

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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SALES TAX LAWS AMENDMENT BILL (NO. 1) 1996

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EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Treasurer, the Hon Peter Costello, MP)







## ***General outline and financial impact***

### **AMENDMENT OF THE SALES TAX LAW**

#### **Motor vehicles for use by governments**

Amends the *Sales Tax Assessment Act 1992* and the *Sales Tax (Exemptions and Classifications) Act 1992* to remove the exemption from sales tax in respect of certain vehicles, and parts for those vehicles, purchased by governments or government authorities, where the vehicles are wholly or partly for private use as part of an employee's remuneration.

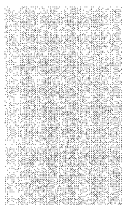
***Date of effect:*** 3.15pm (AEST), 11 June 1996.

***Proposal announced:*** Treasurer's Press Release No. 27 of 11 June 1996 as modified by Treasurer's Press Release No. 30 of 14 June 1996.

***Financial impact:*** This measure is expected to raise between \$50 million and \$100 million in 1996-97.

***Compliance cost impact:*** There will be some impact on the compliance costs of the affected government bodies. They will need to determine which of the vehicles they purchase after 3.15pm on 11 June 1996 will still be exempt and which will be subject to tax. Where vehicles will still be exempt, the government body can simply quote their exemption declaration to receive the vehicle tax-free as they currently do. Affected government bodies will also need to maintain a record of their exempt and taxed vehicles for the purpose of determining whether they can quote in respect of parts purchased for those vehicles.





## ***Motor vehicles for use by government***

### **Overview**

1.1 The amendments contained in this Bill will ensure that motor vehicles purchased by governments and government authorities for the private use of employees as part of their remuneration will not be eligible for exemption from sales tax.

### **Summary of the amendments**

#### **Purpose of the amendments**

1.2 The Bill proposes to amend the *Sales Tax Assessment Act 1992* (Assessment Act) and the *Sales Tax (Exemptions and Classification) Act 1992* (E&C Act) to remove the ability for governments and government authorities to purchase certain motor vehicles free of sales tax where the vehicles are wholly or partly for the private use of employees as part of their remuneration.

#### **Date of effect**

1.3 The amendments will apply to dealings with the vehicles that occur after 3.15pm on 11 June 1996. [*Clause 2 and items 7 and 14 of Schedule 1*]

### **Background to the legislation**

1.4 Commonwealth, State, Territory and local governments and other government authorities are currently exempt from sales tax on all purchases for their own use. This exemption extends to all types of motor vehicles even where the motor vehicle is for an employee's private use as part of their remuneration.

1.5 Removal of the exemption for motor vehicles for governments and government authorities was originally announced as an integral part of the Commonwealth Government's offer in relation to financial assistance grants to the States and Territories. It was then refined after negotiations at the Premiers' Conference to cover only those vehicles that are provided by the government as employer to an employee as part of their remuneration.

1.6 The Government was concerned that the exemption for motor vehicles was being utilised in a way that placed government bodies in an unfairly favourable position to employers in the private sector who do not have access to similar tax exemptions. By utilising the sales tax exemption to provide tax-free cars for salary -packaging arrangements, employers at all levels of government are going beyond what the Government considers to be the original intention of the exemption; namely being eligible for exemption from sales tax where the goods are for the official or business use of the Government body.

## **Explanation of the amendments**

### ***Governments and government bodies affected***

1.7 In the existing law, Schedule 1 of the E&C Act has the effect (among other things) that all goods for use by governments and certain government bodies are exempt from sales tax. The Bill amends Schedule 1 to exclude 'goods for use as part of a car remuneration package' from the exemptions in relation to governments and certain government bodies. Consequently, goods for use as part of a car remuneration package will be taxable if they are for use by one of the following governments and government bodies:

- public transport authorities (Item 64);
- Australian governments and government authorities (Item 126);
- State/Territory bodies (Item 126A);
- municipal, shire and district councils constituted for the general purposes of local government (paragraph (a) of subitem 127(1));
- public authorities constituted for the purpose of carrying out local government functions (paragraph (b) of subitem 127(1));
- harbour boards, harbour trusts and marine boards (paragraph (c) of subitem 127(1));

State libraries, museums and art galleries (Item 128);

the Aboriginal and Torres Strait Islander Commission (paragraph (a) of Item 130);

- the Torres Strait Regional Authority (paragraph (aa) of Item 130); and
- the Reserve Bank of Australia (paragraph (f) of Item 130).

(The Item numbers in brackets are references to exemption Items in Schedule 1 of the E&C Act). **[Items 8 - 13 of Schedule 1]**

1.8 Institutions that are exempt from sales tax under other exemption Items (for example, schools, universities, public hospitals and public benevolent institutions) will not be affected by these changes.

***Goods for use as part of a car remuneration package***

1.9 There are two circumstances in which goods are taken to be used, or for use, as part of a car remuneration package. **[Items 2 and 3 of Schedule 1 - new subsection 15E(1)]**

***Cars***

1.10 The first circumstance relates to cars. Cars will be taxable if they are for use in the provision of a 'car benefit.' A car benefit for these purposes is a car benefit as defined in subsection 7(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) subject to certain modifications (see paragraph 1.11) below.

1.11 A car benefit will exist where a car is used, or available for use, for private purposes by:

- an employee of the government or government body;
- an associate of the employee (for instance, the spouse of the employee);
- an employee of an associate of the government or government body (for instance, an employee of a company controlled by a government or government body); or
- an associate (for instance, the spouse) of an employee of an associate to a government or a government body.

