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INVALUABLE: VALUE ADDED TAX, POST-COLONIALISM, & THE UNITED STATES OF AMERICA

INTRODUCTION

The maintenance of a successful taxation system is of the utmost importance. In September of 2020, the release¹ of the federal income tax returns of the President of the United States made global news.² Accordingly, many have called into question the effectiveness of the American system of taxation.³

The United States is one of few countries worldwide that does not assess a value-added tax (VAT).⁴ Instead, an income tax is implemented at the federal level, while each state is constitutionally authorized⁵ to assess taxes of its own. Taxes at the state level may, for example, be based on income, property, sales, alcohol, tobacco, and more.⁶

Outside the United States, on the other hand, VAT is nearly ubiquitous.⁷ Notably, assessment of VAT is compulsory for all member states of the European Union,⁸ and VAT is also

1. Russ Buettner, Susanne Craig & Mike McIntire, *Trump's Taxes Show Chronic Losses and Years of Income Tax Avoidance*, N.Y. TIMES (Sept. 27, 2020), <https://www.nytimes.com/interactive/2020/09/27/us/donald-trump-taxes.html>.

2. See David Leonhardt, *Trump's Taxes*, N.Y. TIMES (Sept. 28, 2020), <https://www.nytimes.com/2020/09/28/briefing/president-trump-tiktok-uber-your-monday-briefing.html>; *Trump's Taxes: What You Need to Know*, BBC NEWS (Sept. 28, 2020), <https://www.bbc.com/news/world-us-canada-54323654>.

3. See, e.g., *Opinion: The Truth About Taxation in America*, WASH. POST (Oct. 12, 2019), https://www.washingtonpost.com/opinions/the-truth-about-taxation-in-america/2019/10/12/08b7c268-ec51-11e9-9306-47cb0324fd44_story.html.

4. See *Value Added Tax Rates (VAT) By Country*, U.S. COUNCIL INT'L BUS., <https://www.uscib.org/value-added-tax-rates-vat-by-country/> (last visited Nov. 18, 2020).

5. U.S. CONST. art. I, § 2, cl. 3.

6. E.g., *More Tax Types*, N.Y. STATE DEP'T OF TAX'N & FIN., https://www.tax.ny.gov/forms/more_tax_types.htm (last visited Nov. 18, 2020).

7. See *Value Added Tax Rates (VAT) By Country*, *supra* note 4.

8. Council Directive 2006/112, 2006 O.J. (L 347) 1 (EC), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0112&from=EN>; see also *The EU's Common System of Value Added Tax (VAT)*, EUR-LEX (June 30, 2020), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:l31057](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:l31057;); *Value Added Tax Rates (VAT) By Country*, *supra* note 4.

prevalent in African countries.⁹ It is not unusual for a nation to levy taxes separate from VAT.¹⁰

The United States is not afraid to set a trend—it is the only country that utilizes the term “soccer”¹¹, and one of the few remaining nations yet to adopt the metric system.¹² With regard to taxation, the United States is exceptional yet again: it is the only nation aside from Eritrea that imposes its income tax on non-resident citizens.¹³ Furthermore, it is one of few nations missing from the list of those that have adopted some form of VAT.¹⁴ This trend prompts the question: is a VAT altogether preferable to the current taxation system employed by the United States?

This Note answers in the negative and argues that the United States is correct in its rejection of the VAT, despite its global prevalence. Due to the international implications of VAT and the established ties between international law and colonialism, this Note contends that the VAT may be seen merely as a mechanism within a post-colonial framework.¹⁵ Therefore, to arrive at the aforementioned conclusion, this Note conducts a comparative analysis of countries linked through post-colonial ties which implement a system of VAT.

First, this Note discusses pertinent background principles, including: a primer on post-colonial theory,¹⁶ an overview of the fundamentals of taxation,¹⁷ and an introduction to the VAT

9. See *Value Added Tax Rates (VAT) By Country*, *supra* note 4.

10. See, e.g., *Browse: Money and Tax*, GOV.UK, <https://www.gov.uk/browse/tax> (last visited Nov. 18, 2020); REVENUE, <https://revenue.ie/en/Home.aspx> (last visited Nov. 18, 2020).

11. See Billy Perrigo, *Why Do Americans Call It Soccer Instead of Football? Blame England*, TIME (July 11, 2018, 1:16 PM), <https://time.com/5335799/soccer-word-origin-england/>.

12. See *generally* Hector Vera, *The Social Life of Measures: Metrication in the United States and Mexico, 1789–2004*, (Sept. 2011) (Ph.D. dissertation, The New School for Social Research), <https://pqdtopen.proquest.com/doc/924487292.html?FMT=AI>.

13. Kyle Pomerleau, *How Countries Define Their Income Tax Borders*, TAX FOUND. (June 1, 2015), <https://taxfoundation.org/how-countries-define-their-income-tax-borders-0/>; *U.S. Citizens and Resident Aliens Abroad*, IRS, <https://www.irs.gov/individuals/international-taxpayers/us-citizens-and-resident-aliens-abroad> (last visited Nov. 9, 2020).

14. See *Value Added Tax Rates (VAT) By Country*, *supra* note 4.

15. See *infra* Part I, Section A.

16. See *infra* Part I, Section A.

17. See *infra* Part I, Section B.

itself.¹⁸ In the second section, this Note analyzes the history and operation of VAT in both the United Kingdom¹⁹ and Spain,²⁰ two European countries that assume, or once assumed, the role of “colonizer,” and evaluate their success. In the third section, this Note examines the history, operation, and overall success of VAT in Ireland,²¹ Argentina²² and Jamaica,²³ which were once colonized by the empires discussed in section two.²⁴ In section 4, this Note turns to the United States.²⁵ Specifically, it gives an overview of its “hybrid” taxation system, links this hybrid system of taxation with the hybridity theory of post-colonialism, and evaluates the system’s success in comparison with VAT overseas. This Note concludes with the argument that the implementation of a nationwide VAT in the United States would be ineffective and undesirable.

I. BACKGROUND

A. *The Relevance of Post-Colonial Theory in International Law*

The analysis of this Note is conducted through a post-colonial lens; therefore, it is crucial to explain the relevance of post-colonial theory to concepts of international law, and to provide a basic primer of the theory and some of its terminology.²⁶

All international and foreign law is linked with colonialism.²⁷ As Professor Antony Anghie argues:

[C]olonialism was central to the constitution of international law in that many of the basic doctrines of international law—including, most importantly, sovereignty doctrine—were forged out of the attempt to create a legal system that could account for relations between the European and non-European worlds in the colonial confrontation. In making this argument,

18. See *infra* Part I, Section C.

19. See *infra* Part II, Section A.

20. See *infra* Part II, Section B.

21. See *infra* Part III, Section A.

22. See *infra* Part III, Section B.

23. See *infra* Part III, Section C.

24. See *infra* Part II.

25. See *infra* Part IV.

26. See *generally* KEY TERMS IN POST-COLONIAL THEORY, <https://www3.dbu.edu/mitchell/postcold.htm> (last visited Nov. 18, 2020) (providing definitions).

27. See ANTONY ANGHIE, *Introduction, in* IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW 1–4 (2005).

I focus on the colonial origins of international law; I attempt, furthermore, to show how these origins create a set of structures that continually repeat themselves at various stages in the history of international law. In so doing I seek to challenge conventional histories of the discipline which present colonialism as peripheral, an unfortunate episode that has long since been overcome. . .²⁸

Anghie's analysis of the relationship between international law and colonialism begins with what he calls the "civilizing mission"; the pretense of redeeming the undeveloped under which colonizing countries justify their conquest and the measures used to achieve it.²⁹ He explains that economic exploitation, along with racial discrimination, territorial dispossession, and cultural subordination is "central to th[is] imperial project" of colonization.³⁰

Anghie's introduction also pays tribute to Homi Bhabha, a leading post-colonial theorist.³¹ While Anghie's work is instructive as to the relevance of post-colonial theory in international law, an understanding of Bhabha's post-colonialism is crucial to the arguments advanced by this Note as well. Bhabha's pre-eminent work, *The Location of Culture*, discusses and defines terms relevant to the forthcoming analysis, such as: hybridity³², the "Other,"³³ colonial hierarchy,³⁴ mimicry,³⁵ etc. The book—just

28. *Id.* at 3.

29. *Id.* at 3–4.

30. *Id.* at 7.

31. *See id.* at 9 n.14.

32. *See* HOMI BHABHA, *THE LOCATION OF CULTURE* 4 (1994) ("[This] interstitial passage between fixed identifications opens up the possibility of a cultural hybridity that entertains difference without an assumed or imposed hierarchy...").

33. *See id.* at 44–48, 86 ("The ambivalent identification of the racist world... turns on the idea of man as his alienated image; not Self and Other but the otherness of the Self inscribed in the perverse palimpsest of colonial identity. And it is that bizarre figure of desire, which splits along the axis on which it turns, that compels... the psychoanalytic question of the desire of the subject to the historical condition of colonial man... First: to exist is to be called into being in relation to an otherness, its look or locus... 'They want to take our place.' It is always in relation to the place of the Other that colonial desire is articulated... the dream of the inversion of roles.").

34. *See id.* at 4, 44, 70, 77.

35. *See id.* at 86 ("... [M]imicry represents an *ironic* compromise.... [C]olonial mimicry is the desire for a reformed, recognizable Other, as a *subject of a difference that is almost the same, but not quite*. Which is to say, that the

like Anghie's—extends to analysis of capitalist and economic issues.³⁶ One of Bhabha's most salient and concise passages on colonialism reads as follows:

[The] predominant strategic function [of colonial discourse] is the creation of a space for a 'subject peoples' ... It seeks authorization for its strategies by the production of knowledges of colonizer and colonized which are stereotypical but antithetically evaluated. The objective of colonial discourse is to construe the colonized as a population of degenerate types on the basis of racial origin in order to justify conquest and to establish systems of administration and instruction . . . I am referring to a form of governmentality that in marking out a 'subject nation', appropriates, directs, and dominates its various spheres of activity.³⁷

VAT, therefore, exists within the post-colonialist framework in this way; a form of governmentality which "appropriates, directs, and dominates" economic spheres of activity across the world.³⁸

B. *Fundamentals of taxation*

Generally speaking, "[t]axation is the rule; exemption from taxation is the exception."³⁹ As it is practically impossible to legally circumvent paying at least some form of taxes, especially

discourse of mimicry is constructed around an *ambivalence*; in order to be effective, mimicry must continually produce its slippage, its excess, its difference... Mimicry is, thus the sign of a double articulation; a complex strategy of reform, regulation and discipline, which 'appropriates' the Other as it visualizes power. Mimicry is also the sign of the inappropriate, however, a difference or recalcitrance which coheres the dominant strategic function of colonial power...").

