

1988

THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DIPLOMATIC AND CONSULAR PRIVILEGES AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Acting Minister for
Foreign Affairs and Trade, the Hon. Michael Duffy, M.P.).

OUTLINE

The Diplomatic and Consular Privileges Amendment Bill 1988 amends both the Diplomatic (Privileges and Immunities) Act 1967 and the Consular (Privileges and Immunities) Act 1972. The Bill provides that goods purchased from registered Sales Taxpayers for the official use of the missions and posts of prescribed overseas countries shall be exempt from Australian Sales Tax. The Governor-General will make regulations proclaiming particular foreign States to be prescribed overseas countries.

These amendments are the result of increasing difficulties Australia is experiencing overseas in claiming exemption for its missions and posts from sales tax and value added tax. Under the two (1961 and 1963) Vienna Conventions on Diplomatic and Consular Relations, personnel at foreign missions and posts are exempt from direct taxes but have a liability to pay indirect taxes of a kind which are normally incorporated in the price of goods or services. Due to the manner in which sales tax operates in this country the Government has always taken the view that Australian sales tax is an indirect tax and as such must be paid by foreign missions and posts. However, the Government has also taken the view that certain foreign sales tax and value added tax systems, due to the manner in which they operate, are direct taxes and as such do not apply to personnel at our missions and posts. The divergence of these interpretations has increased between Australia and some foreign countries to the point where amendments to the legislation are necessary as a mechanism to achieve reciprocity and mutual benefit.

Financial Impact Statement

1. A foreign state will only be proclaimed a prescribed overseas country where Australia is receiving reciprocal sales tax or V.A.T. exemption in that foreign State; and the financial benefits to Australia of such reciprocal exemption outweigh the cost of granting sales tax exemption in Australia. Consequently, the Bill is not expected to have an adverse effect on Government finances.

NOTES ON CLAUSES

Clause 1 Short Title

Clause 2 Commencement

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

Part II Amendment of the Diplomatic Privileges and Immunities Act 1967

Clause 3 Principal Act

3. This clause provides that Part II applies only to the Diplomatic Privileges and Immunities Act 1987.

Clause 4 Application of Amendments

4. This provides that Part II shall apply to goods purchased on or after 1 July 1987. This retrospective application is necessary in order to give legislative backing to an arrangement entered into between Australia and the Government of the United States of America. That arrangement provides that each party will grant sales tax exemption in respect of goods purchased by the mission and posts of the other party. The arrangement came into effect on 1 July 1987.

Clause 5 Interpretation

5. Adds two new definitions to Section 4 of the Diplomatic Privileges and Immunities Act 1967

- . "prescribed overseas country" is defined as a country prescribed in regulations by the Governor-General. A country will be prescribed by regulations only where the foreign State is providing reciprocal treatment to Australia; and it is in Australia's financial interest to do so.

- . "registered person" is given the same definition as that in the Sales Tax Assessment Act (No. 1) 1930. The definition includes manufacturers and wholesale merchants who have been registered under the Sales Tax Assessment Act (No. 1) 1930.

Clause 6 Vienna Convention on Diplomatic Relations to have force of law

- 6. This amends section 7 of the Diplomatic Privileges and Immunities Act 1967 so that it reflects the fact that under the new Administrative Arrangements the Minister for Foreign Affairs and is also responsible for Trade matters.

Clause 7 Exemption from sale tax for prescribed overseas missions

- 7. Adds a new section 10A to the Diplomatic Privileges and Immunity Act.

The new sub-section 10A(1) provides that sales tax is not payable on goods which satisfy the following conditions

- (a) The goods must be purchased directly from a registered manufacturer or wholesale merchant by or on behalf of the head of a mission of prescribed overseas country.
- (b) The goods are intended for the official use of the mission. This condition means that individual employees of the mission cannot purchase, free of sales tax, goods intended for their own personal use. It also ensures that sales tax exemptions will not be available where the mission purchases goods as the agent of a third party.
- (c) The head of mission must have agreed that goods purchased free of sales tax will be disposed of or otherwise dealt with in accordance with any conditions set under section 10(3).

8. The new sub-section 10A(2) is a technical provision aimed at avoiding any possible abuse by missions of their sales tax exempt status. The sub-section provides that the Treasurer may declare that a mission has sufficient goods of a particular kind to meet its reasonable needs. While such a declaration is in force sales tax exemption will not be available with respect to goods of that particular kind or of a similar kind. The provision is essentially the same as sub-section 9(2) and 10(2) of the Diplomatic Privileges and Immunities Act.
9. Under the new sub-section 10A(3) the head of mission may agree that:
 - (a) Where goods purchased free of sales tax are disposed of within 2 years of being acquired then the sales tax which would have been payable if the mission had not been exempt will now be payable. The Treasurer may, at his discretion, waive the requirement that the sales tax be paid. This provision is intended to prevent missions from purchasing goods free of sales tax and then within a short period of time reselling the goods at a profit. The Treasurer's power to waive sales tax is aimed at those situations where it would be unreasonable to require sales tax to be payable, e.g. where the goods have been destroyed.
 - (b) Where the condition set out in (a) above has not been complied with then the head of mission will agree to be bound by such additional condition as the Treasurer may impose. This provision is aimed at the situation where, for whatever reason, a mission has consistently failed to either keep goods for the required two years; or pay the required sales tax where the goods are disposed of within two years. It is expected that this provision will only rarely, if ever, have to be used.

10. The provisions contained in the new sub-section 10A(3) are essentially the same as those already in sub-section 9(3) and 10(3) of the Diplomatic Privileges and Immunities Act.

Clause 8 References to Minister for Industry, Technology and Commerce to replace reference to the Minister for Industry and Commerce

11. This clause when read together with the first schedule to the Bill substitutes the term "Minister for Industry, Technology and Commerce" for the term "Minister for Industry and Commerce" wherever the latter appears in the Diplomatic Privileges and Immunities Act 1967. These are technical amendments made necessary by new Administrative Arrangements.

Part III Amendment of the Consular Privileges and Immunities Act 1972

Clause 9 Principal Act

12. This clause provides that Part III applies only to the Consular Privileges and Immunities Act 1972.

Clause 10 Application of amendments

13. This provision is the same as Clause 4 of the Bill and is necessary for the same reasons as that earlier clause.

Clause 11 Interpretation

14. This clause adds the same definitions contained in clause 5 of the Bill to section 3 of the Consular Privileges and Immunities Act 1972.

Clause 12 Exemption for sales tax for prescribed overseas consular post

15. This adds a new section 8A to the Consular Privileges and Immunities Act 1972. This new section is essentially the same as that contained in clause 8 of the Bill, the only difference being that where clause 8 refers to a "mission" clause 12 refers to a "consular mission". The comments made with respect to clause 8 apply equally to clause 12.

**Clause 13 Reference to the Minister for Industry,
Technology and Commerce to replace reference to
the Minister for Industry and Commerce**

16. This clause together with the second schedule of the Bill has the same effect as clause 8 and simply substitutes the term "Minister for Industry, Technology and Commerce" for "Minister for Industry and Commerce" wherever the latter term appears in the Consular Privileges and Immunities Act 1972.

