Exploring grounds for allowing an input tax deduction on the acquisition of double-cab delivery vehicles

RA Herholdt

orcid.org/0000-0001-5493-0500

Mini-dissertation accepted in partial fulfilment of the requirements for the degree Master of Commerce in Taxation at the North-West University

Supervisor: Mr H van Dyk

Graduation: June 2023

Student number: 20726511

ACKNOWLEDGEMENTS

- Throughout this journey I have been blessed in abundance by Christ, who has kept me sane and motivated.
- My wife and loudest cheerleader, Nadine. Thank you for all the late nights of being by my side, being the most loving and supportive wife anyone could ever wish for, and for being a super-mom to our children.
- My two beautiful children, Hailey and Joshua. Thank you for your beautiful drawings, letters, hugs and kisses while at my desk. We are truly blessed with you!
- My parents, Karel and Nicolene, for their continued love and support.
- My supervisor, Herman van Dyk, for his valued input, guidance and patience.

ABSTRACT

In South Africa, enterprises that are registered for value-added tax (VAT), are generally precluded from claiming VAT on the acquisition of double cab light delivery vehicles (LDVs), despite using such vehicles for legitimate business purposes. Such enterprises are often forced to use double cab LDVs by other legislation, most notably health and safety statutes. Enterprises that have challenged this inequitable position through the court system, have been unsuccessful as the underlying legislation has limited regard for the intended use of the double cab LDVs and rather focuses on the construction of the vehicle. This study set out to determine whether grounds exist for allowing an input tax deduction on the acquisition of double cab light delivery vehicles, based on the principle of tax equity. To achieve this, this study analysed the reasoning of the legislature in disallowing an input tax deduction on motor cars, what is deemed to be a motor car, judicial decisions on motor cars and other defined terms and other legislation that enterprises should adhere to (which drives the decision as to what type of vehicle should be acquired). The study also compared the Australian position on input tax deductions to South Africa to determine what international norms are insofar it relates to an input tax deduction on motor cars. It was found that the current VAT legislation does not achieve tax equity and that a suitable legislative intervention may be required to address the inequity.

KEYWORDS: VAT, section 17(2)(c), input tax, deduction, motor car, double cab, bakkie, taxation, South African tax, taxable supply

TABLE OF CONTENTS

ACKNOWLEDGEMENTS ..... **I**

ABSTRACT ..... **II**

CHAPTER 1: INTRODUCTION **1**

1.1 Background 1

1.2 Topic actuality 1

1.3 Problem statement 3

1.4 Research objectives 3

1.4.1 Main objective 4

1.4.2 Secondary objectives 4

1.5 Ontology, epistemology, methodology and methods 4

1.5.1 Ontology 4

1.5.2 Epistemology 4

1.5.3 Methodology 5

1.5.4 Interpretivism research paradigm and qualitative methodology 5

1.5.5 Research method 5

1.6 Chapter overview 6

CHAPTER 2: TAX EQUITY, DISALLOWANCE OF INPUT TAX AND THE DEFINITION OF "MOTOR CARS" **7**

2.1 Introduction 7

2.2 Tax equity 7

2.2.1 Vertical tax equity 7

2.2.2 Horizontal tax equity 8

2.3 Why is there a policy that disallows input tax from being claimed on the acquisition of motor cars? 8

2.4 How National Treasury determines whether a vehicle is a “motor car” 9

2.4.1 Legislative definition 9

2.4.1.1 Prior to amending the definition in 2000 9

2.4.1.2 After amending the definition in 2000 to include the wording “double cab light delivery vehicle” 10

2.5 Court cases 10

2.5.1 ITC 1596 57 SATC 341 (1995) 11

2.5.1.1 Relevance and overview of the case 11

2.5.1.2 Summary of the case 11

2.5.1.3 Legal issues and reasoning of the court 11

2.5.2 ITC 1693 62 SATC 518 (1999) 12

2.5.2.1 Relevance and overview of the case 12

2.5.2.2 Summary of the case 12

2.5.2.3 Legal issues and reasoning of the court 13

2.5.3 RTCC v The Commissioner for The South African Revenue Service (VAT 1345) (2016) 13

2.5.3.1 Relevance and overview of the case 13

2.5.3.2 Background of the case 13

2.5.3.3 Legal issue and reasoning of the court 14

2.5.4 Court case dealing with another defined term – AB (Pty) Limited v The Commissioner for The South African Revenue Service (VAT 1015) 15

2.5.4.1 Relevance and overview of the case 15

2.5.4.2 Background of the case 15

2.5.4.3 Legal issue and reasoning of the court 16

2.6 An analysis of Interpretation Note 82 (IN 82) 19

2.6.1 Interpretation of the definition of "motor car" 19

2.6.2 VAT incurred on the acquisition of a motor car is not allowed to be claimed as an input tax deduction 20

2.6.3 Instances where input tax may be deducted when accessories are acquired and when motor cars are modified or converted 20

2.6.4 Change in use adjustments to motor cars, from taxable to non-taxable 21

2.7 Conclusion 23

CHAPTER 3: ANALYSIS OF HEALTH AND SAFETY REGULATIONS, THE NATIONAL ROAD TRAFFIC ACT 93 OF 1996, OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993 AND COMPARISON OF SOUTH AFRICAN AND AUSTRALIAN TAX LAWS 25

3.1 Introduction 25

3.2 National Road Traffic Act 93 of 1996 (NRTA) 25

3.3 Occupational Health and Safety Act 85 of 1993 (OHS Act) 27

3.3.1 Health and safety regulations 28

3.4 Comparison with Australian legislation 29

3.4.1 Australian law on transporting passengers in the loading area of a LDV 30

3.4.2 Australian GST law on double cab LDVs 30

3.5 Conclusion 35

CHAPTER 4: CONCLUSION 38

4.1 Introduction 38

4.2 Summary of Chapter 2 38

4.3 Summary of Chapter 3 39

4.4 Overall conclusion 41

REFERENCES 44

ABBREVIATIONS:

ANTS – A New Tax System

BRICS – Brazil, Russia, India, China and South Africa

GST – Goods and Services Tax

GVM – Gross vehicle mass

IN – Interpretation note

LCT – Luxury Car Tax

LDV – Light delivery vehicle

NRTA – National Road Traffic Act

OHS – Occupational Health and Safety

SAIPA – South African Institute of Professional Accountants

SARS – South African Revenue Service

VAT – Value-added tax

WST – Wholesale Sales Tax

Chapter 1: Introduction

1.1 Background

In South Africa, registered value-added tax (VAT) vendors[1] may claim an input tax deduction on expenditure that has been charged with VAT (at either 0% or 15%), if that expenditure is used in the making of a taxable supply, subject to certain limitations. One of those limitations is that a registered VAT vendor may not claim an input tax deduction on the purchase or rental of a vehicle that falls within the definition of a "motor car" in terms of section 17(2)(c) of the VAT Act 89 of 1991 (the VAT Act). Certain exceptions do apply in terms of section 17(2)(c)(i)-(iii) of the VAT Act, for instance, if the vendor is a car dealer, if the vendor's business activity entails the rental of motor cars, when a motor car is acquired by the vendor for demonstration purposes or temporary use prior to a taxable supply and when a motor car is acquired by the vendor for the purpose of awarding that motor car as a prize.

It has to be further considered what percentage of output of a vendor relates to taxable supplies, as this influences the percentage that the vendor can claim as an input tax deduction, on any expenditure that has been charged with VAT, and is allowable in terms of section 17(1)(i) of the VAT Act. If 95% or more of the vendor's output relates to taxable supplies, the "*de minimis*" rule allows for a full input tax deduction. If the vendor's taxable supply is equal to a percentage of less than 95%, the input tax deduction can be claimed to the extent of making taxable supplies – i.e. to the portion that relates to taxable supplies (Bruwer *et al.*, 2019:105).

VAT returns result in a cash flow (SAIPA Tax Committee, 2012:18), either to or from SARS and will result in a positive cash flow for the vendor during the months in which the vendor receives an input tax refund from SARS. Conversely, not being able to claim an input tax deduction will have a negative impact on a business' short-term cash flow (Botha, 2016:33). Depending on the category of the VAT vendor, these cash flows will occur at the end of every month, two months, six months or twelve months, in terms of section 27 of the VAT Act.

1.2 Topic actuality

When the VAT Act was introduced in 1991 it was not uncommon to see people being transported on the back of a light duty vehicle (LDV) on certain plants and building sites, but over the years the health and safety regulations were tightened and as a result, people are no longer allowed to ride as passengers on the back of a LDV (Lubbe & Viviers, 2013:25). In terms of Regulation 247 (gazetted on 11 May 2015) of the National Road Traffic Act 93 of 1996, people may not be

[1] A person registered for VAT will hereinafter be referred to as a vendor

transported on the back of any LDV when tools or goods are also being transported unless the people and tools or goods are separated by a partition. As a result, companies are forced to invest in double cab LDVs (Lubbe & Viviers, 2013:25).

Double cab LDVs are very popular among many South African companies to use, as they (by design) are able to carry at least four passengers, as opposed to two in the case of single cab LDVs, as well as being able to carry tools of their trade on the back of the vehicle — which cannot be done in the case of another type of vehicle capable of carrying four or more passengers. Think of loading a cement-mixer or 20 bags of cement in the trunk of a sedan or a 16-seater minibus.

However, double cab LDVs fall within the scope of a motor car[2] as defined. Subsequently, an input tax deduction is denied for companies that are in, for example, the mining or refinery industries, on the acquisition of a double cab LDV even if they produce 100% taxable supplies and can argue that those LDVs are solely used for business purposes (Stiglingh, 2019:1034), regardless of whether those double cab LDVs are acquired/purchased, rented, imported or leased (Kamdar, 2011:39).

Therefore, the issue is that the denial of input tax is based on the construction of the vehicle as opposed to its use. This is confirmed in *RTCC v The Commissioner for the South African Revenue Service (VAT 1345)* (2016) where the court held that the purpose for which the vehicle was acquired or used is irrelevant[3].

It should also be understood what is excluded from the definition of a motor car (Jones, 2015:5), as even though input tax is denied on the acquisition of a double cab LDV, the input tax will be claimable on the purchase of a canopy, roof rack or other removable accessories that are fitted after production of the vehicle, and do not form part of the initial standard structure of the vehicle (SARS, 2015). Similarly, VAT incurred on repairs, maintenance and running costs including insurance, tyres and servicing may be claimed as input tax in terms of section 17(1) of the VAT Act. It then follows that the denial of input tax only extends to the initial purchase or rental of the motor car.

In the case of *AB (Pty) Limited v The Commissioner for The South African Revenue Service* (2014) it appears that SARS and the tax courts apply the input tax denial provisions contained in

---

[2] When the VAT Act was enacted in 1991, the definition of a motor car made no specific reference to a double cab LDV (President of the Republic of South Africa, 1991:20), but the definition was amended in 2000 to specifically include “double cab light delivery vehicle” (President of the Republic of South Africa, 2000:112).

[3] Tax court rulings only apply *inter partes*, and are only of persuasive value in respect of other tax cases (SARS, 2022).

section 17(2) of the VAT Act strictly and make no concessions for special events or vendors outside of the provisos contained in that section. As a result, it is clear that legislative intervention is required if vendors other than those referred to in section 17(2)(c)(i)-(iii) would want to claim an input tax deduction on the acquisition of a double cab LDV.

SARS spends a lot of resources on auditing vendors to ensure that the input tax deductions claimed comply with the provisions of the VAT Act (Kamdar, 2011:39), which may result in the public treasury spending a lot of the produce of tax paid by vendors in its pursuit to ensure compliance. This is not in line with Adam Smith's (1892:1105) canon of efficiency, nor the OECD's (2017:18) principle of efficiency, which states that tax authorities' administrative costs to ensure compliance should be minimised as far as possible[4].

It must be considered that it is quite easy for SARS to verify the construction of the vehicle according to technical specifications, whereas it is more difficult to verify the actual use thereof by the vendors.

1.3 Problem statement

Many companies' only viable option to safely transport workers and tools, in terms of the Occupational Health and Safety Act 85 of 1993 and the National Road Traffic Act 93 of 1996, is to acquire double cab LDVs. However, the restriction of an input tax deduction results in cash flow constraints when companies acquire such double cab LDVs.