36. *See id.* at 216.

37. *See id.* at 70. *Cf.* JEREMY SILMAN, *THE COMPLETE BOOK OF CHESS STRATEGY* 3, 5, 231, 343 (1998) (discussing strategies of conquest, subject spaces, and the domination of such spheres of activity); ROBERT GREENE, *THE 48 LAWS OF POWER* 107–113 (Law XV: crush your enemy totally).

38. *See* BHABHA *supra* note 32, at 70.

39. *See* *Thomas v. Northeast Ga. Council, Inc., Boy Scouts of Am.*, 244 S.E.2d 842, 844 (Ga. 1978) (quoting *Campbell v. Red Bud Consol. Sch. Dist.*, 198 S.E. 225, 228 (Ga. 1938). *But see*, *Nuci Phillips Mem'l Found. v. Athens-Clarke Cty. Bd. of Tax Assessors*, 703 S.E.2d 648 (Ga. 2010).

in the United States,⁴⁰ taxpayers should be entitled to subject their respective tax systems to the utmost scrutiny.

Tax systems and legislation are typically evaluated by experts and policymakers based on three criteria: equity (horizontal and vertical), efficiency, and simplicity.⁴¹ Horizontal equity refers to the principle that similarly situated taxpayers should pay similar amounts of tax, while vertical equity requires that differently situated taxpayers bear differing tax burdens.⁴² Efficiency may refer either to the market economy's allocation of resources to their most productive use, or to how government subsidies in the form of tax provisions are actually received by the intended beneficiaries.⁴³ The final term, simplicity, can be used to assess statutory language, and how such language facilitates or hinders taxpayer compliance; it may also refer to aspects of tax administration.⁴⁴ Administration of any tax system requires choice of a tax base and structure of tax rates.⁴⁵

The term 'tax base' simply refers to what a tax is based on; the American federal income tax is a suitable example—although the term 'income' can sometimes prove difficult to define.⁴⁶ Narrower definitions might count income earned from wages alone, while broad-sweeping definitions would include income from all sources derived.⁴⁷ Tax may also be based on consumption⁴⁸ (sales tax), transfers of wealth, or particular luxury goods. Experts recognize that "[t]here is no single tax base that is a priori optimal", and that the varying effects produced by various tax bases must be taken into account.⁴⁹

40. See generally STEVE WAMHOFF & MATTHEW GARDNER, INST. ON TAX'N & ECON, POL'Y, WHO PAYS TAXES IN AMERICA IN 2019? (Apr. 2019), <https://itep.org/who-pays-taxes-in-america-in-2019/>.

41. DANIEL L. SIMMONS, MARTIN J. MCMAHON, BRADLEY T. BORDEN & BRET WELLS, FEDERAL INCOME TAXATION 4 (8th ed. 2020).

42. See *id.* at 4–5.

43. See *id.* at 5–6.

44. See *id.* at 6.

45. See *id.* at 6.

46. Compare I.R.C. § 61 (defining gross income), with I.R.C. § 63 (defining taxable income). See also *Comm'r v. Glenshaw Glass Co.*, 348 U.S. 426, 427 (1955); SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, 61–88.

47. I.R.C. § 61.

48. See JOHN MAYNARD KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY (1936) (discussing the marginal propensity for consumption); see also ALVIN H. HANSEN, A GUIDE TO KEYNES 59 (1953).

49. See SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 6.

Rate structures may be defined as progressive, proportional or regressive. Progressive rates—such as the rates of the federal income tax⁵⁰—subject higher increments of income to higher rates of tax, while regressive rates result in lower-income persons paying a higher percentage of their income in tax than people with higher income.⁵¹ Proportional rates are otherwise known as “flat rate” taxes, which frequently apply to retail or real property sales.⁵²

C. Introduction to VAT

Academics agree that the VAT is a regressive tax⁵³; nonetheless, it remains one of the most popular systems of taxation in the world.⁵⁴ Prior to an analysis of the current success of VAT, it is crucial to discuss (i) the colonial origins of the value-added tax, and (ii) how the tax actually functions.

1. Colonial origins of the VAT

Historically speaking, VAT can be credited to what once were some of the world’s most formidable empires.⁵⁵ Centuries ago, the Romans imposed a ‘turnover tax’ system that can be seen as a predecessor to modern VAT; the Romans then brought their system to Egypt, France and Spain—countries that all established empires in their own right.⁵⁶

The colonial implications of this are profound; from an early stage, colonial conquest and implication of tax have been inextricably linked.⁵⁷ The “economic exploitation” referred to by Anghie has been common practice for some time now—

50. The tax rates, or brackets, are set forth in § 1 of the Internal Revenue Code. *See* I.R.C. § 1.

51. *See* SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 6.

52. *Id.*

53. *Id.*

54. *See Value Added Tax Rates (VAT) By Country*, *supra* note 4.

55. *See* Kathryn James, *Exploring the Origins and Global Rise of VAT*, in THE VAT READER 15, 15–16 (2011) [http://www.taxhistory.org/www/freefiles.nsf/Files/JAMES-2.pdf/\\$file/JAMES-2.pdf](http://www.taxhistory.org/www/freefiles.nsf/Files/JAMES-2.pdf/$file/JAMES-2.pdf); Richard Pomp, *Turnover Taxes: Their Origin, Fall from Grace, and Resurrection*, 40 J. STATE TAX’N 17, 17–18 (2021) https://opencommons.uconn.edu/cgi/viewcontent.cgi?article=1579&context=law_papers; *see also* Percy Bysshe Shelley, *Ozymandias*, POETRY FOUND., <https://www.poetryfoundation.org/poems/46565/ozymandias> (last visited Nov. 18, 2020).

56. *See* James, *supra* note 55, at 15–16; Pomp, *supra* note 55, at 17.

57. *See* James, *supra* note 55; Pomp *supra* note 55.

moreover, its imposition is typically linked with “war and crises”.⁵⁸ In a sense then, the Romans incited a cycle: (i) political or national conquest, (ii) which leads to economic exploitation, (iii) so as to enable more conquest⁵⁹.

2. How VAT works

VAT is a tax imposed and collected on the value added to a good or service at each stage in the production and distribution of such good or service.⁶⁰ It is essentially a tax “levied on the difference between the sales and production inputs of a business.”⁶¹

VAT is different from a typical retail sales tax in that the VAT is assessed multiple times as the good or service is produced and sold, while a retail sales tax applies just once during the final sale.⁶² There are three accounting methods for the VAT⁶³; however, this Note will discuss only the credit-invoice method, as it is utilized by all of the countries present in this analysis.

The credit-invoice method imposes a tax on a business for all of its sales; the tax is disclosed on the sales invoice.⁶⁴ “A business credit is provided for all VAT on purchases of taxable goods and services (“inputs”) used in the business.”⁶⁵ When a reporting period closes, a business determines “its tax liability by subtracting the cumulative amount of VAT stated on its purchase invoices from the cumulative amount of VAT stated on its sales invoices.”⁶⁶ The credit-invoice is considered preferable for a number of factors, including reporting and calculation

58. See James, *supra* note 55; Pomp *supra* note 55.

59. Cf. James, *supra* note 55; Pomp *supra* note 55; see also Philip Larkin, *This Be the Verse*, POETRY FOUND., <https://www.poetryfoundation.org/poems/48419/this-be-the-verse> (last visited Nov. 18, 2020) (“Man hands on misery to man.”).

60. U.S. CHAMBER OF COM., AN INTRODUCTION TO THE VALUE ADDED TAX 3 (2010), https://www.uschamber.com/sites/default/files/legacy/issues/econ-tax/files/vat_paper_4_25_2010.pdf.

61. *Id.*

62. *Id.*

63. See *id.*

64. *Id.* at 4.

65. *Id.*

66. *Id.* For a useful illustration of VAT, see the farmer, miller and baker example provided. *Id.* at 4–5.

considerations, revenue stability and border adjustability issues.⁶⁷ However, it must be noted that the prevalence of the credit-invoice method particularly in European countries⁶⁸ affirms post-colonial theories of dominance, imperial imposition and mimicry.⁶⁹

II. EMPIRES

Professor Antony Anghie describes empire as “a relationship, formal or informal, in which one state controls the effective political sovereignty of another political society”, and that “[i]mperialism is simply the process or policy of maintaining an empire.”⁷⁰ Notably, Professor Anghie also links imperialism—the dominant practices of powerful Western states—to the formation of the United Nations.⁷¹

Scholars have observed the remarkable strength of the relationship between the United Nations and the European Union.⁷² This relationship is of particular relevance to an analysis of the implications of the EU VAT directive.⁷³ The directive, amended regularly⁷⁴, requires that member states implement some form of VAT, either at national or community level.⁷⁵ In this way, the body of the EU imposes itself upon and dominates individual member states—such as the United Kingdom⁷⁶ and Spain, (former) empires themselves—in the manner alluded to by Bhabha and Anghie.⁷⁷ The upcoming sections will discuss the history and operation of VAT in the aforementioned nations.

67. *Id.* at 6–8.

68. *Id.* at 6.

69. *See supra* note 35 and accompanying text.

70. *See* ANGHIE *supra* note 27, at 11 (citations omitted).

71. *See id.* at 11–12.

72. *See, e.g.*, FRANK HOFFMEISTER, THE UNITED NATIONS AND THE EUROPEAN UNION: AN EVER STRONGER PARTNERSHIP (Jan Wouters et al. eds., 2006); Julija Brsakoska Bazerkoska, *The European Union and the United Nations: Theory and Practice*, 2 IUSTINIANUS PRIMUS L. REV. 1, 4 (2011).

73. *See* Council Directive 2006/112, 2006 O.J. (L 347) 1 (EC).

74. *Id.*

75. *See id.* at ¶ 4.

76. Note that the United Kingdom’s continued membership in the European Union is in question.

77. *See supra* note 36 and accompanying text.

