

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS)
AMENDMENT BILL (No.2) 1985

SALES TAX ASSESSMENT BILL (No.11) 1985

SALES TAX BILL (No.11A) 1985

SALES TAX BILL (No.11B) 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon. P.J. Keating, M.P.)

GENERAL OUTLINE

The purpose of this package of 4 Bills is to amend the sales tax law to exempt from sales tax the sales of limited quantities of spirituous liquors, tobacco products and perfume ("airport shop goods") from inwards duty free shops to passengers and crew of aircraft arriving in Australia on international flights ("relevant travellers"). The Bills, together with amendments in clauses 4,7,12,18 and 21 of the Customs and Excise Legislation Amendment Bill (No. 2) 1985 and in clause 13 of the Customs Tariff Amendment Bill (No. 2) 1985, are designed to enable the establishment of inwards duty free and sales tax free shopping facilities at international airports in Australia.

Sales Tax (Exemptions and Classifications) Amendment Bill (No. 2) 1985

This Bill will amend the Sales Tax (Exemptions and Classifications) Act 1935 -

- . to exempt from sales tax the sale of spirituous liquors and perfume to inwards duty free shops for re-sale to relevant travellers;
- . to exempt from sales tax any sales of airport shop goods by an inwards duty free shop which is registered or required to be registered for sales tax purposes to such persons; and
- . to expand the scope of the existing exemption from sales tax for certain goods imported by relevant travellers to include goods purchased by such persons from an inwards duty free shop.

Sales Tax Assessment Bill (No. 11) 1985

This Bill will -

- . ensure that sales tax will be payable on Australian manufactured airport shop goods -
 - .. purchased by relevant travellers where the quantity purchased, together with any similar goods imported, exceeds the quantity that may be acquired duty and sales tax free by such persons;
 - .. sold by an inwards duty free shop to persons other than relevant travellers; or
 - .. applied by the proprietor of an inwards duty free shop to his or her own use; and

provide the machinery for the assessment, collection and administration of the tax on airport shop goods described above that is imposed by the two related taxing Bills.

Sales Tax Bill (No. 11A) 1985

This Bill will -

formally impose the sales tax, being a duty of excise, payable under the Sales Tax Assessment Bill (No. 11) 1985 on the sale value of Australian manufactured airport shop goods dealt with in a taxable manner; and

declare the rates of tax applicable to those goods.

Sales Tax Bill (No. 11B) 1985

This Bill will -

formally impose the sales tax, being neither a duty of excise nor a duty of customs, payable under the Sales Tax Assessment Bill (No. 11) 1985 on the sale value of Australian manufactured airport shop goods dealt with in a taxable manner; and

declare the rates of tax applicable to those goods.

BROAD FRAMEWORK OF SALES TAX LAW

The following broad framework of the sales tax law is provided to assist in an understanding of the changes being made by this package of 4 Bills.

Sales tax is a single stage tax levied on, or in relation to, goods. In general, it is designed to fall at the wholesale level, but is payable by manufacturers and importers, as well as by wholesalers, the tax in each case being based on a sale value equivalent to the wholesale value of the goods. The overall intention is that goods that are produced in, or imported into, Australia for use or consumption here will bear the tax unless they are specifically exempted from it. Second-hand goods that have been used in Australia are not ordinarily taxable, but imported goods that have been used overseas are normally taxable on a basis corresponding with that applicable to new goods.

The levy is not limited to sales. Where goods have not already borne tax it could, for example, fall on leases of those goods or on the application of those goods

to a taxpayer's own use. It may also fall on the entry for home consumption of imported goods where they are not entered for sale by a wholesaler, e.g., where they are entered by a retailer or consumer. Where a person pays a royalty in relation to goods in circumstances where the amount of the royalty is not part of the sale value of the goods, tax is payable by the person paying the royalty at the rate applicable to the goods.

Manufacturers and wholesalers are required to register with the Taxation Office, unless they deal only in exempt goods. When registered they are issued with a certificate of registration and by quoting the certificate number when purchasing goods or entering imported goods for home consumption they can acquire the goods free of tax. The system of quoting certificates is designed to defer payment of the tax until the last wholesale sale.

Registered manufacturers and wholesale merchants are required to furnish monthly returns of their transactions to the Taxation Office. The tax is basically a self-assessment one and persons furnishing returns are required to calculate the tax payable on transactions for the month, and to forward payment of that tax with each return. Importers are required to pay tax when clearing goods through Customs unless they are registered persons who quote their certificates for the goods.

Reflecting the fact that sales taxpayers are obliged to pay tax to the Taxation Office in this way they, in turn, when selling goods to a retailer or other customer, charge to the retailer or customer an amount equal to the tax that they are liable to remit when forwarding a sales tax return for the month. In that way, the tax is passed on to the consumer.

The sales tax legislation is contained in a number of separate Acts. In addition, there is a series of Regulations that are complementary to those Acts. The Acts and Regulations must be regarded as a whole to properly understand the wholesale sales tax.

There are nine basic Sales Tax Acts (Rating Acts) that specify the rates at which tax is payable. Where royalties are payable in respect of goods, and the royalties are not subject to tax under the Rating Acts, three further Sales Tax Acts impose tax on the royalty payments, but at the rates that are applicable in relation to the particular goods under the basic Rating Acts. Each of the basic Rating Acts has a complementary Sales Tax Assessment Act providing the machinery for assessment, collection and administration of the tax imposed by the related Sales Tax Act. There is also a Sales Tax Assessment Act for the three Sales Tax Acts relating to royalty payments. The subjects of taxation and the various Assessment Acts and Sales Tax Acts are set out in the following table -

Assessment Acts and Sales Tax ActsSubjects of Taxation

Sales Tax Assessment Act
(No. 1) and the Sales Tax Act
(No. 1)

Goods manufactured in Australia and sold by the manufacturer or treated by the manufacturer as stock for sale by retail or applied to the manufacturer's own use.

Sales Tax Assessment Act
(No. 2) and Sales Tax Act
(No. 2)

Goods manufactured in Australia and sold by a purchaser from the manufacturer.

Sales Tax Assessment Act
(No. 3) and Sales Tax Act
(No. 3)

Goods manufactured in Australia and sold by a person not being either the manufacturer or a purchaser from the manufacturer.

Sales Tax Assessment Act
(No. 4) and Sales Tax Act
(No. 4)

Goods manufactured in Australia and applied to own use by a purchaser who quoted a sales tax certificate number when purchasing the goods.

Sales Tax Assessment Act
(No. 5) and Sales Tax Act
(No. 5)

Imported goods entered for home consumption in Australia.

Sales Tax Assessment Act
(No. 6) and Sales Tax Act
(No. 6)

Goods imported into Australia and sold by the importer or applied to own use by the importer.

Sales Tax Assessment Act
(No. 7) and Sales Tax Act
(No. 7)

Goods imported into Australia and sold by a person other than the importer.

