

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

(As read a first time)

SALES TAX LAWS AMENDMENT BILL (No. 2) 1985

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1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 19 September 1985

(*Treasurer*)

A BILL

FOR

An Act to amend various laws related to sales tax, and for related purposes

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 (No. 2) 1985*.

Commencement

- 10 ~~1.~~ (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (2) Parts II and III and section 20 shall be deemed to have come into operation immediately after the commencement of section 6 of the *Sales Tax Laws Amendment Act 1985*.

(3) Parts IV, V and VI shall be deemed to have come into operation immediately after the commencement of the *Sales Tax Assessment Act (No. 10) 1985*.

(4) Sections 19 and 21 shall be deemed to have come into operation on 20 September 1985.

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

Principal Act

3. The *Sales Tax Assessment Act (No. 1) 1930*¹ is in this Part referred to as the Principal Act.

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Issue of certificates

4. Section 11 of the Principal Act is amended—

(a) by omitting from sub-section (2) “, by virtue of this section or section 16,”; and

(b) by omitting from paragraph (3B) (b) “11(8A)” and substituting “(8A)”.

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Revocation of registration

5. Section 16 of the Principal Act is amended by omitting from sub-section (4) “(1)” and substituting “(2)”.

PART III—AMENDMENT OF SALES TAX ASSESSMENT ACT (No. 5) 1930

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Principal Act

6. The *Sales Tax Assessment Act (No. 5) 1930*² is in this Part referred to as the Principal Act.

Interpretation

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7. Section 2A of the Principal Act is amended by adding at the end the following sub-section:

“(2) In this Act—

(a) a reference to imported goods entered for home consumption includes a reference to goods that are imported after having been entered for home consumption in the manner referred to in paragraph 2B (1) (b); and

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(b) a reference to the entry for home consumption of imported goods includes a reference to the entry for home consumption, in the manner referred to in paragraph 2B (1) (b), of goods that are imported after having been so entered,

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and other grammatical forms of those phrases have corresponding meanings.”.

Sale value of imported goods

8. Section 4 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

“(4) Where—

5 (a) a payment of royalty has been made in connection with the importation or entry for home consumption of goods; and

(b) in determining the sale value of the goods in accordance with sub-section (1) or (3)—

10 (i) no part of the amount of royalty has been taken into account; or

(ii) a part of the amount of royalty (in this sub-section referred to as the ‘relevant part’) has been taken into account,

then, for the purposes of this section, the sale value of the goods so determined shall be deemed to be increased by an amount equal to 120% of—

15 (c) where sub-paragraph (b) (i) applies—the amount of the royalty; or

(d) where sub-paragraph (b) (ii) applies—the difference between the amount of the royalty and the relevant part.”.

Time for payment of tax

20 9. Section 9 of the Principal Act is amended by omitting paragraph (1) (a) and substituting the following paragraphs:

“(a) where neither paragraph (aa) nor (b) applies—at the time when the goods are entered for home consumption;

25 “(aa) where the goods are entered for home consumption in the manner referred to in paragraph 2B (1) (b) before the goods are imported—at the time when the goods are imported; or”.

**PART IV—AMENDMENT OF SALES TAX ASSESSMENT ACT
(No. 9) 1930**

Principal Act

30 10. The *Sales Tax Assessment Act (No. 9) 1930*³ is in this Part referred to as the Principal Act.

Sale value of goods

11. Section 4 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

35 “(4) Where—

(a) a payment of royalty has been made in connection with a lease of goods; and

(b) in determining the sale value of the goods in accordance with sub-section (1), (1A), (2) or (3)—

(i) no part of the amount of royalty has been taken into account;
or

(ii) a part of the amount of royalty (in this sub-section referred to as the 'relevant part') has been taken into account,

then, for the purposes of this section, the sale value of the goods so determined shall be deemed to be increased by an amount equal to— 5

(c) where sub-paragraph (b) (i) applies—the amount of the royalty; or

(d) where sub-paragraph (b) (ii) applies—the difference between the amount of the royalty and the relevant part.”

