

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SALES TAX LAWS (COMPUTER PROGRAMS) AMENDMENT BILL 1989

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS)
(COMPUTER PROGRAMS) AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

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

GENERAL OUTLINE

Sales Tax Laws (Computer Programs) Amendment Bill 1989

This Bill will amend the Sales Tax Assessment Acts (Nos. 1-9) 1930, the Sales Tax Assessment Acts (Nos. 10-11) 1985 and the Sales Tax Procedure Act 1934 -

- . to remove sales tax on computer programs other than those embodied in microchips (proposal announced on 22 December 1988);
- . to correct a deficiency in the present law so that the wholesale value (and not the retail value) of a licence fee paid for the right to use sounds, visual images or computer programs contained in goods is included in the sale value of the goods;
- . to ensure that any obligations imposed by amendments of the sales tax law that operate from a date earlier than their enactment do not have to be met before the 27th day after Royal Assent is given to the amending legislation; and
- . to correct cross-references to provisions of the Sales Tax Assessment Act (No. 1) 1930.

Sales Tax (Exemptions and Classifications) (Computer Programs) Amendment Bill 1989

This Bill will amend the Sales Tax (Exemptions and Classifications) Act 1935, and allow similar amendments to be made to the Sales Tax Regulations, to remove the exemption from sales tax, as "aids to manufacture", of goods for use in embodying computer programs in goods other than microchips (proposal announced on 22 December 1988).

FINANCIAL IMPACT

The revenue cost of removing sales tax on computer programs is estimated to be \$10 million in 1988-89, \$30 million in 1989-90 and \$35 million in 1990-91.

The gain to revenue from removing the "aids to manufacture" exemption for goods for use in embodying computer programs in goods other than microchips will be negligible.

The other amendments proposed by the Bills will have a negligible revenue impact.

BROAD FRAMEWORK OF THE 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 Bills.

Sales tax is a single stage tax levied on, or in relation to, goods. In general, it is designed to apply at the wholesale level, but is payable by manufacturers and importers, as well as by wholesalers. The tax in each case is 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, apply to leases of those goods or to the application of those goods to a taxpayer's own use. It may also apply to the entry for home consumption of imported goods where they are not entered for sale by a wholesaler, for example, where they are entered by a retailer or a consumer. Where a royalty is payable in relation to goods but is not part of their sale value, tax is payable by the person paying the royalty at the rate applicable to the goods.

Tax is also levied on certain Australian manufactured goods sold by inwards duty free shops to persons who, if they had imported those goods as passengers or crew of aircraft arriving in Australia, would have been liable to tax.

Manufacturers and wholesalers are required to register with the Australian Taxation Office (ATO) unless they deal only in exempt goods. By quoting their registration 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 ATO. The tax is basically self-assessed - persons who furnish returns and 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.

When selling goods, sales taxpayers are restricted to passing on to the retailer or customer an amount equal to the tax that they are liable to remit to the ATO.

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 11 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 :

<u>Assessment Acts and Sales Tax Acts</u>	<u>Subjects of Taxation</u>
Sales Tax Assessment Act (No. 1) and 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 other than 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.
Sales Tax Assessment Act (No.11) and Sales Tax Acts (No.11A) and (No.11B)	Australian manufactured airport shop goods purchased by relevant travellers, sold to persons other than relevant travellers or applied to own use by the proprietor of an inwards duty free shop.

Another Act, the Sales Tax (Exemptions and Classifications) Act 1935, contains a Schedule - the First Schedule - that lists classes of goods that are exempt from tax and specifies circumstances in which particular

exemptions apply. Further Schedules to that Act list the classes of goods that are taxable at specified rates. Goods not listed in any of the Schedules to that Act are taxable at what is called the "general rate" - currently 20 per cent. Exemptions from tax set out in this Act extend to otherwise taxable goods that are for use by specified organisations 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.

