A BILL

FOR

An Act to amend the law relating to sales tax

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

5   **1.** This Act may be cited as the *Sales Tax Laws Amendment Act 1988*.

Commencement

2. This Act shall be taken to have commenced on 4 November 1988.

PART II—AMENDMENT OF THE SALES TAX ASSESSMENT ACT
(No. 1) 1930

Principal Act

3. In this Part, "Principal Act" means the *Sales Tax Assessment Act (No. 1) 1930*[1].   5

Interpretation

4. Section 3 of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of "computer program" and substituting the following definition:

" 'computer program' means a computer program within the   10
meaning of the *Copyright Act 1968*, and includes part of such a program;";

(b) by inserting in subsection (1) the following definition:

" 'domestic program goods' means goods to which section 3D applies;".   15

5. After section 3C of the Principal Act the following section is inserted in Part I:

Transfer of computer program not embodied in goods

"3D. Where:

(a) a computer program is transferred from a person (in this section   20
called the 'transferor') to another person (in this section called the 'transferee'), otherwise than by transferring goods in which the program is embodied;

(b) valuable consideration is given by the transferee or another person
to the transferor or another person in connection with, or as   25
consideration for, the supply of, or the right to use, the program; and

(c) the transfer begins and ends in Australia;

the following provisions apply for the purposes of this Act:

(d) the program shall be deemed to be goods;   30

(e) the transfer shall be deemed to be:

(i) the manufacture of the goods in Australia by the transferor; and

(ii) the sale of the goods by the transferor to the transferee;

(f) for the purposes of section 18B, the program shall be deemed to be   35
embodied in goods.".

Sales tax

6. Section 17 of the Principal Act is amended by inserting in subsection
(1) "or the *Sales Tax Act (No. 1A) 1988*, as the case requires," after
"1930".   40

7. After section 18B of the Principal Act the following section is inserted:

Reduction of sale value for custom computer programs

"18C. (1) Where:

(a)   a computer program (in this section called the 'custom program')
    that was developed under a contract by a person (in this subsection
    called the 'programmer') for use by only one person (in this
    subsection called the 'client'):

    (i)   is transferred directly by the programmer to the client; or

    (ii) is transferred indirectly by the programmer to the client
        through one or more interposed transfers;

(b)   apart from this section, sales tax is payable, on the sale value of
    goods, in respect of the transfer, or any of the transfers, to which
    paragraph (a) applies; and

(c)   the whole or a part of the sale value (which whole or part is in
    this subsection called the 'custom program value') is directly
    attributable to the custom program;

the following provisions apply to that sale value:

(d)   if the whole or a part of the custom program value (which whole
    or part is in this subsection called the 'non-custom value') is directly
    attributable to one or more computer programs that:

    (i)   are incorporated in the custom program (whether with or
        without modification); and

    (ii) are not programs that were developed by the programmer:

        (A) for use only by the client; and

        (B) for use only as part of the custom program;

    and the non-custom value exceeds 20% of the custom program
    value—the sale value shall be reduced by so much (if any) of the
    custom program value as exceeds the non-custom value;

(e)   in any other case—the sale value shall be reduced by the custom
    program value.

"(2) If:

(a)   subsection (1) applies to reduce the sale value of goods in respect
    of a particular transfer of goods in which the custom program is
    embodied;

(b)   the transferor is an unregistered person; and

(c)   the whole of the sale value remaining after the application of
    subsection (1) is directly attributable to the goods in which the
    custom program is embodied;

the sale value shall be further reduced to nil.

"(3) This section does not apply if the sale value is determined under
subsection 18 (5B).".

PART III—AMENDMENT OF OTHER ACTS

Amendment of other Acts

8. The Acts specified in the Schedule are amended as set out in the Schedule.

PART IV—APPLICATION AND TRANSITIONAL   5

Application of amendments

9. The amendments made by this Act apply to transactions, acts and operations effected or done in relation to goods on or after the commencement of this Act.