Application of provisions of *Sales Tax Assessment Act (No. 1) 1930* 10

12. Section 12 of the Principal Act is amended by omitting from sub-section (1) “sections 3 and 3A (except the definition of ‘Goods’)” and substituting “section 3 (except the definition of ‘Goods’), section 3A”.

PART V—AMENDMENT OF SALES TAX LAWS AMENDMENT ACT 1985 15

Principal Act

13. The *Sales Tax Laws Amendment Act 1985*⁴ is in this Part referred to as the Principal Act.

Sale value of imported goods

14. Section 28 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section: 20

“(2) Until the commencement of sub-section (1), section 4 of the Principal Act has effect as if the following sub-section were added at the end:

‘(5) Where— 25

(a) a payment of royalty has been made in connection with the importation or entry for home consumption of goods; and

(b) in determining the sale value of the goods in accordance with sub-section (1) or (3)—

(i) no part of the amount of royalty has been taken into account; 30
or

(ii) a part of the amount of royalty (in this sub-section referred to as the “relevant part”) has been taken into account,

then, for the purposes of this section, the sale value of the goods so determined shall be deemed to be increased by an amount equal to 120% of— 35

(c) where sub-paragraph (b) (i) applies—the amount of the royalty; or

(d) where sub-paragraph (b) (ii) applies—the difference between the amount of the royalty and the relevant part.’”

PART VI—AMENDMENT OF SALES TAX PROCEDURE ACT 1934

Principal Act

15. The *Sales Tax Procedure Act 1934*⁵ is in this Part referred to as the Principal Act.

5 Interpretation

16. Section 3 of the Principal Act is amended by omitting “, or that Act as amended from time to time,” from the definition of “Goods” and substituting “or the *Sales Tax Assessment Act (No. 10) 1985*”.

Recovery of tax

10 17. Section 10 of the Principal Act is amended by omitting from sub-section (1) all the words from and including “those goods” and substituting the following:

“those goods—

(a) have been either—

- 15 (i) sold by the defendant;
- (ii) manufactured by the defendant and treated by the defendant as stock for sale by retail;
- (iii) applied by the defendant to the defendant’s own use;
- (iv) leased by the defendant to a lessee; or
- 20 (v) deemed to have been sold, as mentioned in sub-section 3 (2) of the *Sales Tax Assessment Act (No. 10) 1985*, by the defendant; or

25 (b) being imported goods, have been entered for home consumption by the defendant as described in section 2B of the *Sales Tax Assessment Act (No. 5) 1930*,

the plaintiff shall be entitled to judgment for the amount of sales tax stated in the certificate except in so far as the defendant proves that the whole or part of the sales tax so stated is not payable”.

PART VII—AMENDMENT OF SALES TAX REGULATIONS

30 Sales Tax Regulations

18. The Sales Tax Regulations are in this Part referred to as the Regulations.

Interpretation

19. Regulation 4 of the Regulations is amended—

- 35 (a) by inserting after the definition of “auxiliaries to aids to manufacture” in sub-regulation (1) the following definition:

“‘biscuits’ includes—

- (a) cookies, crackers, pretzels, cones or wafers; or

(b) goods consisting principally of biscuits or of goods falling within paragraph (a),

but does not include—

(c) breakfast food consisting wholly or principally of compressed, rolled or flattened cereal; 5

(d) rusks for infants or invalids, or crispbread; or

(e) goods consisting principally of goods falling within paragraph (d);”; and

(b) by inserting after sub-regulation (1C) the following sub-regulation:

“(1D) The reference in paragraph (f) of the definition of ‘aids to manufacture’ in sub-regulation (1) to goods for use by a confectioner, baker or pastry-cook in the manufacture of biscuits does not include a reference to machinery designed for manufacturing biscuits used in premises or vehicles in which the business of manufacturing biscuits is carried on exclusively or principally for the purpose of sale by retail directly from those premises or vehicles.”. 10
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Cases in which certificates to be quoted

20. Regulation 12 of the Regulations is amended by omitting from paragraph (1) (g) “paragraph (c)” and substituting “sub-paragraph (a) (iii)”.