MAIN FEATURES

Sales Tax Laws (Computer Programs) Amendment Bill 1989

Removing sales tax on certain computer programs (Clauses 4, 5, 7, 9, 11, 15, 17, 19, 21, 23 and 27)

Computer programs as such, because they are not goods, are not subject to sales tax under the existing sales tax law. However, the sale value of the carrying media for programs and other goods in which programs are embodied includes the value of the programs for the purposes of calculating the amount of sales tax payable on the goods concerned.

This Bill will reduce the sale value of goods containing computer programs by the amount of that value attributable to any programs in them, other than programs that are on a microchip. Except in cases where the only computer program in the goods is embodied on a microchip, the sale value will be further reduced by the amount of that value attributable to any instruction manual that forms part of the goods. The remainder of the goods - which may only be the carrying medium - and the packaging of the goods will, however, continue to be taxable.

The proposed changes will apply to taxable transactions in goods containing computer programs that occur on or after 23 December 1988.

Licence fees for the right to use sounds, visual images or computer programs (Clauses 26, 27 and the Schedule)

The Bill will effect an amendment of a concessional nature to correct a deficiency in the present law. This amendment will ensure that, where goods containing sounds or visual images (videos, records and the like) or goods containing computer programs on microchips are subject to sales tax when sold by retail or treated as stock for sale by retail, any licence fee for the right to use the sounds, images or programs is included in the sale value of the carrying medium on the fee's wholesale value instead of its retail value. The amendments will apply to taxable transactions on or after 1 June 1989.

Deferring time for meeting new sales tax obligations (Clauses 25 and 27)

It is common for extensions of the sales tax base or increases in rates of sales tax to take effect from the date of introduction of the amending legislation into the Parliament. As a consequence, because sales tax is a monthly tax, persons technically can be required (on a retrospective basis) to do or not to do certain things - such as to register for sales tax purposes and to pay sales tax - before the amending legislation becomes law. Once

the amending legislation is enacted, a person who has failed to register or to pay sales tax on transactions since the date of introduction technically and retrospectively becomes guilty of an offence or liable to additional tax by way of penalty.

This Bill will ensure that any amendments made by it, or by any later sales tax Bills, will not result in a person being guilty of an offence or liable to additional tax by way of penalty for acts or omissions before the 28th day after the day on which the amending legislation concerned receives Royal Assent. Consistent with that, any obligations that arise from such amendments that presently should be met before the 27th day after Royal Assent is given to the amending legislation will in future not have to be formally met before that day.

Sales Tax (Exemptions and Classifications) (Computer Programs) Amendment Bill 1989

One of the general principles of the sales tax law is that, where goods are subject to sales tax, any goods that are always or mainly to be used in manufacturing the taxable goods are exempt from sales tax. Without such an exemption, there would be an element of double taxation of the manufactured goods. On this basis, under the present law any goods for use exclusively, or principally, in embodying computer programs in goods are free from sales tax as "aids to manufacture".

Consistent with the removal of sales tax from computer programs other than those on microchips proposed by the Sales Tax Laws (Computer Programs) Amendment Bill 1989, this Bill will alter, with effect from 23 December 1988, the definition of "aids to manufacture" in the Sales Tax (Exemptions and Classifications) Act 1935 - and allow the Sales Tax Regulations to be similarly altered - to remove the sales tax exemption for goods for use in embodying computer programs in goods, except where the goods are for use exclusively, or principally, in embodying programs in microchips that are goods themselves or are a component of goods.

Detailed explanations of the clauses of the Bills are given in the following notes.

SALES TAX LAWS (COMPUTER PROGRAMS)
AMENDMENT BILL 1989

PART 1 - PRELIMINARY

Clause 1 : Short title

This clause allows the amending Act to be cited as the Sales Tax Laws (Computer Programs) Amendment Act 1989.

Clause 2 : Commencement

By reason of subsection 5(1A) of the Acts Interpretation Act 1901, an Act comes into operation on the 28th day after Royal Assent unless the Act specifies otherwise. Subclause 2(1) provides for the amending Act, other than as specified in subclause 2(2), to be taken to have commenced on 23 December 1988.