The research conducted in this study, therefore, answers the following question:

Does the VAT Act achieve tax equity in disallowing input tax claims on the acquisition of double cab LDVs?

1.4 Research objectives

To answer the research question posed in paragraph 2, this study achieved the following research objectives:

[4] According to the 2021 Tax Statistics (National Treasury & SARS, 2022), the cost of collecting revenue in 2020/2021 is 0.85%, which is below the international benchmark of 1%, but 0.05% higher than in 2019/2020.

1.4.1 Main objective

The main objective is to consider whether South Africa's tax legislation achieves "tax equity"[5] in disallowing an input tax deduction on the acquisition of double cab LDVs.

1.4.2 Secondary objectives

The secondary objectives, that assist in reaching the main objective, are:

Determining why legislation disallows the input tax claims on motor cars and how SARS interprets the definition of a motor car when determining whether input tax is allowable or not on the acquisition of certain motor cars.

Determining what the limitations are in terms of health and safety regulations of various refineries and mines and the South African National Road Traffic Act 93 of 1996 for passengers to be transported on the back of any LDV and to compare South Africa's current tax position on input tax deductions being denied in relation to the tax system in place in Australia[6] [7].

1.5 Ontology, epistemology, methodology and methods

1.5.1 Ontology

Ontology is the beliefs about reality. In a relativist ontology, the belief is that no reality exists outside of the vendor's thoughts (Levers, 2013:2). In essence, a relativism ontology believes that there are multiple realities, as vendors (or categories of vendors) will have each a subjective experience of the laws that are applicable to them (Levers, 2013:2).

1.5.2 Epistemology

Epistemology is the study of knowledge. Epistemology has two stances: objectivism and subjectivism. A subjectivism stance will be taken, that is, the belief that knowledge is experienced differently by different categories of vendors (Denzin & Lincoln, 2005:12). Applying a relativist ontology and subjective epistemology results in gathering knowledge in an interpretivism paradigm (Levers, 2013:3). According to Denzin and Lincoln (2005:13) this type of research is

---

[5] "Equity" is one of Adam Smith's Canons of Taxation (Smith, 1892:1103). According to Kabinga (2016) equity relates to the idea that taxes should be fair. Horizontal equity (does a tax system make arbitrary distinctions among taxpayers) and vertical equity (how taxpayers at different income levels should be taxed, taking into account their ability to pay) will both be considered.

[6] According to Datt *et al.* (2017), the South African VAT and Australian GST systems are highly similar, as they are both based on New Zealand's GST model.

[7] Mining products and mineral fuels are in the top 5 export products of both Australia and South Africa (World's Top Exports, 2020).

"guided by a set of beliefs and feelings about the world and how it should be understood and studied".

1.5.3 Methodology

Qualitative research is interested in understanding how different vendors interpret their reality, as opposed to accepting that there is one reality for a certain class of vendors when following a quantitative approach (Merriam, 2002:4). Rephrasing this in terms of this study, the qualitative approach focusses on other laws and regulations that are applicable to certain vendors that result in them having the need to be treated differently in terms of section 17(2) of the VAT Act.

1.5.4 Interpretivism research paradigm and qualitative methodology

Because this study aims to answer a specific question on the appropriateness of the current restrictions contained in section 17(2) of the VAT Act, and to take account of certain laws and regulations that are important to vendors (Saunders *et al.*, 2016:141), thereby understanding why vendors would want to be able to claim an input tax deduction (Merriam & Tisdell, 2016:6) when acquiring double cab LDVs, this study was conducted in an interpretivism paradigm, following a qualitative approach.

1.5.5 Research method

This study applies a doctrinal legal research method to analyse the content of the VAT Act of South Africa, court cases pertinent to VAT and double cab LDVs, OECD recommendations on VAT, SARS interpretation notes, the South African National Road Traffic Act 93 of 1996, health and safety regulations of companies, academic journals, articles and published books, as it entails research into the tax laws and other legal concepts of South Africa and Australia (Hutchinson & Duncan, 2012:85). The difficulties that some vendors experience when they have to adhere to certain health and safety regulations as well as the VAT Act are also explained (Pearce *et al.,* 1987), further supporting the use of the doctrinal research method.

To compare the provisions and restrictions of the South African VAT Act with the Australian Goods and Services Tax (GST) Act, a comparative legal research method is applied (Van Hoecke, 2015:3).

1.6 Chapter overview

Chapter 1

This chapter explains the background to and actuality of the topic, the problem statement, research objectives, research methodology and method to be used in conducting this study.

Chapter 2

The fundamental tax principal of equity is analysed as a basis for evaluating whether the VAT Act achieves equity in disallowing an input tax deduction on the acquisition of double-cab LDVs. Many vendors are of the opinion that, because they acquired a double-cab LDV solely for use in the making of taxable supplies, they are entitled to an input tax deduction on the acquisition thereof. SARS and the courts do not allow this and this chapter also determines why legislation disallows the input tax from being claimed on motor cars, by analysing the definition of a motor car in the VAT Act, court cases dealing with the denial of input tax claims on the acquisition of double-cab LDVs and SARS interpretation notes.

Chapter 3

This chapter analyses health and safety regulations of prominent South African refineries and mines, as well as the South African National Road Traffic Act (93 of 2006) and compare South African tax legislation to similar tax systems in place in Australia.

Chapter 4

This chapter concludes on the findings of the study and answers the research question.

Chapter 2: Tax equity, disallowance of input tax and the definition of "motor cars"

2.1 Introduction

According to the OECD (2017:18), neutrality is one of the generally accepted principles of tax policies, which entails that tax should be equitable among taxpayers in similar positions. The exceptions to section 17(2)(c) of the VAT Act allows vendors whose business is the selling or rental of cars to claim an input tax deduction on the acquisition of a motor car, but it disallows a vendor who is not engaged in the buying and selling or rental of cars, even though that vendor produces revenue for the state in the form of output tax. Therefore, this chapter analyses the concept of tax equity, to provide a basis for this study to determine whether tax equity is achieved.

Many vendors have taken the position that the input tax paid on the acquisition of a motor car is (or at least, should be) deductible (SAIPA Tax Committee, 2012:18) because it is used in the making of taxable supplies. However, section 17(2)(c) of the VAT Act specifically excludes some vehicles from being input tax deductible and SARS and the courts' views are analysed in this chapter with regard to any concession made available to vendors other than motor traders or rental companies, and what costs are input tax deductible by making reference to what is included in the definition of a motor car.

2.2 Tax equity

Equity is one of Adam Smith's canons of taxation (Smith, 1892:1103), which is distinguished by two dimensions of equity, namely horizontal equity and vertical equity (Musgrave, 2002). According to Musgrave (2002: 9), horizontal equity is the theory of equal treatment among taxpayers in similar positions, while vertical equity is the theory of how tax should differ between unequal (or dissimilarly positioned) taxpayers. Simply put, taxpayers in the same positions should be taxed equally, as vertical equity cannot exist without horizontal equity (Musgrave, 2002:9).

2.2.1 Vertical tax equity

A regressive tax system is defined as: *"one in which the average tax rate falls as income level rises*" (Oxford Learner's Dictionary, 2022). It is accepted that VAT is a regressive tax (Fourie & Owen, 1993:282), which is evidenced by the fact that a financially stable company pays the same amount of VAT as a financially struggling start-up company would pay on the same purchase. This results in a larger portion of the start-up company's income being spent on VAT than a financially stable company. In the South African VAT system vertical equity is not achieved, as all

taxpayers, regardless of their abilities, pay VAT at the same rate[8]. The Davis Tax Committee (2018) share this view by stating that VAT is not vertically equitable. The OECD has had a longstanding view that a VAT system with a broad base and single rate is ideal (Hagemen *et al.*, 1987).

2.2.2 Horizontal tax equity

Horizontal equity is the theory of taxpayers in similar positions being taxed equally. According to Repetti and Ring (2012:140), an issue that is faced with the concept of horizontal tax equity is: how should the similarity of taxpayers be determined? Elkins (2006:43) stated that a clear distinction should be made between taxpayer who are in *similar* positions and taxpayers who are in *identical* positions.

This study assumes that identical taxpayers are those who are identical in their nature of production (for example, two or more companies who acquire motor cars for the purpose of resale or rental), while similar taxpayers are those who, regardless of the nature of their business, produce taxable supplies through the supply of goods or services that are meant to be consumed by an end-user (for example, two or more companies that acquire any goods that are used in the making of taxable supplies). It is held that taxpayers in identical positions are taxed equally in terms of the VAT Act (e.g., two or more motor dealers, or two or more non-motor dealers), and that horizontal equity exists among those identical taxpayers.

It follows that vertical equity is not achievable in a VAT system due to its regressive nature, and therefore horizontal equity should be considered when assessing whether the current VAT legislation as relates to the disallowance of input tax being claimable on the purchase of double-cab LDVs achieves tax equity among *similar* taxpayers.

2.3 Why is there a policy that disallows input tax from being claimed on the acquisition of motor cars?

VAT is a consumption tax charged on a product at every point of sale where value is added, in essence each vendor charges output tax to the next vendor who then deducts input tax (to the extent of making taxable supplies), until the product or service is used by the consumer. It is ultimately the retail consumer who pays the VAT (Palmer, 2021).

[8] The current standard rate of VAT in South Africa is 15%. There is some attempt to make VAT more progressive by zero rating certain basic foodstuffs, but the Katz Commission found that the zero rating benefits the poor modestly in in monetary terms and benefits the non-poor substantially (Katz, 1995).

Upon amending the definition of a motor car, the National Treasury (2000) stated that a lot of motor cars are registered in the names of vendors who would have been able to deduct input tax on the acquisition thereof, but are actually acquired for private use, which results in the retail consumer using (read consuming) the motor car and enjoying an input tax deduction on the acquisition thereof. Lower income countries' budgets for public service delivery is small as compared to higher income countries and tax abuse results in fewer funds being made available in delivering these services (O'Hare *et al.,* 2022). When consumers purchase goods for private use through a company and claim an illegitimate input tax deduction on the purchase thereof, less tax will flow to the National Treasury, resulting in less funds being available for public service delivery. It follows that the denial of an input tax deduction on the acquisition of a motor car is put in place to curb tax abuse, as the Explanatory Memorandum on the Taxation Laws Amendment Bill (2000) stated that vendors who purchase cars and claim an input tax deduction on that acquisition, but use those cars for private purposes, are at an unfair advantage. It would seem that the "unfair advantage" relates to the loss of income to the National Treasury, as well as to non-vendors who are not able to claim an input tax deduction on the purchase of any vehicle[9]. The prevention of tax abuse was also prevalent in *AB (Pty) Ltd v The Commissioner for The South African Revenue Service* (2014), where it was held that providing any food and accommodation, without having regard to the quality of food or luxury of accommodation, remained the provision of entertainment.

2.4 How National Treasury determines whether a vehicle is a "motor car"

2.4.1 Legislative definition

2.4.1.1 Prior to amending the definition in 2000

Prior to the amendment of the VAT Act in 2000, the words "double cab light delivery vehicle" was not included in the definition (President of the Republic of South Africa, 1991:20), and the courts had to apply an "objective test" to determine whether a double cab LDV fell within the ambit of the definition.

The "objective test"

The objective test that the courts applied[10] entailed that the two-dimensional length of the vehicle from the start of the windscreen to the rear of the vehicle (in other words, the total length of the

[9] The term "vehicle" is intentionally used, as it is meant to describe a vehicle on which an input tax deduction is allowed, as well as a motor car on which an input tax deduction would be disallowed, if a vendor made the purchase.

[10] Refer to 2.5.

vehicle excluding the engine bay) be divided between the passenger area and the dedicated loading area, and if more than 50% of that length is attributed to the passenger area, the vehicle will fall within the ambit of the definition of a motor car (SARS, 2015).

2.4.1.2 After amending the definition in 2000 to include the wording "double cab light delivery vehicle"

In 2000 the definition of a motor car was amended to include a double cab LDV (President of the Republic of South Africa, 2000:112). This was done because the use of double cab LDVs as family cars have become more popular in the years leading up to the amendment and therefore these vehicles should be treated the same as a normal passenger vehicle (National Treasury, 2000).