***[New subsections 15E(2) and 15E(6)]***

1.12 A car benefit will *not* exist where the proposed private use of the car:

relates solely to travel by the employee or associate between his or her home and place of employment, or place where the duties

of employment are performed **[new subparagraph 15E(4)(a)(i) and new subsection 15E(6)]**;

- relates solely to travel which is incidental to travel in the course of performing the duties of employment **[new subparagraph 15E(4)(a)(i) and new subsection 15E(6)]**; or
- is minor, infrequent and irregular **[new subparagraph 15E(4)(a)(ii)]**.

1.13 In this context private use is any use by an employee that is not exclusively in the course of producing the assessable income of the employee (see subsection 136(1) of the FBTAA).

*Example 1:* The Department of Roads has a number of vehicles that are used by officers to carry out necessary road inspections. The Department allows senior officers to take those cars home at night provided they are safely garaged. No other private use of the vehicles is allowed. The Department will continue to be able to buy those vehicles free of sales tax.

*Example 2:* Susan works for the Department of Primary Industry. The Department provides Susan with a car that she can take home at night, use on the week-ends and take with her when she goes on holidays. However, when Susan is at work, she must ensure the car is available for other officers to use to visit the local abattoirs. Notwithstanding this business use, the Department will no longer be able to purchase vehicles used in these circumstances free of sales tax.

*Example 3:* A local council has a number of utilities that are used for council business. Where employees move house, the council allows them to borrow one of the utilities to assist with the move. The councils will still be able to purchase the utilities free of sales tax as the private use is minor, infrequent and irregular.

1.14 There are a number of other important definitions for the purposes of these provisions:

- A car is defined to mean:
  - a motor vehicle, including a four-wheel drive, which is a motor car, station wagon, panel van, utility truck or similar vehicle, designed to carry a load of less than one tonne;
  - any other road vehicle designed to carry a load of less than 1 tonne or fewer than nine passengers; or

motor cycles and similar vehicles. **[New paragraph 15E(4)(b) and new subsection 15E(6)]**



An employee is a person who is an employee for the purposes of the PAYE provisions of the income tax law and also includes members of local governing bodies. **[New subsections 15E(5) and (6)]**

- An employer includes a government body, including the Commonwealth and authorities of the Commonwealth which cannot, by law, be made liable to Commonwealth taxation, which is liable to pay any salary or wages. **[New paragraph 15E(4)(c)]**
- The Commonwealth is taken to be an associate of each of its authorities, and each authority of the Commonwealth is taken to be an associate of each other authority. Similar rules apply in respect of States and Territories and their respective authorities. **[New subsection 15E(6) and subsection 159(2) of the FBTA]**
- The terms 'application to private use' and 'availability for private use' have the same meaning as in the fringe benefits tax law. **[New subsection 15E(6)]**

### **Parts**

1.15 The second circumstance in which goods are taken to be used, or for use, as part of a car remuneration package, relates to parts and accessories.

1.16 Parts and accessories are for use as part of a car remuneration package where the parts or accessories are for a car which is used, or is for use, as part of a car remuneration package (see paragraphs 1.9-1.11 above), and the car is acquired or will be acquired after the amendments come into effect **[new subsection 15E(3)]**. Parts and accessories for cars used in remuneration packages, where the car was acquired before then, will continue to be exempt.

### **Consequential amendments**

1.17 The changes to exemptions for governments and government bodies make necessary some consequential amendments to the sales tax laws.

1.18 *Always-exempt persons:* in the existing law, an always-exempt person is a person whose use of goods is always covered by an exemption Item. The definition of 'always-exempt person' is amended by the Bill to ensure that governments and government bodies do not lose their status as always-exempt persons, and the benefits which flow from it (for example, under Item 192 of Schedule 1 to the E&C Act) because their use of cars as part of car remuneration packages is now excluded from the relevant exemption Item. **[Item 1 of Schedule 1]**

1.19 *Notional application of sales tax to the Commonwealth:* the Commonwealth cannot tax itself. The Bill amends the sales tax law to

ensure that if an assessable dealing occurs, for which the Commonwealth would be the taxpayer if it were liable to tax, the Commonwealth will be required to pay a notional amount, equivalent to the amount of tax which would have been owing, if the taxpayer had been a person who was subject to tax **[new subsections 129A(1)-(3)]**. In these cases, the Minister for Finance may give directions for the payment of the money within the Public Account **[new subsections 129A(5)-(6)]**. The Commonwealth cannot seek to have an assessment of the amount of sales tax owing reviewed by the AAT or the Federal Court, and cannot be penalised or prosecuted for an offence relating to the sales tax law. **[New subsections 129A(4) and (7) - item 4 of Schedule 1]**

1.20 ***New subsection 129A(8)*** is a safeguard measure to ensure that where authorities of the Commonwealth cannot be subject to sales tax under the sales tax law, they will be subject to the notional application of sales tax.

1.21 ***Commonwealth-controlled authorities:*** 'Commonwealth-controlled authorities' as defined in section 130 of the Assessment Act, are excluded from the general exemption for Australian governments and government authorities. These authorities are accordingly unable to purchase goods free of sales tax unless there is a provision in the enabling legislation of the authority which over-rides the sales tax law, and that provision was enacted after 13 May 1987. The Bill amends the sales tax law so that the enabling legislation of a Commonwealth-controlled authority will have to specifically exempt goods for use as part of a car remuneration package in order for its enabling legislation to over-ride the provisions of the sales tax law. **[Items 5 and 6 - new subsection 130(2A)]**