Sales Tax Assessment Act
(No. 8) and Sales Tax Act
(No. 8)

Goods imported into Australia and applied to own use by a purchaser who quoted a sales tax certificate number when purchasing the goods.

Sales Tax Assessment Act
(No. 9) and Sales Tax Act
(No. 9)

Goods in Australia
dealt with by lease.

Sales Tax Assessment Act
(No. 10) and Sales Tax Act
(No. 10A), Sales Tax Act
(No. 10B) and Sales Tax Act
(No. 10C)

Certain royalties
payable in respect of
goods.

Another Act, the Sales Tax (Exemptions and Classifications) Act 1935, contains a First Schedule that lists the classes of goods that are exempt from tax and specifies the circumstances in which that exemption applies. Further Schedules list the classes of goods that are taxable at specified rates. Goods not listed in any of the Schedules are taxable at what is called the general rate - currently 20%. Exemptions from tax set out in this Act extend to otherwise taxable goods that are for use by specified organizations or are dealt with in a particular manner.

A further Act, the Sales Tax Procedure Act 1934, provides the machinery for the collection and recovery of sales tax but obviates the necessity to establish under which of the various Assessment Acts a particular transaction falls.

The Taxation Administration Act 1953 contains provisions relating to offences and prosecution of offences against the various taxation laws including the sales tax law.

FINANCIAL IMPACT

As the proposed legislation does not alter the quantity or value of goods that may qualify for exemption from sales tax, there is no cost in terms of sales tax revenue forgone. The introduction of inwards duty free shops is expected to increase airport concession revenue by \$5 million in a full year.

MAIN FEATURES

The purpose of this package of Bills is to provide the legislative framework necessary to enable the passengers and crew of aircraft arriving in Australia from overseas ("relevant travellers") to purchase, free of sales tax, limited quantities of certain goods which are to be sold from inwards duty free (IDF) shops to be located at Australia's international airports.

IDF shops will be bonded warehouses for Customs' purposes and will be located at each of Australia's international airports between the point of disembarkation and the Customs' barrier. The proprietor of an IDF shop, in addition to holding a warehouse licence under the

Customs Act, may, but not necessarily, also be a person who is registered or is required to be registered for sales tax purposes.

The range of goods which an IDF shop will be permitted to sell is to be limited to spirituous liquors, tobacco products and perfume ("airport shop goods"). At present, the following sales tax exemptions are available for these goods when imported by relevant travellers as part of their personal baggage -

- . spirituous liquors - one litre. The balance is taxable at 20%.
- . tobacco products - unlimited. Although an unlimited quantity of tobacco products may be imported free of sales tax, there is a limit of 250 grams of tobacco or 200 cigarettes that may be imported free of customs duty; and
- . perfume - in non-commercial quantities.

It is important to note that these Bills will not alter the level of the exemptions presently available, but will extend the exemptions so that relevant travellers may purchase on arrival in Australia goods, or further goods, free of sales tax and duty up to the prescribed levels.

Sales Tax (Exemptions and Classifications) Amendment Bill (No. 2) 1985

Under the existing sales tax law the sale of goods by persons not registered or required to be registered for sales tax purposes (i.e., most retailers) is not directly subject to sales tax. This reflects the basic concept of a tax on the last wholesale sale. Most retailers therefore purchase their trading stock at a price inclusive of sales tax payable by the manufacturer or wholesaler.

Generally, most IDF shops will, when established, be solely retailers for sales tax purposes and will not therefore be required to be registered for sales tax purposes. Accordingly, under the existing sales tax law these retailers could not acquire their trading stock free of sales tax.

Moreover, in cases where the IDF shop proprietor is registered for sales tax purposes (e.g., because the proprietor is also a manufacturer or wholesaler of the goods to be sold), the present law would not permit a tax-free sale of goods by retail to an arriving passenger or crew member on an international flight.

This Bill will provide the legislative framework within which sales tax free purchases and sales of goods may take place for the purpose of allowing inwards duty free (and sales tax free) shopping by incoming passengers and crew on international flights to Australia (these persons are referred to in this Bill and in related Bills as "relevant travellers").

In giving effect to this legislative scheme, this Bill will amend the Sales Tax (Exemptions and Classifications) Act 1935 to introduce the exemptions that are necessary to allow specified goods to be sold by IDF shops free of sales tax to relevant travellers. The effect of the amendments will be -

- . to enable an IDF shop to purchase free of sales tax spirituous liquors and perfume that are for sale to relevant travellers (tobacco products are already free from sales tax);
- . to enable an IDF shop to sell airport shop goods (an expression that encompasses the abovementioned goods) to a relevant traveller without incurring a liability for sales tax; and
- . to exempt from sales tax purchases of airport shop goods from an IDF shop by a relevant traveller, to the extent that those goods, together with any other similar goods imported by the traveller, do not exceed the limits (in quantity or value) presently allowable under the Sales Tax (Exemptions and Classifications) Act for goods imported by such persons.

Purchase of airport shop goods by an IDF shop
(Clause 6(c) - proposed new sub-item 114(3) of the First Schedule to the Sales Tax (Exemptions and Classifications) Act)

Under the present sales tax law a registered person would be required to pay tax on all sales of spirituous liquors and perfume to an unregistered IDF shop because -

- . such an IDF shop is not permitted to purchase taxable goods free of tax for sale by retail; and
- . there is presently no sales tax exemption for purchases in Australia of spirituous liquors and perfumes by relevant travellers.

This Bill will, as one of the measures necessary to introduce inwards duty and sales tax free facilities, provide an exemption under which spirituous liquors and perfume may be sold, free of tax, to an inwards duty free shop if those goods are for re-sale to relevant travellers. As mentioned above, tobacco products are already unconditionally exempt under the sales tax law and no amendment of the law is necessary in this regard.

Sale of airport shop goods by an IDF shop
(Clause 6(c) - proposed new sub-item 114(3) of the First Schedule to the Sales Tax (Exemptions and Classifications) Act)

Under the present sales tax law, a registered person is liable to sales tax on all sales (other than exempt sales) that are made to a retailer. The retailer, on the other hand, incurs no liability to tax on the subsequent retail sale of the goods. However, some retailers may also be manufacturers or wholesalers who are registered or required to be registered under the law. The sales tax law requires these manufacturers and wholesalers to purchase retail stocks free of tax by quoting their sales tax certificates. If they make retail sales of goods drawn from tax-free stocks purchased for sale by wholesale, the sales tax law imposes a liability for tax on the registered person in respect of those sales.

This Bill will exempt from sales tax all sales of airport shop goods to relevant travellers from IDF shops that are registered sales taxpayers.

Airport shop goods purchased by relevant travellers
(Clause 6(b) - proposed new sub-item 114(1) of the First Schedule to the Sales Tax (Exemptions and Classifications) Act)

Sub-item 114(1) in the First Schedule to the Exemptions and Classifications Act exempts from sales tax a range of goods that are imported by passengers and crew of ships or aircraft. This is achieved, not by listing particular goods, but by referring to those goods that are either exempt from duty or dutiable at concessional rates under particular provisions of the customs law. Sub-item 114(1) in effect exempts one litre of spirituous liquors as well as perfume (to the extent that it is within the \$360 personal baggage concession) from tax.

