

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SALES TAX (EXEMPTIONS & CLASSIFICATIONS) MODIFICATION (EXCISE)
BILL 1995

SALES TAX (EXEMPTIONS & CLASSIFICATIONS) MODIFICATION (CUSTOMS)
BILL 1995

SALES TAX (EXEMPTIONS & CLASSIFICATIONS) MODIFICATION (GENERAL)
BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Treasurer, the Hon Ralph Willis, MP)





Outline of the sales tax legislation package for the 1995-96 Budget

The changes to the sales tax law announced in the 1995-96 Budget are contained in four separate Bills.

Taxation Laws Amendment (Budget Measures) Bill 1995

As well as amending the *Income Tax Assessment Act 1936*, this Bill will make amendments necessary to give effect to the following sales tax measures:

- amendments to remove concessions for certain computer programs on non-permanent microchips;
- amendments consequential upon the increase in tax rates for passenger motor vehicles; and
- amendments affecting the liability of the Commonwealth to pay sales tax refunds.

These amendments are explained in greater detail in the explanatory memorandum for the Taxation Laws Amendment (Budget Measures) Bill 1995.

Sales Tax (Exemptions and Classifications) Modification (Excise) Bill 1995

Sales Tax (Exemptions and Classifications) Modification (Customs) Bill 1995

Sales Tax (Exemptions and Classifications) Modification (General) Bill 1995

These Bills will modify the operation of the *Sales Tax (Exemptions and Classifications) Act 1992* (E & C Act), as modified by any other Act, to the extent necessary to give effect to the changes briefly described below:

- scaffolding, wall and floor safes and racking and shelving systems excluded from exemption;
- safes, musical instruments and bric-a-brac excluded from concessional treatment;

- rate of tax on passenger motor vehicles increased;
- certain currently exempt building materials and other goods to be subject to tax;
- model aircraft excluded from exemption; and
- exemptions for recycled paper removed.

These measures are set out in the Schedules to the Bills. The Schedules are identical for each Bill. Consequently, references throughout this explanatory memorandum to particular items or Schedules should be read as being a reference to the relevant item or Schedule in each of the Bills. The Constitution requires that a law imposing taxation should only deal with one subject of taxation. Sales tax is therefore imposed by 4 Acts, the Sales Tax Imposition Acts. There are separate Acts imposing sales tax to the extent that it is a duty of customs, a duty of excise, a tax on in situ swimming pools, or a tax that is none of these. The Constitution also requires that a law imposing taxation should only deal with that imposition, and a part of the law relating to any other matter will be invalid.

There is a view (although not shared by the Government) that the measures contained in the Modification Bills impose taxation. For this reason, they have been included in separate Bills. Each Bill will modify the effect of the Exemptions and Classifications Act in so far as it applies to sales tax imposed by the corresponding Sales Tax Imposition Act.

The Modification Bills modify the effect or operation of the E & C Act, but do not amend it. It will therefore be necessary to read the Exemptions and Classifications Act together with earlier modifying Acts, and these Modification Bills, to discover how the sales tax laws are to be applied in relation to the goods affected by these measures.

The changes to the sales tax law contained in the Modification Bills are explained in greater detail below.



General outline and financial impact

Passenger motor vehicles

Increases the sales tax payable on passenger motor vehicles to the general rate (currently 21 per cent).

Date of effect: Applies to dealings with goods after 7.30 pm eastern standard time on 9 May 1995.

Proposal announced: 1995-96 Budget, 9 May 1995

Financial impact: Gain to revenue:

1994-95	\$18 million
1995-96	\$330 million
1996-97	\$355 million
1997-98	\$380 million
1998-99	\$405 million

Compliance cost impact: The proposed measures should not impose any new compliance costs on the majority of taxpayers except for a minor one-off cost associated with adjustments of sales tax calculations.

Safes, musical instruments and ornaments

Modifies the sales tax law to make it clear that freestanding safes, musical instruments and ornaments are not entitled to the concessional treatment afforded to furniture.

Date of effect: Applies to dealings with goods after 7.30 p.m. eastern standard time on 9 May 1995.

Proposal announced: 1995-96 Budget, 9 May 1995

Financial impact: This measure will prevent the potential for revenue leakage, rather than directly increase revenue.

Compliance cost impact: This measure will provide greater certainty in the law, thus reducing the need for professional advice and rulings. In general, the goods affected by this measure have long been accepted as being subject to sales tax at the general rate.

Model aircraft

Modifies the sales tax law to ensure that sales tax is paid on model aircraft at the general rate of 21%. A recent court decision has overturned the long standing treatment of model aircraft.