In order to avoid manufacturers making adjustments to the vehicles, such as increasing the dedicated loading space to result in more than 50% of the vehicle being attributed to dedicated loading space when applying the objectivity test, the wording "double cab light delivery vehicle" was specifically included in the definition of a motor car. It was also envisaged that consumers will not mind if the loading area is increased if they are able to deduct input tax upon acquisition of the double cab LDV (National Treasury, 2000).

After the amendment in 2000, section 1 of the VAT Act defines a motor car as:

"… a motor car, station wagon, minibus, ***double cab light delivery vehicle*** *and any other motor vehicle of a kind normally used on public roads, which has three or more wheels and is constructed wholly or mainly for the carriage of passengers, but does not include —*

(a) Vehicles capable of accommodating only one person or suitable for carrying more than 16 persons, or
(b) Vehicles of an unladen mass of 3 500 kilograms or more;" (own emphasis added).

The exclusions listed in (c) and (d) are very specific and will not exempt a normal purpose double cab LDV from being classified as a motor car as defined.

Therefore, it follows that if none of the exceptions as listed in the definition of a motor car in terms of section 1 are met, a double cab LDV is regarded as a motor car for VAT purposes.

2.5 Court cases

Three court cases are analysed that ruled on input tax claimed on motor cars, the objective test being applied to determine whether a vehicle should be classified as a motor car and the intention

of the taxpayer or purpose for which the vehicle was acquired. It is important to note that the below cases were heard in the Tax Court, and as such, the outcomes thereof are only of persuasive value in respect of other tax cases and do not create judicial precedents.

2.5.1 ITC 1596 57 SATC 341 (1995)

2.5.1.1 Relevance and overview of the case

This case is considered as it relates to a taxpayer who sought to claim an input tax deduction on a vehicle based on the use thereof and the category in which it was licensed. After SARS denied the input tax deduction after an audit of the taxpayer's tax affairs, the taxpayer appealed to the Tax Court, which also ruled based on the construction of the vehicle rather than the use thereof or the category in which it was licensed.

2.5.1.2 Summary of the case

The taxpayer, an attorney who also carried on farming operations, purchased a double cab 4x4 Toyota Hilux and claimed an input tax deduction on the acquisition thereof. SARS initially paid the input tax claim, but upon auditing the taxpayer, SARS realised that the vehicle was a double cab LDV and classified as a "motor car". The taxpayer was assessed on the VAT return incorrectly paid to him and the taxpayer objected and appealed to the Transvaal Special Court for Hearing Income Tax Appeals against the Commissioner's decision.

In court the taxpayer argued that he used the double cab LDV on his farm and although passengers could also travel in the vehicle, it had only rarely been used for the convenience of passengers. It was further argued by the taxpayer that the licensing authority registered the vehicle as a LDV and that the vehicle did not fall in the class of passenger vehicles.

2.5.1.3 Legal issues and reasoning of the court

The legal issue in this case was the taxpayer claiming an input tax deduction on the purchase of a double cab LDV and argued that the vehicle was not primarily constructed for passengers, that it was used on his farm and that it was licensed in a class not associated with passenger vehicles.

Should the court then sustain the taxpayer's appeal and allow the input tax deduction, based on the argument of the taxpayer that he used it on his farm, it is rarely used for the transport of passengers and that the vehicle is licensed as a LDV?

As this case was before the court prior to the inclusion of the words "double cab light delivery vehicle" in the definition of a motor car in 2000 (President of the Republic of South Africa,

2000:112), the court applied the definition of a motor car in order to ascertain whether the vehicle does fall within the definition of a motor car, which at the time, read as follows: *"includes any motor vehicle of a kind normally used on public roads, which has three or more wheels* ***and*** *is constructed or adapted wholly or mainly for the carriage of passengers…"* (own emphasis). For the first part of the definition, the court held that the type of vehicle in question is one that is usually used on a strip of land that is accessible by the public, even if it is used in another way. For the second part, the court made first mention of the "objective test" in considering whether the vehicle was "mainly" constructed for the transportation of passengers. It also held that the fact that a person would endure uncomfortable seating and a reduced loading area meant that the increased seating space is quite important for the person.

The court held that the passenger area exceeds the loading area, and as a result the vehicle is a motor vehicle as defined. It disregarded the use thereof by the taxpayer and the category in which it was licenced and correctly dismissed the taxpayer's appeal.

It would seem that the court would have sustained the appeal if the vehicle in question was a single cab LDV, as the loading area would have exceeded the passenger area, while still not having regard to the purpose for which the vehicle was used by the taxpayer.

2.5.2 ITC 1693 62 SATC 518 (1999)

2.5.2.1 Relevance and overview of the case

Similar to the case in 2.5.1, a taxpayer bought a double cab LDV and claimed an input tax deduction on the acquisition thereof, again based on the use thereof. However, the taxpayer claimed input tax to the extent of the cost of a single cab LDV, which the court used as part of its ruling in saying that the taxpayer knew that he could not claim an input tax deduction on the acquisition of a double cab.

2.5.2.2 Summary of the case

A taxpayer, a *bona fide* farmer, acquired a double cab Nissan Hardbody. The taxpayer claimed input tax equal to that of a single cab LDV and after inspection SARS concluded that the input tax should not have been paid to the taxpayer as they contended that the vehicle fell within the definition of a motor car and charged an additional tax as a penalty for which they claimed was alleged tax evasion. The taxpayer then appealed to the tax court. In court, the taxpayer argued that the facts surrounding his case are different than those in *ITC 1596 57 SATC 341* (1995), as he is a *bona fide* farmer. He also argued that the extra seating is uncomfortable and that no

person could endure the discomfort if seated in the back, compared to when they were traveling in a car.

2.5.2.3 Legal issues and reasoning of the court

The legal issues arising from this case were that the taxpayer claimed an input tax deduction on the premise of the use thereof, that it was in no way as comfortable as a car and should not be classified as a motor vehicle and that he apportioned input tax to the extent of the cost of a single cab LDV.

The question is, should the court have regard to the farming use and level of comfort of the vehicle and allow the apportioned input tax that was claimed upon the acquisition thereof?

The court made reference to the vehicle's brochure, which stated that *"The Nissan Double Cab is the ideal alternative to a passenger car"* and held that the vehicle is primarily designed for the transport of passengers. It further held that the fact that the taxpayer was willing to endure the so-called discomfort and sacrifice the extra loading space present in a single cab LDV meant that the extra seating was of importance to him, even if not used often. The objective test applied by the court was not that of the length of the loading area compared to the passenger area, but rather those relating to the design, abilities and marketing of the vehicle.

The court ruled that the vehicle was indeed a motor vehicle as defined, again disregarding the taxpayer's arguments regarding the use thereof.

2.5.3 RTCC v The Commissioner for The South African Revenue Service (VAT 1345) (2016)

2.5.3.1 Relevance and overview of the case

This case is considered as it relates to a taxpayer who claimed an input tax deduction on the purchase of a vehicle, based on the use thereof. After SARS denied the claim, the taxpayer appealed to the Tax Court and the court assessed the case based on the construction of the vehicle, rather than its use.

2.5.3.2 Background of the case

The taxpayer claimed an input tax deduction on the acquisition of a 2007 Mercedes Benz 115 CDI Crew Cab vehicle (a minibus/multi-purpose vehicle by design), on the basis that the vehicle was acquired for the purposes of making taxable supplies. SARS' position was that the vehicle

was regarded as a motor car as defined and accordingly disallowed the input tax deduction from being claimed by the taxpayer.

The taxpayer appealed to the tax court and argued in court that the vehicle in mention was not a passenger vehicle, but a qualifying vehicle on which an input tax deduction could be claimed, as it was used solely in its business as a courier to deliver different kinds of packages and that the vehicle's second row of seating is used to accommodate workers who would assist with the delivery of parcels or goods.

The court did not dispute the issue of whether the taxpayer uses the vehicle to carry goods, but referred to the construction of the vehicle, the characteristics of which show that it was mainly for the conveyance of passengers as the vehicle was equipped with two rows of seating, with access to the second row through a dedicated, windowed sliding door on each side, and that the intention of the manufacturer with the second row of seats was for the conveyance of passengers.

2.5.3.3 Legal issue and reasoning of the court

The legal issue that arose from the action of the taxpayer was that an input tax deduction was claimed on the purchase of a motor vehicle as defined. The taxpayer essentially argued that the construction of the vehicle should not be the decisive factor in determining whether an input tax deduction should be allowed or denied, but its use thereof, which was to make taxable supplies.

The issue therefore is, should the court allow for the taxpayer to claim an input tax deduction on the acquisition of the vehicle, based on the use thereof?

The court did not dismiss the fact that the taxpayer uses the vehicle to deliver parcels (in essence, in the making of taxable supplies), and did not argue against the fact that the vehicle is not specifically listed in section 17(2)(c), being a *"motor car, station wagon, mini bus, double cab light delivery vehicle and any other motor vehicle of the kind normally used on public roads, which has three or more wheels"*, but considered whether the vehicle was *"constructed or converted wholly or mainly for the carriage of passengers"*. In considering this, the court referred to ITC 1596 (discussed in 2.5.1) in which the "objective test" was applied to determine whether the vehicle was constructed or converted "mainly", or more than 50%, for the carriage of passengers. In addition to the aforementioned case, the court also made reference to Interpretation Note 82 (SARS, 2015), in which the "objective test" is interpreted by SARS. It held that the seating area, which was argued by the taxpayer that it was used for people helping with deliveries and not the transporting of passengers, should be regarded as passenger area and not as cargo area for transporting goods. This test resulted in more than 50% of the vehicle's area being classified as

passenger area, thereby classifying the vehicle as a motor vehicle and subsequently, an input tax deduction is denied in terms of section 17(2)(c).

Ultimately, the court held that the construction of the vehicle is the decisive matter, and not the actual use thereof, and based on the result of the "objective test" and in terms of section 17(2)(c), was correct in dismissing the taxpayer's appeal.

From the facts, it seems like the decisive factor was the second row of seating of the vehicle and that SARS and the court's opinion would have been different if the vehicle had no second row of seating.

2.5.4 Court case dealing with another defined term – AB (Pty) Limited v The Commissioner for The South African Revenue Service (VAT 1015)

2.5.4.1 Relevance and overview of the case

A court case that dealt with a different matter, entertainment, was heard after a taxpayer claimed an input tax deduction on the costs incurred in providing accommodation and meals to contracted employees while on a project. This case is relevant as it deals with the disallowance of an input tax deduction on a term that is defined in section 1 of the VAT Act.

In terms of section 17(2)(a), input tax may not be claimed on goods or services acquired for the purposes of entertainment, which is defined in section 1 as *"the provision of any food, beverages, accommodation … or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by him"*. Two provisos are enacted that will allow the deduction of input tax on the acquisition of such goods and services by such vendor, one of which is discussed below.

2.5.4.2 Background of the case

The taxpayer was involved in providing services to mines as part of projects and employed contract employees for the duration of the project. The taxpayer provided these contract workers with accommodation and meals, which was recovered by factoring in the cost as part of the quote of the project. The taxpayer claimed an input tax deduction from SARS on the costs incurred in providing the accommodation and meals to the contract workers and SARS issued assessments against the taxpayer on the input tax claimed for the duration of the project, relating to said accommodation and meals.

The taxpayer's objection to SARS was denied and the taxpayer appealed to the Tax Court.

2.5.4.3 Legal issue and reasoning of the court

One of the provisos (mentioned in 2.5.4.1) that allows a vendor to deduct input tax on the costs incurred in providing entertainment to its employees, read as follows: *"such goods or services are acquired by the vendor for the consumption or enjoyment by that vendor (including, where the vendor is a partnership, a member of such partnership),* ***an employee****, office holder of such vendor, or a self-employed natural person in respect of a meal, refreshment or accommodation,* ***in respect of any night*** *that such vendor or member is by reason of the vendor's enterprise or, in the case of such employee, office holder or self-employed natural person, he or she is* ***by reason of the duties of his or her employment****, office or contractual relationship,* ***obliged to spend away from his or her usual place of residence and from his or her usual working-place***" (own emphasis).

The issue is that the contract employees were employed only for the duration of the project, resulting in the court ruling that the employees' usual workplace being the mine at which the work was performed, ultimately dismissing the taxpayer's appeal based on this fact.