At present, sub-item 114(1) would not, however, extend to goods purchased from an IDF shop by relevant travellers because the goods, by being purchased in Australia, would not be imported by the purchaser as is necessary to come within the scope of the exemption.

The Bill will extend sub-item 114(1) to apply to this situation. There will, however, be no change in the quantity and value limits mentioned above, so that in order to determine whether exemption applies, it will be necessary to aggregate the quantity or value of goods purchased overseas and from the IDF shop.

Sales Tax Assessment Bill (No. 11) 1985

Sales Tax Bill (No. 11A) 1985

Sales Tax Bill (No. 11B) 1985

As explained earlier in these notes, persons who are not registered or required to be registered for sales tax purposes are not directly liable to sales tax, although they may indirectly pay such tax as part of the purchase price of taxable goods. These Bills will provide an exception to that basic rule in certain specified situations in the cases of IDF shop proprietors and passengers and crew arriving in Australia on international flights.

The effect of the Bills will be to make sales tax payable upon the sale value of Australian manufactured goods when they are -

- (a) purchased from an IDF shop by a relevant traveller (a term defined to mean an arriving passenger or crew member on an international flight) to the extent that those goods, together with any similar goods imported by the traveller, exceed the quantity or value limits in respect of which sales tax exemption is allowable for those goods (see notes on Sales Tax (Exemptions and Classifications) Amendment Bill (No. 2) 1985);
- (b) sold by an unregistered IDF shop to a person who is not a relevant traveller; or
- (c) applied by an unregistered proprietor of an IDF shop to his or her own use.

By virtue of amendments of the First Schedule to the Sales Tax (Exemptions and Classifications) Act 1935 proposed by the Sales Tax (Exemptions and Classifications) Amendment Bill (No. 2) 1985, a conditional exemption from sales tax is to be provided for all sales of airport shop goods by registered persons to IDF shops for sale to relevant travellers. Consequently, IDF shops will be authorised to acquire these goods free of tax from a registered person. However, should the goods be dealt with by an unregistered IDF shop otherwise than in accordance with the exemption, the existing sales tax law would not levy tax in respect of that dealing.

Similarly, should a relevant traveller purchase from an IDF shop airport shop goods in excess of the level of the tax free entitlements allowable to relevant travellers under proposed new sub-item 114(1) in the First Schedule to the Sales Tax (Exemptions and Classifications) Act, the existing law would not impose sales tax on that dealing.

Sales Tax Assessment Bill (No. 11) 1985 will therefore provide that sales tax is payable -

- (a) by a relevant traveller, where the traveller purchases airport shop goods from an IDF shop; and
- (b) by an unregistered proprietor of an IDF shop -
 - (i) where airport shop goods are sold to any person who is not a relevant traveller; and
 - (ii) where airport shop goods are applied to the proprietor's own use.

Although these Bills only apply to Australian manufactured goods and, in situations described in paragraph (b), proprietors not registered for sales tax purposes, a similar result in relation to imported goods and registered persons is achieved under the existing law.

In a case to which paragraph (a) or (b)(ii) applies, the sale value of the goods will be the amount for which the goods were purchased by the taxpayer plus the amount of any excise duty that is payable in respect of the goods. In a case to which paragraph (b)(i) applies, the sale value will be the amount for which the goods were sold plus the amount of any excise duty that is payable in respect of the goods. The sales tax is to be paid at the time the goods are dealt with in a taxable manner. Where the sales tax is not paid at that time, a Collector of Customs will be authorised to seize or impound the goods.

The Assessment Bill also contains machinery provisions for the assessment, collection and administration of the proposed new tax, where necessary by reference to the existing provisions of the sales tax law contained in the Sales Tax Assessment Act (No. 1) 1930.

More detailed explanations of the clauses of each of the Bills are contained in the notes that follow.

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS)
AMENDMENT BILL (No.2) 1985

Clause 1 : Short title, etc

Sub-clause 1(1) provides for the amending Act to be cited as the Sales Tax (Exemptions and Classifications) Amendment Act (No. 2) 1985.

Sub-clause 1(2) facilitates references to the Sales Tax (Exemptions and Classifications) Act 1935 that is referred to in this Bill as "the Principal Act".

Clause 2 : Commencement

By reason of sub-section 5(1A) of the Acts Interpretation Act 1901, Acts come into operation on the twenty-eighth day after the Royal Assent, unless otherwise specified in the Act. Under clause 2, the Act will come into operation on the day section 7 of the Customs and Excise Legislation Amendment Act (No. 2) 1985 (which contains the legislation necessary to authorise IDF shops to sell certain goods free of duties of customs and excise) comes into operation. In turn, section 7 will come into operation on a date to be fixed by Proclamation by the Governor-General. If section 7 comes into operation before the date on which this Bill receives the Royal Assent, then this amending Act will be deemed to have come into operation on that earlier date.

Clause 3 : Definitions

Section 2 of the Principal Act contains certain definitions of expressions used in the Act which are, unless the contrary intention appears, to have the given meaning. This clause will insert into section 2 three additional definitions of expressions that are, by amendments of the Principal Act proposed by this Bill, to be included in the Principal Act.

"airport shop goods" will have the same meaning as in the Customs Act 1901. By clause 4 of the Customs and Excise Legislation Amendment Bill (No. 2) 1985, section 4 of the Customs Act is to be amended by inserting a definition of "airport shop goods". This expression will mean goods, or goods included in a class of goods, that have been declared by the Customs Regulations to be "airport shop goods" that are authorised to be sold from inwards duty free shops. The Government announced on 5 September 1984 that it would propose

amendments of the Customs Regulations to declare spirituous liquor, tobacco products and perfume to be "airport shop goods";

"inwards duty free shop" and "relevant traveller" are key expressions used in the amendments of the Principal Act proposed by the Bill and will have the same meaning as in section 96B of the Customs Act 1901. By clause 7 of the Customs and Excise Legislation Amendment Bill (No. 2) 1985, the Customs Act is to be amended by inserting new section 96B which will contain, inter alia, definitions of "inwards duty free shop" and "relevant traveller". "Inwards duty free shop" will be defined to mean a warehouse in respect of which a person or partnership has been granted a warehouse licence under section 78 of the Customs Act authorising the sale in the warehouse of airport shop goods (see earlier notes in this clause on "airport shop goods") to "relevant travellers". "Relevant traveller" will be defined to mean any person who has arrived in Australia on an international flight (whether as a passenger or the captain or a member of the crew of an aircraft) and who has not been questioned by any officer of Customs in respect of goods carried on that flight, i.e., has not passed through the Customs barrier.