Date of effect: Applies to dealings with goods after 7.30 p.m. eastern standard time on 9 May 1995.

Proposal announced: 1995-96 Budget, 9 May 1995

Financial impact: Not quantifiable.

Compliance cost impact: In general, the increase in compliance costs will be small. Persons manufacturing, or trading in, model aircraft will now have to pay sales tax, and will incur some costs in fulfilling their obligations in that regard. Most taxpayers affected by this measure will be familiar with the requirements to fulfil their sales tax obligations since, prior to a recent court decision, model aircraft had long been accepted as subject to sales tax.

Scaffolding, racking and shelving and wall and floor safes

Modifies the sales tax law to ensure that sales tax is paid on scaffolding components, wall and floor safes and racking and shelving systems. Recent court decisions have overturned or put in doubt the long standing treatment of these items.

Date of effect: Applies to dealings with goods after 7.30 p.m. eastern standard time on 9 May 1995.

Proposal announced: 1995-96 Budget, 9 May 1995

Financial impact: This measure will prevent the potential for revenue leakage, rather than directly increase revenue.

Compliance cost impact: These measures will mean that some persons will be required to pay sales tax where previously they were not required to do so, and will incur some costs in fulfilling their obligations in that regard. The costs will be the same as for other taxpayers whose goods are subject to sales tax. Most taxpayers affected will be familiar with the requirements to fulfil their sales tax obligations since, prior to recent court

decisions, scaffolding components, wall and floor safes and shelving systems had generally been accepted as being subject to sales tax.

Building materials

Modifies the sales tax law to remove exemption from a range of building materials, which will become taxable at the rate of 12%. The broad categories of goods covered are builders' hardware; wall and floor tiles; plaster and plaster mixtures; taps, nozzles, tap handles and shower heads; bonding, setting and sealing agents; wooden floor coverings; paints, putties, fillers, thinners, pigments and driers; wallpaper; prefabricated household cupboards, cabinets and storage units and office partitions and workstation panelling.

Date of effect: Applies to dealings with goods on or after 1 July 1995.

Proposal announced: 1995-96 Budget, 9 May 1995

Financial impact: Gain to revenue:

1995-96	\$215 million
1996-97	\$245 million
1997-98	\$265 million
1998-99	\$290 million

Compliance cost impact: The removal of the exemption will mean that some persons will be required to pay sales tax where previously they were not required to do so, and will incur some costs in fulfilling their obligations in that regard; however, they will not incur any particular costs in excess of those borne by other taxpayers who deal with goods that are subject to sales tax.

Recycled paper

Modifies the sales tax law to remove the sales tax exemption for certain 100% recycled paper products.

Date of effect: Applies to dealings with goods on or after 1 November 1995.

Proposal announced: 1995-96 Budget, 9 May 1995.

Financial impact: Gain to revenue:

1995-96	\$7 million
1996-97	\$13 million
1997-98	\$14 million
1998-99	\$15 million

Compliance cost impact: The removal of the exemption will mean that some persons will be required to pay sales tax where previously they were not required to do so, and will incur some costs in fulfilling their obligations in that regard; however, they will not incur any particular costs in excess of those borne by other taxpayers who deal with goods that are subject to sales tax.

Passenger motor vehicles

Overview

1.1 *Schedule 1* to the Bills will increase the rate of sales tax applicable to passenger motor vehicles. The rate increase requires consequential amendments to the calculation of the substitute taxable value for luxury motor vehicles. These changes are explained in the explanatory memorandum for the Taxation Laws Amendment (Budget Measures) Bill 1995.

Summary of the modifications

Purpose of the modifications

1.2 The existing sales tax rate for passenger motor vehicles is 16 per cent. The modifications will increase this rate to 21 per cent.

Date of effect

1.3 The modifications will apply to dealings after 7.30 pm, eastern standard time, on 9 May 1995. [*Subclause 2(1) and clause 5*]

Background to the legislation

1.4 Non-luxury passenger motor vehicles are currently classified under Item 1 of Schedule 3 to the *Sales Tax (Exemptions and Classifications) Act 1992* (the E&C Act) and are therefore subject to sales tax at the concessional rate of 16 per cent. The 1993-94 Budget increased all WST rates by one percentage point with a further one percentage point increase scheduled for 1 July 1995. In accordance with this, the WST rate on passenger motor vehicles was increased from 15 per cent to its current rate of 16 per cent and is scheduled to increase to 17 per cent on 1 July 1995. This concessional rate is unique to passenger motor vehicles.