The taxpayer argued that regard should be had to the context of the wording of the Act, that the accommodation and meals were subpar, and that the meaning of the word "entertainment" should be confined to the "enjoyment" that the employees received from the use and consumption thereof. As a result of the subpar nature of the accommodation and meals, the taxpayer argued that there was no personal enjoyment by the employees in the use and consumption of the accommodation and meals, and therefore it did not constitute "entertainment".

The question is, should the court sustain the appeal based on the fact that there was no enjoyment by the employees in the use and consumption of the subpar accommodation and meals?

The court held that the definition of "entertainment" in the Act does not specify that the meals or accommodation should be of any quality, the definition is not ambiguous, and that the legislature intentionally included the provision of meals and accommodation in the definition.

The court was correct in dismissing the appeal, based on the fact that providing entertainment to employees without satisfying one of the provisions to section 17(2)(a) is disallowed in terms of that section.

Conclusion on the court case rulings

From the above court rulings, it is evident that SARS and the courts have no regard to how a vehicle is used or for what purpose it was acquired (the taxpayer's intention), nor is there no

regard to the level of comfort or the category in which it is licensed. This is purely because of the way in which the legislation is worded.

With reference to the above cases dealing with the definitions of “motor car” and “entertainment”, it is evident that SARS and the courts apply the definition of a subject matter strictly and literally and if a definition is met, no regard is had to anything other than the provisos to the disallowing section, as contained in the Act.

The term “motor car”[11] is a defined term in section 1 of the Act. If a vehicle is found to satisfy the definition thereof, either by way of the explicit wording contained in the definition or an objective test of the design thereof, the restrictions contained in section 17(2)(c) apply and an input tax deduction is denied, even if the taxpayer believes that there are other case-specific factors present that could result in a different application of the definition by the taxpayer.

Because section 17(2)(c) is specifically applicable to the limitation of deductions on the defined term “motor car”, the courts were correct in dismissing the taxpayers’ appeals, as sustaining the appeals based on the extenuating circumstances of the taxpayers would result in the court acting against what the legislature intends to achieve.

In the case of *Venter v Rex* (1907) it was stated that the most important rule was to determine the intention of the legislature from the language that was used. The first double cab LDV in South Africa was introduced in 1974 (News24.com, 2016), but was discontinued in 1984. In 1984, the Toyota Hilux double cab was introduced in South Africa, with Mazda, Nissan, Ford and Isuzu following in 1986. After the release of these double cab LDVs its popularity slowly increased and it can be argued that double cab LDVs were not as prevalent when the VAT Act was originally enacted. Through the wording of the Explanatory Memorandum on the Taxation Laws Amendment Bill (2000), it seems that the intention of the legislation at the time was to prevent tax abuse by disallowing an input tax claim on the acquisition of a “personal use”, or “family” vehicle, which later proved (through its popularity) to include double cab LDVs due to its increased passenger carrying abilities and luxury.

In the case of *CSARS v United Manganese of Kalahari (Pty) Ltd* (2020), it was held that:

> *“Where Parliament has clearly shown by later amending legislation what was meant by the earlier legislation under amendment and the amending legislation is passed explicitly*

[11] It is important to note that, at the time the court cases were heard, the definition of a motor car did not specifically include the wording “double cab light delivery vehicle”. Therefore, the courts had to apply the objective test to determine whether the vehicle fell within the ambit of the definition.

for the purpose of clarifying that meaning, it is permissible as an aid in interpretation to have regard to the meaning ascribed by the later legislation to its predecessor".

This further supports the view that the above-mentioned courts were correct in the judgements that were delivered, as the definition of a motor car in section 1 was amended in 2000 to specifically include the wording "double cab light delivery vehicles". The amendment of the definition clarifies the intention of the legislation when it was initially introduced, which was to curb tax abuse. This intention to curb tax abuse was further made clear by the National Treasury in the Explanatory Memorandum on the Taxation Laws Amendment Bill (2000), by stating the following:

"The reason for this[12] *is that a large number of motor cars are acquired for private purposes but registered in the names of vendors who would otherwise have been in a position to deduct input tax in respect thereof and thereby obtain an unfair advantage.*

In recent years double cab light delivery vehicles have become increasingly popular as private family motor cars. The definition of "motor car" for that reason includes double cab vehicles on the grounds that the area of the cab exceeds the area available as loading space. Input tax is accordingly denied in terms of section 17(2)(c).

Some motor vehicle manufacturers have started making adjustments to certain models by increasing the loading space. If this should lead to these models falling outside the ambit of the definition of "motor car" input tax will become deductible, which may lead to the distortion of consumer preferences as far as this type of vehicle is concerned.

It is accordingly proposed that the definition of "motor car" be amended to specifically include double cab light delivery vehicles."

It seems that National Treasury was, therefore, of the opinion that taxpayers may not care much if a double cab LDV's dimensions are out of proportion and possibly prevented any future legal challenges (where taxpayers may challenge the "objective test" as applied in the abovementioned cases) if a factory-standard double cab LDV had a loading area that exceeded its passenger area. It is, therefore, clear that the initial intention of the legislature was to prevent an input tax deduction on the acquisition of a vehicle that could be used for personal purposes, whether it took the form of a "traditional" motor car or a double cab LDV with the same passenger-carrying capacity of a motor car.

[12] Referring to the amendment of the definition of "motor car" in section 1, by specifically including a double cab light delivery vehicle.

2.6 An analysis of Interpretation Note 82 (IN 82)

As the wording of the Act can be misinterpreted and misapplied by various taxpayers, as evidenced in the above court cases, SARS issues interpretation notes on certain sections of (inter alia) the VAT Act. These interpretation notes explain SARS' view of how the sections of the Act is, or should be, applied. In *CSARS v Marshall NO and Others* (2016) it was stated that, although an Interpretation Note is not binding on the courts or a taxpayer, it explains SARS' interpretation of the statutory provisions as contained in the Act. IN 82 was published by SARS in March 2015, after the *ITC 1596* (1995) and *ITC 1693* (1999) cases and sets out the following:

- interpretation of the definition of "motor car";
- VAT incurred on the acquisition of a motor car is not allowed to be claimed as an input tax deduction;
- exceptions to the above principle;
- allowed input tax deductions when accessories are acquired, and when motor cars are modified or converted; and
- change in use adjustments.

2.6.1 Interpretation of the definition of "motor car"

According to IN 82, a double cab LDV is a *"four wheel pick-up truck with four doors and a reduced load capacity to accommodate up to five people".*

Therefore, once a light delivery vehicle has four full-size doors and a separate load area (e.g. a rear loading bin), it is classified as a double cab LDV in terms of IN 82. Though not focussed on in this study, an extra cab (super cab/rap cab) LDV does not have four full-size doors and therefore the objective test will typically be applied to determine whether the vehicle falls within the ambit of the "motor car" definition.

Even though the courts have applied the objective test when dealing with double cab LDVs in *ITC 1596* (1995) and *ITC 1693* (1999), it would seem that subsequent to the amendment of the definition of a motor car it would seem unnecessary to apply the objective test when courts deal with a case involving a double cab LDV. IN 82 confirms this by stating that it should first be determined whether a vehicle falls within the category of a motor car, station wagon, minibus or a double cab LDV, before it can be considered whether the vehicle falls within the fifth category of the definition of a motor car, which is:

"any other motor vehicle that –

- *is normally used on public roads;*
- *has three or more wheels; and*
- *is constructed or converted wholly or mainly for the carriage of passengers".*

The objective test will only be applied to determine whether the vehicle was constructed or converted wholly (100%) or mainly (more than 50%) for the carriage of passengers upon ascertaining that the vehicle in mention falls within the fifth category.

2.6.2 VAT incurred on the acquisition of a motor car is not allowed to be claimed as an input tax deduction

IN 82 refers to section 17(2)(c) of the VAT Act where it states that a vendor may not deduct input tax on the acquisition of a double cab LDV and also makes reference to the provisos to section 17(2)(c). As the exceptions contained in the provisos to section 17(2)(c) have no bearing on the purpose of this study, they will not be considered further.

2.6.3 Instances where input tax may be deducted when accessories are acquired and when motor cars are modified or converted

IN 82 distinguishes between accessories forming part of the standard structure of a motor car and accessories not forming part of the standard structure of a motor car. When accessories are fitted to the motor car during its production, it forms part of the standard structure and input tax cannot be claimed on those accessories when the vehicle is acquired, e.g., non-removable accessories such as rubberising, tinted windows, air conditioner, etc. However, the input tax on all accessories or modifications after the initial acquisition of the vehicle that are removable (and therefore do not form part of the standard structure of the vehicle) may be claimed, e.g., the fitment of a fire extinguisher, roof rails and a canopy.

If seats are installed in the loading area of a qualifying light delivery vehicle before the vendor acquires that vehicle, that vehicle is converted into a motor car as defined and subsequently input tax cannot be deducted on the acquisition of that vehicle. The example given in IN 82 (Example 5) relates to a construction company that purchased a single cab LDV for delivering building supplies to construction sites and afterwards installed seats in the loading area of the vehicle to be able to transport workers. This resulted in the vehicle being converted mainly for the carriage of passengers and was then classified as a motor car.

The same principle holds true when a motor car is converted to a qualifying vehicle before the vendor acquires the vehicle. In such a case the vendor may make an input tax deduction upon the acquisition of that vehicle. An example of this would be to permanently remove the seats from

a double cab LDV, leaving only the driver seat, thereby meeting exclusion (a) in the proviso to the definition of a motor car.

If the vendor converts the motor car into a qualifying vehicle after acquisition, input tax may be not be deducted on the initial cost of acquisition, but input tax is deductible on the conversion costs only if the vehicle is used in the course of making a taxable supply. This is illustrated in Table 1.

Table 1: Illustration of the VAT consequences upon converting a motor car into a "qualifying vehicle"

Date of acquisition	1 January 2022
Date of conversion	1 February 2022
Acquisition cost (15% VAT inclusive)	R115 000
Conversion cost (15% VAT inclusive)	R46 000
Input tax effects:	
On acquisition	R0 – input tax denied (section 17(2)(c))
On conversion	R6 000 (R46 000 x $\frac{15}{115}$) input tax deduction

In terms of IN 82, input tax is deductible on costs incurred on the running and maintenance of a motor car to the extent that the motor car is used in the making of a taxable supply. This confirms the wording of section 17(2)(c), which states that the restriction of an input tax deduction is only on the *"motor car supplied to or imported by the vendor".*

2.6.4 Change in use adjustments to motor cars, from taxable to non-taxable

If a qualifying vehicle is acquired and the vendor is entitled to deduct input tax on the acquisition thereof, but subsequently **applies** the vehicle for a purpose that would have resulted in an input tax deduction being denied upon the acquisition thereof, section 18(1) would deem the vendor to make a taxable supply in the course or furtherance of its enterprise. Section 18(1) reads as follows:

"…where –

(a) goods or services have been supplied to… a vendor;

*…(ii) if they are **subsequently applied** by him wholly for a **purpose** in respect of which, if such goods or services had been acquired by him **at the time of such application**, a deduction of input tax would have been denied terms of section 17(2)(a) or (c),*

be deemed to have been supplied by him by way of a taxable supply by him in the course of his enterprise." (Own emphasis added.)

This is because the vehicle on which an input tax deduction was claimed, no longer qualifies for an input tax deduction as it would meet the definition of a motor car.

The word "apply" is not defined in the Act, but is defined by the Merriam-Webster online dictionary as "to put to use especially for some practical purpose" (Merriam-Webster Inc., 2022). This definition can be interpreted in many ways, as it makes no specific mention to "conversion". In the case of *Saidi and Others v Minister of Home Affairs and Others* (2018), it was held that *"This Court has noted on numerous occasions that text is not everything. Unless there is no other tenable meaning, words in a statute are not given their ordinary grammatical meaning if, to do so, would lead to absurdity."*

The definition of "applied" or "apply" in section 18(1) with reference to section 17(2)(c), in light of the above, could be construed as: using the vehicle as a motor car or converting the vehicle to a motor car to be able to use it in a way that is prohibited by section 17(2)(c).

The result of this is that the vendor must account for output tax on the open market value (section 10(7)) of the motor car in terms of section 16(4) read with section 18(1)(ii), in essence "paying back" some (if open market value is less than original cost) or all (if open market value is more than the original cost) of the input tax deduction that was claimed upon the acquisition of the vehicle. This is illustrated in Table 2.

