

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

SALES TAX LAWS AMENDMENT BILL (NO. 2) 1992

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1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 3 November 1992

(Minister Assisting the Treasurer)

A BILL

FOR

**An Act to amend the law relating to sales tax, and for
related purposes**

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Sales Tax Laws Amendment Act*
5 *(No. 2) 1992*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

**PART 2—AMENDMENT OF THE SALES TAX AMENDMENT
(TRANSITIONAL) ACT 1992**

Principal Act

3. In this Part, “Principal Act” means the *Sales Tax Amendment (Transitional) Act 1992*¹. 5

4. Section 11 of the Principal Act is repealed and the following section is substituted:

**Continued operation of some Items in the old Exemptions and
Classifications Act**

- “11. The new Exemptions and Classifications Act has effect as if: 10
- (a) Schedule 1 included Items 14 and 14A from the First Schedule to the old Exemptions and Classifications Act; and
 - (b) Schedule 1 included Item 105 from the First Schedule to that Act, modified by omitting from paragraph (a) of the Item ‘1 January 1993’ and substituting ‘1 January 1994’.”. 15

**PART 3—AMENDMENT OF THE SALES TAX ASSESSMENT
ACT 1992**

Division 1—Principal Act

Principal Act

5. In this Part, “Principal Act” means the *Sales Tax Assessment Act 1992*². 20

Division 2—Amendment relating to in situ pools

6. After section 12 of the Principal Act the following section is inserted:

Construction of pools *in situ* 25

- “12A.(1) This section applies to the construction of a pool shell if:
- (a) a person (“the pool builder”) who is in the business of constructing or erecting pools constructs the pool shell *in situ* in Australia under a contract with another person (“the pool purchaser”); and
 - (b) the construction does not, apart from this section, constitute the manufacture of goods; and 30
 - (c) the contract is entered into on or after the first taxing day.
- “(2) This section also applies to the construction of a pool shell if:
- (a) a person (“the owner-builder”) constructs the pool shell *in situ* in Australia in a case where paragraph (1)(a) does not apply; and 35
 - (b) the construction does not, apart from this section, constitute the manufacture of goods; and
 - (c) the construction begins on or after the first taxing day.

“(3) If this section applies to the construction of a pool shell:

- (a) the pool shell is taken to be goods that are Australian goods; and
- 5 (b) the construction is taken to be the manufacture of the goods; and
- (c) the pool builder or owner-builder, as the case requires, is taken to be the person who manufactured the goods, other than as an employee, and to have done so in the course of a business.

10 “(4) If this section applies because of subsection (1), the pool builder is taken to have sold the goods by retail, immediately after the manufacture, to the pool purchaser.

“(5) If this section applies because of subsection (2), the owner-builder is taken to have applied the goods to own use immediately after the manufacture.

15 “(6) Section 29 does not apply to any assessable dealing in respect of the goods that results from this section applying.

20 “(7) The taxable value of any taxable dealing in respect of the goods that results from this section applying is the price (excluding sales tax) for which the person who is taken to have manufactured the goods could reasonably be expected to have purchased a fibreglass pool shell (being a shell that is manufactured goods apart from this section) of similar dimensions and shape to the goods by wholesale under an arm’s length dealing.

25 “(8) If for any reason it is not possible or practicable to work out that price, the taxable value of the dealing in respect of the goods is instead the price (excluding sales tax) that the person could reasonably be expected to have paid another person, who is in the business of constructing or erecting pools, for the manufacture of the goods if:

- 30 (a) all the materials used in or in connection with the manufacture were supplied by that other person; and
- (b) the 2 people were dealing with each other at arm’s length in relation to the manufacture.

“(9) In this section:

35 ‘construct’, in relation to a pool shell, means construct or erect the pool shell, but does not include:

- (a) undertaking of excavation or other earthworks or clearing, levelling or landscaping of land; or
- (b) painting, tiling, treating or finishing the pool shell; or
- 40 (c) constructing or erecting coping in connection with the pool shell; or
- (d) installing any drainage, heating, lighting, power supply, water supply or filtering or pumping equipment in or in connection with the pool shell;

'pool' means a swimming pool, spa pool or hot tub;
 'pool shell' means the walls and floor, or other structure, that forms the shell or container for a pool."