1.5 Passenger motor vehicles with a wholesale value in excess of the luxury threshold are taxed at the 16 per cent rate on the value of the vehicle below the luxury threshold, and at the special rate of 45 per cent

on that part of their value that exceeds the threshold. Other motor vehicles (such as four wheel drive vehicles) with a wholesale value in excess of the luxury threshold are taxed at the general 21 per cent rate on the value of the vehicle below the luxury threshold, and at the special rate of 45 per cent on the amount above the threshold.

1.6 The luxury threshold for the purposes of sales tax is 67.1 per cent of the motor vehicle depreciation limit. For the year ending 30 June 1995 this figure is \$51,271, therefore the luxury threshold for sales tax purposes is \$34,403.

Explanation of the modifications

1.7 The Bills modify the E&C Act by repealing Schedule 3, with the result that passenger motor vehicles will be classified under Schedule 4 and subject to the general rate of 21 per cent rising to 22 per cent on 1 July 1995. ***[Items 7 and 8 of Schedule 1]***

1.8 The increase in sales tax applicable to passenger motor vehicles coupled with the fact that that part of the wholesale value which falls below the luxury threshold will now be subject to the general rate, necessitates amendments to section 42A of the *Sales Tax Assessment Act 1992*. These amendments are explained in detail in the explanatory memorandum to the Taxation Laws Amendment (Budget Measures) Bill 1995.

Safes, musical instruments and ornaments

Overview

2.1 *Schedule 1* to the Bills will modify the sales tax laws to ensure that freestanding safes, musical instruments and bric-a-brac are taxable at the general rate of sales tax (currently 21 per cent).

Summary of the modifications

Purpose of the modifications

2.2 The modifications will ensure that freestanding safes, musical instruments and bric-a-brac are excluded from the concessional treatment afforded to household furniture.

Date of effect

2.3 The modifications will apply to dealings after 7.30 pm, eastern standard time, on 9 May 1995. [*Subclause 2(1) and clause 5*]

Background to the legislation

2.4 Furniture of a kind ordinarily used for household purposes is taxed at the concessional rate of 11 per cent under Item 1 of Schedule 2 to the *Sales Tax (Exemption and Classifications) Act 1992* (the E&C Act). Pianos, organs, freestanding safes and ornamental objects in the nature of bric-a-brac have long been accepted as being subject to the general rate of sales tax.

2.5 A recent decision of the Federal Court found that certain safes were furniture of a kind ordinarily used for household purposes, and thus qualified for the concessional rate. This decision overturned the long-standing view that free-standing safes were not household furniture. With regard to musical instruments and bric-a-brac, some doubt has recently arisen as to whether they are also household furniture and taxable at the concessional rate. The long standing treatment of these goods has been to tax them at the general rate.

Explanation of the modifications

2.6 Subitem 1(3) of Schedule 2 to the E&C Act lists goods that are not intended to be covered by Item 1 and therefore do not qualify for the 11 per cent rate. Subitem 1(3) will be modified to include safes, musical instruments and bric-a-brac to ensure these goods cannot be classified as furniture. ***[Item 6 of Schedule 1]***

2.7 The exclusion for safes specifies that both free standing safes and safes that are of a kind ordinarily installed as fixtures will be excluded from the concessional rate. The amendment will ensure, however, that safes used for storing food (such as meat safes) will not be excluded from the concessional rate.

Model aircraft

Overview

3.1 *Schedule 1* to the Bills will modify the *Sales Tax (Exemptions and Classifications) Act 1992* to ensure that sales tax is paid on model aircraft at the general rate of 21%.

Summary of modifications

Purpose of modifications

3.2 The modifications will give effect to longstanding policy on the treatment of model aircraft.

Date of effect

3.3 The modifications will apply to dealings with goods after 7.30 pm. eastern standard time on 9 May 1995. *[Clause 5]*

Background to the legislation

3.4 Aircraft are exempt from sales tax under Item 61 of Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*. That item applies to aircraft other than non-motorised gliders or hang gliders. Model aircraft have long been treated as being subject to sales tax at the rate of 21% applicable to toys. The Federal Court recently held that model aircraft that are capable of flight are eligible for exemption under Item 61 (*Bons & Anor t/a Scale Aviation Australia v FC of T 94 ATC 4372*). This outcome is considered to be contrary to the intention of the exemption item. It is therefore necessary to amend the sales tax law to specifically exclude model aircraft from the exemption for aircraft.