Table 2: Illustration of the VAT consequences upon converting a "qualifying vehicle" into a "motor car"

Date of acquisition	1 January 2022
Date of conversion	1 February 2022
Acquisition cost (15% VAT inclusive)	R115 000
Open market value on conversion date	R90 000
Input tax effects:	
On acquisition	R15 000 (R115 000 x $\frac{15}{115}$) input tax deductible
On conversion	R11 739 (R90 000 x $\frac{15}{115}$) output tax chargeable

SARS also specified in IN 82 that *"should the vendor have initially acquired the motor car for the **purpose** of carrying passengers, an input tax deduction would have been denied under section 17(2)(c)…"* (Own emphasis added.)

In terms of section 18(1), it would seem that even if no modification is made to a single cab LDV and the only purpose for acquiring that vehicle was to use the dedicated loading space to transport workers to and from building sites, SARS would disallow the input tax from being deducted upon acquisition of the vehicle as the vendor's intention would be to transport passengers.

It would, therefore, seem that the viewpoint of SARS and the Court, on the premise of the court rulings which were handed down in *SATC 1596* (1995), *SATC 1693* (1999) and *RTCC v The Commissioner for The South African Revenue Service* (*VAT 1345)* (2016), that the intended or actual use of the taxpayer is irrelevant, is contradictory to the Act.

2.7 Conclusion

This chapter sets out to analyse the concept of tax equity, SARS and the courts' approach to determining whether an input tax deduction should be allowed on the acquisition of motor cars and what costs are input tax deductible by making reference to what is included in the definition of a motor car.

This chapter found that vertical tax equity (taxpayers who have different tax-paying abilities) is not achievable in a VAT system, as VAT is charged at the same rate regardless of the taxpayer's tax-paying abilities. VAT by its nature is regressive and therefore horizontal equity is the important consideration. It also found that SARS and the courts had no regard to the fact that the taxpayers used the motor cars in the making of taxable supplies. Section 17(1) of the Act states:

> *"Where goods or services are acquired or imported by a vendor partly for* ***consumption, use or supply…****" (own emphasis)*.

It cannot be disproven that the taxpayers **use or consume** the vehicles in the making of taxable supplies. In a general sense, motor traders and rental companies use motor cars as inputs in making taxable supplies. Just so, non-motor traders and rental companies use motor cars as an input in making taxable supplies that are ultimately taxed on the end-user. This results in horizontal tax equity among similar taxpayers not being achieved and proves that in the current form, the VAT Act does not achieve tax equity insofar motor vehicles are considered.

This chapter also found that running and maintenance costs relating to motor cars are not part of the definition of a "motor car" and are input tax deductible. This is in line with section 17(1) of the Act, with section 17(2)(c) not being applicable as it specifically relates to the acquisition (purchase or rental) of motor cars.

It is important to note that SARS and the courts have to apply the law as it stands and have no discretion to deviate from what is written in the legislation. Therefore, to address inequity, it seems that legislative intervention is required.

Chapter 3: Analysis of health and safety regulations, the National Road Traffic Act 93 of 1996, Occupational Health and Safety Act 85 of 1993 and comparison of South African and Australian tax laws

3.1 Introduction

Apart from the VAT Act, there are numerous other laws that are enacted that taxpayers must comply with. Two of the most predominant laws in South Africa relating to the use of vehicles that will be analysed, are the National Road Traffic Act 93 of 1996 and the Occupational Health and Safety Act 85 of 1993. When operating a vehicle on national roads the National Road Traffic Act 93 of 1996 must be adhered to and all employers must comply with the Occupational Health and Safety Act 85 of 1993 with the exception of the mining industry, who should comply with the Mine Health and Safety Act 29 of 1996. These Health and Safety Acts set out the minimum requirements for employers to ensure that a culture of health and safety is promoted within the workplace.

Australia's GST Act is also analysed to see how it treats the purchase of double cab LDVs and it is compared to the VAT Act. Australia is chosen to compare to, since both GST/VAT Acts are based on New Zealand's GST model (Datt *et al.*, 2017) and both countries have large mining, chemical and steel industries (CIA, 2022).

As such, the purpose of this chapter is to analyse some of the laws that taxpayers must adhere to in the making of taxable supplies, as well as comparing the law regarding input tax deductions on the acquisition of LDVs in Australia with that of South Africa. Comparing to the Australian legislation may deliver some insight into the international norm of input tax deductions as it relates to double cab LDVs.

3.2 National Road Traffic Act 93 of 1996 (NRTA)

In terms of section 2 of the NRTA, all road-users throughout South Africa must adhere to the Act. Taxpayers must, therefore, be cognisant of the provisions thereof when acquiring vehicles to use in making taxable supplies, which may result in the taxpayer being forced to acquire a type of vehicle on which the input tax on acquisition is denied in terms of section 17(2)(b) of the VAT Act, but will result in them being compliant with the NRTA.

The transport of non-fare-paying passengers on the back of any LDV is not disallowed in terms of the NRTA[13], but Regulation 247 of said the Act was amended on 11 May 2015 to provide certain checks that should be in place when transporting passengers in the loading area of a LDV. They are:

- If the passenger is seated, that portion of the vehicle in which he/she is sitting must be enclosed to a height of at least 350 millimetres above the seating surface; **or**
- If the passenger is standing, that portion of the vehicle in which he/she is standing must be enclosed to a height of at least 900 millimetres above the standing surface; **and**
- The manner and material of the enclosure must be strong enough to prevent the passenger from falling from the LDV when it is in motion; **and**
- No passenger may be transported in the loading area of a LDV with any tools or goods (except their personal belongings), unless the portion conveying the passengers and the portion conveying the tools or goods are separated by means of a partition.

The purpose of these regulations are that passengers should not easily fall off when a vehicle is moving and to prevent unwanted injury when tools move around while the vehicle is in motion.

Furthermore, Regulation 308 of the NRTA prohibits any part of a passenger's body to protrude beyond the LDV while it is in motion. Therefore, no passenger may be seated on the edge of the loading bin of a LDV or stand upright and be able to look over the roof of a LDV, as part of their body will either protrude from the side or from the top.

In summary: in terms of the NRTA, it is allowed to transport passengers on the back of a LDV without any special seats and safety belts being affixed, provided that:

- The passengers are not fare-paying passengers,
- The enclosure adheres to Regulation 247,
- No body part is protruding in terms of Regulation 308, and
- The gross vehicle mass (GVM) is not exceeded in terms of Regulation 239.

Many taxpayers need to transport the tools required for their trade (shovels, toolboxes and other larger equipment), as well as employees to perform the duties, therefore, adhering to Regulation 247 seems close to impossible when the taxpayer acquires a single cab LDV (on which input tax is deductible) to perform their duties.

---

[13] Regulation 250 of the National Road Traffic Act 93 of 1996 prohibits the conveyance of fare-paying passengers in the loading area of a LDV.

Generally, when workers are transported in a seating position on the back of a LDV, Regulation 308 will be adhered to as long as the passengers do not hang their arms off the side of the vehicle, sit on the edges of the loading bin or stand upright on the back of a LDV.

The only restriction in terms of the number of passengers allowed on the back of a LDV is that the GVM of the vehicle should not be exceeded. Therefore, at least nine workers can be transported while sitting on the back of an LDV, assuming that the loading capacity is 1 tonne and the average weight of a worker is about 80kg, while conforming to the regulations as set out in the NRTA, this is relevant for the analysis of the OHS Act, discussed in 3.3 below.

In terms of section 89 of the NRTA, non-compliance with the Act shall be punished by a fine or imprisonment, which results in taxpayers having to choose between compliance with the VAT Act and obtaining a tax benefit by means of getting an input tax deduction on the acquisition of a vehicle while facing prosecution in terms of the NRTA, or compliance with the NRTA but not being able to claim an input tax deduction on the acquisition of a vehicle. The clear answer is to avoid prosecution, which results in horizontal equity not being achieved in terms of the VAT Act, as the taxpayer may effectively be "forced" to acquire a vehicle on which an input tax deduction is denied.

3.3 Occupational Health and Safety Act 85 of 1993 (OHS Act)

In terms of section 8(1) of the OHS Act, it is every employer's duty to provide and maintain, as far as reasonably practicable, a safe working environment that is without risk to the health of its employees.

Howlett *et al.* (2014:49-52) conducted a study aimed at injuries sustained by passengers who were traveling in the loading area of LDVs. The findings of their study are summarised as follows:

- LDV-related collisions result in a higher mortality rate than sedan-related collisions;
- In the case of a collision, traveling in the loading area of a LDV has a mortality rate of double that associated with a sedan;
- Canopies do not offer protection, and passengers traveling in a canopy-covered loading area faces a fatality risk of 1.8 times higher than passengers traveling inside the cab; and
- It is unsafe to transport passengers in the loading area of a LDV.

It would, therefore, seem that transporting employees in the loading area of a LDV is not in line with the safety requirement in the overarching section 8(1) of the OHS Act.

3.3.1 Health and safety regulations

In line with section 7(1) of the OHS Act, many companies have implemented a health and safety policy, which are (as seen below) more stringent and more specific than those provisions and regulations in the OHS Act and the NRTA.

The goal of these companies, especially mines and refineries, is an attempt to minimise the risk of injury to an employee or contractor as far as possible by tightening their health and safety regulations (Lubbe & Viviers, 2013:25), which are enforced on their employees and contractors. As a result, it is not uncommon to see the phrase "no passenger shall be transported on the back of a LDV" in a company's health and safety regulations, in some cases followed by an exception such as "purposely built" or "installed seats and safety belts". A summary of some companies' regulations follows:

Table 3: Health and safety regulations on passenger transport in the loading area of a LDV

	Regulation/policy	**Exception**
Company 1[14] (mining)	No passenger shall be transported on the back of a LDV.	None.
Company 2[15] (refinery)	No passenger shall be transported on the back of a LDV.	Unless it has been designed for safe personnel transport.
Company 3[16] (mining)	No passenger shall be transported on the back of a LDV.	Unless it has been designed specifically for this purpose.
Company 4[17] (mining)	No person may position him/herself on any external part of the vehicle.	None.
Company 5[18]* (air transport / management)	No employees on premises permitted in back of LDV.	None.

** This company is included for the sake of showing that the policy is not confined to the mining and refinery sectors.*

To comply with health and safety regulations, the loading bay of a single cab LDV may in some cases be converted to safely transport passengers. However, as found in 2.6.4, when the loading

[14]Samancor (2015)
[15]Sasol (2018)
[16]Anglo Gold Ashanti (2018)
[17]Siyathuthuka Mining (2021)
[18]Airports Company South Africa (2021)

bay of a LDV is converted for this purpose, it will fall within the ambit of the definition of a motor car. The result is that an input tax credit may either not be claimed if the LDV is converted before acquisition or a section 18(1) output tax adjustment would have to be made by the vendor if an input tax credit on the acquisition of the LDV was already claimed before the conversion is made. Another factor to consider when converting the loading area for the safe transport of passengers is the loss of loading area for tools and machinery. Once a LDV is converted to safely transport passengers, it will be unable to load tools and machinery on the back, which will defeat the purpose of acquiring a LDV in the first place.

In summary – NRTA and OHS Act

Apart from the limited instances where a factory-standard single cab LDV can be converted to create a safe seating space with seats and safety belts for passengers, no passenger may be transported on the back of a LDV on a mine or refinery's premises. This is, however, not confined to mines and refineries, as shown. In conducting its business activities on clients' sites, taxpayers must adhere to the imposed health and safety policy or they will not be able to access the site and earn revenue (which in turn generates revenue for the National Treasury). The result is that the decision to acquire a type of LDV is not one that is made on the taxpayer's preference, but rather one that is made based on the requirements of the OHS Act and the client-specific health and safety regulations.

In the determination of what to include in its health and safety policies, no regard is had to the suppliers' ability to claim an input tax deduction on certain vehicles (by virtue of the requirements of transporting passengers as stipulated in these policies) and taxpayers have no choice but to adhere to these policies in order to be allowed on site. It appears that tax equity is not achieved by the VAT Act in this regard, as:

- vehicle dealerships/rental companies are allowed to claim an input tax deduction on the acquisition of double cab LDVs in making taxable supplies, but
- taxpayers not meeting the exclusions to section 17(2)(c) are not allowed to claim an input tax deduction on the acquisition of double cab LDVs, even though it is acquired in the making of taxable supplies and they are forced in terms of the OHS Act and the resultant policies to acquire such vehicles.

