1990-91

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SALES TAX LAWS AMENDMENT BILL (NO.2) 1991

EXPLANATORY MEMORANDUM

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

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A. General Outline and Financial Impact

The Sales Tax Laws Amendment Bill (No.2) 1991 will amend the sales tax law by making the following change:

Quarterly Payment of Tax

- Taxpayers who have an annual sales tax liability below a threshold amount will be able to lodge returns and pay sales tax on a quarterly basis;
- The threshold amount will be:
  - for 1991-2, $50,000;
  - for any subsequent year, the threshold for the previous year adjusted in line with movements in the Consumer Price Index.
- The cost will be $49.8m in 1991-92 and $5.9m in 1992-93.

B. Overview of the Sales Tax Law

The following outline of the sales tax law will help you to understand the changes this Bill will make.

What is sales tax and to what goods does it apply?

Sales tax is a one stage tax that applies to all goods produced in Australia or imported into Australia that have not previously gone into use and consumption in Australia. In general, it applies at the wholesale level, but it could also be payable by manufacturers and importers, as well as by wholesalers. The tax is based on the last wholesale price or a value equivalent to it.

How and when is sales tax paid?

The ATO requires manufacturers and wholesale merchants to register and supply details of their taxable transactions every month. The tax is basically self-assessed. The manufacturers and wholesalers must calculate the tax payable on their transactions for the month and send their payment with each monthly return. Importers pay the tax when they clear their goods through Customs unless they are registered and quote their registration certificate for the goods.

How is the legislation structured?

The sales tax legislation is contained in a number of separate Acts (these are known as Sales Tax Assessment Acts and each has an equivalent Rating Act or Acts). There is also a series of Regulations that complement those Acts. The Acts and Regulations must be read together to properly understand the wholesale sales tax. The table below lists the Assessment Acts together with the taxable dealings to which they apply.

Act No.	**Taxable Dealings**
	Goods manufactured in Australia, and:
No.1	sold by a manufacturer or treated as stock for sale by retail or applied to manufacturer's own use;
No.2	sold by a purchaser from the manufacturer;
No.3	sold by a person not being the manufacturer or a purchaser from the manufacturer;
No.4	applied to own use by a purchaser who quoted a sales tax certificate number when purchasing the goods;

Goods imported into Australia, and:

No.5 entered for home consumption;

No.6 sold by the importer or applied to own use by the importer;

No.7 sold by a person other than the importer;

No.8 applied to own use by a purchaser who quoted a sales tax certificate number when purchasing the goods;

Other taxable dealings on Australian manufactured or imported goods:

No.9 any goods in Australia that are leased out by a registered person;

No.10 certain royalties payable in respect of goods;

No.11 certain dealings with airport shop goods.

Certain goods are exempt from Sales Tax

The First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* lists classes of goods that are exempt from tax.

Further Schedules to that Act list the classes of goods that are taxable at specified rates. If goods are not listed in any of the Schedules to that Act then tax is payable at what is called the "general rate" (currently 20 per cent).

C. Quarterly Payment of Sales Tax

1. Summary of Proposed Changes

This Bill will amend the sales tax law to give some sales tax payers the option of paying tax each quarter rather than each month. The concession will apply if a person's sales tax liability for the preceding financial year does not exceed the **threshold amount** for the current year. Their tax liabilities must also be up to date.

The **threshold amount** for the first year (1991-92) in which this concession will apply will be $50,000. This will be adjusted in subsequent years in line with movements in the Consumer Price Index.

The concession will not be available for leased goods, imported goods entered for home consumption or goods purchased from inwards duty free shops at Australian international airports.

The amendments will apply from 1 August 1991. The first quarterly payment of tax will be due by 21 November 1991 for taxable dealings in August, September and October.

2. Background

Under the existing law, sales tax payers must generally pay tax and lodge returns within 21 days after the close of the month in which a taxable dealing occurs.

In the case of goods entered for home consumption or bought at inwards duty free shops, payment is required at the time of the dealing with the goods. For leased goods, the Commissioner determines the time for payment in each case and returns must be lodged monthly.

The quarterly payment system proposed by this Bill will assist small sales tax payers.

3. Outline of the Amendments

The Sales Tax law will be amended as set out in the Schedule to the Bill. The Bill will amend the following Acts in the ways described below.

Sales Tax Assessment Act (No.1) 1930

- amends section 3 to insert new definitions that apply to all Assessment Acts amended by the Bill.
- inserts section 3D which defines "quarterly remitter" (subsection (1)) and sets out the formula for calculating the quarterly remitter threshold (subsections (2)-(7)).
- inserts section 21A which allows a quarterly remitter to lodge returns for a quarter or to lodge separate returns for each month in the quarter.
- inserts section 24A to allow a quarterly remitter to pay tax within 21 days after the end of the quarter.
- amends section 25AA to allow a quarterly remitter 21 days after the end of a quarter to request the Commissioner to make an assessment in respect of a taxable dealing.
- amends subsection 40(3) to extend the period of time within which a quarterly remitter can request review of a refund decision.