Although expressions used in the Principal Act generally have, by virtue of sub-section 3(1) of that Act, the same meaning as they have in the relevant Sales Tax Assessment Act, only the Sales Tax Assessment Bill (No.11) contains definitions of "airport shop goods", "inwards duty free shop" and "relevant traveller". Unless these expressions are defined in the Principal Act, therefore, they would have no meaning when item 114 in the First Schedule to that Act is being applied for the purposes of the other Assessment Acts (Nos. 1,2,3,5,6 and 7) under which airport shop goods could be liable for tax.

Clause 4 : Interpretation

Section 3 of the Principal Act contains a number of measures that assist in the interpretation of the First Schedule to that Act. The First Schedule sets out, in a number of items contained in the first column of that Schedule, the goods that are exempt from tax and the circumstances in which that exemption applies. Opposite each item, in the second column which is headed "Acts to which Exemption Applies", appear a series of numbers in the range 1 to 9. Sub-section 3(3) of the Principal Act explains that those numbers are references to the

corresponding Assessment Acts (Nos. 1 to 9). In this way, the exemption item only applies to exempt from tax goods taxable under the designated Assessment Act(s).

Clause 4 will omit sub-section 3(3) and substitute a new sub-section, the practical effect of which will be to explain that a reference to the number "11" in the second column of the First Schedule to the Act (which is to appear against item 37 and sub-item 114(1)) is to be read as a reference to the Sales Tax Assessment Act (No.11) 1985.

Clause 5 : Sales tax not payable on a proportion of value of certain goods

Clause 5 will repeal section 6AC of the Principal Act. Section 6AC was introduced in 1978 to provide an exemption from sales tax for certain motor vehicles and boats which, under provisions then contained in the Customs law, were afforded a partial exemption from customs duty. However, the Customs law has since been amended to remove the special concession for these goods. Consequently, section 6AC no longer has any operation.

Clause 6 : Amendments relating to First Schedule to Principal Act

The First Schedule to the Principal Act lists the goods or classes of goods that are exempt from tax and specifies the circumstances in which exemption applies. Clause 6 will amend the First Schedule to the Act to introduce the exemptions that are necessary to enable relevant travellers to purchase airport shop goods free of sales tax from IDF stores.

Tobacco, cigarettes and cigars - which will be included within the definition of "airport shop goods" (see notes on the definition in clause 3) - are exempt from sales tax by virtue of item 37 in the First Schedule. These goods are, however, subject to excise or customs duties.

Item 37 presently applies to exempt tobacco, etc. from tax payable under each of the Sales Tax Assessment Acts (Nos. 1 to 9) - in other words, every taxable dealing is exempt. Paragraph (a) of this clause will maintain that exemption for tobacco products by extending item 37 to cover sales tax payable under proposed new Assessment Act (No.11) by including the numeric 11 in the second column opposite each of the sub-items of item 37 - see earlier notes on clause 4.

Sub-item 114(1) presently exempts from sales tax goods that are imported by the passengers or crew of ships or aircraft where the goods are covered by item 15 or 16 in Part 1 of Schedule 4 to the Customs Tariff. Broadly explained, goods imported by the passengers and crew of ships or aircraft

that are prescribed in by-laws made under item 15 are exempt from customs duty. By-laws made under that item prescribe, inter alia -

- . up to one litre of alcoholic liquors (potable) per person aged 18 years or over;
- . an unlimited quantity of articles for personal hygiene, grooming or adornment (which may include perfume), provided they are not imported in commercial quantities.

Goods which are imported by passengers and crew of ships or aircraft are liable to customs duty at the concessional rate of 20% if they are prescribed in by-laws made under item 16.

By virtue of sub-item 114(1) of the Principal Act, sales tax is not payable on these goods provided that the goods do not exceed the quantities or value limits prescribed in item 15. However, as mentioned above, the sub-item presently applies only to goods that are imported by passengers or members of the crew of ships or aircraft. Accordingly, in its present form the sub-item would not apply to exempt purchases of such goods from IDF shops by those persons.

Paragraph (b) of clause 6 will substitute a new sub-item 114(1) which will extend the existing exemption to include both imported and Australian manufactured goods purchased from an IDF shop. However, the new sub-item will ensure that there is no increase in the overall quantities or values of sales tax exempt goods that a passenger or crew member may take through the Customs barrier.

The new sub-item will, by reason of the reference to the "Nos 5 and 11" in the second column, apply to both Sales Tax Assessment Act (No. 5) 1930 and the proposed Sales Tax Assessment Act (No. 11) 1985, i.e., as explained above to imported and Australian manufactured goods.

In re-drafting sub-item 114(1) the opportunity has also been taken to omit a redundant reference to goods which are entitled to a partial exemption from customs duty. As explained in the notes on clause 5, no such partial exemptions are now available under the Customs law.

Paragraph 6(c) of this Bill will insert a new sub-item 114(3). The new sub-item will exempt from sales tax airport shop goods that are either -

- (a) purchased by an IDF shop for sale to a relevant traveller; or

- (b) are actually sold from an IDF shop to a relevant traveller.

The purpose of the exemption referred to in (a) is to enable proprietors of IDF shops who are not registered for sales tax purposes to purchase their retail stock of Australian made airport shop goods free of tax (goods which are imported by IDF shops for sale to relevant travellers do not need to be specifically exempted as IDF shops are to be bonded warehouses and sales tax does not become payable until imported goods are entered for home consumption). The exemption referred to in (b) would remove the liability to tax that a registered IDF shop would have under the Sales Tax Assessment Acts (Nos. 6 or 7) when dealing with imported airport shop goods in a taxable manner.

Clause 7 : Application of amendments

Clause 7 is relevant to the possible retrospective commencement of the amending Act as discussed in the notes on clause 2. It will provide that the amendments of the Principal Act included in this Bill are to apply to all airport shop goods that are dealt with in a taxable manner after the day on which the amending Act comes into operation.

SALES TAX ASSESSMENT BILL (No. 11) 1985

Introductory Note

This Bill is part of a package of Bills - consisting of the Customs and Excise Legislation Amendment Bill (No.2) 1985, the Customs Tariff Amendment Bill (No.2) 1985, the Sales Tax (Exemptions and Classifications) Amendment Bill (No.2) 1985 and Sales Tax Acts (Nos. 11A and 11B) 1985 - that are intended to give legislative effect to the decision to introduce inwards duty free shopping at international airports.

Broadly, the scheme will permit the passengers and crew of international flights arriving in Australia ("relevant travellers") to purchase limited quantities of spirituous liquor, tobacco products and perfume ("airport shop goods") free of sales tax, customs duty and excise duty from inwards duty free shops ("IDF shops"). To enable this, the proprietors of IDF shops will be able to acquire their retail stock free of tax.

Inwards duty free shops will be located at international airports and will be permitted, by proposed section 96B of the Customs Act 1901, only to be located where passengers on arriving international flights have access to them before they reach the Customs barrier. That section will also impose on inwards duty free shops, inter alia, a condition that they only sell airport shop goods to

passengers and crew of arriving international flights before they have reached that barrier.