3.4 Comparison with Australian legislation

Australia is used for comparative purposes since both the SA VAT Act and the equivalent Australian GST model are both based on New Zealand's GST model (Datt *et al.*, 2017), and mining products and mineral fuels are in the top 5 export products of both Australia and South

Africa (World's Top Exports, 2020). Furthermore, Australia is a developed country, while South Africa is a developing country (UN Statistics Division, 2022). Comparing South Africa to Australia will provide insight into how a developed country, whose tax system has the same roots as that of South Africa, treats the VAT/GST on acquisition of double cab LDVs.

This section of the study, therefore, seeks to compare the legal position of claiming input tax credits on the acquisition of double cab LDVs of South Africa against Australia. In comparing the current position of value-added tax laws (or equivalent), this study also considers the road traffic laws enacted in Australia as an overarching law that must be adhered to, as it will also have an impact on the decision of what type of LDV Australian taxpayers should acquire in the production of income.

3.4.1 Australian law on transporting passengers in the loading area of a LDV

In terms of Rule 268(2) of the Australian Road Rules (2021):

"A person must not travel in or on a part of a motor vehicle that is a part designed primarily for the carriage of goods unless:

(a) the part is enclosed; and

(b) he or she occupies a seating position that is suitable for the size and weight of the person and that is fitted with a seatbelt."

The Australian Road Rules (2021) is a model document laying out the basis for the road laws in the different Australian territories. All six Australian territories have enacted this in their territorial law (National Transport Commission, 2022). The result is that, in Australia no person may be transported in the loading area of a LDV except when it is enclosed and converted for such purpose.

It is, therefore, not necessary for this study to compare the OHS Act to the equivalent Australian Work Health and Safety Act (2011), as its Road Rules prohibits passengers from being transported on the back of a LDV without it being properly designed for the purposes thereof.

3.4.2 Australian GST law on double cab LDVs

Australia's value-added tax equivalent was recently amended in 2000, changing from the old Wholesale Sales Tax (WST) system to the new GST system. A brief history of the WST system and change to the GST system follows:

Wholesale Sales Tax (1930–1999)

According to Reinhardt and Steel (2006), Australia's Wholesale Tax system (called the "Sales Tax Assessment Act") was introduced in 1930. The WST system was one that taxed the retailer, rather than the end-user (Harrison, 1997). Even though the retailer would "pass on" the WST so paid to the next user (or end-user), no input tax credit could be claimed down the value chain. In essence, this resulted in taxpayers through the value chain not being able/allowed to claim an input tax credit on the acquisition of a double cab LDV, and as such, a taxpayer could not claim input tax under the revoked WST system.

Goods and Services Tax (GST) (2000–current)

The WST system was not efficient nor simple (Reinhardt & Steel, 2006), and a new tax system was introduced in 2000 after several unsuccessful attempts in prior years. In 2000 *A New Tax System (Goods and Services Tax) Act* 1999 (ANTS) took effect, which introduced GST at a flat rate of 10% (where the good or service is not zero-rated or exempt).

ANTS is a consumption-based tax system (Harrison, 1997), comparable to South Africa's VAT system, which enables vendors to claim a GST deduction (to the extent that it was paid) upon acquisition of the good or service, as it moves along the value chain.

Current GST treatment of motor cars/motor vehicles

Section 11 of ANTS allows for an input tax credit to be claimed upon the acquisition of creditable acquisitions. In essence, this is Australia's equivalent of section 17(1) of the VAT Act. Furthermore, there are some restrictions that section 69 of ANTS impose on claiming GST on the acquisition of motor cars, which also has to be considered. Sections 11-20 and 69-10 of ANTS read as follows:

Section 11-20 states that *"You are entitled to the input tax credit for any *creditable acquisition that you make."*

Section 69-10 states that: *"(1) If:*

a) *you are entitled to an input tax credit for a *creditable acquisition or *creditable importation of a *car; and*

*b) you are not, for the purposes of the A New Tax System (Luxury Car Tax) Act 1999, entitled to quote an *ABN[19] in relation to the supply to which the creditable acquisition relates, or in relation to the importation, as the case requires; and*

*c) the *GST inclusive market value of the car exceeds the *car limit for the *financial year in which you first used the car for any purpose;*

the amount of the input tax credit on the acquisition or importation is the amount of GST payable on the supply or importation of the car up to 1/11 of that limit.

*(3) If your acquisition or importation is *partly creditable, the input tax credit is reduced to the extent (expressed as a percentage) to which the acquisition or importation is made for a *creditable purpose.*

(4) This section does not apply in relation to:

*a) the acquisition or importation of a *car that is not a *luxury car because of subsection 25-1(2) of the A New Tax System (Luxury Car Tax) Act 1999; or*

b) the acquisition of a car by lease or hire."

Analysis of sections 11-20 and 69-10

Section 11-20 allows for a person who is registered for GST or liable to register for GST, to make an input tax deduction on any purchase made in the furtherance of their enterprise, which may be subject to other restrictions in terms of section 69-10.

Section 69-10 is a restrictive section that addresses the acquisition and importation of motor vehicles and places a restriction on the amount of the input tax deduction if the vehicle in question is a luxury car. The result is that 1/11 (or 9.1%) of the "car limit"[20] (in other words, 1/11 x AUD60 733) is claimable if the GST inclusive amount exceeds AUD60 733. However, section 69-10 further states that it does not apply if the vehicle that was acquired is not a luxury car[21] or if the vehicle is leased or hired. The "car limit" and "luxury car" principles are illustrated in Table 4.

[19] An ABN (Australian Business Number) can only be quoted if the taxpayer intends to hold the car for trading stock, carry out research and development for the manufacturer, or to export it GST-free (Australian Tax Office, 2016).

[20] The car limit for the 2021/2022 year is AUD60 733 (Australian Tax Office, 2021a).

[21] Per the definition contained in section 195-1, a vehicle is a luxury car if the tax value thereof exceeds AUD69 152, or AUD79 659 if it is a fuel efficient vehicle. A fuel efficient vehicle is a luxury vehicle that has a combined fuel consumption of not more than 7lt per 100km (or more than 14.3km/lt).

Table 4: Illustration of vehicles that are 100% GST-deductible or not, based on section 69-10

	Value (AUD)	Fuel consump-tion	Classification	GST % claimable	GST claimable
Toyota HiLux WorkMate 2.4GD-6 4x4 double-cab (Australian equivalent to the double-cab used in Table 5) (Toyota Australia, 2021)	$51 882	7.2lt/100km	Not a luxury car – value less than $69 152	100% of GST	$4 717 ($51 882 x $\frac{10}{110}$)
Toyota HiLux Rogue 2.8GD-6 4x4 double-cab auto (Australian equivalent to the Hilux Raider RS) (Toyota Australia, 2021)	$75 338	8.4lt/100km	Luxury car, not fuel efficient	9.1% of "car limit"	$5 521 ($60 733 x 9.1%)
BMW 420i Coupé (BMW Australia, 2021)	$77 555	6.4lt/100km	Not a luxury car – value higher than $69 152, but the vehicle's fuel consumption is less than 7lt / 100km. Therefore, below "fuel efficient luxury car" threshold of $79 659.	100% of GST	$7 050 ($77 555 x $\frac{10}{110}$)

Exception to "car limit"

According to the Australian Taxation Office (2021b), GST credit can be claimed for the full amount of GST paid on the purchase of the car, regardless of whether the cost exceeds the "car limit". The criteria to qualify for the exception is:

- The car must be used in the carrying on of a business, **and**
- It must be held as trading stock, not holding the car for hire or lease, or
- Research and development is carried out for the manufacturer thereof, or
- It is exported in instances where the export is GST-free, or
- It is an emergency vehicle, or
- It is a commercial vehicle, the primary purpose of which is not to carry passengers, or
- It is a motor home or campervan, or

- It is specifically designed to transport disabled people in wheelchairs (unless the sale of the car was GST-free).

Luxury Car Tax (LCT)

A luxury car is defined as:

> *"(1) A luxury car is a *car whose *luxury car tax value exceeds the *luxury car tax threshold.*
>
> *(2) However, a *car is not a *luxury car if it is:*
>
> *a) a vehicle that is specified in the regulations to be an emergency vehicle, or that is in a class of vehicles that are specified in the regulations to be emergency vehicles; or*
> *b) specially fitted out for transporting *disabled people seated in wheelchairs (unless the supply of the car is *GST-free under Subdivision 38-P of the *GST Act); or*
> *c) a commercial vehicle that is not designed for the principal purpose of carrying passengers; or*
> *d) a motor home or campervan."*

If a motor vehicle is acquired that exceeds the LCT thresholds, an *ad valorem* tax of 33% on the excess of the total invoice value (including accessories) less the applicable threshold (fuel efficient or other) is imposed in terms of *A New Tax System (LCT) Act 1999*. It is important to note who is liable for LCT:

1) The seller of the luxury vehicle will levy LCT, and will recover that tax from the buyer. The LCT amount is not deductible as an input tax deduction by the buyer.
2) The buyer, if they import the luxury car.

Therefore, if a car meets the definition of a luxury car, in addition to the limit imposed on the input tax claim (as discussed above), an *ad valorem* tax is imposed at 33% of the amount that exceeds the luxury car threshold in terms of *A New Tax System (LCT) Act 1999*. It is important to note that the application of this does not result in a total exclusion of any input tax credit claimable on the acquisition of such luxury car. The calculation of LCT is done as follows:

Luxury Car Tax value (a) less Luxury Car Tax threshold (b) x 10/11 (c) x 33%

a. Total value of luxury car
b. AUD79 659 for FY21/FY22
c. Value before GST

Ad valorem tax in South Africa

South Africa also imposes an *ad valorem* tax on locally manufactured and imported vehicles, which must be paid by the local manufacturer or importer in terms of the Customs and Excise Act 91 of 1964. According to Part 2B of Schedule 1 to the Customs and Excise Act 91 of 1964, the following formula shall be applied to determine the rate of the excise duty:

- Locally manufactured vehicles:
  ((0.00003 x (recommended retail price excluding VAT x 80%)-0.75)%, limited to 30%

- Imported vehicles:
  ((0.00003 x *ad valorem excise duty*)-0.75)%, limited to 30%

It is evident that South Africa imposes excise duty on motor vehicles of all values while Australia has a threshold that must be exceeded before the LCT is imposed, however, the maximum rate of the excise duty is limited to a lower amount than the rate applied on LCT.

In summary

In Australia, input tax credit may be claimed on the acquisition of any vehicle, insofar it is used in the furtherance of an enterprise, but subject to it not being a luxury car as defined. When the vehicle is a luxury car as defined, the input tax credit is limited (refer above), and an additional (luxury car) tax is levied by the authorities.

It, therefore, follows that Australia allows for an input tax deduction on double cab LDVs if the LDV is used in the making of taxable supplies, or at least to some extent. This results in a more equitable tax treatment of taxpayers while preventing tax abuse, as taxpayers are able to deduct input tax on the acquisition of any motor car (if incurred in the making of taxable supplies), and the Australian tax base is protected by imposing a limit on the amount that can be claimed if the vehicle in mention meets the definition of a “luxury car”.

3.5 Conclusion

This chapter analysed some of the overarching laws that taxpayers must adhere to in the production of income, as well as comparing the law surrounding input tax deductions on the acquisition of LDVs in Australia with that of South Africa.

It was found that taxpayers’ choice of the type of vehicle to acquire in the business activities are in most cases dictated by other laws that are applicable throughout the country, such as the NRTA

and the OHS Act, and by the health and safety policies that are put in place by clients of these taxpayers.

The tax position of Australia was also compared to South Africa, and it was found that Australia allows for an input tax credit on any type of vehicle. This input tax deduction is in some cases limited as a result of the value and other characteristics of the vehicle, such as the fuel consumption, but an input tax deduction is granted nonetheless.

It would, therefore, appear that Australia's tax system (ANTS) achieves greater tax equity than South Africa's VAT Act, as the input tax deduction on double cab LDVs in Australia is not limited to only those vendors whose business activities entail the reselling or rental of vehicles.

To further assess the international norms of input tax deduction on double cab LDVs, the following is a high-level indicator of the input tax treatment in different countries on the acquisition of double cab LDVs (or motor cars), if used in making taxable supplies.