Explanation of the modifications

3.5 Subitem 61(1) of Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* is modified by adding model aircraft (including

model aircraft which fly) to the classes of goods which do not qualify for sales tax exemption under Item 61. ***[Item 5 of Schedule 1]***

3.6 For the purposes of this amendment, model aircraft are not to be restricted to models that are smaller representations of real aircraft. A model aircraft based on an imagined design will also be excluded from the exemption.

Scaffolding, racking and shelving and wall and floor safes

Overview

4.1 *Schedule 1* to the Bills will modify the sales tax law to ensure that sales tax is paid on scaffolding components, wall and floor safes and racking and shelving systems.

Summary of the modifications

Purpose of the modifications

4.2 The modifications will give effect to longstanding policy on the treatment of scaffolding components, wall and floor safes and shelving systems.

Date of effect

4.3 These modifications will apply to dealings with goods after 7.30 p.m. eastern standard time on 9 May 1995. **[Clause 5]**

Background to the legislation

4.4 A wide range of building materials are currently exempt from sales tax, under Items 39 to 49 of Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* (E&C Act). Item 39 provides exemption for certain goods of a kind ordinarily used as raw materials in the construction or repair of buildings or other structures attached to land.

4.5 In recent court cases, it has been held that scaffolding components and wall and floor safes are exempt, because they consist of exempt building materials. These decisions have also put in doubt the treatment of racking and shelving systems. The decisions are at odds with the long standing treatment

of these goods, which can be identified as goods with their own distinct character.

Explanation of the modifications

4.6 Scaffolding, wall and floor safes, racking and shelving systems, and components, fittings, accessories and attachments for these goods, will be excluded from exemption by these amendments. This will be achieved by specifically excluding them from the two exemption Items which could apply to these goods, that is, Items 39 and 49 of the E&C Act. ***[Items 1, 2, 3 and 4 of Schedule 1]***

4.7 The rate of tax applicable to scaffolding, wall and floor safes, racking and shelving systems, and components, fittings, accessories and attachments for these goods, will then generally be taxed at 21 per cent, unless the goods can be classified under Item 1 of Schedule 2 as goods of a kind ordinarily used for household purposes.

Building materials

Overview

5.1 *Schedule 2* to the Bills will modify the exemptions for certain building materials. These building materials will become taxable at the rate of 12 per cent.

Summary of the modifications

Purpose of the modifications

5.2 The modifications make some categories of currently exempt building materials taxable at the concessional rate, which will be 12 per cent when the amendment comes into effect.

Date of effect

5.3 The modifications will apply to dealings occurring on or after 1 July 1995. *[Clause 6 of the Bills]*

Background to the legislation

5.4 The sales tax law currently exempts most building materials from sales tax. The modifications contained in the Bills will apply the concessional rate, which will be 12 per cent when the modifications come into effect, to a range of building materials.

Explanation of the modifications

Plaster

5.5 Plaster used as raw materials in construction and repair is currently exempt from sales tax. It will become taxable at 12 per cent by removing the reference to it in paragraph 39(1)(i) of Schedule 1 and including it in new item 16 in Schedule 2 of the E&C Act. Goods manufactured from plaster such as cornices, plaster boards and plaster sheets will remain exempt from sales tax under paragraph 39(1)(i) of Schedule 1, which will continue to exempt certain plaster products and goods having structural uses similar to plaster products. ***[Items 2 and 15 of Schedule 2]***

Ingredients for plaster mixtures

5.6 Goods of a kind marketed principally as ingredients for plaster mixtures are currently exempt from sales tax under subitem 41(2) of Schedule 1 to the E&C Act. They will become taxable at the rate of 12 per cent by removing the reference to plaster mixtures in subitem 41(2) of Schedule 1 and including them in subitem 16(2) of Schedule 2. ***[Items 6 and 15 of Schedule 2]***

Builders' hardware

5.7 All goods currently exempt from sales tax as builders hardware will become taxable at 12 per cent by removing paragraph 39(1)(o) of Schedule 1 and incorporating a reference to builders' hardware in paragraph 16(1)(a) of Schedule 2. ***[Items 3 and 15 of Schedule 2]***

5.8 Examples of builders' hardware that will become taxable are nails, rivets, washers, screws, bolts and nuts.

Wall and floor tiles

5.9 Tiles or floor coverings made of cork, linoleum, rubber, vinyls or similar materials are currently subject to sales tax. However, certain similar wall and floor tiles are exempt from sales tax. The law will be modified so that all other wall and floor tiles become taxable at 12 per cent. This will be done by excluding wall tiles or floor tiles or other floor coverings from the item 39 exemption, and including them in the new item 16 of Schedule 2. ***[Items 4 and 15 of Schedule 2]***