The proposed Sales Tax Assessment Act (No.11) 1985 ("Assessment Act (No.11)") and its complementary Sales Tax Acts (Nos. 11A and 11B) 1985 are safeguarding measures that, in a practical sense, only take effect where the underlying concept of inwards duty free shopping is breached. In other words, provided inwards duty free shops sell only to relevant travellers and those travellers purchase quantities that do not cause them to exceed their permitted tax-free levels, no tax will become payable under Assessment Act (No.11).

PART 1 - PRELIMINARY

Clause 1 : Short title

This clause provides for the new Act to be cited as the Sales Tax Assessment Act (No. 11) 1985. As explained in the note on the broad framework of the sales tax law at the commencement of this explanatory memorandum, the existing sales tax law is contained, inter alia, in 9 basic Assessment Acts each with its complementary Taxing Act. A tenth Assessment Act provides the machinery for the collection, assessment and administration of tax imposed on royalty payments by its 3 complementary Taxing Acts. This Bill will become the eleventh Assessment Act and is so designated in its short title.

Clause 2 : Commencement

By reason of sub-section 5(1A) of the Acts Interpretation Act 1901, Acts come into operation on the twenty-eighth day after the Royal Assent, unless otherwise specified in the Act. Under clause 2, the Act will come into operation on the day section 7 of the Customs and Excise Legislation Amendment Act (No. 2) 1985 (which contains the legislation necessary to authorise IDF shops to sell goods free of duties of customs and excise) comes into operation. In turn, section 7 will come into operation on a date to be fixed by Proclamation by the Governor-General. If section 7 comes into operation before the date on which this Bill receives the Royal Assent, then the Act will be deemed to have come into operation on that earlier date.

Clause 3 : Interpretation

Clause 3 contains a number of definitions to assist in interpretation. Each expression that is defined is to have the given meaning, unless the contrary intention appears:

"airport shop goods" - this expression is defined in the Sales Tax (Exemptions and Classifications) Amendment Bill (No.2) 1985 - see notes on clause 3 of that Bill;

"Collector" will have the same meaning as it has in the Customs Act 1901. Under sub-section 8(1) of that Act, a reference to a "Collector" is to be construed as a reference to any principal officer of Customs or any Customs officer doing duty in the matter in relation to which the expression is used. The expression "Collector" is used in clauses 9 and 13;

"Customs Act" will mean the Customs Act 1901 and is a drafting measure to allow abbreviated references to that Act;

"excise duty" will be defined to mean duties of excise imposed by the Excise Tariff Act 1921 (paragraph (a)). Duties of excise demanded or collected in pursuance of either an Excise Tariff Proposal introduced into the House of Representatives or a notice published in accordance with section 160B of the Excise Act 1901 are also within the meaning of the term (paragraph (b)). Paragraph (b) relates to measures that facilitate the imposition and collection of duty between the date a change in rate is to be effective and the date the enabling legislation receives the Royal Assent. The term is used in clause 6 as one of the components of the amount on which sales tax is to be calculated;

"inwards duty free shop" and "relevant traveller" - these expression are defined in the Sales Tax (Exemptions and Classifications) Amendment Bill (No.2) 1985 - see notes on clause 3 of that Bill.

"proprietor" is to be defined to mean a person who is a proprietor for the purposes of proposed new section 96B of the Customs Act 1901 (see notes on definitions of "inwards duty free shop" and "relevant traveller") and who is not registered or required to be registered for sales tax purposes - for a discussion of the sales tax law as it concerns registration of taxpayers refer to "Broad Framework of Sales Tax Law" earlier in this memorandum. New section 96B of the Customs Act 1901 will define the "proprietor" of an IDF shop to

mean the holder of the warehouse licence issued under section 78 of the Customs Act in respect of that shop;

"relevant traveller" - this expression is defined in

the Sales Tax (Exemptions and classifications) Amendment Bill (No 2) 1985 - see notes on clause 3 of that Bill;

"Taxing Act" is a drafting measure to facilitate reference to the Sales Tax Act (No. 11A) 1985 and the Sales Tax Act (No. 11B) 1985, as the case requires. The term is used in clause 4;

"taxpayer" is defined to mean -

- (a) where airport shop goods are purchased from an IDF shop by a relevant traveller (see notes for this clause on definition of "relevant traveller") - the relevant traveller; and
- (b) where the goods are sold by an IDF shop to any person who is not a "relevant traveller" or where the goods are applied to own use by the proprietor of the IDF shop - the shop proprietor.

PART II - LIABILITY TO TAXATION

This Part contains the main provisions for determining liability to sales tax on the sale value of Australian manufactured airport shop goods dealt with in a taxable manner and in respect of which sales tax will be imposed by the Taxing Acts. The provisions relate to -

- . the goods that will be subject to sales tax (clause 4);
- . the particular dealings with the goods that are to be taxable (clause 5);
- . the sale value of the goods (clause 6);
- . the liability to pay tax in respect of that sale value (clause 7); and
- . the exemption from liability to pay tax (clause 8).

Clause 4 : Sales tax

Under clause 4, the sales tax imposed by each Taxing Act (the Sales Tax Act (No. 11A) 1985 or the Sales Tax Act (No. 11B) 1985) will be levied and payable upon the sale value of airport shop goods dealt with in a taxable manner (what will constitute dealing in a taxable manner is described in the notes on clause 5).

Clause 5 : Taxable dealings

Clause 5 will specify the circumstances in which airport shop goods will be taken to be dealt with in a taxable manner. These circumstances will be -

- . where the goods are purchased from an IDF shop by a relevant traveller (see notes on definition of "relevant traveller" in clause 3 of the Sales Tax (Exemptions and Classifications) Bill (No. 2) 1985);
- . where they are sold to any person who is not a relevant traveller; or
- . where the proprietor of the IDF shop applies them to his or her own use.

Clause 6 : Sale value

This clause declares the sale value of airport shop goods (that is the amount on which tax is payable) for each of the three circumstances set out in clause 5 in which the goods will be taken to be dealt with in a taxable manner. The sale value for each taxable dealing will be the amount of any excise duty that is, or may become, payable in respect of the goods plus -

- . where the goods are purchased from an IDF shop by a passenger, the captain or member of the crew of an arriving international flight - the purchase price;
- . where the goods are sold by an IDF shop to a person who is not a passenger, the captain or member of the crew of an arriving international flight - the sale price less so much of that price that includes an amount attributable to excise duty that is, or may become, payable in respect of the goods; or
- . where the proprietor of the IDF shop applies those goods to his or her own use - the amount for which the IDF shop purchased the goods.

Clause 7 : Liability for tax

A taxpayer, i.e., the customer or proprietor of an IDF shop (see notes on definition in clause 3), who, by virtue of clause 5, is taken to have dealt with airport shop goods in a taxable manner is, by reason of clause 7, the person liable to pay sales tax upon the sale value (determined under clause 6) of those goods.

