted and implemented, or the way in which legislative provisions are applied (or disregarded) by SARS. Some of the issues identified by the Office of the Tax Ombud are the following:

- Incorrect allocation by SARS of payments made by taxpayers – which then results in a debt recorded for some taxpayers.
- Employers' non-compliance with legislation relating to issuing of employees' tax certificates – this results in taxpayers (employees) then being sent back and forth between SARS and the employers. It was also found that SARS branches are inconsistent in following procedure in attending to these matters.
- Inconsistent timelines provided to taxpayers for finalisation of audits or verifications and extension of turnaround times after expiry of initial timeline.
- Issues with the live tax compliance system that causes undue hardship to various taxpayers due to the way the system was designed.
- Delays by SARS in updating of banking details have resulted in refunds being paid into wrong bank accounts.
- Taxpayers' eFiling profiles are hijacked by fraudsters which then altered banking details, filed fraudulent returns and created refunds. This could

90 T Tshwane 'SARS deliberately withheld tax refunds, Nugent Commission hears' *Mail & Guardian* (24 August 2018), available at: <https://mg.co.za/article/2018-08-24-sars-deliberately-withheld-tax-refunds-nugent-commission-hears> (accessed 26 May 2019).

91 PwC *Paying taxes 2018* (n 86 above).

92 Office of the Tax Ombud *Brochure on systemic issues* (2018), available at <http://www.taxombud.gov.za/Publications/Pages/default.aspx>.

then create unintended tax debts for taxpayers if not identified as such by SARS.

3.3.2 General tax administration simplification efforts

If concerns about refunds, tax audits, lack of communication from the tax authority and other systemic issues as pointed out above could be timeously addressed, it may assist in making it easier for taxpayers to comply. Two recent efforts to this effect are the establishment of the Office of the Tax Ombud and the release of the Service Charter of the South African Revenue Service.

The Office of the Tax Ombud was established in October 2013 in terms of sections 14 and 15 of the Tax Administration Act to enhance the tax administration system as an independent channel of redress for taxpayers who had exhausted the normal SARS complaints processes.⁹³ In the foreword to the 2016/17 Tax Ombud Annual Report, the Minister of Finance states that the Office of the Tax Ombud is 'central to the social contract between government and citizens'⁹⁴ – referring to the fact that the Tax Ombud should ensure that citizens are treated fairly by the tax authority.

Section 16(1) of the Tax Administration Act spells out the Tax Ombud's mandate as being to:

- a) Review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a Tax Act by the South African Revenue Service ('SARS'); and
- b) Review, at the request of the Minister or at the initiative of the Tax Ombud with the approval of the Minister, any systemic and emerging issue related to a service matter or the application of the provisions of the Tax Administration Act or procedural or administrative provisions of a Tax Act.

The long-awaited Service Charter of the South African Revenue Service was released finally early in July 2018. The Charter outlines taxpayers' rights and responsibilities, as well as service standards they can expect from the agency.⁹⁵

Another effort that could enhance interactions between taxpayers and tax authority is a taxpayer bill of rights. Although the Davis Tax

93 Office of the Tax Ombud 'About us', <http://www.taxombud.gov.za/AboutUs/Pages/default.aspx> (accessed 26 May 2019).

94 Office of the Tax Ombud *Tax Ombud annual report 2016/17* (2017), available at <http://www.taxombud.gov.za/Publications/Pages/default.aspx>.

95 South African Revenue Service *Service charter* (July 2018), available at: <http://www.sars.gov.za/About/Pages/Service-Charter.aspx> (accessed 26 May 2019).

Committee has recommended that a taxpayer bill of rights be adopted, SARS has not published such a document to date. A taxpayer bill of rights would 'guarantee' taxpayers' rights in their interactions with SARS and make SARS responsible in its dealings with taxpayers.⁹⁶

3.4 Taxpayer communication

The Davis Tax Committee highlighted the importance of communication with taxpayers in their closing report, stating that 'taxpayers need assurance and indications that their taxes are being spent prudently and invested in the best interests of the country'.⁹⁷ Judge Bernard Ngoepe, the Tax Ombud of South Africa, believes that SARS has gone to great lengths to show taxpayers how their taxes have been used to benefit society. He maintains that this heightens a sense of civic and moral duty and demonstrates to taxpayers that they too would stand to benefit.⁹⁸

In 2017, SARS and National Treasury jointly published the 10th edition of the Tax Statistics publication marking ten years of increased effort by the tax authority to improve communications with taxpayers and the broader society.⁹⁹ The publication includes detailed tables on revenue collection and data pertaining to all the major tax types for the past ten years, providing data on the key trends of the past decade.¹⁰⁰ Illustrative graphics provide summarised descriptions of numbers of taxpayers, channels of payment, cost of collecting taxes, etc. However, it does not provide detail on how the tax system has contributed to South Africa's fiscal health and socio-economic development – in other words the spending of tax revenue by government.

