

Tax

Sales Tax - Recovery By Statutory Alteration of Contracts

The recent federal budget included sales tax on building products. Few construction contractors, subcontractors or suppliers seem to be aware of the provisions of the *Sales Tax Assessment Act 1992* (Cth), which can result in statutory "cost adjustment" recovery of increased costs caused directly by changes in sales tax.

The relevant provision of the *Sales Tax Assessment Act* is section 128, Alteration of Contracts if Cost of Supplying etc Assessable Goods is Affected by Later Alteration to Sales Tax Law. Section 128 provides:

"128(1) [Alteration of contracts involving assessable goods] If, after a contract involving assessable goods has been made, an alteration to the sales tax law happens and the alteration directly causes an increase or decrease in the cost to a party to the agreement of complying with the agreement, then the contract is altered as follows:

- (a) if the cost is increased - by allowing the party to add the increase to the contract price;

- (b) if the cost is decreased - by allowing the other part to deduct the decrease from the contract price.

128(2) [Contracts not altered] The contract is not altered if:

- (a) the contract has express written provision to the contrary; or
- (b) it is clear from the terms of the contract that the alteration of the sales tax law has been taken into account in the agreed contract price."

Contracting parties facing claims from their contractors, subcontractors or suppliers for recovery, via this statutory provision, of increased costs directly caused by the sales tax announced in the recent federal budget will need an analysis of each contract to determine whether adjustment is precluded by the provisions of section 128(2) of the *Sales Tax Assessment Act*.

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Tax Incentives For Heritage Conservation

Tax rebates are now available to encourage the restoration of heritage properties.

The rebate will be available only when the work has been finished in accordance with a provisional certificate, and the final certificate has been issued. The tax rebate, which amounts to twenty cents in the dollar, will apply in the year the final certificate is issued.

However, the provisional certificate must be issued before the work is commenced, and it will only be granted to heritage conservation works which are to conserve, maintain, preserve, restore, reconstruct, or adapt a registered building or structure of cultural significance.

Taxpayers are eligible to apply for a provisional certificate if:

- the work can be completed in two years;
- the conservation work will cost \$5,000 or more;
- they own, or hold a crown lease over, the land on which the building or structure is situated; and
- the building or structure is listed on the Register of the National Estate or a State/Territory statutory heritage register.

The scheme will be administered by the Minister for

Communications and the Arts. The total amount of approved expenditure for each financial year must not exceed \$9.5m. This will be the annual limit until the end of the 1996/97 financial year.

A project is more likely to be approved if it meets "high priority criteria." A claimable expenditure limit will be set by the Minister when granting a provisional certificate.

Although this legislation is a positive step in encouraging the restoration of heritage properties, it does have its limitations.

For an information guide and application forms, write to:

Tax Incentive for Heritage Conservation
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Canberra ACT 2601

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