A. VAT in *The United Kingdom*

The bold claim that “the sun never sets on the British empire” used to be a common refrain; in its time, the United Kingdom presided over territories that spanned the globe.⁷⁸ The United Kingdom’s assumption of a role as a colonizing force is unmistakable; in discussing the British empire, author J.P. Bulkeley refers to the role of empire as implying a “trusteeship for the *backward races* they contain”, yet denies outright domination.⁷⁹ Acknowledgment of British imperial dominance is widely accepted, on the other hand, among the majority of modern-day journalists—even the BBC.⁸⁰

Colonial dominance, as discussed above, is often linked, in inextricable fashion, to economic dominance. The BBC again notes the connection between financial independence and the very foundation of the imperial system.⁸¹ *Little Dorrit*—an expansive novel, even by Dickensian standards—demonstrates well the “overriding, unappeasable craving for money” characteristic of Victorian-era society.⁸²

‘Have you no taste for anything, Mr. Pancks?’

‘What’s taste?’ dryly retorted Pancks.

‘Let us say inclination.’

‘I have an inclination to get money, sir. . .’⁸³

The upcoming section of this Note will link the avarice observed by Dickens, Professor Herbert and more to the continued implementation of VAT in the United Kingdom. First, the Note will briefly review the history of VAT in the United Kingdom; then, the Note will offer an overview of the operation of VAT within the country.

78. See, e.g., HC Deb (25 June 1839) (48) col. 847, *Waste Lands of the Colonies*, http://hansard.millbanksystems.com/commons/1839/jun/25/waste-lands-of-the-colonies#column_847.

79. JOHN PIERSON BULKELEY, *THE BRITISH EMPIRE: A SHORT HISTORY* 188 (Clarendon Press 1921) (emphasis added).

80. Andrew Porter, *Britain’s Empire in 1815*, BBC (Feb. 17, 2011), http://www.bbc.co.uk/history/british/empire_seapower/britain_empire_01.shtml.

81. See John Darwin, *Britain, the Commonwealth and the End of Empire*, BBC (Mar. 3, 2011), http://www.bbc.co.uk/history/british/modern/endofempire_overview_01.shtml#one.

82. See Christopher Herbert, *Filthy Lucre: Victorian Ideas of Money*, 44 *VICTORIAN STUD.* 185, 198 (2002); CHARLES DICKENS, *LITTLE DORRIT* (Penguin Books 1998) (1857).

83. See DICKENS *supra* note 82, at 176.

1. Brief History of VAT in the United Kingdom

Practically speaking, the British have implemented some form of taxation even prior to the formation of the United Kingdom in 1707.⁸⁴ After organizing its income tax, the United Kingdom set about the introduction of a sales tax in the form of the Purchase Tax in 1940, “levied at different rates based on an item’s perceived ‘luxury’”.⁸⁵ The Purchase Tax, however, was quickly abolished and replaced by VAT in 1973, in connection with the United Kingdom’s accession to what would eventually become the European Union.⁸⁶ Initially, all VAT was implemented at a single rate of ten percent, but the scheme has quickly evolved—or perhaps devolved—into a complex matrix of varying tax rates or exemptions (zero-rated VAT) for different goods and services.⁸⁷ Although the United Kingdom’s imminent departure from the European Union would free the country from the aforementioned EU VAT Directive of 2006,⁸⁸ the British government has not shown any desire to discontinue the practice.⁸⁹ On the contrary, the VAT—as will be shown herein—is integral to the financial stability of the United Kingdom.

2. Operation of VAT in the United Kingdom

Her Majesty’s Revenue and Customs (HMRC) is the department of the government responsible for the assessment and

84. See, e.g., *The Poor Law*, ELIZABETHAN ERA, <http://www.elizabethan-era.org.uk/the-poor-law.htm> (last visited Nov. 18, 2020). For a helpful introductory timeline of taxation in the United Kingdom, see *Key Dates*, UK PARLIAMENT, <https://www.parliament.uk/about/living-heritage/transforming-society/private-lives/taxation/keydates/> (last visited Nov. 18, 2020).

85. See *Key Dates*, *supra* note 84; see also Adam Victor, *VAT: A Brief History of Tax*, THE GUARDIAN (Dec. 30, 2010, 7:10 PM), <https://www.theguardian.com/money/2010/dec/31/vat-brief-history-tax>.

86. Treaty of Accession of Denmark, Ireland and the United Kingdom, Mar. 27, 1972, 1972 O.J. (L 73) 15.

87. Compare Victor, *supra* note 85, with Peter Victor, *A Brief History of VAT*, INDEPENDENT (July 30, 1995) <https://www.independent.co.uk/news/a-brief-history-of-vat-1593926.html>.

88. See Council Directive 2006/112, 2006 O.J. (L 347) 1 (EC).

89. See generally Andy Spencer, *Brexit and Fiscal Representation*, BLOOMBERG TAX (Nov. 11, 2020, 3:01 AM), <https://news.bloomberg-tax.com/daily-tax-report-international/brexit-and-fiscal-representation> (discussing how “Brexit” will change, rather than abate, the practice of VAT).

collection of taxes, including VAT, in the United Kingdom.⁹⁰ HMRC requires that VAT be charged and collected on nearly all sales, with few exceptions.⁹¹ The excess of VAT charged over VAT paid (i.e. gain) must be remitted to the government, and vice-versa.⁹² A report detailing such figures is to be included in a VAT Return, typically due to HMRC four times a year.⁹³ British taxpayers have the option to pay a VAT bill or to complete a VAT return online.⁹⁴ Like the American federal income tax system, there are special rules regarding charitable⁹⁵ and insolvent⁹⁶ taxpayers, and penalties for failure or tardiness in reporting.⁹⁷

A closer analysis of VAT policies and practices in the United Kingdom reveal some of the system's inherent drawbacks. As an introductory matter, the standard rate of VAT in the UK is currently twenty percent, while the reduced rate is five percent.⁹⁸ According to the government, the standard rate applies to most goods and services, while the reduced rate applies only to *some*.⁹⁹ A few "zero-rated" goods, as previously mentioned, exist outside

90. See *HM Revenue & Customs*, GOV.UK, <https://www.gov.uk/government/organisations/hm-revenue-customs> (last visited Nov. 18, 2020).

91. See *Businesses and Charging VAT*, GOV.UK, <https://www.gov.uk/vat-businesses> (last visited Nov. 18, 2020).

92. *Id.*; see also I.R.C. § 1001 (computing gain).

93. *Businesses and Charging VAT*, *supra* note 91; see also *VAT Returns*, GOV.UK, <https://www.gov.uk/vat-returns> (last visited Nov. 18, 2020) (explaining VAT returns).

94. *Pay Your VAT Bill*, GOV.UK, <https://www.gov.uk/pay-vat> (last visited Nov. 18, 2020).

95. *Compare VAT for Charities*, GOV.UK, <https://www.gov.uk/vat-charities> (last visited Nov. 18, 2020), with I.R.C. § 170(a) (allowing deduction from gross income for charitable contributions); see also *Hernandez v. Comm'r*, 490 U.S. 680 (1989) (interpreting section 170).

96. *Compare Insolvency and Your VAT*, GOV.UK, <https://www.gov.uk/insolvency-and-your-vat> (last visited Nov. 18, 2020), with I.R.C. § 61(a)(11) (including cancellation-of-indebtedness income in gross income), and I.R.C. § 108(a)(1)(B) (excluding cancellation-of-indebtedness income from gross income under section 61(a)(11) for insolvent taxpayers).

97. *Compare VAT Returns: Surcharges and Penalties*, GOV.UK, <https://www.gov.uk/vat-returns/surcharges-and-penalties> (last visited Nov. 18, 2020), with SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 43–49 (discussing penalties under the Internal Revenue Code), and I.R.C. §§ 6621–22 (setting interest on deficiencies).

98. *VAT Rates*, GOV.UK, <https://www.gov.uk/vat-rates> (last visited Nov. 18, 2020).

99. *Id.* (stating that the reduced rate applies to "some" goods).

of the scope of VAT (e.g., “most food and children’s clothes”).¹⁰⁰ Decisions as to which rate goods and services are categorized under may be appropriately described as arbitrary, or even fickle; the system provides, for instance, different tax rates for hot and cold sandwiches or *types* of water.¹⁰¹ Or, consider; VAT is levied on an essential like fuel at both the residential and commercial level, while gambling and certain aircraft parts are exempted from VAT.¹⁰²

VAT in the United Kingdom is not just unpredictable in this sense, it is also rather complicated. As a result of this complexity, there is frequent litigation disputing the correct amount, if any, of VAT to assess.¹⁰³ The susceptibility of the VAT to evasion¹⁰⁴ and carousel fraud¹⁰⁵ has been noted¹⁰⁶.

100. *Id.*

101. *VAT Rates on Different Goods and Services*, GOV.UK, <https://www.gov.uk/guidance/rates-of-vat-on-different-goods-and-services> (last updated Dec. 31, 2020); *see also, e.g., Guidance: Food Products (VAT Notice 701/14)*, GOV.UK, <https://www.gov.uk/guidance/food-products-and-vat-notice-70114> (last updated Dec. 3, 2020).

102. *VAT Rates on Different Goods and Services*, *supra* note 101; *see also Ships, Trains, Aircraft and Associated Services*, GOV.UK, <https://www.gov.uk/guidance/ships-aircraft-and-associated-services-notice-744c> (last updated Dec. 31, 2020).

103. *E.g., Mithras v. The Commissioners For Her Majesty’s Revenue And Customs (Value Added Tax)*, [2010] UKUT 115 (TCC) (deciding whether to uphold HMRC assessment of VAT where initial return appeared incorrect or incomplete); *Case C-479/13*, *Eur. Comm’n v. French Republic*, ECLI:EU:C:2015:141 (Mar. 5, 2015) (discussing whether VAT should apply—and at which rate—to electronically-supplied services); *Case C-38/16, Compass Cont. Servs. Ltd. v. Revenue and Customs Comm’rs*, ECLI:EU:C:2017:454 (June 14, 2017) (resolving claim for overpayment of VAT).

104. *See, e.g., Han & Yau v. Comm’rs of Customs and Excise* *Martins & Martins v. Comm’rs of Customs and Excise* *Morris v. Comm’rs of Customs and Excise* [2001] EWCA (Civ) 1048, [2001] 1 WLR 2253 (Eng.); *1st Indian Cavalry Club Ltd. and Chowdhury v. Customs and Excise Comm’rs*, (1998) STC 293 (Eng.).

105. *FACTBOX – How Carousel Fraud Works*, REUTERS (Aug. 20, 2009, 9:51 AM), <https://www.reuters.com/article/uk-carousel-fraud-britain-factbox-sb/factbox-how-carousel-fraud-works-idUKTRE57J43U20090820> (explaining carousel fraud, whereby, VAT is circumvented through importation); *see also Apollo Comm’ns Ctr. Ltd. (in liquidation) and others v. Rahmann and others*, [2007] EWHC (Ch) 3467 (Eng.) (discussing carousel fraud).