Detail on how tax revenue is spent is usually found in the budget speech and published 'budget highlights brochures' by various entities such as newspapers and professional bodies. SARS also published a brochure with 'budget highlights' for the first time in 2018, a one-page information sheet explaining changes in tax rates and also displaying three informational graphics titled: 'Where is the money coming from?'; 'Where is the money going to?', and 'Providing social support to the poor'.¹⁰¹ This

96 Davis Tax Committee *Final report on tax administration* (September 2017), available at: <http://www.taxcom.org.za/library.html>.

97 Davis Tax Committee *Final report on tax administration* (n 96 above).

98 B Ngoepe 'Ethical behaviour by taxpayer and tax collector' Address by the Tax Ombud at the 6th Annual FISA Conference – 2016: Johannesburg (25 August 2016), available at <http://www.taxombud.gov.za/Media/Pages/default.aspx> (accessed 26 May 2019).

99 National Treasury and SARS *2017 tax statistics* (n 68 above).

100 SARS 'National Treasury and the South African Revenue Service release the 10th annual edition of tax statistics' media release (12 December 2017), <http://www.sars.gov.za/Media/MediaReleases/Pages/12-December-2017---Tax-statistics%20for%202017.aspx> (accessed 26 May 2019).

101 SARS *Budget tax guide* (2018), available at: <http://www.sars.gov.za/About/SATaxSystem/Pages/Budget-Speeches.aspx>.

is all in plain language and easy to understand. But the document is a little hidden on the SARS website.

A report on citizen engagement and public financial management makes an important observation on the type of information demanded by citizens, namely: '[p]eople need to understand the link between what is spent and what services actually get provided'.¹⁰² It can be argued that provision of this kind of information to citizens is not the role of SARS, but given the risk of non-compliance because of dissatisfaction with service delivery by government it could be a more prominent feature in SARS' communications with taxpayers.

It is clear that SARS is making use of technology to enhance taxpayer communication, although engagements with taxpayers may still take place through more than 50 branches located countrywide, 21 mobile tax units and a contact centre. During the 2017 tax year, more than 6.7 million walk-ins were serviced at SARS branches and 6.5 million telephone calls were handled, while almost 500,000 taxpayers were serviced through mobile tax units. SARS also held free tax education workshops which were attended by more than 200,000 people.¹⁰³ On the e-filing platform, personal income tax filing of returns had a 53% uptake and, although taxpayers can also interact online with a consultant, a study found that taxpayers' fear of making mistakes, forgetting login details, being unable to upload supporting documents, and fear of fraud, scams and the lack of access to the internet are factors that contribute to taxpayers reluctance to use eFiling.¹⁰⁴

A SARS eFiling App and MobiSite are also available to taxpayers who want to file their personal income tax return from their mobile devices. Mobisite is accessible to blind and visually impaired taxpayers. The app may be also be used to view a notice of assessment and the tax statement of account and has a tax calculator, but users cannot register for eFiling on Mobisite or the app. Taxpayers first have to register for eFiling on a desktop or laptop and, once the registration is successful, they can continue using either the eFiling App or the SARS Mobisite. As stated earlier, there may be a threat of collapse of SARS' IT structure because of outdated IT infrastructure and urgent reform is needed in this regard.

On its website SARS publishes interpretation notes, guides, frequently asked questions and brochures for different taxpayer segments and tax types. SARS' legal advisory services also finalised 330 binding rulings and

102 Grant Thornton *Citizen engagement and public financial management: The pivotal role of public sector financial leaders in advancing public participation in government policy and performance* (2017), available at: https://www.granthornton.co.za/globalassets/1.-member-firms/south-africa/pdfs/citizen-engagement-and-public-financial-management_301117_online-spreads.pdf (accessed 26 May 2019).

