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**THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA**

HOUSE OF REPRESENTATIVES

Sales Tax Laws Amendment Bill (No. 2) 1992

Sales Tax Imposition (*In Situ* Pools) Bill 1992

EXPLANATORY MEMORANDUM

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



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General Outline and Financial Impact

The amendments to be made by these Bills fall into 3 categories:

1. The re-imposition of sales tax at the rate of 20 per cent on swimming pool, spa pool and hot tub shells constructed *in situ*.

These provisions are contained in the Sales Tax Imposition (In Situ Pools) Bill 1992 and in Division 2 of Part 3, and Part 5 of the Sales Tax Laws Amendment Bill (No. 2) 1992;

2. The extension of the period during which an exemption from tax will be available for certain UHF television transmitters.

These amendments are contained in Part 2 of the Sales Tax Laws Amendment Bill (No. 2) 1992;

3. The making of miscellaneous amendments to ensure that the new sales tax law operates as intended.

These amendments are contained in Division 3 of Part 3 and Part 4 of the Sales Tax Laws Amendment Bill (No. 2) 1992.

1. Swimming pools

Change: To re-impose sales tax on swimming pool, spa pool and hot tub shells constructed *in situ* to bring their treatment for sales tax purposes into line with other swimming pools, spa pools and hot tubs that are already subject to tax.

Financial Impact: A gain to the revenue of \$2.5m in 1992-93 and \$5m in a full year.

2. UHF television transmitters

Change: To extend the current exemption for UHF television transmitters until 1 January 1994.

Financial Impact: Nil.

3 Miscellaneous Changes

(a) Sales Tax Assessment Act 1992

Use of goods as raw materials

Change: To clarify the circumstances in which goods will be taken to have been used as raw materials in manufacturing other goods, or in constructing or repairing property.

Financial Impact: Nil

Containers for export

Change: To extend the exemption for containers for export so that it applies regardless of the nature of the contents of the container.

Financial Impact: A cost to the revenue of \$1m in 1992-93 and \$2m in a full year.

Taxable dealing with goods that are the contents of a container

Change: To ensure that the value of a container will not be excluded from the taxable value of an assessable dealing with its contents where tax has been paid separately on the container but subsequently refunded under a credit claim.

Financial Impact: Nil.

Registration entitlement

Change: To exclude persons who are *one-off* manufacturers from entitlement to registration.

Financial Impact: Nil.

Standard grounds for quoting a registration number

Change: To allow registered persons to quote when acquiring goods for sale to eligible Australian travellers in accordance with the prescribed rules for export sales.

Financial Impact: Nil.

Clawback of CR9 credit on later sale of faulty goods

Change: To correct a minor drafting error.

Financial Impact: Nil.

Credits for registered persons who did not quote when entitled to quote

Change: To ensure that a credit will not be allowable under Credit ground CR2 to a registered person who was entitled to quote in respect of an assessable dealing but did not quote, if the registered person has subsequently sold the goods or applied them to own use.

Financial Impact: Nil.

Credits for repairs under warranty

Change: To ensure that credits for replacement goods used in repairs under warranty are available to third party repairers and to limit credits available in respect of warranty repairs to cases where the value of the warranty has been included in the taxable value of the original goods.

Financial Impact: Nil.

Credit entitlement where there is a bad debt

Change: To extend the circumstances in which a credit will be available for tax paid on goods which are the subject of a bad debt.

Financial Impact: Nil

Computer programs on microchips

Change: To ensure that tax is not payable on the value of a computer program embodied on mediums other than non-erasable microchips.

Financial Impact: Nil.

Prescribed rules for export sales

Change: To include a reference in the definition of *prescribed rules for export sales* to the conditions that must be complied with in order for a credit to be available in respect of goods sold to eligible Australian or foreign travellers.

Financial Impact: Nil.

(b) Sales Tax (Exemptions and Classifications) Act 1992

Business Input Exemptions for the Oil Industry

Change: To ensure that all business inputs exemptions are available to qualifying oil companies.

Financial Impact: A negligible cost to the revenue.

Building materials

Change: To ensure that the new exemption Item for building materials does not inadvertently exclude some materials covered by the existing law.

Financial Impact: Nil.

Crude oil and Diesel oil

Change: To restore the unconditional exemption for crude oil that is available under the existing law and to make diesel oil an always exempt good.

Financial Impact: A negligible cost to the revenue.

Parts for spectacles and wheelchairs

Change: To provide an exemption from tax for parts for spectacles and parts for wheelchairs.

Financial impact: Nil.

Chapter 2

Swimming Pools

Re-imposition of Sales Tax on *In Situ* Swimming Pools

A. Introduction

This chapter describes how the new sales tax law will apply to swimming pool shells, including spa pool and hot tub shells, that are constructed *in situ*.

2.2 In February 1992 the High Court ruled that legislation purporting to impose sales tax on swimming pools constructed *in situ* was of no effect (*Mutual Pools & Staff Pty Ltd v Federal Commissioner of Taxation (1992) 104 ALR 545*). The Court found that the legislation did not conform with the requirements of section 55 of the Constitution. One of the measures contained in these Bills is the re-imposition of sales tax on *in situ* pools at the rate of 20 per cent.