By subclause 2(2), Parts 12, 13 and 14 of the amending Act are to be taken to have commenced on 1 June 1989 - the day following the date of introduction of the Bill into the Parliament. Parts 12 and 13 propose the amendments -

- . extending the time for meeting initial obligations under amendments of the sales tax law that operate from a date prior to their enactment;
- . ensuring that licence fees for the right to use sounds, visual images or computer programs in goods are not taxed at more than their wholesale value; and
- . correcting cross-references to provisions of Sales Tax Assessment Act (No.1) 1930.

Part 14 deals with the application of all the amendments to be made by the Bill.

PART 2 - AMENDMENT OF THE SALES TAX
ASSESSMENT ACT (NO. 1) 1930

Clause 3 : Principal Act

This clause facilitates references to the Sales Tax Assessment Act (No.1) 1930, which, in this Part, is referred to as the "Principal Act".

Clause 4 : Interpretation

Section 3 of the Principal Act is an interpretative provision that gives particular meanings to words and expressions used in the that Act. By this clause, the definition of "manufacture" is to be amended by converting the present exclusion in the definition to

paragraph form (paragraph (g)) and by inserting a new paragraph - paragraph (h) - in the definition to limit its scope as it applies to the embodiment of computer programs in goods.

Expressly to be excluded from the definition of "manufacture", by new paragraph (h), is the copying or reproduction of a computer program, or the conversion of a computer program to another language, code or notation, so as to embody the program in goods where all of the following conditions are met :

- . the person who did the copying or reproduction did not manufacture the blank carrying medium in which the program has been embodied;
- . tax is payable or has already been paid by someone else for a past transaction with the blank carrying medium (subparagraph (i)); and
- . the carrying medium, now containing the program, is for sale by retail by the person who did the copying or reproducing (subparagraph (ii)).

The exclusion does not apply, however, if -

- . the program is embodied in a microchip (whether the microchip is goods itself or is a component of goods) (paragraph (h)); or
- . the sale by retail would be such a sale because a sale would be deemed to have been made by subsection 3(4) of the Principal Act or because there is an indirect marketing arrangement as defined in subsection 3(4A) of the Principal Act (subparagraph (ii)).

The effect of paragraph (h) is to remove the need for a person who ordinarily sells by retail blank carrying media (for example, computers) on which a wholesaler has already paid tax, and who is asked by a customer to put a computer program on such a medium before selling it to the customer, to register, to lodge returns, to pay sales tax and to apply for refunds because tax has been paid twice. The copying or reproduction of a computer program so as to embody the program in goods will, in all other circumstances, continue to amount to "manufacture" for sales tax purposes.

Clause 5 : Sale value of goods embodying computer programs

Clause 5 will insert a new section - section 18C - in the Principal Act to reduce what would otherwise be the sale value of goods (that is, the amount on which tax is payable) containing one or more computer programs, other than where all of the programs are on microchips, if, after 22 December 1988, the goods have been -

- . sold by the manufacturer of the goods (usually the person who copied or reproduced the programs so as to embody them in goods) either to an unregistered person or to a registered person who did not quote her or his sales tax certificate when buying the goods (paragraph (a)); or
- . treated as stock for sale by retail by the manufacturer (paragraph (b)).

The deduction to be made from the "gross" sale value of the goods is, in the first instance, under paragraph (c), so much of the amount that would, but for section 18C, be the sale value of the goods as is attributable to every program embodied in the goods that is not a program embodied in a microchip (whether the microchip is goods itself or is a component of goods).

The amount to be deducted would include the wholesale value of the program (which would include the costs and profits of the manufacturer in relation to the program, but not in relation to the carrying medium, if the goods were sold by her or him by wholesale). The wholesale value of any services to be provided in relation to the program (for example, installing the program or training licensees and their staff in the use of the program) where the "gross" sale value includes the value of those services would also be excluded from the wholesale value. Services to be provided in relation to the carrying medium (for example, installing a computer) would not, however, give rise to a reduction in sale value.