103 SARS *Annual report 2016-2017* (n 62 above).

104 SARS *Annual report 2016-2017* (n 62 above) 62.

805 non-binding rulings in the 2017 tax year and, by so doing, provide clarity and certainty to taxpayers on the interpretation of tax legislation.

In the 2016/17 Annual Report of the Tax Ombud, a summary of the most serious issues investigated mentions a number of times the lack of communication by SARS with taxpayers. In some cases, it appears that there was no communication from SARS and in other cases communications were incomplete or inconsistent.¹⁰⁵ These cases relate to, for example, the revising of an assessment without issuing a letter of findings or any prior communication to the taxpayer.

4 Principles and lessons from the New Zealand case study experience

Following on from the discussion in the previous section of tax simplification in South Africa, this section of the chapter now seeks to draw together the principles and lessons from New Zealand's simplification experience, which will then be applied to South Africa in section 5.

In reviewing the New Zealand experience, there is much to indicate that, to the extent New Zealand sought to rewrite its income tax legislation, it is the closest to best practice for the three jurisdictions that have undertaken this exercise (specifically Australia, New Zealand and the UK). Major points of good practice were:

- the coordinated process of reorganising existing material first (in addition to taking a staged process);
- setting up the Rewrite Advisory Panel to deal with (potential) unintended policy changes;
- employing a fully consultative process; and
- completing the project (at least with respect to the income tax legislation).

That is not to say that there could have been improvements, including:

- setting a realistic timeframe and budget;
- dealing with related major policy issues concurrently;
- focusing on areas of unnecessary complexity; and
- undertaking rewriting of other major statutes, including the Tax Administration Act 1994 and Goods and Services Tax Act 1985.

Most importantly, the key aim of the simplification exercise was limited to what Tran-Nam defines as 'legal simplicity', namely how difficult a tax

105 Office of the Tax Ombud *Tax Ombud annual report 2016/17* (n 94 above).

law is to read and understand.¹⁰⁶ Rather, it should have been broader to encompass ‘effective simplicity’, namely how easy it is to determine the correct tax liability. Focusing on effective simplicity would have necessitated a very different project than that undertaken. The focus would have been on how to make the determination of a taxpayer’s correct liability simpler, which may not have necessitated extensive legislation rewriting. The reorganisation step would almost certainly have been a key part of effective simplicity. Clarity around major policy issues would almost inevitably be included, as would improving the tax administration interface, which is part of the current Business Transformation Project.

An effective approach to tax simplification is multi-faceted. As Budak *et al* state, this requires:¹⁰⁷

- 1 Simplification of tax systems.
- 2 Simplifying tax law.
- 3 Simplifying taxpayer communications.
- 4 Simplifying tax administration.
- 5 Longer term or more fundamental approaches to simplification.

New Zealand’s experience has been successful at point 2 above, with some more recent attempts to be successful at points 1, 3, 4 and 5. It will be several years before an accurate assessment can be made as to whether New Zealand has in overall terms been successful or not.¹⁰⁸ What also needs to be recognised is that New Zealand as a developed nation has a clear advantage over most developing countries, regardless of their size, through the resources it has available in the form of skilled staff, availability of technology, and a high level of trust between the government and taxpayers and tax advisers. These simplification efforts started well before the rewrite project. The reforms of the 1984 Labour Government (known as the Douglas reforms) were pivotal when, for example, the goods and services tax was introduced in a model which continues to serve as the global benchmark, along with the Broad Base Low Rate approach. It should also be recognised that the size and scale of New Zealand’s economy and tax system has contributed to the outcome, as it is easier to effect change when the scale is small. As Sawyer concludes:¹⁰⁹

106 Tran-Nam ‘Tax reform and tax simplification’ (n 4 above).

107 Budak *et al* ‘International experiences of tax simplification’ (n 49 above) 353.

108 S James & A Sawyer ‘Digitalization of tax: Comparing New Zealand and United Kingdom approaches’ Paper presented at the 13th International Tax Administration Conference, UNSW Sydney, 5-6 April 2018.

109 Sawyer ‘Complexity of tax simplification’ (n 25 above). See also recent changes introduced through Inland Revenue, *Tax and social policy engagement framework* (August 2019).