B. Sales Tax Imposition (*In Situ* Pools) Bill 1992

Explanation

2.3 This Bill will impose sales tax to the extent that the tax relates to *in situ* pools. *[clause 3]*

2.4 The pools and tubs on which the Bill imposes tax are those covered by new section 12A to be inserted in the *Sales Tax Assessment Act 1992* by the other Bill in this package - the *Sales Tax Laws Amendment Bill (No. 2) 1992*.

2.5 Constitutional requirements for separate Acts to impose sales tax: For Constitutional reasons, sales tax payable from the first taxing day will be imposed by 4 Acts:

- the *Sales Tax Imposition (Excise) Act 1992* - to the extent that it is a duty of excise;
- the *Sales Tax Imposition (Customs) Act 1992* - to the extent that it is a duty of customs;
- the Act proposed by this Bill - to the extent it is a tax on *in situ* swimming pools; and

the *Sales Tax Imposition (General) Act 1992* - to the extent that it is not a duty of excise, a duty of customs or a tax on *in situ* swimming pools.

2.6 Property of a State will not be taxed: The Bill contains a provision to the effect that it will not impose a tax on property of any kind belonging to a State. The term 'property of any kind belonging to a State' will have the same meaning that the term has in section 114 of the Constitution.*[clause 4]*

Note: Section 114 states that the Commonwealth shall not impose any tax on property of any kind belonging to a State.

2.7 Commencement: The Bill will commence on the day it receives the Royal Assent.*[clause 2]*

C. Amendments to the *Sales Tax Assessment Act 1992*

Summary

2.8 The Sales Tax Laws Amendment Bill (No. 2) 1992 will insert new section 12A in the *Sales Tax Assessment Act 1992*. The new section will apply to swimming pool, spa pool and hot tub shells constructed *in situ* in Australia (*in situ* pools). The Bill will also amend the *Sales Tax Imposition (General) Act 1992* so that tax is not imposed on *in situ* pools by that Act.

Explanation

2.9 Who will be liable to pay sales tax:

- (a) **A pool builder** who constructs or erects a pool shell *in situ* in Australia under a contract with a pool purchaser.
[new paragraph 12A(1)(a) - clause 6 of the Sales Tax Laws Amendment (No. 2) Bill 1992]
- (b) In any other case **the pool owner**. The most common example of other circumstances in which a pool might be built in Australia is construction by the pool owner. A significant proportion of *in situ* pool construction is carried out by **owner-builders**. In such cases, instead of getting a builder to construct the pool, the owner takes on the role of organising the pool's construction. This can include constructing some or all of the pool herself or himself.
[new paragraph 12A(2)(a) - clause 6 of the Sales Tax Laws Amendment (No. 2) Bill 1992]

2.10 Goods manufactured in Australia: The construction *in situ* of a pool shell by a pool builder or owner-builder will be taken to be the manufacture of goods under the new sales tax law. Broadly, the responsibilities and concessions that apply to manufacturers will also apply to pool builders and owner-builders. As is the case with manufacturers, for sales tax to apply it is not necessary for a builder to personally 'manufacture the goods' - organising others to undertake the work will be sufficient.

2.11 When will the liability occur: When the construction or erection of the walls and floor of the pool shell or container is completed. The usual requirements for payment of the tax will apply:

- (a) **In the case of a pool builder:** The pool builder will be taken to have sold the pool by retail, to the pool purchaser, immediately after the construction has been completed. This will be an assessable dealing subject to sales tax;

[new subsection 12A(4) - clause 6 of the Sales Tax Laws Amendment (No. 2) Bill 1992]

- (b) **In the case of an owner-builder:** The owner-builder will be taken to have applied the pool to her or his own use immediately after construction has been completed. This will be an assessable dealing subject to sales tax.

[new subsection 12A(5) - clause 6 of the Sales Tax Laws Amendment (No. 2) Bill 1992]

2.12 When does the construction of a shell begin and when is it complete: A pool shell is the walls and floor of the pool or the structure that is the container for the pool. Sales tax will not apply to:

- (a) any excavation, clearing, levelling, landscaping or other earthworks associated with a swimming pool, spa pool or hot tub constructed *in situ*;
- (b) painting, tiling, treating or finishing the pool shell;
- (c) coping of any kind; or
- (d) installing any drainage, heating, lighting, power supply, water supply or filtering or pumping equipment in, or in connection with, the *in situ* pool.

[new subsection 12A(9) - clause 6 of the Sales Tax Laws Amendment Bill(No. 2) 1992]

2.13 Construction of the shell will commence when the first steps are taken to build the floor and or walls of the shell. In most cases this will

occur when the tying and shaping of the steel reinforcing cage commences. Another example would be when prefabricated wall or floor sections commence to be installed.

2.14 Construction will be complete when the shell is capable of holding water but not necessarily waterproof. For example, in the case of a shell constructed from poured concrete, when the concrete is dry.

2.15 For the purposes of this Bill, a pool shell would normally not include a pool liner. However in the case of some larger pools the liner is actually the container or walls and floor of the pool. These pools are built mainly of sand and liner with some concrete at one or both ends of the pool. Without the liner there would be no container for the water. In these cases the liner will form part of the shell for the purposes of new section 12A.