If at least one program embodied in the goods is not on a microchip, paragraph (d) of new section 18C will allow a further deduction from the "gross" sale value of the goods for so much of the amount of that value as is attributable to any other part of the goods the sale value of which, if sold as separate goods, would be exempt from sales tax under item 51 of the First Schedule to the Sales Tax (Exemptions and Classifications) Act 1935. Item 51 exempts from sales tax certain books and other printed material. Paragraph (d), therefore, will operate to ensure that instruction manuals that form part of goods that contain a computer program that is not on a microchip are, in effect, exempted from sales tax.

Notwithstanding the above, if the Commissioner of Taxation and an individual taxpayer agree under existing subsection 18(5B) of the Principal Act on how to determine the sale value of goods dealt with by the taxpayer, that agreement takes precedence over the operation of proposed new section 18C.

- PART 3 - AMENDMENT OF THE SALES TAX ASSESSMENT
ACT (NO. 2) 1930
- PART 4 - AMENDMENT OF THE SALES TAX ASSESSMENT
ACT (NO. 3) 1930
- PART 5 - AMENDMENT OF THE SALES TAX ASSESSMENT
ACT (NO. 4) 1930
- PART 6 - AMENDMENT OF THE SALES TAX ASSESSMENT
ACT (NO. 5) 1930
- PART 7 - AMENDMENT OF THE SALES TAX ASSESSMENT
ACT (NO. 6) 1930
- PART 8 - AMENDMENT OF THE SALES TAX ASSESSMENT
ACT (NO. 7) 1930
- PART 9 - AMENDMENT OF THE SALES TAX ASSESSMENT
ACT (NO. 8) 1930
- PART 10 - AMENDMENT OF THE SALES TAX ASSESSMENT
ACT (NO. 9) 1930

Introduction

As the amendments proposed in each of Parts 3 - 10 of the Bill are expressed in similar terms and are intended to achieve the same end, the corresponding clauses of each of these Parts are dealt with collectively in the following notes.

Clauses 6, 8, 10, 12, 14, 16, 18 and 20 : Principal Act

These clauses facilitate references to the relevant Sales Tax Assessment Act, which, in each Part, is referred to as the "Principal Act".

Clauses 7, 9, 11, 13, 15, 17, 19 and 21 : Sale value of goods embodying computer programs

New section 4B in Sales Tax Assessment Acts (Nos. 5 and 9) and section 4C in Sales Tax Assessment Acts (Nos. 2 to 4 and 6 to 8), which are to be inserted in the relevant Assessment Acts by these clauses, are substantially to the same effect as proposed section 18C, in Sales Tax Assessment Act (No. 1) 1930. Each new section will apply to transactions that are within the scope of the relevant Assessment Act. An explanation of section 18C may be found in the earlier notes on clause 5 of the Bill.

PART 11 - AMENDMENT OF THE SALES TAX
ASSESSMENT ACT (NO. 10) 1985

Clause 22 : Principal Act

Clause 22 facilitates references to the Sales Tax Assessment Act (No.10) 1985, which, in Part 11 of the Bill, is referred to as the "Principal Act".

Clause 23 : Sale value

Section 5 of the Principal Act declares the sale value of goods (that is, the amount on which tax is payable) deemed to be sold by a taxpayer to be the value of royalty payments made by the taxpayer in relation to goods, less any part of those payments included in the taxable sale value of the goods under another sales tax assessment Act.

By clause 23, a new subsection (2) is to be added to section 5 of the Principal Act. The new subsection will allow a further reduction in the sale value of goods, other than microchips, to which the Principal Act applies. That reduction is in identical terms to that to be allowed under proposed new section 18C in Sales Tax Assessment Act (No.1) 1930. The earlier notes on clause 5 of the Bill explain the detail of that reduction.

PART 12 - AMENDMENT OF THE SALES
TAX PROCEDURE ACT 1934

Clause 24 : Principal Act

This clause facilitates references to the Sales Tax Procedure Act 1934, which is referred to as the "Principal Act" in this Part of the Bill.

Clause 25 : Effect of amendments of Sales Tax Acts

Clause 25 proposes the insertion of a new section - section 12F - in the Principal Act to defer the time for meeting initial obligations imposed by amendments of the sales tax law that operate from a date earlier than their enactment.