Sales Tax Assessment Act (Nos. 2-4 & 6-8) 1930 and *Sales Tax Assessment Act (No. 10) 1985*

- inserts section 7A into each Act to allow quarterly remitters to lodge returns on a quarterly basis if they choose.
- inserts section 9A to allow a quarterly remitter to pay tax within 21 days of the end of the quarter.
- amends section 10A to allow a quarterly remitter 21 days after the end of a quarter to request the Commissioner to make an assessment in respect of a taxable dealing.

Sales Tax Procedure Act 1934

- amends section 3 to insert new definitions.
- amends section 5 to allow for the operation of the quarterly payments system.

4. Detailed Explanation of the Amendments

A person who qualifies as a **quarterly remitter** will have the option of paying tax and lodging returns on a quarterly, rather than a monthly, basis.

Who can be a quarterly remitter?

A quarterly remitter will be a person who can satisfy one of two tests set out in amendments proposed by the Bill. These tests will be:

Test 1 *If the person is not already a quarterly sales tax payer, then*

- their sales tax liability for the previous financial year must not exceed the quarterly remitter threshold for the current year; and
- they must not have any outstanding sales tax returns or sales tax liabilities at the end of the 21st day of the quarter in which the test is applied.

[Schedule to the Bill - New paragraph 3D(1)(a), *Sales Tax Assessment Act (No.1) 1930]*

Test 2 *If the person is already a quarterly sales tax payer,*

- their sales tax liability for the previous financial year must not exceed the quarterly remitter threshold for the current year.

In the first year of operation (1991-92) Test 1 will apply to all sales tax payers. In subsequent years, test 1 will apply to new taxpayers, and existing taxpayers who are not quarterly remitters, to determine if they are eligible. Test 2 will only apply to quarterly remitters to determine their eligibility to remain on the system.

[Schedule to the Bill - New paragraph 3D(1)(b), *Sales Tax Assessment Act (No.1) 1930*]

Exceptions to the quarterly payment rules

Some taxable dealings will be excluded from the quarterly payment rules. These are:

- entry for home consumption of imported goods (taxable under *Sales **Tax Assessment Act (No.5) 1930*** - tax is payable at the time of entry);
- a lease of goods (tax is payable when determined by the Commissioner under ***Sales Tax Assessment Act (No.9) 1930***); and

  dealings with airport shop goods (tax is payable at the time of the dealing under ***Sales Tax Assessment Act (No. 11) 1985***).

In these cases the person must still pay the tax on these dealings within the time which is presently prescribed. The fact that a quarterly remitter has taxable dealings of this kind does not prevent the person from paying quarterly for other taxable dealings. The threshold limit is calculated on all taxable dealings.

What are the sales tax quarters?

They are the three month periods ending on 31 July, 31 October, 31 January and 30 April. A quarterly remitter will lodge returns and pay tax for each quarter by 21 August, 21 November, 21 February and 21 May each year. [Schedule to the Bill - subsection 3(1), *Sales Tax Assessment Act (No.1) 1930*]

The Meaning of Quarterly Remitter Threshold

The quarterly remitter threshold determines whether a person can pay tax on a quarterly basis during a particular financial year (the current or "threshold" year). There will be a quarterly remitter threshold for each financial year. It will be $50,000 for the financial year commencing on 1 July 1991.

If a person's sales tax liability for the financial year immediately before the current year is equal to or less than the quarterly remitter threshold for the current year then the person will be entitled to be a quarterly remitter during the current year. [Schedule to the Bill - New paragraph 3D(2)(a) *Sales Tax Assessment Act (No.1) 1930*].

Example 1 Company X commenced business as a wholesale merchant on 1 July 1990. During the 1990-1 year it paid sales tax of $35,000. The company can pay tax on a quarterly basis in 1991-92 because its tax liability for 1990-91 ($35,000) was less than the quarterly remitter threshold for 1991-92 ($50,000).

Example 2 Co. Y commenced business on 1 July 1991 and had a tax liability of $120,000 for that financial year - obviously in excess of the $50,000 threshold. It will be a quarterly remitter for the 1991-92 year but is unlikely to be a quarterly remitter in the next year.

The Quarterly Remitter Threshold will be indexed to the CPI

The threshold will be indexed in line with movements in the consumer price index so that it is not eroded by price increases and to ensure that the new system will continue to benefit small taxpayers. ***The Commissioner of Taxation will announce the threshold amount applicable to quarterly sales tax payers.***

The threshold amount for later financial years will be calculated using the following formula (rounded up to the nearest whole dollar):

Previous year's threshold x Indexation factor

Previous year's threshold is the quarterly remitter threshold for the financial year immediately preceding the current (or threshold) year. **Indexation factor** is the indexation factor for the threshold year. [Schedule to the Bill - New paragraph 3D(2)(b), *Sales Tax Assessment Act (No. 1) 1930*]

Returns of Tax

Taxpayers must generally lodge returns of tax at the same time that the tax is due.