Clause 8 : Exemptions

Section 5 of the Sales Tax (Exemptions and Classifications) Act 1935 exempts from sales tax goods covered by an item in the First Schedule to that Act. The First Schedule lists the goods that are exempt from tax and specifies the circumstances in which that exemption applies. This clause will be complementary to section 5 of the Sales Tax (Exemptions and Classifications) Act and will ensure that sales tax will not be payable on the sale value of any airport shop goods that are exempt from tax under that Act. Broadly, the following goods will qualify for exemption when purchased by a relevant traveller -

- . spirituous liquors - one litre. The balance is taxable at 20%;
- . tobacco products - unlimited. Although an unlimited quantity of tobacco products may be imported free of sales tax, there is a limit of 250 grams of tobacco or 200 cigarettes that may be imported free of customs duty; and
- . perfume - in non-commercial quantities.

The proprietor of an IDF shop would not be entitled to any exemption from sales tax in respect of spirituous liquors or perfume sold to a person who is not a relevant traveller or applied to the proprietor's own use.

(For a more detailed discussion of the goods that may be acquired sales tax free see notes on amendments of item 114 of the First Schedule to the Sales Tax (Exemptions and Classifications) Act 1935 proposed by clause 6 of the Sales Tax (Exemptions and Classifications) Amendment Bill (No.2) 1985).

PART III - RETURNS

Clause 9 : Returns

The sales tax law generally requires that any person who deals with goods in a taxable manner is to either lodge a monthly return with the Commissioner of Taxation or, in the case of imported goods entered for home consumption by an unregistered person or a registered person who does not quote a sales tax certificate, give an entry for home consumption to a Collector of Customs.

By clause 9, however, returns will be required to be lodged under the Act after goods are dealt with in a taxable manner in cases where the taxpayer is the proprietor of an IDF shop. In these cases a return, in a form approved by the Commissioner, will be required immediately after the goods are dealt with in a taxable

manner. If that taxable dealing takes place at the IDF shop the return is to be lodged with a Collector of Customs. If the taxable dealing takes place elsewhere the return is to be furnished to the Commissioner of Taxation. The requirement to lodge a return after each and every taxable dealing recognises the fact that such dealings are inconsistent with the concept of inwards duty free shopping and ought not to occur. Relevant travellers whose purchases exceed the prescribed limits will not be ordinarily expected to lodge returns, but will be required to pay the tax due on demand by a Collector.

Clause 10 : Further returns

In addition to any return that may be required by clause 9, the Commissioner may under clause 10, by notice in writing, call upon any person, including a relevant traveller, to furnish, within the time specified in the notice, such return, or such further return or fuller return, as the Commissioner requires - whether in that person's own behalf or as an agent or trustee.

Returns under this clause will usually be either "amended" returns or "supplementary" returns. A return may be required under this clause where the return is either incomplete or inaccurate. Additionally, the Commissioner will be authorised by this clause to require a return to be lodged by a person who is not required to lodge a return under clause 9 - for example, a relevant traveller whose overseas and IDF shop purchases exceed the prescribed limits.

PART IV - COLLECTION AND RECOVERY OF TAX

Clause 11 : Time for payment of tax

Under clause 11, sales tax upon the sale value of airport shop goods dealt with in a taxable manner becomes due and payable at the time the goods are dealt with in that manner. At this time the sales tax is deemed to be a debt due to the Commonwealth and payable to the Commissioner under section 30 of the Sales Tax Assessment Act (No. 1) 1930 as applied by sub-clause 16(1) of this Bill.

Recognising that tax will be payable under this Act only where goods are purchased or otherwise dealt with in breach of the concept of inwards duty free shopping, additional penalty tax under section 29 of the Sales Tax Assessment Act (No.1) 1930 at the rate of 20% per annum of the tax payable will commence to run from the time the goods are dealt with in a taxable manner.

Clause 12 : Power to question relevant travellers, etc.

The purpose of this clause is to extend sub-section 195(1) of the Customs Act 1901 - which empowers officers of Customs to question persons about whether they are in possession of any dutiable, excisable or prohibited goods that have been imported - to authorise Customs officers to question relevant travellers about Australian manufactured airport shop goods (i.e., in practical terms spirituous liquors and perfume) in respect of which sales tax might be payable under the Sales Tax Assessment Act (No. 11) 1985.

The effect of the clause will be to empower an officer of Customs to question a person who has, or the officer has reason to believe has, disembarked from an aircraft (in effect, all persons who pass through the Customs barrier at Australia's international airports after arriving on international flights) as to whether that person, or any child or companion, has on their person or in their luggage any airport shop goods which have been dealt with in a taxable manner.

A person who refuses or fails to comply with a requirement to provide information to an officer of Customs by responding to a question asked of the person pursuant to clause 12 would, on conviction, be punishable for an offence against section 8C of the Taxation Administration Act 1953. The maximum penalty under that section is, for a first offence - \$2,000, for a second offence within 5 years - \$4,000 and for a third or subsequent offence within 5 years - \$5,000 or imprisonment for 12 months, or both.

A person who, in response to a question under clause 12 from a Customs officer, gives a false or misleading answer would be subject to a statutory penalty of up to 200 per cent of the tax payable on any goods found to be subject to tax or, alternatively, would be guilty of an offence against section 8K, 8N or 8P of the Taxation Administration Act 1953. Those sections create offences of making false or misleading statements to persons in connection with the operation of the various taxation laws, including the sales tax law. Penalties ranging from a fine not exceeding \$2,000 to a fine of up to \$5,000 or imprisonment for 12 months, or both, may, depending on the seriousness of the conduct, apply to persons convicted of offences under these sections.

Clause 13 : Customs may seize or impound goods

Clause 13 will empower a Collector of Customs to seize or impound airport shop goods where any amount of sales tax payable in respect of those goods is not paid. As well, the clause describes how the goods are to be dealt with after they have been seized or impounded. The purpose

of the clause is to give to a Collector of Customs and the Commissioner of Taxation broadly the same powers in relation to the seizure or impounding of Australian manufactured airport shop goods on which sales tax is outstanding as a Collector of Customs has under the Customs Act 1901 in relation to any imported goods on which there is unpaid Customs duty.

Sub-clause 13(1) sets out the circumstances in which a Collector of Customs (a term defined in clause 3 to include any officer of Customs) may seize or impound airport shop goods. These circumstances are that the Collector must believe on reasonable grounds that there is an amount of outstanding sales tax payable on such goods which is not paid when demanded by the Collector.

Sub-clause 13(2) describes the circumstances in which the Collector is no longer to be authorised to retain airport shop goods seized or impounded under sub-clause (1). These circumstances will arise when -

- . all outstanding sales tax on the goods has been paid in full;
- . security, to the Collector's satisfaction, is given for the payment of the full amount of the outstanding sales tax;
- . the Collector or the Commissioner of Taxation is satisfied that there is no sales tax payable in respect of the goods; or
- . as a result of an objection or appeal by the taxpayer under Part VII of the Sales Tax Assessment Act (No. 1) 1930 (which will apply to Sales Tax Assessment Act (No. 11) 1985 by virtue of sub-clause 16(1) of this Bill), a decision is made by the Commissioner, a Board of Review or a Court that no sales tax is payable on the goods.