What is apparent is that there has been a *strong, sustained and largely unified commitment to reform, both on the part of both politicians and of policymakers.* Furthermore, having a *unicameral Parliament has been influential* in this regard, and the change to a MMP election process has challenged, but not hindered, the tax simplification process. *The level of consultation and the willingness of officials and the New Zealand Government to make modifications in the light of reasoned argument, especially from tax practitioners, have been features of the process.* This is underpinned by the GTPP, which has served the tax policy development process well over the last 20 years.

From an institutional theory perspective, the extent of influence of the New Zealand Government (the Executive), in conjunction with key stakeholders in the development of tax policy (especially that of tax practitioners and their associated professional bodies) is clear in the simplification experience reviewed in this case study. This is buttressed by the twin pillars of transparency and consultation that underpin the Generic Tax Policy Process, along with the continued adoption of the Broad Base Low Rate tax policy framework developed in the late 1980s as part of the Douglas reforms.

One area where complexity remains, and no doubt will continue to increase, is in regard to cross-border taxation base protection measures, including obligations by multinational enterprises and wealthy individuals to respond to exchange of information requests and additional audit activity. This has increased especially in a post-Base Erosion Profit Shifting world and the implementation of various recommendations made by the OECD/G20 as part of the recent Base Erosion and Profit Shifting Project.

5 Evaluation of the principles and lessons for potential application in South Africa

In the previous section, the key principles and lessons from the New Zealand simplification experience were summarised. Unsurprisingly, if New Zealand had the opportunity to undertake its tax rewrite project again it would do some things differently. We would also suggest that, rather than undertake this form of legislative simplification in isolation, it would be preferable for other countries to evaluate whether to undertake effective simplification. That is, undertake a legislative rewrite in some form, in conjunction with addressing significant policy issues and potentially also an overhaul of the administration system (as is currently underway in New Zealand through the Business Transformation Project).

The New Zealand experience does offer sage advice – it is very easy to underestimate the time and cost involved in rewriting legislation as part of seeking legislative simplification. Extending this to concurrently

incorporate effective simplification increases the overall risk of larger budget overruns and a failure to adequately complete the exercise.

For a small developed jurisdiction such as New Zealand, which has a relatively simple tax system (for instance, there is no issue over a federal versus state divide), such a combined exercise would be a massive challenge to undertake. From the perspective of a larger developing jurisdiction such as South Africa, which itself has been undergoing significant tax reform (as detailed in section 3), a combined legislative rewrite with significant tax administration overhaul would most likely be a 'bridge too far'. Indeed, New Zealand's legislative rewrite was undertaken in stages and, in our view, remains incomplete with both the Goods and Services Tax Act 1985 and Tax Administration Act 1994 not having undergone a much needed rewrite.

Before contemplating any form of tax simplification, a jurisdiction should evaluate the effectiveness of its policy development and legislative review processes to ascertain whether they are likely to facilitate the best possible outcome. In this regard, New Zealand's Generic Tax Policy Process is exemplary and continues to serve New Zealand extremely well with respect to tax policy development and implementation. As has been written elsewhere by one of the current authors, the Generic Tax Policy Process is not necessarily transportable as it was developed to serve New Zealand's requirements.¹¹⁰

The principles underlying the Broad Base Low Rate policy model that have applied since the late 1980s have also served the tax rewrite and policy reform agenda well. Specifically, the pillars of efficiency, simplicity and equity have underpinned the tax reform agenda, ensuring in most instances, as far as is practical in meeting specific policy aims, that the legislation has avoided much of the complexity that accompanies the inclusion of extensive legislative exemptions and overly complex policy ideals. In this regard, South Africa should take time to revisit its core tax policy principles and philosophy to ascertain whether these are 'fit for purpose'.

How is South Africa progressing, in our view, with its approach to tax simplification? In terms of statutory simplification, South Africa is moving in the right direction with the major overhaul undertaken (similar to New Zealand's reorganisation phase of its tax rewrite). What remains to be seen is whether a rewriting of the legislation will be undertaken to improve understandability. New Zealand's experience will be informative in this regard. With respect to tax administration, South Africa is making good progress but there remains much to be done, including reducing the

110 Sawyer 'Complexity of tax simplification' (n 25 above). See also recent changes introduced through Inland Revenue, *Tax and social policy engagement framework* (August 2019).

compliance burden for taxpayers. To be fair, virtually all jurisdictions (including New Zealand) could do more in this area.