Each of the Assessment Acts which this Bill will amend currently requires a return form to be lodged with the Commissioner. The form sets out the value of the taxable dealings made by a taxpayer in a month and the tax payable on those dealings.

The Bill will amend the provisions for lodging sales tax returns:

- A person who is a quarterly remitter will have the option of paying tax and lodging returns either on a quarterly or a monthly basis.
- Persons who satisfy the tests for being a quarterly remitter, do not need to notify the Commissioner of which payment and lodgment option they choose.
- A quarterly remitter who chooses to lodge returns on a monthly basis will not be legally required to lodge those monthly returns within 21 days after the close of each month. All that is required is that the taxpayer either lodges three monthly returns or one quarterly return within 21 days after the close of the relevant quarter.

[Schedule to the Bill - New section 21A of Assessment Act (No.1) and new section 7A of Assessment Acts (Nos. 2-4, 6-8 & 10)]

Time for Payment of Tax

A person who satisfies a test to become a quarterly remitter must pay tax within 21 days after the end of a quarter on the taxable dealings that occurred in that quarter (other than taxable dealings to which the quarterly payment rules do not apply).

The person may:

- pay the total liability for the quarter in a single payment by the 21st day after the end of the quarter; or pay tax in separate instalments for each month of the quarter, so long as the total liability for the quarter is paid within 21 days after the end of the quarter.

[Schedule to the Bill - New subsection 24A(1) of Sales Tax Assessment Act (No.1) and new subsection 9A(1) of Sales Tax Assessment Acts (Nos. 2-4, 6-8 & 10)]

The tax is due and payable 21 days after the end of the quarter unless the Commissioner:

- has reason to believe a taxpayer will go overseas before the due date. An earlier payment date may be fixed in this case;
- extends the time for payment of the tax or allows the tax to be paid in instalments.

[Schedule to the Bill - New subsection 24A(2) of Sales Tax Assessment Act (No.1) and new subsection 9A(2) of Sales Tax Assessment Acts (Nos. 2-4, 6-8 & 10)].

Refund decisions for quarterly remitters

Under the existing sales tax law (Sales Tax Assessment Act (No.1), subsections 40(2) and (3)), a person who applies for a refund and has that application rejected may lodge an objection to that decision with the Commissioner. The Commissioner must then consider and make a decision about that objection. However, the person lodging the objection must do so within 60 days after the date of the taxable dealing to which the refund application relates. The Bill will extend that period to 120 days for quarterly remitters only. [Schedule to the Bill - New section 40(3) of *Sales Tax Assessment Act (No.1) 1930.*]

Sections of Assessment Act (No.1) that will also apply to other Acts

A feature of the sales tax legislation is that most of the rules relating to the assessment of tax are set out once only, in the Sales Tax Assessment Act (No.1). However, each of the Assessment Acts to be amended by this Bill has a special provision (section 12) which automatically incorporates (and adapts), without the need to restate them, as many of those rules as are relevant to the taxable dealings covered by the Act.

Each section 12 of the Assessment Acts (Nos. 2-4, 6-8 & 10) will be amended to include new section 3D of Assessment Act (No.1) as a section applicable to all those Acts. The effect of this amendment will be that the rules relating to quarterly remitters' thresholds and indexation will also apply to these Acts. [Schedule to the Bill - subsection 12(1), Sales Tax Assessment Act (Nos. 2-4, 6-8 & 10)]

Changes to the Sales Tax Procedure Act to Reflect the Quarterly Payments System

Sections 5, 6 and 10 of the ***Sales Tax Procedure Act 1934*** facilitate the collection and recovery of sales tax by removing the necessity to establish under which of the Assessment Acts a particular taxable dealing falls.

Section 5 requires a sales tax payer to lodge a return if, during any month, the person:

- sell goods;
- transfers to retail stock goods that the person has manufactured;
- applies goods to own use; or
- leases goods.

The return must be lodged within 21 days after the close of the month in which the taxable dealing occurs.

In the case of quarterly remitters, the Bill will amend this section to extend the general requirement to lodge returns to include returns by quarterly remitters. [Schedule to the Bill - section 5, *Sales Tax Procedure Act 1934*]

5. Commencement Date

The amendment will apply to taxable dealings that occur on or after 1 August 1991. [Subclause 4(1)]

A person cannot be a quarterly remitter for a sales tax quarter earlier than the one commencing on 1 August 1991. [Subclause 4(2)]

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*** minor consequential amendments only; not specifically mentioned in the Explanatory Memorandum***

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