Timber floor coverings and parquet blocks

5.10 Subitem 42(b) of Schedule 1 currently exempts parquet blocks. Timber floor coverings including parquet blocks will become taxable at 12 per cent by removing the reference to parquet blocks in subitem 42(b) of Schedule 1 to the E&C Act and including timber floor coverings including parquet blocks in Schedule 2 under new subitem 17(1). Timber floorboards will continue to be exempt. An additional modification will be made to subitem 42 to ensure that goods covered by new item 17 or 19 of Schedule 2 to the E&C Act (office partitions etc) are not exempt under subitem 42(1). ***[Items 7, 8, 13 and 15 of Schedule 2]***

Paints, putties, wallpaper etc.

5.11 Paints, putties, wallpaper etc. are currently exempt from sales tax under item 44 of Schedule 1. These goods will become taxable at 12 per cent by omitting item 44 and creating a new item, item 18, in Schedule 2 which will cover precisely the same goods. ***[Items 1, 9, 13 and 15 of Schedule 2]***

Taps, nozzles, tap handles and showerheads

5.12 Taps, nozzles, tap handles and shower heads of a kind ordinarily installed as fixtures in houses and other buildings are currently exempt from sales tax under subitem 50(3) and paragraph 39(1)(j) of Schedule 1. These goods will become taxable at 12 per cent under new item 6A in Schedule 2 of the E&C Act. Item 6A will also cover parts for these goods. Item 50 and item 39 will be modified to ensure that they cannot exempt goods covered by item 6A. ***[Items 5, 11, 12 and 14 of Schedule 2]***

Office partitions and workstation panelling

5.13 Office partitions and office workstation panelling and various components of these goods are currently exempt from sales tax. They will become taxable at the rate of 12 per cent under new item 19 in Schedule 2 to the E&C Act. Fittings, accessories and attachments for office partitions and office workstation panelling will also be taxed at 12 per cent by inclusion in new item 19. Items 39 and 42 in Schedule 1 will be modified to ensure that it can no longer exempt goods to be covered by new item 19 in Schedule 2. ***[Items 5, 10 and 15 of Schedule 2]***

5.14 Movable office screens are currently taxable at the rate of 21 per cent and will continue to be subject to that rate. Work surfaces, shelves and other office furniture designed to be attached to office partitions or office workstation panelling will not be covered by item 19 and will continue to be treated as commercial office furniture, currently taxable at 21 per cent.

Kitchen cupboards and other storage units

5.15 Kitchen cupboards and other household storage units are currently treated as exempt under paragraph 42(c) of Schedule 1 to the E & C Act. Prefabricated timber cupboards, cabinets, storage units (including bathroom vanity units) and kitchens, of a kind ordinarily used for household purposes, will become taxable at 12 per cent under new subitem 17(2) of Schedule 2. ***[Item 15 of Schedule 2]***

Exclusions from building materials exemptions

5.16 Paragraph 39(3)(j) of Schedule 1 ensures that the current range of exemptions for building materials does not exempt certain classes of goods covered by Schedule 2 of the Act. This paragraph will be modified to include the classes of building materials which are to become taxable under items 6A, 16 or 19 of Schedule 2. ***[Item 5 of Schedule 2]***

Recycled paper

Overview

6.1 *Schedule 3* to the Bills removes the sales tax exemption for certain 100% recycled paper products.

Summary of the modifications

Purpose of the modifications

6.2 The modifications will ensure that the general rate of sales tax (currently 21 per cent) will apply to goods made entirely from recycled paper.

Date of effect

6.3 The modifications will apply to dealings with goods on or after 1 November 1995. [*Subclause 2(3) and clause 7*]

Background to the legislation

6.4 Item 108 of Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* (the E&C Act) currently exempts recycled printing and writing paper from sales tax provided those goods are made entirely from recycled paper. In September 1993, the Industry Commission released a report entitled 'Adding Further Value to Australia's Forest Products'. The report noted that the use of sales tax exemptions in this case was inefficient and likely to impede efficient industry development and recommended that the sales tax exemption for recycled paper products be abolished.

Explanation of the modifications

6.5 **Schedule 3** to the Bills removes the sales tax exemption for 100% recycled paper by omitting Item 108 from Schedule 1 to the E&C Act and by removing the reference to Item 108 from the Table of Contents to Schedule 1. **[Items 2 and 1 respectively]**