106. Douglas Fraser, *Britain ‘Losing Billions in VAT’*, BBC NEWS (Oct. 31, 2009, 12:41 AM), <http://news.bbc.co.uk/2/hi/8335164.stm>; *Carousel Fraud Checks ‘Shut’ Sussex Firm*, BBC NEWS (June 10, 2010), <https://www.bbc.com/news/10286413>; *EU Takes Aim at Multi-billion ‘Carousel’*

VAT is an essential source of revenue for the British government. The tax-to-GDP ratio has remained above a mark of 30 percent since 2020.¹⁰⁷ VAT specifically has accounted for a growing proportion of the United Kingdom's GDP.¹⁰⁸ The United Kingdom's VAT revenue ratio, which is a measure of a national VAT system's revenue raising performance as calculated by the OECD, is below average.¹⁰⁹ Furthermore, the Institute for Fiscal Studies reports that VAT continues to carry an increasing burden as other sources of revenue (i.e., council tax, corporation tax) dwindle.¹¹⁰ These factors certainly contribute to, and explain, British dependence on the VAT.

B. VAT in Spain

The origins of VAT in Spain are deeply rooted.¹¹¹ Professor Darío Fernández-Morera notes that VAT, then known as *alcabala*, was present even in Golden-Age Spain.¹¹² Professor Fernández-Morera observes that the *alcabala* was criticized by Cervantes¹¹³, and ultimately proved damaging to the economy—to the extent that VAT has been credited as the “single most decisive cause of the decline of Cervantes' Golden Age Spain.”¹¹⁴

Sales Tax Frauds, REUTERS (Feb. 24, 2016, 1:16 PM), <https://www.reuters.com/article/idUSKCN0VX2EL>.

107. OECD, *Revenue Statistics, Key Findings for the United Kingdom* <https://www.oecd.org/tax/revenue-statistics-united-kingdom.pdf> (last visited Apr. 5, 2023).

108. The World Bank, Taxes on goods and services <https://data.worldbank.org/indicator/GC.TAX.GSRV.CN?locations=GB> (last visited Apr. 5, 2023).

109. OECD, CONSUMPTION TAX TRENDS – UNITED KINGDOM (2020), <https://www.oecd.org/tax/consumption/consumption-tax-trends-united-kingdom.pdf>.

110. HELEN MILLER & THOMAS POPE, INST. FOR FISCAL STUD., THE CHANGING COMPOSITION OF UK TAX REVENUES (2016), <https://www.ifs.org.uk/publications/8244>.

111. Darío Fernández-Morera, *Cervantes and Economic Theory, in LITERATURE AND THE ECONOMICS OF LIBERTY: SPONTANEOUS ORDER IN CULTURE* 99, 119 (Paul A. Cantor & Stephen Cox eds., 2009).

112. *Id.*

113. MIGUEL DE CERVANTES SAAVEDRA, RINCONETE Y CORTADILLO (1613) (“Yo pensé que el hurtar era oficio libre, horro de pecho y alcabala” / I thought that stealing was a tax-free trade).

114. Fernández-Morera, *supra* note 111, at 119 The connection between *alcabala* and the Moorish colonial presence in Spain must not be overlooked.

1. Brief History of VAT in Spain

Despite this, the Spanish decided to reinstate a formal VAT system in 1986; again, largely motivated by requirements mandated by the EU.¹¹⁵ VAT was originally in force under Ley 30/1985; this law has since been replaced twice.¹¹⁶

Initially, the VAT utilized three different rates: a 12% standard rate, a 33% rate—nearly triple the standard rate—for luxury goods, and a reduced rate of 6% for necessary goods.¹¹⁷ The 1992 amendment eliminated the luxury rate and increased the standard rate slightly to 13%, then 15%.¹¹⁸ In 1993, a third rate was reintroduced; this time, instead of an enhanced luxury rate, a super-reduced rate was employed for food essentials (bread, milk, eggs, etc.).¹¹⁹ This three-tiered VAT structure has been in place since that time, and the rates have been steadily increasing since shortly thereafter (with the exception of the super-reduced rate, which has remained at 4%).¹²⁰ On January 1st, 1995, the standard rate was 16%, and the reduced rate was 7%.¹²¹ On July 1, 2010, the standard rate was 18% and the reduced rate was 8%.¹²² Finally, since September 1, 2012, the standard VAT rate in Spain has been 21%, with a reduced rate of 10%.¹²³

115. *Bloomberg Value-Added Tax Navigator*, Spain § 1.2; see also Documents Concerning the Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities, Act Concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Adjustments to the Treaties, art. 395, (Nov. 15, 1985, 1985) O.J. (L 302) 1, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A11985I395> (accession to EU).

116. Ley 30 /1985 (B.O.E. 1985, 190) (Spain); *Bloomberg Value-Added Tax Navigator*, Spain § 1.2; Ley 37/1992 (B.O.E. 1992, 312) (Spain); Real Decreto 1624/1992 (R.D. 1992, 1624) (Spain).

117. TAX REPRESENTATIVE ALLIANCE, SPAIN VAT GUIDEBOOK 2 (2016), <https://tra.org/wp-content/uploads/2016/01/Spain-VAT-Guidebook.pdf> [hereinafter SPAIN VAT GUIDEBOOK].

(2016); Ley 30 /1985 (B.O.E. 1985, 190) (Spain).

118. SPAIN VAT GUIDEBOOK, *supra* note 117, at 2; Ley 37/1992 (B.O.E. 1992, 312) (Spain); Real Decreto 1624/1992 (R.D. 1992 1624) (Spain).

119. SPAIN VAT GUIDEBOOK, *supra* note 117, at 2.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

2. Operation of VAT in Spain

Even Spanish tax professionals confess that VAT is such a complex tax that it is hard to summarize in an accurate and complete manner.¹²⁴ As is this case with VAT in many other jurisdictions, one of the biggest legal issues pertains to which activities are exempt from VAT—and why.¹²⁵ Other issues include defining the taxable person,¹²⁶ the scope of the VAT in general,¹²⁷ special rules for imports¹²⁸ and exports,¹²⁹ deductions and refunds,¹³⁰ interest,¹³¹ penalties,¹³² and more.

According to the Spanish Tax Authority, La Agencia Tributaria, receipts from VAT in 2019 totaled 71.5 million, an increase of 1.9%.¹³³ José Maria Ruiz-Mateos is one individual, however, who arguably did *not* contribute his fair share to this total. Ruiz-Mateos was a Spanish entrepreneur and founder of Rumasa, a private holding company which, in 1983, constituted approximately two percent of the Spanish national gross domestic product.¹³⁴ The following year, remarkably, the government expropriated the enterprise, citing currency smuggling, fraud, and tax embezzlement.¹³⁵ Ruiz-Mateos was sentenced to prison and

124. *Id.*

125. *Id.*; see also *Bloomberg Value-Added Tax Navigator*, Spain § 7.3.

126. *Bloomberg Value-Added Tax Navigator*, Spain § 3.1; see also §§ 3.2–3.5.

127. *Bloomberg Value-Added Tax Navigator*, Spain § 2.1; see also §§ 2.2–2.4.

128. *Bloomberg Value-Added Tax Navigator*, Spain § 7.5.

129. *Bloomberg Value-Added Tax Navigator*, Spain § 7.6.

130. *Bloomberg Value-Added Tax Navigator*, Spain § 8.

131. *Bloomberg Value-Added Tax Navigator*, Spain § 11.1.

132. *Bloomberg Value-Added Tax Navigator*, Spain § 11.2.

133. AGENCIA TRIBUTARIA, INFORME ANUAL DE RECAUDACIÓN TRIBUTARIA 29 (2019) https://sede.agenciatributaria.gob.es/static_files/AEAT/Estudios/Estadisticas/Informes_Estadisticos/Informes_Anuales_de_Recaudacion_Tributaria/Ejercicio_2019/IART19_es_es.pdf.

134. *Los hijos de Ruiz Mateos se afanan en una nueva colmena*, EL MUNDO (Feb. 20, 2005), <https://www.elmundo.es/nuevaeconomia/2005/262/1108854001.html>.

135. *Rumasa Case Jailing Upheld*, N.Y. TIMES (Dec. 3, 1985), <https://www.nytimes.com/1985/12/03/business/rumasa-case-jailing-upheld.html>; John Darnton, *Spain's Stunning Takeover*, N.Y. TIMES (Feb. 25, 1983), <https://www.nytimes.com/1983/02/25/business/spain-s-stunning-takeover.html>.

denied bail, and the expropriation was held lawful in an opinion rendered by the Spanish Constitutional Court.¹³⁶

After spending several years in prison, Ruiz-Mateos ascended to the presidency of capital-based football club Rayo Vallecano de Madrid, S.A.D.¹³⁷ This was a calculated, if not somewhat successful, attempt to rehabilitate his image. Ruiz-Mateos managed to win election to the European Parliament—and subsequently, judicial immunity—in 1989 after forming his own eponymous political party.¹³⁸

Upon his request in 1994, Ruiz-Mateos was replaced as president of Rayo by his wife, Teresa Rivero.¹³⁹ The club went on to achieve great accomplishments under Rivero's leadership, while Rivero herself represented an important figure as a woman in power in football.¹⁴⁰ Recently though, the Tribunal Supremo¹⁴¹ sentenced Rivero to her own seven-year prison term for financial crimes including VAT fraud dating back to 2009–2010 in relation to her term as president of Rayo.¹⁴² One has to wonder whether such infractions signal a deeper, perhaps moral aversion to the VAT. In any case, this family has made headlines for their repeated failure to adhere to the national tax policy.

136. S.T.C., Jan. 3, 1987 (B.O.E. n. 3 166/1986) (Spain); *Rumasa Case Jailing Upheld*, *supra* note 135.

137. Daneil Domenéch, *La historia de Ruiz Mateos y el Rayo Vallecano*, CALLE AMBERES (Nov. 26, 2019), https://calleamberesfutbol.home.blog/2019/11/26/la-historia-de-ruiz-mateos-y-el-rayo-vallecano_

138. Rodrigo Terrasa, 'Que me votes, leche': cuando José María Ruiz-Mateos fue político, EL MUNDO (July 9, 2015, 3:17 PM), https://www.elmundo.es/economia/2015/09/07/55ed6c4846163fa6668b4579.html_

139. *Id.*; Colin Millar, *Former La Liga Club President Jailed for Seven Years for Tax Fraud*, FOOTBALL ESPAÑA (Oct. 22, 2020, 4:42 PM), <https://www.football-espana.net/2020/10/22/former-la-liga-club-president-jailed-for-seven-years-for-tax-fraud>.