**Regulations for the purposes of item 113C in the First Schedule to the   10
*Sales Tax (Exemptions and Classifications) Act 1935***

10. Regulations that are made for the purposes of item 113C in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* in relation to computer programs may be expressed to take effect from a date before the date of notification of the regulations, not being a date   15 earlier than the date of commencement of this Act.

Transitional

11. (1) Nothing in this Act makes a person liable to a defined penalty because of an act or omission before the postponed day.

(2) Where, apart from this section, this Act would have had the effect   20 of making a person liable to a defined penalty because the person contravened a requirement to do something:

    (a) within a specified period ending before the postponed day; or

    (b) before a specified time occurring before the postponed day;

that requirement has effect as if the relevant law operated instead by   25 reference to a period ending at the beginning of the postponed day, or by reference to the beginning of the postponed day, as the case may be.

(3) For the purposes of this section, a reference to a person being liable to a defined penalty is a reference to:

    (a) the person being guilty of an offence; or   30

    (b) the person being liable to additional tax by way of penalty.

(4) In this section, "postponed day" means the twenty-eighth day after the day on which this Act receives the Royal Assent.

SCHEDULE   Section 8

AMENDMENT OF OTHER ACTS

Sales Tax Act (No. 1) 1930

Section 3:

Add at the end the following subsection:

"(2) This Act does not impose sales tax on the sale value of domestic program goods.".

Sales Tax Assessment Act (No. 2) 1930

Subsection 12 (1):

Before "20A", insert "18C,".

Sales Tax Assessment Act (No. 3) 1930

Subsection 12 (1):

Before "20A", insert "18C,".

Sales Tax Assessment Act (No. 5) 1930

Subsection 12 (1):

Before "20A", insert "18C,".

Sales Tax Assessment Act (No. 6) 1930

Subsection 12 (1):

Before "20A", insert "18C,".

Sales Tax Assessment Act (No. 7) 1930

Subsection 12 (1):

Before "20A", insert "18C,".

Sales Tax (Exemptions and Classifications) Act 1935

After section 6C:

Insert the following section:

Application of Act in relation to imported program goods

"6D. This Act applies to imported program goods within the meaning of the *Sales Tax Assessment Act (No. 12) 1988*:

    (a) as if they had been imported, and entered for home consumption under the *Customs Act 1901*, at the time when the computer program concerned was transferred; and

SCHEDULE—continued

(b) in all other respects, in the same way as this Act applies to domestic program goods within the meaning of the *Sales Tax Assessment Act (No. 1) 1988.*".

Sales Tax Procedure Act 1934

After subsection 5 (1):

Insert the following subsection:

"(1A) Where imported program goods within the meaning of the *Sales Tax Assessment Act (No. 12) 1988* are deemed to be sold during a month and sales tax is payable under that Act on their sale value, the transferee of the computer program concerned shall, within 21 days after the end of that month, furnish to the Commissioner of Taxation a return of those goods.".

Subsection 5 (2):

Omit "the last preceding subsection", substitute "subsection (1) or (1A)".

Subsection 10 (5) (paragraph (a) of the definition of "refund decision"):

After "*1985*" insert ", section 13 of the *Sales Tax Assessment Act (No. 12) 1988*".

NOTE

1. No. 25, 1930, as amended. For previous amendments, see No. 62, 1930; No. 25, 1931; Nos. 39 and 64, 1932; Nos. 17 and 47, 1933; Nos. 16 and 29, 1934; Nos. 8, 45 and 61, 1935; No. 78, 1936; Nos. 30 and 64, 1940; No. 54, 1942; No. 1, 1953; No. 40, 1962; No. 93, 1966; No. 216, 1973; No. 197, 1978 (as amended by No. 47, 1985); No. 19, 1979; No. 134, 1980; Nos. 51 and 122, 1982; No. 39, 1983; No. 123, 1984 (as amended by No. 47, 1985); Nos. 47, 123 and 144, 1985; Nos. 41, 48 and 99, 1986; Nos. 23, 42, 140 and 145, 1987; and Nos. 6 and 000, 1988.