Under section 204 of the Customs Act 1901, when an officer of Customs seizes any imported goods in respect of which there is unpaid Customs duty the officer is required to take those goods to a place approved by the Collector as a place for storage of those goods. Sub-clause 13(3) will empower any officer of Customs who has seized any Australian manufactured airport shop goods under sub-clause (1) to take those goods for storage at a place approved by a Collector under section 204 of the Customs Act 1901.

Under sub-clause 13(4) airport shop goods that have been seized or impounded under sub-clause (1) will be condemned as forfeited to the Crown - that is, they will become the property of the Australian Government - if they

are held for any period of 4 months and during all of that period no proceedings in relation to the goods are pending (that is, for a continuous period of 4 months there is no outstanding action by the taxpayer before a Board of Review or a Court). Any goods so condemned will be disposed of at the direction of the Commissioner.

Sub-clause 13(5) will afford protection to the Commonwealth, the Commissioner and any officer of Customs against any action taken by them in seizing or impounding airport shop goods, provided there was reasonable cause for that action. In these cases, no legal action may be brought against any of these persons. This sub-clause will not, however, afford any protection where there was no reasonable cause for the seizure, etc.

Sub-clauses 13(6) and (7) contain a number of definitions, for the purposes of clause 13 only, of expressions used in the clause.

Under sub-clause (6), "sales tax" will be defined to include, in addition to its ordinary meaning, further tax and additional tax. In this context, additional tax includes -

- . additional tax payable at the rate of 20% per annum where tax or further tax is not paid within the statutory time; and
- . additional tax, of up to double the amount of tax sought to be avoided, imposed where a person fails to furnish a return, or furnishes a return or makes a statement in connection with tax payable, that is false or misleading by commission or omission.

Sub-clause (7) contains the following definitions:

"Assessment Act" will mean so much of the Sales Tax Assessment Act (No. 1) 1930 as is applied to this Act by the operation of sub-clause 16(1);

"proceedings", where used in relation to goods, will mean -

- . an objection lodged with the Commissioner of Taxation by a taxpayer against any decision relating to the sale value of goods;
- . a request by a taxpayer for the Commissioner to refer any decision to a Taxation Board of Review; or

. an appeal by a taxpayer to a Court, under Part VII of Sales Tax Assessment Act (No. 1) 1930 as is applied to this Act by the operation of sub-clause 16(1); or

. any proceeding in a Court taken by the owner of goods for the recovery of goods that have been seized or impounded under sub-clause 13(1).

Clause 14 : Further tax

Sub-clause 14(1) will authorise the Commissioner -

- . to assess the sale value upon which tax should have been paid in those cases where the Commissioner determines that tax is payable by a person and that person has not for some reason paid that tax (paragraph (a)); and
- . to calculate the amount of tax that is so payable (paragraph (b)).

Under sub-clause 14(2) the Commissioner may raise an assessment against a person for an amount of sales tax in circumstances where the Commissioner considers tax ought to be levied. The circumstances under which such an assessment may be made are -

- . where a person fails to furnish a return that is required to be furnished and sales tax is payable (paragraph (a));
- . notwithstanding that a return may have been furnished by a person, where the return does not fully disclose the correct amount of sales tax payable (paragraph (b)); or
- . irrespective of whether or not a sales tax return has been furnished by a person, the Commissioner believes that sales tax or extra sales tax is payable by the person (paragraph (c)).

Where an assessment has been made under this clause, a written notice (an assessment notice) of the tax payable is required to be sent to the person liable to pay the tax - sub-clause 14(3). An assessment notice is, under this sub-clause, to be issued as soon as practicable after the making of the assessment.

Any tax specified as payable in an assessment notice issued under sub-clause 14(3) is, by virtue of sub-clause 14(4), payable on or before the due date

specified in the notice. However, while it is the practice to issue assessment notices to taxpayers whenever an assessment is made, the omission to give any such notice does not invalidate the assessment or any calculation made by the Commissioner - sub-clause 14(5).

Sub-clause 14(6) is an interpretative aid that provides that a reference to "tax" in the clause includes further tax.

Clause 15 : Refunds of tax

The Sales Tax Assessment Acts (Nos. 1 to 9) 1930 and the Sales Tax Assessment Act (No. 10) 1985 provide that, where the Commissioner finds in any case that tax has been overpaid and is satisfied that the tax has not been passed on by the taxpayer to some other person, or, if passed on to another person, has been refunded to that person by the taxpayer, the Commissioner may refund or offset the amount of tax found to be overpaid.

Sub-clause 15(1) makes similar provision for refunds of tax overpaid in respect of airport shop goods. The Commissioner may, instead of refunding an amount of overpaid tax, apply the amount against any liability of the person to the Commonwealth under any other Act administered by the Commissioner. In other words, if the person owes any other sales tax or income tax, for example, the refund otherwise due may be offset against that debt. Any excess remaining would, in these circumstances, be refunded to the person.

The effect of sub-clause 15(2) is to make it an essential condition before overpaid tax is refunded that it be shown to the Commissioner's satisfaction that the tax -

- . has not been passed on by the taxpayer to some other person; or
- . if so passed on, has been refunded by the taxpayer to the person to whom it was passed on.

Thus, where the proprietor of an IDF shop has recouped the amount of tax from a customer by selling goods at a tax-inclusive price, no refund or offset would be made unless and until the customer has been reimbursed for the tax incorporated in the purchase price.

Sub-clause 15(3) is an interpretational measure defining the term "tax" as used in this clause to have (unless the contrary intention appears) its ordinary meaning and to also include both further tax and additional tax. In this context, additional tax includes -

additional tax payable at the rate of 20% per annum where tax or further tax is not paid within the statutory time; and

additional tax of up to double the amount of tax sought to be avoided, imposed where a person fails to furnish a return, or furnishes a return or makes a statement in connection with tax payable that is false or misleading.

PART V - APPLICATION OF SALES TAX ASSESSMENT ACT
(No. 1) 1930

Clause 16 : Application of provisions of Sales Tax Assessment Act (No. 1) 1930

Clause 16 will operate to adopt and apply, for the purposes of the sales tax payable on airport shop goods dealt with in a taxable manner, the machinery provisions of the sales tax law contained in the Sales Tax Assessment Act (No. 1) 1930 (Assessment Act (No.1)).

Sub-clause 16(1) applies, with appropriate variations, specified provisions of the Assessment Act (No. 1) for the purposes of the assessment and collection of tax on airport shop goods dealt with in a taxable manner.

The specified provisions relate to definitions (sections 3 and 3A), administration (Part II), certain sale value provisions (sub-sections 18(5B) and (5C)), information gathering (section 23), collection and recovery of tax (sections 25A and 27 to 39 (inclusive)), objections, appeals and review (Part VII), penalty tax (Part VIII, other than section 46), and miscellaneous provisions (Part X) and the Schedule.