Table 5: Treatment of input tax on double cab LDVs in BRICS and other selected developed countries

Country	**Premise on which the country is selected**	**Input tax deduction on motor cars (EY, 2022)**
Brazil	BRICS member	Not denied
Russia	BRICS member	Not denied
India	BRICS member	Vehicles with seating capacity of up to 13 persons: Denied, with exceptions Vehicles with seating capacity exceeding 13 persons: Not denied
China	BRICS member	Not denied
United Kingdom	Similar industries (chemicals, mining) (CIA, 2022)	Not denied
New Zealand	Similar industries (mining) (CIA, 2022)	Not denied
Germany	Similar industries (chemicals, mining) (CIA, 2022)	Not denied
France	Similar industries (chemicals) (CIA, 2022)	Passenger cars: Denied Vans and trucks: Not denied

Italy	Similar industries (iron and steel, chemicals) (CIA, 2022)	A total of 60% of the input tax is denied, up to 40% of the input tax is deductible.

Therefore, it seems that South Africa is trailing behind some of the world's strongest economies, as well as its counterparts in BRICS, in allowing an input tax deduction on the acquisition of motor cars (if used in the making of taxable supplies).

Chapter 4: Conclusion

4.1 Introduction

The main objective of this study was to answer whether South Africa's tax legislation achieves tax equity in disallowing an input tax deduction on the acquisition of double cab LDVs. To answer this question, secondary objectives were formulated, which are:

- Determining why legislation disallows input tax claims on motor cars and how SARS and the courts interpret the definition of a motor car when determining whether input tax is allowable or not on the acquisition of certain motor cars. This was answered in Chapter 2.
- Determining what the limitations are in terms of health and safety regulations of various refineries and mines and the South African National Road Traffic Act 93 of 1996 for passengers to be transported on the back of any LDV and to compare South Africa's current tax position on input tax deductions being denied in relation to the tax system in place in Australia. This was answered in Chapter 3.

4.2 Summary of Chapter 2

The objective of Chapter 2 was to determine why legislation disallows input tax claims on motor cars and how SARS and the courts interpret the definition of a motor car when determining whether input tax is allowable or not on the acquisition of certain motor cars. The objective was addressed by:

- Exploring the fundamental principle of "tax equity" in terms of an indirect tax system such as the VAT Act,
- Analysing the legislative definition of a motor car and the history thereof in terms of the VAT Act, including why an input tax deduction is disallowed by making reference to the publication of National Treasury when the VAT Act was amended,
- Analysing court case rulings relating to input tax claims on motor cars, and
- Analysing SARS' view of the definition of a motor car in terms of IN 82.

Chapter 2 found that vertical tax equity is not achievable in terms of the VAT Act, as VAT is charged at the same rate regardless of the taxpayer's tax-paying abilities and horizontal equity should be the measure to determine whether equity is achieved in our VAT Act, insofar it relates to input tax deductions on the acquisition of double cab LDVs. From analysing the court cases

(refer to 2.5.1, 2.5.2 and 2.5.3) and IN 82[22], this chapter also found that SARS and the courts had no regard to the fact that the taxpayers used the motor cars in the making of taxable supplies and no exceptions are made from applying the wording in the Act based on the intention of the vendor. In this context, an anomaly was found in IN 82[23], whereby SARS stated that the "intention" of the taxpayer is indeed a factor in considering whether an input tax deduction would have been *denied* on the acquisition of a qualifying vehicle.

Furthermore, it has been found that legislation disallows input tax to be claimed on the acquisition of double cab LDVs in order to curb tax abuse, as double cab LDVs are very popular to use as family vehicles and claiming an input tax deduction may be an easy way for the end-user/consumer to obtain a "discount" on the acquisition thereof. A well-argued case can be made that although non-motor traders and non-rental companies consume motor cars as an input in making taxable supplies, that the ultimate "consumption tax" will be collected from the end-users of those taxpayers' output (as is the case with vehicles on which deductions are currently allowed).

This chapter also found that running and maintenance costs relating to motor cars are not part of the definition of a "motor car" and are input tax deductible. This may pose a further question as to why the current legislation would allow for running and maintenance to be input tax deductible, but not for the acquisition of such a vehicle?

4.3 Summary of Chapter 3

The objective of Chapter 3 was to determine what the limitations are in terms of health and safety regulations of various refineries and mines and the South African National Road Traffic Act 93 of 1996 for passengers to be transported on the back of any LDV and to compare South Africa's current tax position on input tax deductions being denied in relation to the tax system in place in Australia. This was addressed by:

- Analysing the NRTA's prescriptions of carrying passengers and goods on the back of a LDV,
- Analysing the safety prescriptions in terms of the OHS Act and the resultant health and safety policies of various companies, and

---

[22] This is confirmed in chapter 4 of IN 82, where it states that *"A vendor is generally not entitled to deduct input tax on the acquisition of a motor car irrespective of whether it is applied for taxable purposes or not".*

[23] In example 5 on page 13 of IN 82, it is stated that *"Should the vendor have initially acquired the motor car for the **purpose** of carrying passengers, an input tax deduction would have been denied"* (own emphasis).

- Analysing the relevant sections in Australia's ANTS dealing with the allowance and restrictions of input tax claims on the acquisition of double cab LDVs.

Chapter 3 found that taxpayers' choice of the type of vehicle to acquire are in most cases dictated by other laws that are applicable, such as the NRTA, OHS Act and the health and safety policies that are put in place by the clients of these taxpayers as a result of the provisions of the OHS Act. These have a direct bearing on the decision of the type of vehicle to acquire for its operating activities and the taxpayer should, therefore, take into account the following:

- Regulations and provisions of the OHS Act,
- Size of its teams requiring transport, to determine how much seating space is required per vehicle (inside the vehicle and/or in the loading area of the vehicle),
- Location and accessibility of the work site, to determine whether a more capable (4x4-type) vehicle is required, and
- The provisions of section 17(2)(c) of the VAT Act, in order to be able to claim an input tax deduction on the acquisition thereof.

The VAT Act makes no special provision for an input tax deduction in the event that a vendor is forced to purchase a double cab LDV in terms of any law or regulation, and in such a "forced" case the South African Institute of Taxation is still of the opinion that an input tax deduction may not be made as a double cab LDV falls within the ambit of the definition of a motor car (South African Institute of Taxation, 2014). Simply stated, even though companies are forced to acquire a double cab LDV in order to comply with legislation and other health and safety regulations that are imposed by their clients, they may still not claim an input tax deduction upon the acquisition of the double cab LDV, even if the loss of a contract (as a result of non-compliance with health and safety regulations) will result in significant output tax losses for SARS and ultimately the National Treasury.

The comparison of Australia's GST Act (ANTS) to the VAT Act found that Australia allows for an input tax credit on any type of vehicle, if used in making taxable supplies. Although the input tax deduction in terms of ANTS is in some cases limited as a result of the value and other characteristics of the vehicle, such as the fuel consumption, an input tax deduction to some extent was allowed nonetheless.

This chapter also found that ANTS achieves greater tax equity than the VAT Act, as the input tax deduction on double cab LDVs in Australia is not limited to only those vendors whose business activities entail the reselling or rental of vehicles and all taxpayers were allowed an input tax deduction.

4.4 Overall conclusion

South Africa, as a developing country (UN Statistics Division, 2022), largely depends on indirect taxes such as VAT for generating revenue (Amirthalingam, 2012). According to Tanzi and Zee (2001), developing countries derive more than double the amount of income from consumption tax than they do from income tax. Therefore, it appears that developing countries should have an efficient indirect tax system in place in order to retain more revenue for the National Treasury. The financial effect to the National Treasury as a result of the application of section 17(2)(c) is demonstrated below.

Financial implication – National Treasury and the vendor

Typically, a single cab LDV provides seating space for two people. If a team of five people is assigned to a project, they will either need three single cab LDVs, or one double cab LDV to adhere to the health and safety regulations of clients that prohibit passengers to be seated on the back of a LDV. In the case of acquiring three single cab LDVs, legislation allows an input tax credit in terms of section 17(1) but disallows the input tax credit on one double cab LDV. The effect thereof is as follows:

Table 6: Financial effect of purchasing three single cab LDVs instead of one double cab LDV

	Single cab LDV (x 3)	**Double cab LDV (x 1)**
Make and model [24]	Toyota Hilux 2.4GD6 4x4 SR MT single cab	Toyota Hilux 2.4GD6 4x4 SR MT double cab
Retail price including VAT per vehicle (as at 08 December 2021)	R504 000.00 (Toyota South Africa, 2021a)	R574 300.00 (Toyota South Africa, 2021b)
VAT amount per vehicle (x $\frac{15}{115}$)	R65 739.13	R74 908.70
Total purchase price including VAT	R1 516 000.00	R574 300.00
Total input tax credit claimed	R197 217.39 (allowed in terms of section 17(1))	R74 908.70 (disallowed in terms of section 17(2)(c))
Percentage difference	163,27%	

[24] These models were chosen as they are the cheapest LDV in the Toyota Hilux range with 4x4 capabilities.

VAT as a cash flow

When a vendor claimed more input tax than what it charged output tax for a period of assessment, SARS will refund the excess input tax. Conversely, if a vendor levied more output tax than what it claimed on input tax, it has to pay the excess output tax to SARS. Therefore, VAT results in a cash flow (SAIPA Tax Committee, 2012:18).

If input tax is not claimable on a vehicle, it is added to the cost thereof on which capital allowances are calculated and deducted from the vendor's taxable income during every year of assessment. However, a key difference between VAT and income tax is that VAT results in a direct short-term cash flow, either to or from SARS, whereas income tax allowances only reduce the vendor's income tax liability. During those years when a vendor operates at an assessed loss, no refunds/returns are made by SARS to the vendor. Input tax deductibility is therefore an important factor to consider when vendors purchase goods, as the ability to pay monthly output tax to SARS can be significantly reduced when the vendor's cash resources are spent on input tax denied goods.

As shown in the above table, if a vendor acquires three single cab LDVs, SARS will have to expend 163.27% more in input tax returns paid to a vendor than if the VAT Act allowed for an input tax deduction to be made on the acquisition of a double cab LDV. It also results in unnecessary high finance and maintenance costs for the vendor who has to purchase more vehicles than what is actually necessary, in an effort to alleviate short-term cash flow constraints.

As the seller of the LDVs would have to levy output tax on the supply thereof, there is a cash flow-neutral effect on the National Treasury. However, if there are timing differences (i.e., the seller is a category B vendor that submits tax returns every two months and the buyer is a category C vendor that submits tax returns every month), there will be some months in which SARS pays more in input tax returns than it receives in output tax returns.

According to Tanzi and Zee (2001), VAT in developing countries is frequently incomplete in some aspects and in many instances the input tax mechanism on capital goods is excessively restrictive. These restrictions accumulate and are passed on to the final user, which reduces the benefits that a VAT system ought to offer to the final user by way of them paying more for a good or service. Furthermore, Tanzi and Zee (2001) state that these limitations in the VAT systems enacted in developing countries should be addressed as a matter of priority.

It appears that the VAT Act in its current form is trailing behind that of a developed country such as Australia and does not achieve tax equity insofar the acquisition (purchase or rental) of motor vehicles is concerned. It is, therefore, concluded that grounds do exist for allowing an input tax

deduction on the acquisition of double cab LDVs when and to the extent of making taxable supplies and legislative intervention is required to allow this.

Proposal to address the inequality as found in this study

This study proposes that our legislature adopts a similar stance than Australian legislation, in which an input tax deduction is allowed on the acquisition of motor cars, which is either limited to a certain amount if the vehicle falls within the ambit of the definition of a motor car, as defined in section 1 (similar to Australia's luxury car limit) or limited to a specific variant of a double cab LDV. As shown above in Table 7, the fiscus will greatly benefit from the application thereof, as in its current form the input tax claim is 163.27% more than it would have been if the input tax deduction on a double cab LDV is allowed, especially when a timing difference between the seller's tax periods and the buyer's tax periods exist.

All double cab LDV manufacturers have different variations of a vehicle, from a workhorse to a high-end, luxury model. This may assist in drafting legislation that allows for an input tax claim on a variant that is classified as a workhorse, which has much less luxury features than those present in the high-end variants. Typically, the workhorse variants are fitted with essential features such as air-conditioning and 4x4, but lacks the comfort, styling and other technological features found in the high-end, luxury models. This will allow taxpayers to claim an input tax deduction on a double cab LDV for use in the making of taxable supplies, while legislation continues to curb tax abuse by denying or limiting an input tax deduction on the high-end, luxury double cab LDVs, which are more popular to use as private family motor cars.