Cases in which certificates not to be quoted 20

21. Regulation 13 of the Regulations is amended—

(a) by omitting “39,”; and

(b) by adding at the end the following sub-regulation:

“(2) Sub-regulation 12 (1) does not apply so as to require or permit a registered person who is a manufacturer to quote a certificate in respect of the purchase, or the entry for home consumption, by the person of— 25

(a) mixes to be used in the manufacture by the person of biscuits in premises or vehicles in which the business of manufacturing biscuits is carried on exclusively or principally for the purpose of sale by retail directly from those premises or vehicles; or 30

(b) mixes to be used in the manufacture by the person of goods, being ice-cream, ice-cream cakes, ice-creams, ice-cream substitutes, frozen confectionery (other than frozen yoghurt), flavoured iceblocks (whether or not to be marketed in a frozen state) or similar goods, in premises or vehicles in which the business of manufacturing goods of that kind is carried on exclusively or principally for the purpose of sale by retail directly from those premises or vehicles.”. 35

Amendment or repeal of Regulations

22. The amendment of the Regulations by this Part does not prevent the amendment or repeal, by regulations, of the Regulations as amended by this Part.

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PART VIII—TRANSITIONAL

Transitional

23. (1) Where—

(a) before the commencing day, a person purchased goods or entered goods for home consumption;

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(b) the person—

(i) being a registered person, did not quote a certificate in respect of the purchase or entry and was neither required nor permitted so to quote that certificate; or

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(ii) not being a registered person, but being required to be registered, would, if the person had been a registered person, have been neither required nor permitted to quote a certificate in respect of the purchase or entry; and

(c) on or after the commencing day, the person sells the goods by retail,

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then, for the purposes of the laws relating to sales tax, that sale by retail shall be deemed to have been made immediately before the commencing day.

(2) In this section—

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(a) a reference to a person selling goods by retail does not include a reference to a person selling goods under an indirect marketing arrangement within the meaning of sub-section 3 (4A) of the *Sales Tax Assessment Act (No. 1) 1930*; and

(b) a reference to the commencing day is a reference to 20 September 1985.

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Avoidance of sales tax

24. Where—

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(a) at any time (in this section referred to as the “relevant time”) after half past 4 o’clock in the afternoon, by standard time in the Australian Capital Territory, on 19 September 1985 and before 20 September 1985 a person entered into, performed or carried out a transaction, act or operation (in this section referred to as the “dealing”) in relation to goods; and

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(b) the person entered into, performed or carried out the dealing at the relevant time for the purpose, or for purposes that included the purpose, of enabling any person to avoid liability to pay an amount, or part of an amount, of sales tax that would have been, or might

reasonably be expected to have been, payable in relation to the dealing under the laws relating to sales tax if the dealing had been entered into, performed or carried out on 20 September 1985, then, for the purposes of those laws, the dealing shall be deemed to have been entered into, performed or carried out on 20 September 1985.

NOTES

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); and No. 47, 1985.
2. No. 33, 1930, as amended. For previous amendments, see No.67, 1930; No. 33, 1931; Nos. 43 and 64, 1932; Nos. 17, 25 and 51, 1933; Nos. 16 and 62, 1934; Nos. 45 and 61, 1935; No. 78, 1936; No. 26, 1939; No. 71, 1953; No. 45, 1963; No. 93, 1966; No. 109, 1968; No. 216, 1973; No. 91, 1976; No. 201, 1978; Nos. 51 and 80, 1982; No. 123, 1984; and No. 47, 1985.
3. No. 41, 1930, as amended. For previous amendments, see No. 71, 1930; No. 41, 1931; No. 47, 1932; No. 55, 1933; Nos. 9 and 61, 1935; No. 78, 1936; No. 13, 1946; No. 93, 1966; No. 216, 1973; No. 205, 1978; No. 123, 1984; and No. 47, 1985.
4. No. 47, 1985.
5. No. 53, 1934, as amended. For previous amendments, see No. 12, 1935; No. 78, 1936; No. 63, 1940; No. 1, 1953; No. 93, 1966; No. 216, 1973; No. 123, 1984; and No. 47, 1985.