New subsection 12F(1) gives the meaning of the terms "amending provision" and "postponed day" when those terms are used in the section. The former means any provision of an Act that amends either the Principal Act (paragraph (a) of the definition), a sales tax imposition or assessment Act (paragraph (b)) or the Sales Tax (Exemptions and Classifications) Act 1935 (paragraph (c)). By the term "postponed day" is meant the 28th day after the day on which the Act containing a relevant amending provision receives Royal Assent.

Subsection 12F(2) explains that references in the section to a person being liable to a sales tax penalty refer to the person being guilty of an offence or the person being liable to additional tax by way of penalty.

Subsection 12F(3) will ensure that, if an amending provision once it is enacted would have the effect of making a person liable to a sales tax penalty of a kind defined in subsection (2) for doing, or not doing, something before the 28th day after Royal Assent, the person is not liable to the penalty.

Because of an amending provision, a person could be required under the sales tax law to do something within a specified period, or before a specified time, which period ends or time occurs before the 28th day after Royal Assent is given to the Act containing the amending provision. New subsection 12F(4) will operate to postpone the end of that period or the time for meeting that obligation, to the beginning of the 28th day after the amending Act receives the Royal Assent.

By reason of subclause 27(2) of the Bill, proposed new section 12F of the Principal Act will apply to amendments made by a provision of this Bill, once enacted, and to amendments made by a provision of any Act that receives Royal Assent on or after 1 June 1989.

PART 13 - AMENDMENTS OF ACTS

Clause 26 : Amendments of Acts

Clause 26 proposes the various amendments set out in the Schedule to this Bill of the Acts specified in the Schedule. These changes are explained in later notes dealing with the Schedule.

PART 14 - APPLICATION

Clause 27 : Application of amendments

This clause contains provisions that specify the circumstances in which and the date on which the amendments proposed by the Bill begin to apply.

By subclause 27(1), the amendments proposed by Parts 2 to 11 to remove sales tax on computer programs other than those embodied in microchips will apply to transactions, acts and operations effected or done in relation to goods on or after 23 December 1988.

Subclause 27(2) specifies that the amendment proposed by Part 12 of the Bill to extend the time for meeting initial obligations under retrospective amendments of the sales tax law is to apply to amendments made by any provision of this Bill, once it is enacted, and to

amendments made by a provision of any Act to which Royal Assent is given on or after 1 June 1989 - the day following the introduction of this Bill into the Parliament.

Subclause 27(3) is to the effect that the amendments made by Part 13 - that is, the amendments set out in the Schedule to the Bill - will also apply to transactions, acts and operations effected or done in relation to goods on or after 1 June 1989.

SCHEDULE

Sales Tax Assessment Act (No.1) 1930

Subsection 18B(1)

Subsection 18B(1) of the Sales Tax Assessment Act (No.1) sets out, firstly, when a licence fee for the right to use sounds, visual images or computer programs embodied in goods is to be reflected in the sale value of goods for the purposes of that Act if the fee is not already included in that sale value and, secondly, what the sale value of the goods is to be by virtue of the subsection.

The Schedule will alter subsection 18B(1) in two main respects. The first is to include in the circumstances in which the subsection applies, the case where it is reasonable to expect that, where goods containing sounds, visual images or computer programs have been treated by the manufacturer of the goods as stock for sale by retail, a purchaser of the goods or another person would give the manufacturer or another person valuable consideration for the supply of, or the right to use, the sounds, images or programs (new paragraph (c)). This inclusion is consistent with the scope of Sales Tax Assessment Act (No.1).

The second change to subsection 18B(1) is to reduce the value at which a licence fee given where an unregistered person or a registered person who does not quote her or his certificate buys goods containing sounds, visual images or computer programs from the manufacturer of the goods is included in the sale value of the goods. The value will no longer be the amount actually given; it will be the valuable consideration that could reasonably be expected to have been given for the supply of, or the right to use, the sounds, visual images or computer programs had the goods been sold by the manufacturer by wholesale (new paragraphs (d) and (f)). This change brings the treatment of the licence fee into line with the treatment of the carrying medium itself.