Division 3—Miscellaneous amendments

General definitions

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7. Section 5 of the Principal Act is amended:

(a) by inserting ", or otherwise relieved from sales tax," after "exempted" in the definition of "prescribed rules for export sales";

(b) by omitting the definitions of "permanent media" and "temporary media"; 10

(c) by inserting the following definition:

"'permanent microchip' means a microchip designed to have computer programs embodied in it on a permanent basis, being a microchip that does not allow the erasing or replacing of the computer programs originally embodied in it;" 15

Use of goods as raw materials in manufacturing goods, or in constructing or repairing property

8. Section 7 of the Principal Act is amended:

(a) by omitting from subsection (1) all the words after "in such a way" and substituting "in manufacturing the other goods that the materials, or some essential element of the materials, become an integral part of the other goods."; 20

(b) by omitting from subsection (2) all the words after "in such a way" and substituting "in constructing or repairing the property that the goods, or some essential element of the goods, become an integral part of the property." 25

Meaning of "tax-advantaged computer program"

9. Section 14 of the Principal Act is amended:

(a) by omitting from subsection (1) "permanent media" and substituting "a permanent microchip"; 30

(b) by inserting in subsection (2) "permanent" before "microchip".

Indirect marketing sale (AD2d and AD12d)

10. Section 20 of the Principal Act is amended by omitting "(1)".

11. Section 31 of the Principal Act is repealed and the following section is substituted: 35

Packing AOU if container and contents intended for export

"31. A packing AOU is not taxable if, at the time of the AOU:

- (a) the applier has the intention of exporting the container with the property that, immediately after the AOU, will be its contents; or
- (b) if the packing AOU is on behalf of a person other than the applier—the applier expects that the other person will export the container with those contents.”.

Taxable dealing with goods that are the contents of a container

12. Section 35 of the Principal Act is amended by omitting paragraph (4)(a) and substituting the following paragraph:

- “(a) the taxpayer has borne tax on the container; or”.

Clawback of CR9 credit on later sale of defective goods

13. Section 58 of the Principal Act is amended:

- (a) by omitting from subsections (1) and (3), and from the formula in subsection (2), “faulty” (wherever occurring) and substituting “defective”;
- (b) by omitting the minus sign from the formula in subsection (2) and substituting a plus sign.

Registration

14. Section 78 of the Principal Act is amended by omitting from subsection (4) “the ground in paragraph (1)(a)” and substituting “a ground in subsection (1)”.

Standard grounds for quoting registration number

15. Section 82 of the Principal Act is amended by inserting after paragraph (1)(e) the following paragraph:

- “(ea) selling the goods, in accordance with the prescribed rules for export sales, to a purchaser who is an eligible Australian traveller;”.

Schedule 1

16. Schedule 1 to the Principal Act is amended:

- (a) by omitting the second sentence of column [3] of Table 3 in relation to CR2, and substituting the following sentences:
“Claimant has not sold the goods. If claimant has applied the goods to own use, the AOU would not have been taxable assuming it were an assessable dealing.”.
- (b) by omitting the credit ground CR9 from Table 3 and substituting the following credit ground:

“

CR9	Replacement of defective parts	Claimant has borne tax on assessable goods used for the purpose of replacing the whole or part of other goods because of defects in the other goods. Replacement was under a warranty the value of which was included in the taxable value of the defective goods or in what would have been the taxable value if the most recent assessable dealing had been taxable.	tax borne on replacement goods	time of replacement
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”;