140. *See* Domenéch, *supra* note 137.

141. *Tribunal Supremo*, PODER JUDICIAL ESPAÑA, <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/> (last visited Jan. 14, 2021).

142. S.T.S., Aug. 10, 2020 (C.G.P.J., No. 496) (Spain); Comunicación Poder Judicial, *El Tribunal Supremo confirma la pena de siete años de prisión a la expresidenta del Rayo Vallecano por delitos fiscales del IVA e IRPF del club en 2009 y 2010*, PODER JUDICIAL ESPAÑA (Oct. 22, 2020), <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Noticias-Judiciales/El-Tribunal-Supremo-confirma-la-pena-de-siete-anos-de-prision-a-la-expresidenta-del-Rayo-Vallecano-por-delitos-fiscales-del-IVA-e-IRPF-del-club-en-2009-y-2010>; Alberto Pozas, *El Supremo confirma siete años de cárcel para la expresidenta del Rayo Vallecano*, CADENA SER (Oct. 22, 2020), https://cadenaser.com/ser/2020/10/22/tribunales/1603366395_369539.html.

III. COLONIES

“Mimicry” is the phenomena whereby a colonial subject, consciously or otherwise, seeks to imitate—or mimic—its superior.¹⁴³ Bhabha expands upon mimicry as follows:

. . . [M]imicry represents an *ironic* compromise. . . [C]olonial mimicry is the desire for a reformed, recognizable Other, *as a subject of a difference that is almost the same, but not quite*. Which is to say, that the discourse of mimicry is constructed around an *ambivalence*; in order to be effective, mimicry must continually produce its slippage, its excess, its difference. . . Mimicry is, thus the sign of a double articulation; a complex strategy of reform, regulation and discipline, which ‘appropriates’ the Other as it visualizes power. Mimicry is also the sign of the inappropriate, however, a difference or recalcitrance which coheres the dominant strategic function of colonial power. . .¹⁴⁴

Mimicry is undoubtedly at play in the widespread adoption of VAT. The following countries’ respective decisions to implement a VAT must not be analyzed without regard to colonial factors; specifically, the hegemonic pressure exerted by the respective parent countries.

A. VAT in Ireland

Ireland famously won its independence from the United Kingdom in 1921.¹⁴⁵ The emancipation continues to serve as a great source of national pride:

“Parnell came down the road, he said to a cheering man:
‘Ireland shall get her freedom and you still break stone.’”¹⁴⁶

Nonetheless, the Irish taxation system now largely mirrors that of the United Kingdom

1. Brief History of VAT in Ireland

VAT was introduced to Ireland late in the year 1972.¹⁴⁷ Much like England, Irish accession to the European Economic

143. See KEY TERMS IN POST-COLONIAL THEORY, *supra* note 26.

144. BHABHA *supra* note 32, at 86 (emphasis added).

145. MICHAEL HOPKINSON, IRISH WAR OF INDEPENDENCE (2002).

146. WILLIAM BUTLER YEATS, PARNELL, *reprinted in* THE COLLECTED POEMS OF W.B. YEATS REVISED SECOND EDITION 312 (Richard J. Finneran ed., 1996).

147. *Historical VAT Rates*, REVENUE, <https://www.revenue.ie/en/vat/vat-rates/historical-vat-rates/index.aspx> (last visited Apr. 4, 2023).

Community is heavily related to the implementation of a national VAT.¹⁴⁸ Originally, Ireland utilized a standard rate (about 16 percent) and only one reduced rate (about 5 percent), in addition to a livestock rate and a flat-rate addition (both 1 percent).¹⁴⁹ In 1983, Ireland bifurcated its VAT structure to institute a second reduced rate at a modest 5 percent, essentially replacing the original reduced rate which had swelled to 23 percent.¹⁵⁰ The standard rate had grown to a whopping 35 percent, but quickly diminished to its current position in the low twenties.¹⁵¹ Use of the second reduced rate fluctuated throughout the 1980s and 90s, but has been fixed at 9 percent since 2011.¹⁵² The first reduced rate has remained in the teens since 1991.¹⁵³ The livestock rate and now flat-rate compensation for farmers have both climbed steadily to their current figures of approximately 5 percent each.¹⁵⁴ The history of Irish VAT also includes abolished and repealed “special” VAT rates.¹⁵⁵

2. Operation of VAT in Ireland

Ireland’s Office of the Revenue Commissioners, established by government order in 1923, is responsible for the assessment and collection of nationwide taxes, as well as the implementation of customs controls.¹⁵⁶ VAT is due either on the date of the sale in question or the date of receipt of any advance payment, with several exceptions.¹⁵⁷ Registration for VAT in Ireland is available online, or through a traditional paper application.¹⁵⁸ Ireland also employs a reverse charge mechanism, whereby the recipient of certain goods or services—rather than the supplier—is

148. *Id.*; see also Third Amendment of the Constitution Act 1972 (Act No. 3/1972) (Ir.), <http://www.irishstatutebook.ie/eli/1972/ca/3/enacted/en/print>.

149. See *Historical VAT Rates*, *supra* note 147.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Role of Revenue*, REVENUE, <https://www.revenue.ie/en/corporate/information-about-revenue/role-of-revenue/index.aspx> (last visited Mar. 12, 2022).

157. *When is VAT Due?*, REVENUE, <https://www.revenue.ie/en/vat/accounting-for-vat/when-is-vat-due/index.aspx> (last visited Mar. 12, 2022).

158. *How Do You Register for VAT?*, REVENUE, <https://www.revenue.ie/en/vat/vat-registration/how-do-you-register-for-vat/index.aspx> (last visited Mar. 12, 2022).

accountable for the VAT.¹⁵⁹ The rates applicable to various products are set forth by the Value-Added Tax Consolidation Act of 2010.¹⁶⁰ Seemingly arbitrary decisions as to which rates apply to which goods, and when they apply, are present throughout Ireland's VAT system.¹⁶¹ One particularly curious choice, for instance, allows the second reduced rate to be applied to Baked Alaska instead of the first reduced rate—but only when the dessert is served with a meal.¹⁶² Irish VAT has resulted in litigation over issues including the reclamation and assessment of VAT.¹⁶³ Moreover, the OECD has found Ireland's VAT Revenue Ratio to be below average.¹⁶⁴ Put simply, the practical consequences of the VAT system in Ireland largely mirror those presented by that of the United Kingdom—Ireland's parent country and post-colonial superior.

B. VAT in Argentina

Argentina has one of the largest economies in South America,¹⁶⁵ but the country is currently in crisis.¹⁶⁶ Poverty and economic considerations are present in Argentine art and culture;

159. *Gas, Electricity, Gas and Electricity Certificates*, REVENUE, <https://www.revenue.ie/en/vat/vat-on-goods/gas-electricity-gas-and-electricity-certificates/index.aspx> (last visited Mar. 14, 2022).

160. Value-Added Tax Consolidation Act 2010 (Act No. 31/2010) (Ir.), <http://www.irishstatutebook.ie/eli/2010/act/31/enacted/en/pdf>.

161. *Cf. id.*

162. *VAT Rates: BAKED ALASKA – CAKE (Food and Drink for Human Consumption)*, REVENUE, <https://www.revenue.ie/en/vat/vat-rates/search-vat-rates/B/baked-alaska-cake-food-and-drink-for-human-consumption-.aspx> (last visited Nov. 19, 2021) (VATCA § 46(1)(c)); *see generally Baked Alaska Recipe*, FOOD NETWORK, <https://www.foodnetwork.com/recipes/food-network-kitchen/baked-alaska-recipe-2125603> (last visited Feb. 1, 2022) (providing recipes and photographs of Baked Alaska).

163. *E.g.*, *Dublin Waterworld Ltd. v. Nat'l Sports Campus Dev. Auth.*, [2019] IECA 214 (Ir.), (Transcript); *Cussens and others v. Brosnan (Inspector of Taxes)* [2008 IEHC 169 (Ir.) (citing *Halifax PLC and others v. Customs and Excise Comm'rs* (Case C-255/02), [2006] All ER (D) 283 (Eng.)).

164. *Consumption Tax Trends – Ireland*, OECD, <https://www.oecd.org/tax/consumption/consumption-tax-trends-ireland.pdf> (last visited Dec. 11, 2021).

165. *Argentina Overview*, WORLD BANK, <https://www.worldbank.org/en/country/argentina/overview> (last visited Dec. 30, 2021).

166. Ryan Dube, *Argentina's President Struggles to Avert Economic Crash*, WALL ST. J. (Nov. 3, 2020, 8:57 AM) <https://www.wsj.com/articles/argentinas-presidentstruggles-to-avert-economic-crash-11604406557>.

Jorge Luis Borges¹⁶⁷, for instance, mentioned the themes throughout his works.¹⁶⁸ Given the current financial circumstances of the country, an examination of tax laws in Argentina is worthwhile.

1. Brief History of VAT in Argentina

Argentina initiated its VAT system approximately fifty years ago when on December 27th, 1973, Argentine Congress approved Ley No. 20631 introducing VAT.¹⁶⁹ The consolidated text of the VAT law was approved by Decree No. 280/97 and published in the Official Gazette on April 15, 1997; the law has since been subject to ongoing amendment and interpretation.¹⁷⁰

2. Operation of VAT in Argentina

The General Tax Directorate, a division of Argentina's Federal Administration of Public Revenue (AFIP),¹⁷¹ is responsible for the administration of VAT.¹⁷² The system utilizes a standard rate of 21 percent, a reduced rate of 10.5 percent for selected supplies (e.g. uncooked meat, bread, etc.),¹⁷³ an enhanced rate of 27 percent for "metered utilities and telecommunication services," with certain exceptions, and zero-rated or exempt supplies.¹⁷⁴ The exemptions provided for imports and exports once again raise concerns of carousel fraud, as previously discussed.¹⁷⁵

The potential pitfalls of a VAT system are exemplified—particularly in Argentina, or, alternatively, in relation to import VAT issues—by the fascinating case of Alberto Samid.¹⁷⁶ Samid is an

167. Borges was a prominent Argentine author.

168. Jorge Luis Borges, *El Fin*, in *FICCIONES* 197 (1944).

169. *Bloomberg Value-Added Tax Navigator*, Argentina § 1; Law No. 20631, Dec. 31, 1973 (Arg.).