REFERENCES

A New Tax System (Goods and Services Tax) Act 1999 (Australia).

A New Tax System (Luxury Car Tax) Act 1999 (Australia).

Airports Company South Africa. 2021. *Occupational health and safety mandatory agreement.* Garden View: Airports Company South Africa. https://www.airports.co.za/Documents/Attachment %20Mandatary%20Agreement.pdf Date of access: 10 Dec. 2021.

Amirthalingam, K. 2012. The importance of taxation and the role of indirect taxes in developing countries: a survey of literature. *Sri Lanka Economic Journal*, 13(1).

Anglo Gold Ashanti. 2018. *Major hazard control standards.* https://thevault.exchange/?get_group_doc=143/1564379558-MajorHazardControlStandards.pdf Date of access: 08 Dec. 2021.

Australian Road Rules. 2021. *Australian Road Rules as at 28 May 2021 as approved by the Transport and Infrastructure Council*. https://pcc.gov.au/uniform/2020/Australian-Road-Rules-28May2021.pdf Date of access: 11 Dec. 2021.

Australian Tax Office. 2016. *Quoting an ABN.* https://www.ato.gov.au/business/luxury-car-tax/when-lct-doesn-t-apply/quoting-an-abn/ Date of access: 12 Dec. 2021.

Australian Tax Office. 2021a. *Assets and exclusions.* https://www.ato.gov.au/Business/Depreciation-and-capital-expenses-and-allowances/Simpler-depreciation-for-small-business/Assets-and-exclusions/?anchor=Carcostlimit#Carcostlimit Date of access: 12 Dec. 2021.

Australian Tax Office. 2021b. *About GST and motor vehicles.* https://www.ato.gov.au/business/gst/ in-detail/your-industry/motor-vehicle-and-transport/gst-and-motor-vehicles/?page=2 Date of access: 29 Dec. 2021.

AB (Pty) Limited *v The Commissioner for The South African Revenue Service (VAT 1015)* 2014 (SATC).

BMW Australia. s.a. *New Cars*. https://shop.bmw.com.au Date of access: 12 Dec. 2021.

Botha, L. 2016. Cars, taxable supplies and input VAT. *Without Prejudice,* 16(9):32-33. doi: 10.10520/EJC198319

Bruwer, L., Cass, C., Cucciolillo, D., Koekemoer, A.D., Oosthuizen, A. & Stedall, C. 2019. *A Student's approach to income tax business activities.* Durban: LexisNexis.

CIA (Central Intelligence Agency). 2022. *The world factbook.* https://www.cia.gov/the-world-factbook/ Date of access: 14 Nov. 2022.

CSARS *v Marshall N.O. and Others* 2016 SA 158 (SCA).

CSARS *v United Manganese of Kalahari (Pty) Ltd* 2020 (4) SA 428 (SCA).

Customs and Excise Act 91 of 1964.

Datt, K., Nienaber, G. & Tran-Nam, B. 2017. GST/VAT general anti-avoidance approaches: some preliminary findings from a comparative study of Australia and South Africa. *Australian Tax Forum*, 32(2):377-398.

Davis Tax Committee. 2018. *Final report on VAT for the Minister of Finance.* https://www.taxcom.org.za/docs/20180329%20Final%20DTC%20VAT%20Report%20to%20the%20Minister.pdf Date of access: 27 Nov. 2022.

Denzin, N.K. & Lincoln, Y.S. 2005. Introduction: the discipline and practice of qualitative research. In Denzin, N.K. & Lincoln, Y.S., eds. *The Sage handbook of qualitative research*. 3rd ed. Thousand Oaks, CA: Sage. pp. 1-19.

Elkins, D. 2006. Horizontal equity as a principle of tax theory. *Yale Law & Policy Review*, 2:43-90.

EY (Ernst & Young). 2022. *Worldwide VAT, GST and Sales Tax Guide.* https://www.ey.com/en_gl/tax-guides/worldwide-vat-gst-and-sales-tax-guide Date of access: 16 Nov. 2022.

Fourie, F. & Owen, A. 1993. Value-added tax and regressivity in South Africa. *South African Journal of Economics*, 61(4):281-300.

Hagemann, R.P., Jones, B.R. & Montador, R.B. 1987. Tax reform in OECD countries: Economic rationale and consequences. *OECD Economics Department Working Papers No. 40*. OECD Publishing, pp. 34-37.

Harrison, J. 1997. *The GST debate: a chronology.* https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/Background_Papers/bp9798/98bp01 Date of access: 29 Dec. 2021.

Howlett, J.B., Aldous, C. & Clarke, D.L. 2014. Injuries sustained by passengers travelling in the cargo area of light delivery vehicles. *South African Journal of Surgery*, 52(2):49-52. doi: 10.7196/SAJS.1963

Hutchinson, T. & Duncan, N. 2012. Defining and describing what we do: doctrinal legal research. *Deakin Law Review*, 17(1):83-119.

Income Tax Assessment Act 1997 (Australia).

ITC 1596 1995 57 341 (SATC).

ITC 1693 1999 62 518 (SATC).

Jones, S. 2015. To claim, or not to claim: VAT, that is… value-added tax. *Tax Breaks,* 2015(356):5-6. doi: 10.10520/EJC175444

Kabinga, M. 2016. Principles of taxation. *Tax Justice & Poverty*.

Kamdar, M. 2011. Claiming of denied input VAT and audit by SARS. *Tax Professional,* 2011(06):39. doi: 10.10520/EJC110122

Katz, M.M. 1995. *Third Interim Report of the Commission of Inquiry into certain aspects of the Tax Structure of South Africa*. Pretoria: Government Printer.

Levers, M.-J.D. 2013. Philosophical paradigms, grounded theory, and perspectives on emergence. *Sage Open*, 3(4):2. https://doi.org/10.1177/2158244013517243

Lubbe, M. & Viviers, H. 2013. VAT and Double Cabs. *The TaxSuite Journal,* 24-27.

Merriam, S.B. 2002. *Qualitative research in practice: examples for discussion and analysis*. San Francisco: CA: Jossey-Bass 1(1):1-17.

Merriam, S.B. & Tisdell, E.J. 2016. *Qualitative research: a guide to design and implementation.* 4th ed. San Francisco, CA: Jossey-Bass.

Merriam-Webster Inc. 2022. *Merriam-Webster dictionary.* https://www.merriam-webster.com/dictionary/apply Date of access: 9 Jun. 2022.

Musgrave, R.A. 2002. Equity and the case for progressive taxation. In: Thorndike, J.J. & Ventry, D.J., eds. *Tax justice: the ongoing debate*. Washington, D.C.: The Urban Institute Press. pp. 9-10.

National Road Traffic Act 93 of 1996.

National Transport Commission. 2022. *Australian road rules.* https://www.ntc.gov.au/laws-and-regulations/australian-road-rules Date of access: 4 Jan. 2022.

National Treasury. 2000. *Explanatory memorandum on the Taxation Laws Amendment Bill 2000.*

National Treasury & SARS. 2022. *2021 Tax Statistics.* https://www.sars.gov.za/wp-content/uploads/ Docs/TaxStats/2021/Tax-Statistics-2021-Main-document-updated.pdf Date of access: 9 Jun. 2022.

News24.com. 2016. *The innovators: first double cab pick-up.* https://www.carmag.co.za/news/innovators-first-double-cab-pick/ Date of access: 16 Nov. 2022.

O'Hare, B.A., Lopez, M.J., Mazimbe, B., Murray, S., Spencer, N., Torrie, C. & Hall, S. 2022. Tax abuse: the potential for the Sustainable Development Goals. *PLOS Global Public Health*, 2(2): e0000119.

Occupational Health and Safety Act 85 of 1993.

OECD. 2017. *International VAT/GST guidelines.* Paris: OECD Publishing. doi: 10.1787/9789264271401-en

Oxford. 2022. *Oxford Learner's Dictionary*. Oxford: Oxford University Press. https://www.oxfordlearnersdictionaries.com/definition/english/regressive Date of access: 06 Jul. 2022.

Palmer, G.C. 2021. Revenue: part 2. *LAWSA,* 22(2). LexisNexis.

Pearce, D.C., Campbell, E. & Harding, D.E. 1987. *Australian law schools: a discipline assessment for the Commonwealth Tertiary Education Commission: a summary*. Australian Government Pub. Service.

President of the Republic of South Africa. 1991. Value-Added Tax Act (89/1991). *Government Gazette,* 13307:20, 12 Jun.

President of the Republic of South Africa. 2000. Taxation Laws Amendment Act (30/2000). *Government Gazette,* 21390:112, 19 Jul.

Reinhardt, S. & Steel, L. 2006. *A brief history of Australia's tax system*. https://treasury.gov.au/publication/economic-roundup-winter-2006/a-brief-history-of-australias-tax-system#P8_113 Date of access: 12 Dec. 2021.

Repetti, J. & Ring, D. 2012. Horizontal equity revisited. *Florida Tax Rev*iew, 13(2):135.

RTCC *v The Commissioner for The South African Revenue Service (VAT 1345)* 2016 (SATC).

Saidi and Others *v Minister of Home Affairs and others (CCT107/17)* 2018 ZACC 9; 2018 (7) BCLR 856 (CC); 2018 (4) SA 333 (CC).

SAIPA Tax Committee, 2012. The VAT function and risks associated with VAT. *Professional Accountant,* 2012(4):18-19. doi: 10.10520/EJC130161

Samancor. 2015. *FRCP protocol manual.* https://samancorcr.com/wp-content/uploads/2018/08/SHEQ-FRCP.pdf Date of access: 08 Dec. 2021.

SARS. 2015. *Interpretation note 82*. Pretoria: SARS.

SARS. 2022. *Tax Court*. https://www.sars.gov.za/legal-counsel/dispute-resolution-judgments/tax-court/ Date of access: 20 Feb. 2022.

Sasol. 2018. *Group safety standards*. Sasolburg: Sasol. https://www.sasol.com/sites/default/files/content/files/9.14%20Sasol%20Group%20LSRs%20consolidated_2018.pdf Date of access: 08 Dec. 2021.

Saunders, M., Lewis, P. & Thornhill, A. 2016. *Research methods for business students*. 7th ed. Essex: Pearson.

Siyathuthuka Mining. 2021. *Motorized vehicles and equipment.* https://siyathuthukamining.com/sherq/ Date of Access: 10 Dec. 2021.

Smith, A. 1892. *An inquiry into the nature and causes of the wealth of nations.* London: Routledge.

South African Institute of Taxation. 2014. *Input VAT on double cab vehicles and SUVs used on mine sites.* https://www.thesait.org.za/news/204769/Input-VAT-on-double-cab-vehicles-and-SUVs-used-on-mine-sit%20es.htm Date of access: 08 Dec. 2021.

Stiglingh, M., ed. 2019. *SILKE: South African Income Tax 2020*. 22nd ed. Durban: LexisNexis.

Tanzi, M.V. & Zee, M.H.H. 2001. *Tax policy for developing countries.* Washington: International Monetary Fund.

Toyota Australia. 2021. *Toyota HiLux prices.* https://www.toyota.com.au/hilux/prices Date of access: 12 Dec. 2021.

Toyota South Africa. 2021a. *Hilux Single Cab.* https://www.toyota.co.za/ranges/hilux-single-cab Date of access: 08 Dec. 2021.

Toyota South Africa. 2021b. *Hilux Double Cab.* https://www.toyota.co.za/ranges/hilux-double-cab Date of access: 08 Dec. 2021.

UN Statistics Division. 2022. *Methodology: standard country or area codes for statistical use (M49)*. https://unstats.un.org/unsd/methodology/m49/ Date of access: 11 Sept. 2022.

Van Hoecke, M. 2015. Methodology of comparative legal research. *Law And Method*, 2015:3. doi: 10.5553/REM/.000010

Value-Added Tax Act 89 of 1991.

Venter *v Rex* 1907 910 (TS).

World's Top Exports. 2020. *Australia's top 10 exports*. https://www.worldstopexports.com/australias-top-10-exports/ Date of access: 27 Apr. 2021.