- (c) by omitting “packing it with assessable goods” from column [2] of Table 3 in relation to CR13 and substituting “a packing AOU”;
- (d) by omitting all the words after “packing AOU” from column [3] of Table 3 in relation to CR13 and substituting “by the claimant. The container was exported while still a container for the property that was its contents immediately after the packing AOU. The claimant has borne tax on the container before the time of export.”; 5
- (e) by omitting all the words in column [3] of Table 3 in relation to CR21 and substituting: 10
 “Claimant has:
 - (a) paid tax on an assessable dealing that is a sale or AD4a and later written off some or all of the price for which the goods were sold or the making-up charge, as the case requires; or 15
 - (b) paid tax on an assessable dealing that is a local entry (other than an LE5) and later written off some or all of the price for which the goods were first sold by the claimant after the local entry.”. 20

PART 4—AMENDMENT OF THE SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT 1992

Principal Act

17. In this Part, “Principal Act” means the *Sales Tax (Exemptions and Classifications) Act 1992*. 25

Schedule 1

18. Schedule 1 to the Principal Act is amended:

- (a) by omitting Item 31 of the Table of Contents;

(b) by omitting from Item 55 of the Table of Contents “and other fuels” and substituting “etc.”;

(c) by inserting after Item 57 of the Table of Contents the following Item:

5 “57A. Goods for purifying or compressing natural gas”;

(d) by adding at the end of the Table of Contents the following Items:

“192. Construction, repair etc. of property owned or leased by always-exempt persons or foreign governments

10 193. Goods for donation or loan to an always-exempt person or a foreign government

194. Goods for supply to a person for use in exempt circumstances

15 195. Parts, repair equipment etc. for use in relation to certain leases”;

(e) by inserting after subparagraph (c)(ii) of the definition of “manufacture-related activity” in subitem 18(5) the following word and subparagraph:

20 “or (iii) in relation to whom the goods are qualifying goods because paragraph (ac) of the definition of that expression in subsection 3(2) applies;”;

(f) by inserting after subparagraph (d)(ii) of the definition of “manufacture-related activity” in subitem 18(5) the following word and subparagraph:

25 “or (iii) qualifying goods, because paragraph (ac) of the definition of that expression in subsection 3(2) applies, in relation to the exemption user;”;

(g) by inserting after subparagraph (e)(ia) of the definition of “manufacture-related activity” in subitem 18(5) the following subparagraph:

30 “(ib) are qualifying goods, because paragraph (ac) of the definition of that expression in subsection 3(2) applies, in relation to the exemption user; or”;

(h) by inserting after subparagraph (g)(ia) of the definition of “manufacture-related activity” in subitem 18(5) the following subparagraph:

35 “(ib) the storage or marketing of goods that are qualifying goods, because paragraph (ac) of the definition of that expression in subsection 3(2) applies, in relation to the exemption user; or”;

(i) by omitting paragraph (i) of subitem 39(1) and substituting the following paragraph:

40 “(i) plaster, plaster products and goods having structural uses similar to plaster and plaster products;”;

(j) by omitting paragraph (n) of subitem 39(1) and substituting the following paragraphs:

“(n) doors and door frames;

(na) windows, shutters, window frames, louvre frames, window sashes, window screens and window fittings;”;

(k) by omitting from the heading to Item 55 “and other fuels” and substituting “etc.”;

(l) by inserting in subitem 55(2) “, diesel oil” after “methylated spirits”;

(m) by omitting subitem 55(5);

(n) by inserting in Item 85 “[Parts]” after subitem (1);

(o) by inserting in Item 94 “[Parts]” after subitems (1) and (2).

PART 5—AMENDMENT OF THE SALES TAX IMPOSITION (GENERAL) ACT 1992

Principal Act

19. In this Part “Principal Act” means the *Sales Tax Imposition (General) Act 1992*⁴.

Imposition

20. Section 3 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) This section imposes sales tax only so far as that tax is not:

(a) a duty of customs or a duty of excise within the meaning of section 55 of the Constitution; or

(b) tax imposed by section 3 of the *Sales Tax Imposition (In Situ Pools) Act 1992*.”.

NOTES

1. 1992, No. 118.

2. 1992, No. 114.

3. 1992, No. 119.

4. 1992, No. 117.