By reason of subclause 27(3) of the Bill, the foregoing amendments will apply to transactions, acts and operations effected or done in relation to goods on or after 1 June 1989.

Sales Tax Assessment Act (No.2) 1930Subsection 4B(1)

Subsection 4B(1) of the Sales Tax Assessment Act (No.2), like subsection 18B(1) of Sales Tax Assessment Act (No.1) 1930 explained above, sets out when a licence fee for the right to use sounds, visual images or computer programs embodied in goods is to be reflected in the sale value of goods for the purposes of that Act if the fee is not already included in that sale value, and what the sale value of the goods is to be by virtue of the subsection.

By clause 26 of the Bill, the Schedule will replace most of existing subsection 4B(1) in order to reduce the value at which a licence fee given when goods in which sounds, visual images or computer programs are sold by retail, by a registered person who quoted her or his certificate when buying the goods, is included in the sale value of goods under the subsection. The new value will be the valuable consideration it is reasonable to expect would have been given for the supply of, or the right to use, the embodied material had the goods been sold by the registered person by wholesale (new subparagraphs (c)(i) and (e)(i)) instead of the fee actually given. This is consistent with the value attributed to the carrying medium on its own.

Subclause 27(3) of the Bill is to the effect that the amendment described above will apply to transactions, acts and operations effected or done in relation to goods on or after 1 June 1989.

Subsection 12(1)Paragraph 12(1)(b)

Section 12 of Sales Tax Assessment Act (No.2) applies by reference a number of provisions of the Sales Tax Assessment Act (No.1) 1930 that relate to the imposition, assessment and collection of the tax chargeable under Sales Tax Assessment Act (No.2).

The Schedule will correct a cross-reference in the commencing words of subsection 12(1) and a cross-reference in paragraph (b) of the subsection to provisions of Sales Tax Assessment Act (No.1). The first correction will reflect the fact that Sales Tax Assessment Act (No.1) now has two Schedules instead of one. The second correction is to the number of the subsection in section 32 of Sales Tax Assessment Act (No.1) in which the definition of "prescribed tax" is to be found.

These purely technical changes will, by reason of subclause 27(3) of the Bill, apply to transactions, acts and operations effected or done in relation to goods on or after 1 June 1989.

Sales Tax Assessment Act (No.3) 1930

Sales Tax Assessment Act (No.4) 1930

Sales Tax Assessment Act (No.5) 1930

Sales Tax Assessment Act (No.6) 1930

Sales Tax Assessment Act (No.7) 1930

Sales Tax Assessment Act (No.8) 1930

Sales Tax Assessment Act (No.9) 1930

Sales Tax Assessment Act (No.10) 1985

Sales Tax Assessment Act (No.11) 1985

The amendment set out in the Schedule of subsection 4B(1) of Sales Tax Assessment Acts (Nos. 3, 6 and 7), which is proposed by clause 26 of the Bill, is expressed in similar terms to, and is intended to achieve the same result as, the amendment of subsection 4B(1) of Sales Tax Assessment Act (No.2) 1930 also set out in the Schedule. An explanation of the latter amendment can be found in the notes under the immediately preceding heading, "Sales Tax Assessment Act (No.2) 1930".

Similarly, the amendment of subsection 12(1) in each of Sales Tax Assessment Acts (Nos.3-10) and of subsection 16(1) of Sales Tax Assessment Act (No.11) set out in the Schedule is in identical terms to, and is intended to achieve the same result as, the amendment of subsection 12(1) of Sales Tax Assessment Act (No.2) set out in the Schedule. In addition, the amendment of paragraph 12(1)(b) of Sales Tax Assessment Acts (Nos.3-9) specified in the Schedule bears the same relationship to the amendment of paragraph 12(1)(b) of Sales Tax Assessment Act (No.2) specified in the Schedule. The amendment of subsection 12(1) and paragraph 12(1)(b) of Sales Tax Assessment Act (No.2) is also explained in the notes under the immediately preceding heading, "Sales Tax Assessment Act (No.2) 1930".