170. *Bloomberg Value-Added Tax Navigator*, Argentina § 1; Decreto 280/97, Mar. 26, 1997, B.O. (Arg.).

171. AFIP, www.afip.gob.ar/ (last visited Dec. 21, 2021).

172. *Bloomberg Value-Added Tax Navigator*, Argentina § 1.

173. VAT on advertising in newspapers, magazines, and periodicals may be imposed at a rate of 5%. *Bloomberg Value-Added Tax Navigator*, Argentina § 7.2.

174. *Bloomberg Value-Added Tax Navigator*, Argentina § 7.2.

175. See *supra* notes 105–106; see also *Bloomberg Value-Added Tax Navigator*, Argentina §§ 7.5–7.6.

176. See generally Emilia Delfino, *El 'Rey de la Carne', Alberto Samid, llegará a Argentina tras ser expulsado de Belice, donde estaba prófugo*, CNN ESPAÑOL

Argentine entrepreneur, known as “El rey de carne” as a result of his extensive involvement in the Argentine meat industry.¹⁷⁷ Samid was arrested by Interpol in Belize in March of 2019, after fleeing Argentina under investigation from court officials for tax evasion, corruption, and abuse of labor laws.¹⁷⁸ The cause of action dates all the way back to 1996, when Argentine tax officials first asserted a deficiency of 88 million dollars including income taxes, employer contributions, and—of course—VAT.¹⁷⁹ Samid was extradited and faced charges in Argentina, where he ultimately received a four-year sentence from the Tribunal Oral en lo Penal Económico 1 (TOPE 1, or the First Oral Tribunal for Economic Crimes).¹⁸⁰ Samid was permitted to leave the prison due to health issues and he currently maintains an active Twitter profile, even at the age of 72.¹⁸¹

C. VAT in Jamaica

Jamaica gained independence from the United Kingdom in 1962 with the passing of the Jamaica Independence Act.¹⁸² Prior to achieving liberation, Jamaica was subject to extensive economic exploitation by the British as a result of its wealth of resources (e.g., sugar, slaves, etc.).¹⁸³ Notably, Jamaica was first a colony of the Spanish when taken by Columbus in 1494, until

(Apr. 9, 2019, 4:43 PM), <https://cnnespanol.cnn.com/2019/04/09/el-rey-de-la-carne-alberto-samid-llegara-a-argentina-tras-ser-expulsado-de-belice-donde-estaba-profugo/>.

177. *Id.*

178. *Id.*; see also *Interpol in Belize Arrest Argentina’s ‘King of Meat’ on Corruption Charges*, BUENOS AIRES TIMES (July 4, 2019, 3:56 PM), <https://www.batimes.com.ar/news/argentina/interpol-in-belice-arrest-king-of-meat-on-corruption-charges.phtml>.

179. Federico Rivas Molina, *Interpol captura al carnicero más famoso de Argentina*, EL PAÍS (Apr. 6, 2019, 4:42 PM), https://elpais.com/internacional/2019/04/05/solo_en_argentina/1554495852_120978.html.

180. *Condenaron a cuatro años de prisión en un juicio oral a Alberto Samid*, CENTRO DE INFORMACIÓN JUDICIAL (Apr. 17, 2019), <https://www.cij.gov.ar/nota-34171-Condernaron-a-cuatro-a-os-de-prisi-n-en-un-juicio-oral-a-Alberto-Samid.html>.

181. @soyalbertosamid, TWITTER, <https://twitter.com/soyalbertosamid> (last visited Mar. 15, 2022).

182. Jamaica Independence Act of 1962, 10 & 11 Eliz. 2 c. 40 (Eng.), https://www.legislation.gov.uk/ukpga/1962/40/pdfs/ukpga_19620040_en.pdf.

183. *Slavery and Revolution*, UNIV. OF SOUTHAMPTON (Aug. 2, 2012), <https://blog.soton.ac.uk/slaveryandrevolution/jamaica/>.

seized by the British in 1655.¹⁸⁴ As a result of its colonial history, it might have been expected that Jamaica would eventually adopt the same taxation system employed by its former owners—and they in fact did.¹⁸⁵ Consequently, financial limitations and economic hardship are ingrained in the Jamaican consciousness.¹⁸⁶

1. History of VAT in Jamaica

The General Consumption Tax (GCT) Act, Jamaica's legislative provision for national VAT, was enacted in 1991—less than 30 years after the nation's liberation from British rule.¹⁸⁷ The GCT Act is amended occasionally, and accompanied by a formidable, forty-page set of GCT Regulations, also published in 1991.¹⁸⁸ The initial GCT rate, imposed in 1991, was 10 percent. Since 1993, the standard VAT rate in Jamaica has consistently been between 15 and 18 percent.¹⁸⁹

2. Operation of VAT in Jamaica

The Tax Administration of Jamaica is the administrative body responsible for assessment and collection of taxes.¹⁹⁰ Under section 4(1)(a) of the GCT Act, the current standard VAT rate in Jamaica is 15 percent, effective since April 1, 2020.¹⁹¹ Jamaica's VAT system, like many others, contains complex rules to

184. *Id.*

185. General Consumption Tax Act, (Oct. 22, 1991) (last amended 2014), <https://moj.gov.jm/sites/default/files/laws/The%20General%20Consumption%20Tax%20Act.pdf>; *Bloomberg Value-Added Tax Navigator*, Jamaica § 1.2.

186. *See, e.g.*, GREGORY ISAACS, *Loving Pauper*, on EXTRA CLASSIC (Micron Music Ltd. 1979).

187. General Consumption Tax Act, (Oct. 22, 1991) (last amended 2014), <https://moj.gov.jm/sites/default/files/laws/The%20General%20Consumption%20Tax%20Act.pdf>; *Bloomberg Value-Added Tax Navigator*, Jamaica § 1.2.

188. *See* General Consumption Tax Act, *supra* note 185; *Bloomberg Value-Added Tax Navigator*, Jamaica § 1.2.

189. *General Consumption Tax*, TAX ADMIN. JAMAICA, https://www.jamaicatax.gov.jm/general-consumption-tax1/#history_of_the_standard_rate (last visited Mar. 1, 2022).

190. TAX ADMIN. JAMAICA, <https://www.jamaicatax.gov.jm/> (last visited Feb. 13, 2022).

191. *Bloomberg Value-Added Tax Navigator*, Jamaica § 7.1

determine which persons¹⁹² or transactions¹⁹³ are taxable, at what rates,¹⁹⁴ and more. Litigation over VAT (or GCT) audits are not uncommon in Jamaica.¹⁹⁵ For instance, *Digicel v. Commissioner*, decided in 2014 by Jamaica's Civil Supreme Court, considered the novel issue of whether insurance proceeds received by Digicel for income lost as a result of a hurricane were taxable under the GCT Act.¹⁹⁶ Coincidentally, the approach of the federal income tax to receipts through accident insurance in the United States is at odds, to an extent, with both the analysis and results of the *Digicel* case.¹⁹⁷

IV. THE UNITED STATES OF AMERICA

Since July 4, 1776, the final date of American existence under Great Britain as a colony, the United States of America has grown into a global superpower.¹⁹⁸ In 2076, the nation will—most likely—celebrate 300 years as an independent nation, a large part of which has already been spent operating as a colonizing force in its own right.¹⁹⁹ Though the pre-independence era does not occupy a favorable position in the American consciousness,²⁰⁰ it is relevant to the determination, for the sake of this

192. *Bloomberg Value-Added Tax Navigator*, Jamaica § 3.

193. *Bloomberg Value-Added Tax Navigator*, Jamaica § 4.

194. *Bloomberg Value-Added Tax Navigator*, Jamaica §§ 6–7.

195. See, e.g., *Digicel Jamaica Ltd. v. Comm'r of Tax Appeals*, [2014] JMCA Civ 36; *George Trading Ltd. v. Comm'r of Tax Appeals*, [2003] JMCA Civ 2/2002.

196. *Digicel*, [2014] JMCA Civ 36. The importance of the Digicel company in Jamaican culture has been noted by media personality Daniel Baker, better known as Desus Nice, who is of Jamaican descent. Bodega Boys podcast, ep. 176.

197. Compare *Digicel*, [2014] JMCA Civ 36 (including insurance receipt in taxable income) with I.R.C. § 104 (a)(3) (excluding such receipts from gross income); *Kuhn v. United States*, 258 F.2d 840 (3d Cir. 1958) (reaching same result while interpreting section 104); SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 338–39.

198. *The Declaration of Independence, 1776*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1776-1783/declaration> (last visited Mar. 1, 2022); *1898: The Birth of a Superpower*, OFF. OF THE HISTORIAN, <https://history.state.gov/departmenthistory/short-history/superpower> (last visited Mar. 1, 2022).

199. See *1898: The Birth of a Superpower*, *supra* note 198.

200. Cf. NATHANIEL HAWTHORNE, *THE SCARLET LETTER* (1850).

analysis, to situate the United States in the hybrid space within the post-colonial framework.²⁰¹

Theories of hybridity and mimicry offer helpful explanations as to the historical cognitive dissonance regarding taxation from an American perspective.²⁰² While the United States Constitution has always provided generally for taxation, American citizens have not always received this practice favorably.²⁰³

Moreover, the very system of American taxation can be described as “hybrid,” as it defies description as either a true income or consumption tax.²⁰⁴ The following section will give an overview of the American system—or systems—of taxation, and explain why it is preferable to the implementation of a VAT.

A. Overview of American taxation system

The federal income tax is based on income, narrowly defined, while state and local taxes usually select from bases tethered to consumption.²⁰⁵ Most states choose to implement an income tax of their own, but some do not.²⁰⁶ Such taxes are constitutionally authorized by the following language:

201. See BHABHA, *supra* note 32. Bhabha reminds us that hybridity entertains difference without an imposed or assumed hierarchy; this conception of an anti-hierarchical hybrid gathers support from the existence, whether true or not, of the stereotype of American superiority. See e.g., Stephen M. Walt, *Foreign Policy: America's Superiority Complex*, NPR (May 14, 2010, 11:07 AM), <https://www.npr.org/templates/story/story.php?storyId=126827639>; Paul Krugman, *America's Superiority Complex*, N.Y. TIMES (Mar. 23, 2011, 5:39 PM), <https://krugman.blogs.nytimes.com/2011/03/23/americas-superiority-complex/>.