The legislative amendments to the Office of the Tax Ombud's powers are very new and, as such, it is too early to evaluate their effectiveness. This is a feature of the South African tax system that New Zealand should be watching closely given New Zealand does not have a dedicated tax ombudsman or any statutory office that has oversight of the tax system outside of Inland Revenue. The establishment of the South African Revenue Service Charter is also very new – its effectiveness needs to be evaluated over the next one or two years. Finally, while South Africa has not developed a taxpayers' bill of rights (which is a critical measure in our view to protecting South Africa taxpayers), New Zealand does not have one either, despite calls that have been made for one.¹¹¹ The current Inland Revenue Charter is much like the South African Revenue Service Charter, being a service agreement with largely unenforceable rights. Similar to New Zealand, South Africa will face additional complexity as it addresses base erosion and profit shifting issues through legislative and administrative reform.

6 Conclusions, limitations and recommendations

In our view, New Zealand's experience with tax simplification offers an excellent model for South Africa when it comes to rewriting tax legislation (compared to Australia and the UK), should that be the simplification path South Africa wishes to go down. The lessons learned as a result of a critical post-rewrite review add further to this recommendation. That said, if it is effective simplification that South Africa is seeking, then the New Zealand experience to date is useful but certainly not an example of best practice (at least such an assessment cannot be made at this time). Major policy issues need to be reviewed in conjunction with any legislation reorganisation and rewriting.

New Zealand's Business Transformation Project, along with the enhanced use of technology and ongoing review of the tax system, have the *potential* to offer a best practice model for South Africa. The jury, on this assessment, remains out, and will probably be so for another two to three years, until the Business Transformation Project is complete. The current Tax Working Group, released its interim report during September 2018, and final report in February 2019. In its final report, with respect to tax administration, the Tax Working Group has identified a number of opportunities to improve tax collection in New Zealand. These include increasing penalties for non-compliance as well as recommending a single Crown debt collection agency to ensure all debtors are treated equally. A

¹¹¹ See, eg, M Keating 'Protection of taxpayer rights in New Zealand: A mixed bag' (2018) 24(2) *New Zealand Journal of Taxation Law and Policy* 147.

taxpayer advocate service is also recommended to assist small businesses in their disputes with Inland Revenue, along with additional resources for the Office of the Ombudsman. A comprehensive capital gains tax was proposed. The New Zealand Government in April 2019 rejected almost all of the Tax Working Group's proposals, including the capital gains tax and additional resources to support taxpayers in tax disputes and to support the Ombudsman's office. Some relatively minor recommendations have been added to the New Zealand Government's Tax Policy Work Programme. As a result of the New Zealand Government's response, there is very little useful guidance for South Africa.

New Zealand and South Africa as countries are very different, outside of their love of rugby! New Zealand is a small developed nation that has a reputation for being innovative in tax policy design, with its Generic Tax Policy Process and the Goods and Services Tax Act being prime examples. There is a high degree of trust between the government, public officials and taxpayers/tax advisers. The approach to policy development is one of open consultation and transparency. In relation to New Zealand's Generic Tax Policy Process, Little *et al* state: ¹¹²

There is a degree of cooperation between the private and public sectors that is quite rare internationally. *There is a large element of working together to provide a tax system that is best for 'New Zealand Inc.'* [New Zealand as a whole].

The limitations of this chapter include the obvious one of comparison of only two jurisdictions – New Zealand and South Africa. The two jurisdictions are very different, as has already been noted. Other jurisdictions, including possibly another developing nation, or a much larger nation than New Zealand, could have yielded different comparative findings. In this regard New Zealand provides one relevant but insufficient source of comparison for South Africa with respect to determining its path to tax simplification.

The authors recommend undertaking a further comparative review in two to three years' time when New Zealand's Business Transformation Project is complete. Also at this time a much clearer path will have emerged with respect to tax simplification in South Africa. Only then may a comprehensive evidence-based comparative assessment with respect to the level of effective tax simplification in New Zealand be possible.

Thus, to answer the question that was posed in section 3 of this chapter (Tax simplification in South Africa – what has been done and what needs to be done?), in our view, the simplification lessons from New Zealand are relevant for South Africa. Furthermore, this is not a one-way

112 S Little *et al* 'Development of tax policy in New Zealand: The Generic Tax Policy Process' (2013) 61(4) *Canadian Tax Journal* 1043 1044 (emphasis added).

recommendation; a number of the recent developments in South Africa should be explored closely by policy officials in New Zealand.