The application of these provisions to this Assessment Act will mean, for example, that a person will have the same rights of objection and appeal against an assessment to tax on the sale value of airport shop goods dealt with in a taxable manner as are available to a taxpayer who is dissatisfied with any other sales tax liability. In broad terms, an objection may be lodged against the sale value determined for goods.

There are, however, certain references in the Assessment Act (No. 1) that are to be applied in a particular way.

The provisions of the sales tax law relating to the responsibilities of liquidators are contained in section 32 of the Assessment Act (No.1). Under section 32 the liquidator of a company is required to provide, to the

extent possible out of the assets of the company, for the company's liability to tax under any of the taxation Acts administered by the Commissioner.

Paragraphs 16(1)(a) and (b) are designed to ensure that tax payable on airport shop goods dealt with in a taxable manner is included in the liabilities of a company that a liquidator is required to provide for in addition to any other sales tax or tax liability.

Under sub-section 35(2), an executor or administrator of a deceased's estate is required to lodge returns that have not been completed by the deceased person. Paragraph 16(1)(c) is a drafting measure to ensure that the reference to Part V in sub-section 35(2), as applied by this clause, correctly refers to Part III of Assessment Act (No. 11) - Part III sets out the requirements of persons in relation to the lodgment or furnishing of sales tax returns - these are explained in the notes on clauses 9 and 10.

The Sales Tax Assessment Acts (Nos. 1 to 9) 1930 and the Sales Tax Assessment Act (No. 10) 1985 are supported by the Sales Tax Regulations, which set out in more detail the conditions governing the quoting of certificates by taxpayers and the machinery for registering taxpayers, collecting and refunding sales tax and reviewing objections by taxpayers. Sub-clause 16(2) will apply the general regulation making power contained in section 73 of the Sales Tax Assessment Act (No. 1) 1930 for all similar purposes (except registration procedures which do not apply to taxpayers liable to tax under this Act) in respect of collection of tax on airport shop goods that are dealt with in a taxable manner.

SALES TAX BILL (NO. 11A) 1985

SALES TAX BILL (NO. 11B) 1985

Introductory note

Section 55 of the Australian Constitution provides that taxation laws shall deal only with taxation. The section also carries this separation of taxation matters further by declaring that taxation laws shall deal only with one subject of taxation, and that laws imposing excise duties must deal only with excise duties and laws imposing customs duties must deal only with customs duties.

In recognition of this constitutional requirement these 2 Bills will formally impose the sales tax where that tax is -

. a duty of excise (the Sales Tax Bill
(No. 11A) 1985); and

neither a duty of excise nor a duty of customs (the Sales Tax Bill (No. 11B) 1985),

being, in each case, sales tax payable under the proposed Sales Tax Assessment Act (No. 11) 1985 on the sale value of airport shop goods dealt with in a taxable manner. The Sales Tax Act (No. 5) 1930 will impose tax on such goods entered for home consumption where the tax is a duty of customs payable under the Sales Tax Assessment Act (No.5) 1930.

With the exception of clauses 1 and 7 in each of the Bills, the clauses of the Taxing Bills are identical and are explained together in the following notes.

Clause 1 : Short title

This clause provides for the proposed new Acts to be cited as the Sales Tax Act (No. 11A) 1985 and the Sales Tax Act (No. 11B) 1985, as the case requires - the numeric 11 in each case indicating that the Act applies to tax payable under the Sales Tax Assessment Act (No. 11) 1985.

Clause 2 : Commencement

But for this clause each Bill would, by reason of sub-section 5(1A) of the Acts Interpretation Act 1901, come into operation on the twenty-eighth day after the date of the Royal Assent. By this clause, each Bill once enacted is to come into operation on the day on which the Sales Tax Assessment Bill (No. 11) 1985 comes into operation. In turn, that Bill will come into operation on the day section 7 of the Customs and Excise Legislation Amendment Act (No. 2) 1985 comes into operation. That section, which contains the legislation necessary to authorise IDF shops to sell goods free of duties of customs and excise, will come into operation on a date to be fixed by Proclamation by the Governor-General. If section 7 comes into operation before the date on which the Assessment Bill (No.11) receives the Royal Assent, then both the Assessment Act (No.11) and these Acts will be deemed to have come into operation on that earlier date.

Clause 3 : Incorporation

As has been the invariable practice since Federation, the "Taxing" legislation is contained in separate Acts from the "Assessment" legislation, but is to be read as one with the "Assessment" legislation. By this clause, each of the Taxing Bills is to be read as one with the Sales Tax Assessment Act (No. 11) 1985.

Clause 4 : Interpretation

This clause defines the expression "Assessment Act", as used in each of the Taxing Bills, to mean the

Sales Tax Assessment Act (No.11) 1985. The term is used in clauses 2 and 3.

Clause 5 : Imposition of tax

By this clause, sales tax is formally imposed on the sale value of Australian manufactured airport shop goods dealt with in a taxable manner at IDF shops after the commencement of the relevant Taxing Act. By virtue of clause 5 of the Sales Tax Assessment Bill (No. 11) 1985, goods will be dealt with in a taxable manner if they are -

- . purchased from an IDF shop by a passenger, the captain or member of the crew of an international flight arriving in Australia;
- . sold to a person who is not a passenger, the captain or member of the crew of an international flight arriving in Australia; or
- . applied to own use by the proprietor of an IDF shop.

Clause 6 : Rates of tax

Clause 6 will declare the rates of sales tax which are to be applicable to Australian manufactured airport shop goods in respect of which sales tax is imposed under the Taxing Acts. As with the existing Taxing Acts, the rates are declared to apply by reference to whether or not the taxable goods are listed in a Schedule to the Sales Tax (Exemptions and Classifications) Act 1935 and, if so, in which Schedule they appear. However, no rate is to be declared in respect of goods covered by either the Fourth or Fifth Schedule. Those Schedules relate only to motor vehicles, which are not to be included within the definition of airport shop goods (see the notes on the definition of "airport shop goods" in clause 3 of the Sales Tax (Exemptions and Classifications) Amendment Bill (No. 2) 1985).

The rates of tax that are to be declared are as follows -

- . for goods covered by the Second Schedule - 30%;
- . for goods covered by the Third or Sixth Schedule - 10%; and
- . for goods that are not covered by any Schedule - 20%.

These rates reflect the rates to take effect from 19 September 1985 as proposed by the Sales Tax (Nos. 1 to 9) Amendment Bills 1985 currently before the Parliament.

Clause 7 : Duty of excise

As mentioned in the earlier notes on these Bills, in order to satisfy the requirements of section 55 of the Australian Constitution clause 7 of each Bill will impose sales tax on one subject of taxation only, namely -

- . a duty of excise (Sales Tax Bill (No. 11A) 1985); and
- . a tax that is neither a duty of excise nor a duty of customs (Sales Tax Bill (No. 11B) 1985).

Imported airport shop goods that are similarly dealt with by being entered for home consumption within the meaning of that expression in section 2B of the Sales Tax Assessment Act (No. 5) 1930 will be subject to sales tax (in the form of a duty of customs) under the existing provisions of that Act.