202. See BHABHA, *supra* note 32.

203. U.S. CONST. art. I, § 2, cl. 3; see, e.g., *United States v. Snipes*, 611 F.3d 855 (11th Cir. 2010); cf. WILLIAM FAULKNER, *THE SOUND AND THE FURY* 276 (Random House 1956). See also FAULKNER AND MONEY 110–20 (Jay Watson & James G. Thomas Jr. eds., 2019).

204. See Edward J. McCaffery, *Tax Policy under a Hybrid Income-Consumption Tax*, 70 TEXAS L. REV. 1145 (1992).

205. SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 8 (noting that the Haig-Simons accretion-and-consumption based concept of income commands a much broader tax base than under current law); see also I.R.C. §§ 61, 63; see, e.g., ILLINOIS DEPT OF REVENUE, <https://www2.illinois.gov/rev/Pages/default.aspx> (last visited Mar. 11, 2022) (providing examples of consumption-based state taxes).

206. See NEW YORK STATE DEP'T OF TAX'N & FIN., <https://www.tax.ny.gov/> (last visited Mar. 16, 2021) (New York state taxes); STATE OF CALIFORNIA FRANCHISE TAX BD., <https://www.ftb.ca.gov/> (last visited Mar. 16, 2021) (California state taxes), but see John Waggoner, *9 States That Don't Have an Income Tax*, AARP

[D]irect taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons.²⁰⁷

It has long been observed that the power of taxation is of “vital importance,” and “essential to the very existence of government.”²⁰⁸ At any level, collection of taxes in America is meant to achieve a number of core objectives, such as raising revenue for governmental functions, providing financial assistance to the impoverished, regulation of undesirable activities (or conversely, encouragement of desirable activities), and the equitable redistribution of wealth.²⁰⁹ The extent to which some of these specific goals are achieved may be seen as a measure of the American tax system’s efficiency.²¹⁰

1. The Federal Income Tax

The federal income tax has recently been described both as the “lodestar of the federal revenue system” and “La Llorona” alike.²¹¹ In any case, it certainly is far-reaching. In 2018, 153.8 million individual income tax returns were filed, and the total income tax was \$1.4 trillion dollars.²¹² In order to better grasp such daunting figures, it is important to outline the history of the federal income tax, as well as its practical operation.

(Mar. 9, 2022) <https://www.aarp.org/money/taxes/info-2020/states-without-an-income-tax.html> (Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington and Wyoming assess no state-level income tax).

207. U.S. CONST., art. I, § 2, cl. 3.

208. *McCulloch v. Maryland*, 17 U.S. 316, 425, 428 (1819).

209. SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 3–4.

210. SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 5–6.

211. SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 25; *but see* Jonathan Karver & Marco Hernandez, *Process Makes Perfect: Improving Tax Compliance and Tax Administration Through Behavioral Insights*, WORLD BANK BLOGS (Mar. 5, 2019), <https://blogs.worldbank.org/developmenttalk/process-makes-perfect-improving-tax-compliance-and-tax-administration-through-behavioral-insights>.

212. IRS, INDIVIDUAL INCOME TAX RETURNS: COMPLETE REPORT, 2019 at 21 (last updated Dec. 2021) <https://www.irs.gov/pub/irs-pdf/p1304.pdf>.

a. A Brief History of the Federal Income Tax

The history of the federal income tax is largely shaped by the history of the nation itself. As American influence has grown across the globe, so too has the need for American capital.²¹³ In the latter part of the 18th century, the federal government relied heavily on customs receipts, protective tariffs, and excise—rather than income—taxes in order to produce revenue.²¹⁴ These excise taxes, imposed on goods such as spirits, sugar, snuff, bonds, or even carriages, were short-lived and eventually repealed by 1817.²¹⁵ More than forty years later, only through the looming threat of Civil War was the Lincoln administration able to implement the nation's first federal income tax.²¹⁶ At the conclusion of the war, wealthy Americans levied successfully for the repeal of the tax, but it was reinstated again by Congress in 1894.²¹⁷ Before the government could collect, however, the tax was ruled unconstitutional.²¹⁸ This result was widely questioned, though, and shortly thereafter, Congress submitted the Sixteenth Amendment for ratification and enacted the nation's third federal income tax between 1909 and 1913.²¹⁹ In the 1920s, the severity of the rates fluctuated as a result of varied opinions on the tax, but by the 1930s and 1940s the federal income tax had blossomed “from a class-based tax to a mass-based tax.”²²⁰

213. SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 18; see John Glaser, *Excessive US Military Interventions Come with a Cost*, FOUND. FOR ECON. EDUC. (Dec. 8, 2017), <https://fee.org/articles/excessive-us-military-interventions-come-with-a-cost/>; Amanda Macias, *America Has Spent \$6.4 Trillion on Wars in the Middle East and Asia Since 2001, a New Study Says*, CNBC (Nov. 20, 2019, 2:19 PM), <https://www.cnbc.com/2019/11/20/us-spent-6point4-trillion-on-middle-east-wars-since-2001-study.html>; Anthony Cordesman, *U.S. Military Spending: The Cost of Wars*, CTR FOR STRATEGIC & INT'L STUD. (July 10, 2017), <https://www.csis.org/analysis/us-military-spending-cost-wars>.

214. SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 19.

215. *Id.*

216. *Id.*

217. *Id.* at 19–20.

218. *Pollock v. Farmers' Loan and Trust Co.*, 157 U.S. 429, 601 (1895); see also SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 20.

219. SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 21; see also Revenue Act of 1913, ch.16, 38 Stat. 114; U.S. CONST. amend. XVI.

220. SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 23.

b. Operation of Federal Income Tax

The President of the United States appoints a Commissioner of Internal Revenue for a five-year term. The Commissioner, along with the Internal Revenue Service (IRS), is responsible for the assessment and collection of federal taxes.²²¹ The Commissioner's job is made easier, no doubt, by the vast withholding system implemented after World War II which allows the IRS to process millions of returns.²²² On the other hand, the Commissioner must answer the claims of taxpayers—or rather, non-taxpayers—in the United States Tax Court.²²³

The tax rates, or brackets, are set forth in Section 1 of the Internal Revenue Code (Code). Generally speaking, the bracketed system taxes different portions of a taxpayer's "taxable income"²²⁴ at various rates.²²⁵ Gross income is defined by Section 61 of the Code as "all income from whatever source derived,"²²⁶ but it must be noted that this rule is swallowed by numerous exceptions.²²⁷ Among these is the realization requirement, exemplified by the Supreme Court's decision in *Eisner v. Macomber*,²²⁸ which declines to include certain sales, exchanges, or "accessions to wealth"²²⁹ in the computation of gain for income tax purposes.²³⁰ Gain—and tax, generally speaking—begets issues of

221. *Id.* at 28.

222. *Id.* at 23.

223. *Id.* at 34. The Tax Court hears cases in which a taxpayer challenges an asserted deficiency. Otherwise, a taxpayer must pay the tax and then file a "refund suit" in either a federal district court or the Court of Federal Claims in Washington, D.C. *See id.* at 34–35.

224. I.R.C. § 63.

225. I.R.C. § 1. For an illustration of the operation of the tax brackets; *see* SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 12–13.

226. I.R.C. § 61; *see also* I.R.C. § 63.

227. *See, e.g.*, I.R.C. §§ 102 (generally excluding the value of gifts from income), 121 (excluding gain from the sale of a principal residence), 1001 (computation of gain), 1011–12 (basis rules), 1014–15 (basis rules for gifts, transfers in trust, and property acquired from a decedent).

228. *Eisner v. Macomber*, 252 U.S. 189 (1920).

229. *Comm'r v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955).

230. *See* I.R.C. § 1001(b) (amount realized); *Treas. Reg.*, 26 C.F.R. §§ 1.1001–1(a), 1.1002–1; *Helvering v. Bruun*, 309 U.S. 461 (1940).

computation,²³¹ character,²³² source,²³³ deferral,²³⁴ exclusion,²³⁵ deduction,²³⁶ and more.²³⁷ In this sense, taxable income can be defined much more narrowly under the provisions of the Code than it is by leading economic theorists.²³⁸

2. Sales Tax in the United States

Sales tax at the state level can be to state and local governments what the federal income tax is to the federal government. State income tax is by no means insignificant and should not be ignored; however, as some states choose to forego it, state income taxation can arguably be understood as both a less complex iteration of its federal counterpart, and less pertinent to an overall analysis of American taxation than sales tax at the state level. The following provides a brief history of sales tax across the United States, and an overview of its specific operation.

a. A Brief History of American Sales Tax

Sales tax in the United States, much like so many other taxes, was initially borne out of economic desperation.²³⁹ Mississippi was the first state to enact a sales tax in 1930.²⁴⁰ As the Great Depression hit, many states turned to the sales tax as a measure of producing revenue.²⁴¹ Another “M-state” worthy of note for its choices in taxation is Michigan, as The Great Lakes State is the only one to have ever implemented a modified form of VAT—though it was repealed somewhat recently in 2008.²⁴² By the end

231. *E.g.*, I.R.C. § 1001.

232. *E.g.*, I.R.C. § 1(h)(11).

233. *E.g.*, I.R.C. §§ 861–865.

234. *E.g.*, I.R.C. §§ 951–965.

235. *E.g.*, I.R.C. §§ 101–140.

236. *E.g.*, I.R.C. §§ 151–250.

237. *E.g.*, I.R.C. §§ 1, et. seq.

238. SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 7; *see also* KEYNES, *supra* note 48; HANSEN, *supra* note 48, at 54–56.

239. *See* Vivien Lee & David Wessel, *The History and Future of the Retail Sales Tax*, BROOKINGS (July 16, 2018), <https://www.brookings.edu/blog/up-front/2018/07/16/the-history-and-future-of-the-retail-sales-tax/>.

240. Liz Emanuel & Richard Borean, *When Did Your State Adopt Its Sales Tax?*, TAX FOUND. (July 11, 2014), <https://taxfoundation.org/when-did-your-state-adopt-its-sales-tax/>.