The amendments of Sales Tax Assessment Acts (Nos.3-11) specified in the Schedule will also apply, by reason of subclause 27(3) of the Bill, to transactions, acts and operations effected or done in relation to goods on or after 1 June 1989.

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS)
(COMPUTER PROGRAMS) AMENDMENT BILL 1989

Clause 1 : Short title etc.

Subclause 1(1) is to the effect that the Bill, once enacted, is to be cited as the Sales Tax (Exemptions and Classifications) (Computer Programs) Amendment Act 1989.

Subclause 1(2) facilitates references to the Sales Tax (Exemptions and Classifications) Act 1935, which is referred to in this Bill as the "Principal Act".

Clause 2 : Commencement

Subsection 5(1A) of the Acts Interpretation Act 1901 states that an Act comes into operation on the 28th day after Royal Assent unless the Act specifies otherwise. By clause 2, the Bill, once enacted, is to be taken to have commenced on 23 December 1988.

Clause 3 : First Schedule

Clause 1 of the First Schedule to the Principal Act is an interpretative provision that defines words and expressions used in that Schedule.

By subclause 3(1), the present definition of "aids to manufacture" in subclause 1(1) of the First Schedule is to be narrowed by the addition of a new paragraph (o) to the list of goods specifically excluded from the definition unless the goods are of a kind ordinarily manufactured by the manufacturer for sale and are to be used by her or him exclusively and directly in carrying out certain scientific research.

The effect of the new paragraph will be, subject to the scientific research qualification just described, that goods for use exclusively, or primarily and principally, in copying or reproducing a computer program - or in converting a computer program to another language, code or notation - so as to embody the program in goods will, with one exception, not be exempt from tax as "aids to manufacture" under items 113A or 113B of the First Schedule to the Principal Act. The exception is where the goods are to be used either exclusively, or primarily and principally, in embodying programs in microchips (whether the microchips are goods on their own or are components of goods).

Subclause 1(1) of the First Schedule to the Principal Act also defines the term "auxiliaries to aids to manufacture". That definition expressly excludes goods which are of any of the kinds expressly excluded from the definition of "aids to manufacture". Consequently, new paragraph (o) in the latter definition will have a similar

Impact on the exemptions from sales tax available under items 113A and 113B of the First Schedule for "auxiliaries to aids to manufacture".

By subclause 3(2), the amendment of the definition of "aids to manufacture" will apply to transactions, acts and operations effected or done in relation to goods on or after 23 December 1988.

Clause 4 : Regulations

As explained earlier in this memorandum, the removal of the exemption from sales tax, as "aids to manufacture", of goods for use in embodying computer programs in goods other than microchips - or other than in microchips in goods - complements the proposal by the other Bill in this package to remove sales tax on programs other than those embodied in microchips. To remove the "aids to manufacture" exemption for all relevant transactions, amendments need to be made not only to the First Schedule to the Principal Act - as proposed by clause 3 of the Bill - but also to the Sales Tax Regulations.

The amendments of the Sales Tax Regulations will need to apply from 23 December 1988 to be consistent with the date on which the amendments proposed by clause 3 will begin to apply. However, the effect of subsection 48(2) of the Acts Interpretation Act 1901 is that, unless Parliament provides otherwise, regulations cannot take effect from a date before the date on which the making of the regulations is notified in the Commonwealth of Australia Gazette if the regulations would prejudicially affect a person's rights as at the date of notification in the Gazette. Restricting the "aids to manufacture" exemption from 23 December 1988 would be prejudicial to manufacturers of goods embodying computer programs. For this reason, clause 4 proposes that the general rule in subsection 48(2) of the Acts Interpretation Act be overridden. The clause proposes that regulations amending the Sales Tax Regulations in order to make a similar change to that proposed by clause 3 may take effect from before the day on which the making of the regulations are notified in the Gazette, but no earlier than 23 December 1988.