241. *Id.*

242. *Michigan Business Tax (MBT) Details*, MICHIGAN.GOV, https://www.michigan.gov/taxes/0,4676,7-238-43519_46621-169398--,00.html

of the 1930s, more than 20 states had implemented a state-wide sales tax, and by the end of the 1960s, that figure had more than doubled to 45.²⁴³ Vermont was the last state to join in 1969. Now, only five states—Alaska, Delaware, Montana, New Hampshire and Oregon—operate without a statewide sales tax.²⁴⁴ As early as 1947, retail sales tax “became the largest single source of tax revenue for states.”²⁴⁵ Consequently, sales tax assumes a similar ubiquity and importance to that of the federal income tax.

b. Operation of the American Sales Tax

One of the few similarities between 1947 and 2016 is the continued importance of the sales tax to the various States. Over the span of nearly 70 years, the tax continues to comprise approximately one-third of all state tax revenues.²⁴⁶ There is, of course, no federal sales tax rate—this is arguably rendered unnecessary by the federal income tax and is therefore left to the sole discretion of the states.²⁴⁷ Sales tax is a general term which may include, but is not limited to, the following three varieties most pertinent to this Note’s analysis: retail sales tax,²⁴⁸ excise tax,²⁴⁹ and use tax.²⁵⁰ Retail sales taxes, generally speaking, are levied at the point of sale of goods or services to a final consumer.²⁵¹ Excise taxes are applied to specific goods (i.e.

(last visited Mar. 21, 2022); *see also* MICHIGAN DEP’T. OF TREASURY OFF. OF REVENUE AND TAX ANALYSIS, REPORT: THE MICHIGAN SINGLE BUSINESS TAX 1998-99 (July 2002), https://www.michigan.gov/documents/SBTRReport1998_99_38600_7.pdf; Robert J. Kleine, *The Michigan Single Business Tax: Burden or Benefit?*, PUB. SECTOR CONSULTANTS (Nov. 12, 1993), https://publicsectorconsultants.com/wp-content/uploads/2017/01/111293_ppa.pdf.

243. *See* Emanuel & Borean, *supra* note 240.

244. *Id.*

245. Lee & Wessel, *supra* note 239.

246. *Id.*

247. *Cf.* I.R.C. § 1.

248. *E.g.*, *Find Sales Tax Rates*, N.Y. STATE DEP’T OF TAX’N & FIN., <https://www.tax.ny.gov/bus/st/rates.htm> (last visited Mar. 15, 2022).

249. *E.g.*, *Cigarette and Tobacco Products Tax*, N.Y. STATE DEP’T OF TAX’N & FIN., <https://www.tax.ny.gov/bus/cig/cigidx.htm> (last visited Mar. 15, 2022).

250. *See, e.g.*, New York State Dep’t of Tax’n & Fin., *Use Tax for Businesses*, TB-ST-910 (2017), https://www.tax.ny.gov/pdf/tg_bulletins/sales/b17_910s.pdf (last visited Mar. 14, 2022) [hereinafter *Use Tax for Businesses*].

251. *Sales Taxes*, TAX FOUND., <https://taxfoundation.org/state-tax/sales-taxes/> (last visited Mar. 13, 2022).

gasoline,²⁵² cigarettes,²⁵³ alcohol²⁵⁴) and are levied upon the manufacturer who includes the tax in the final purchase price.²⁵⁵ Use tax applies to goods that are used within a state when such state does not collect sales tax on the purchase of that good (i.e., an out-of-state purchase).²⁵⁶ There can be complexity²⁵⁷ in the interplay between various types of sales taxes, as well as the availability of exemptions.²⁵⁸

B. Overall Evaluation of the Success of the American Taxation System

There are various arguments in favor of retention of our federal income tax.²⁵⁹ The American income tax system is undoubtedly far from perfect. However, as Professor Crane of Northwestern University Law School notes, the income tax raises a lot of money with little pain, and can prove an easy target for unfair criticism.²⁶⁰ The promise of rationality and the guarantee of administration under rule of law present further benefits.²⁶¹ From a practical standpoint, the bracket system ensures that various portions of a taxpayer's income are taxed at differing rates, which allows for bona fide progressivity.²⁶² There are also benefits to our current system of state-level tax. Firstly, the retention of the power to select a tax system by the several states is an important lesson in state sovereignty, one of the fundamental tenets of American government.²⁶³ In turn, each state may levy taxes in a manner consistent with its own citizens, geography,

252. *E.g.*, *Motor Fuel Excise Tax*, N.Y. STATE DEPT OF TAX'N & FIN., <https://www.tax.ny.gov/bus/gas/gasidx.htm> (last visited Mar. 13, 2022).

253. *See, e.g.*, *Cigarette and Tobacco Products Tax*, *supra* note 249.

254. *E.g.*, *Alcoholic Beverages Tax*, N.Y. STATE DEPT OF TAX'N & FIN., <https://www.tax.ny.gov/bus/bev/abt.htm> (last visited Mar. 14, 2022).

255. *See Excise Taxes*, TAX FOUND., <https://taxfoundation.org/state-tax/excise-taxes/> (last visited Mar. 15, 2022).

256. *See Use Tax for Businesses*, *supra* note 250.

257. *Cf.* SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 6.

258. *See, e.g.*, *Matter of EchoStar Satellite Corp. v. Tax Appeals Tribunal of the State of N.Y.*, 20 N.Y.3d 286 (2012).

259. *See generally* Alvin Warren, *Would a Consumption Tax Be Fairer Than an Income Tax?*, 89 YALE L. J. 1081 (1980).

260. Charlotte Crane, *The Income Tax & the Burden of Perfection*, 100 NW. U. L. REV. 171, 174–75 (2006).

261. *Id.* at 176–77.

262. For a discussion on progressivity, *see, e.g.*, SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 13.

263. *Cf.* U.S. CONST. amend. X.

culture and economy.²⁶⁴ Exemptions can be tailored to specific needs rather than conferred arbitrarily, as seen in numerous VAT systems. State level taxation also allows for state tax policies to react and respond to their federal counterparts.²⁶⁵

C. Additional arguments against implementing VAT in the US

There are several arguments to be made against the implementation of VAT in the United States. Firstly, academics have noted that as a practical matter, it would be tremendously difficult—for a number of reasons—to cease use of the current system and switch over to a new one in the United States.²⁶⁶ The inevitable transitional period would likely be rife with attempts to circumvent or abuse the new system.²⁶⁷ For instance, as discussed above, VAT specifically has been shown to be susceptible to “carousel fraud.”²⁶⁸ Furthermore, analysis conducted above shows that VAT exemptions are purely up to the discretion of the government and can at times be arbitrary.²⁶⁹ Arbitrary exemptions can confer arbitrary benefits, which is counterintuitive to the American tax system’s redistributive mission and the vertical equity which inheres within such a mission.²⁷⁰ Conversely, our federal income tax system already champions and centers around the ideal of progressivity.²⁷¹ A national VAT also could work to undo or undermine the state sovereignty—a concept precious to American jurisprudence, particularly the late Justice Antonin Scalia²⁷²—implicit in allowing each state to select its

264. *E.g.*, *Alaska Tax Facts*, ALASKA DEP’T OF COM., CMTY. & ECON. DEV., <https://www.commerce.alaska.gov/web/dcra/officeofthestateassessor/alaskataxfacts.aspx> (last visited May 24, 2021) (providing for Alaska state tax on raw fish).

265. *E.g.*, Joseph Bankman, Jacob Goldin, David Gamage, Daniel Hemel, Darien Shanske, Kirk J. Stark, Dennis J. Ventry Jr. & Manoj Viswanathan, *State Responses to Federal Tax Reform: Charitable Tax Credits*, 159 STATE TAX NOTES 433 (2018).

266. U.S. CHAMBER OF COM., AN INTRODUCTION TO THE VALUE-ADDED TAX (VAT) 8–10 (2010), https://www.uschamber.com/sites/default/files/legacy/issues/econtax/files/vat_paper_4_25_2010.pdf.

267. *Cf.* GREENE *supra* note 37, at Law 35 – Master the Art of Timing.

268. *See FACTBOX – How Carousel Fraud Works*, *supra* note 105; *see, e.g.*, *Revenue & Customs Comm’rs v. Total Network SL*, [2008] UKHL 19 (Eng.).

269. *See, e.g.*, *supra* Part IV(2).

270. SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 3–4.

271. SIMMONS, MCMAHON, BORDEN & WELLS, *supra* note 41, at 13.

272. *See Printz v. United States*, 521 U.S. 898, 932 (1997).

preferred system of taxation.²⁷³ Finally, from a political standpoint, VAT has relied on the support of some of the nation's more unconventional politicians.²⁷⁴ The realistic likelihood of successful implementation of VAT in the United States is negligible. For the foregoing reasons, the United States is best served by continuing to hone and perfect its own income tax system.

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273. U.S. Const. art. I, § 2, cl. 3.

274. See, e.g., Damian Paletta & Max Ehrenfreund, *Trump Considers Value-Added, Carbon Taxes as Part of Tax Code Overhaul*, CHICAGO TRIB. (Apr. 4, 2017, 2:17 PM), <https://www.chicagotribune.com/nation-world/ct-trump-tax-code-overhaul-20170404-story.html> (Trump considers VAT); *Value-Added Tax*, YANG 2020, <https://2020.yang2020.com/policies/value-added-tax/> (last visited Mar. 1, 2022) (Yang supports VAT with false allegation that Amazon paid zero in taxes); see also Andrew Davis, *Why Amazon Paid No 2018 US Federal Income Tax*, CNBC (Apr. 4, 2019, 6:10 AM), <https://www.cnbc.com/2019/04/03/why-amazon-paid-no-federal-income-tax.html> (explaining that Amazon avoided *income* tax during one taxable year but paid billions in *corporate* tax); Alan Cole, *Ted Cruz's "Business Flat Tax: A Primer*, TAX FOUND. (Oct. 29, 2015), <https://taxfoundation.org/ted-cruz-s-business-flat-tax-primer/> (Ted Cruz supports form of VAT).

* To: Mom; AP; all friends and family; my mentors in law Adam Kalish, Judge Kuo, Professor Borden and Andy Braiterman; the world's best lawyer Jimmy Lathrop; my teachers at Brooklyn Law School (Professors Dean, Silverman, Godsoe, Kim, Kanwar, Cleary, and Fajans), Northwestern University (Professors Stern, Fernandez-Morera, O'Laughlin, Feinsod, Baena, Froula, and Wolff) and Hackley School (Mr. Pruitt, Mrs. Remenar, Mr. Fitzpatrick, Mrs. Fitzpatrick, Dr. Smith, Mr. Storckman, and the late Mr. Frauenthal and Van Leer); Sam Campbell and everyone at SPS, even the Waddlers; the world's best U.S. Open ballperson; and, my firm—thank you