2.16 Small business exemption will not apply: The small business exemption will not be available to pool builders and owner-builders in relation to *in situ* pool assessable dealings.

[new subsection 12A(6) - clause 6 of the Sales Tax Laws Amendment (No. 2) Bill 1992]

2.17 Taxable value of a pool shell: The taxable value that will apply to most *in situ* pools, i.e., those of a kind usually installed by or for householders, will be the price (excluding sales tax) for which the pool builder or owner-builder could purchase a comparable in-ground fibreglass pool shell by wholesale.

[new subsection 12A(7) - clause 6 of the Sales Tax Laws Amendment (No. 2) Bill 1992]

2.18 However, fibreglass pool shells are not manufactured in very large dimensions such as olympic pools and the lagoon style pools used by resort complexes. The taxable value of pools of this kind will be the price for which the pool builder or owner-builder would pay another pool builder to build the pool.

[new subsection 12A(8) - clause 6 of the Sales Tax Laws Amendment (No. 2) Bill 1992]

2.19 Commencement: Sales tax will be payable on pool shells constructed *in situ* in Australia by a **pool builder** if the contract is entered into on or after 1 January 1993.

[new paragraph 12A(1)(c) - clause 6 of the Sales Tax Laws Amendment (No. 2) Bill 1992]

2.20 Sales tax will be payable on pools constructed *in situ* in Australia by an **owner-builder** if the construction begins on or after 1 January 1993.

[new paragraph 12A(2)(c) - clause 6 of the Sales Tax Laws Amendment (No. 2) Bill 1992]

2.21 Amendment of the *Sales Tax Imposition (General) Act 1992:*
The sales tax on *in situ* pools will be imposed by the Sales Tax Imposition (In Situ Pools) Bill 1992. For Constitutional reasons the tax must be imposed under a separate Act. A related amendment to be made by the Sales Tax Laws Amendment Bill (No. 2) 1992 makes it clear that the *Sales Tax Imposition (General) Act 1992* does not impose tax on *in situ* pools.*[clause 20]*

Chapter 3

UHF Television Transmitters

Ultra High Frequency (UHF) Transmitters For Use By Television Stations

Summary

Item 105 of the *Sales Tax (Exemptions and Classifications) Act 1935* has an expiry date of 1 January 1993. This expiry date will be extended to 1 January 1994.

Explanation

3.2 Item 105 provides exemption for certain UHF transmitters for use in transmitting television programs to the general public. The concession is limited to UHF transmitters installed ready for use before 1 January 1993. The concession is to be extended to 1 January 1994.

3.3 Because Item 105 had an expiry date of 1 January 1993 it was not carried forward to the new sales tax law. Rather its operation was preserved by section 11 of the *Sales Tax Amendment (Transitional) Act 1992* which allows Item 105 in the *Sales Tax (Exemptions and Classifications) Act 1935* to extend beyond the time that Act will cease to have effect. The alteration of the date in Item 105 to read 1 January 1994 will, in conjunction with section 11, extend the UHF concession to that date.

[clause 4 of the Sales Tax Laws Amendment Bill (No. 2) 1992]

Chapter 4

Miscellaneous changes to the
Sales Tax Assessment Act 1992

Miscellaneous Changes to the *Sales Tax Assessment Act 1992*

This chapter discusses the miscellaneous changes proposed to the *Sales Tax Assessment Act 1992* as part of the fine-tuning of the new sales tax law. The changes generally do not represent new policy. Rather, they are primarily technical amendments designed to ensure that the new provisions apply as intended.

4.2 The changes discussed in this chapter cover the following areas of the law:

- A. Use of goods as raw materials**
- B. Containers for export**
- C. Taxable dealings with goods that are the contents of a container**
- D. Registration entitlement**
- E. Credits**
- F. Standard grounds for quoting a registration number**
- G. Computer programs embodied on microchips**
- H. Prescribed rules for export sales**

A. Use of goods as raw materials

Summary

4.3 Goods will only be taken to be used as raw materials where:

- (a) in relation to manufactured goods, the goods are dealt with in such a way in manufacturing other goods that the goods become an integral part of the manufactured goods; and
- (b) in relation to property, the goods are dealt with in such a way in constructing or repairing property that the goods become an integral part of the property.

Explanation

4.4 Under the present law, exemption for raw materials used in the manufacture of goods, or in constructing or repairing buildings, is limited to goods that are incorporated into the manufactured goods or buildings as part of the manufacturing, construction or repair process, as the case may be.

4.5 The amendments are of a technical nature and will ensure that the current treatment of raw materials is carried through to the new law.
[Clause 8 of Sales Tax Laws Amendment Bill (No. 2) 1992]

B. Containers for export

Summary

4.6 Exemption will apply to new containers for export regardless of the nature of their contents.

Explanation

4.7 Under the present law, all goods (including containers) that are exported, or are to be exported, are exempt from tax. Under the new law, the placing of contents into a new container is an application to own use of the container (referred to as a *packing AOU*). There is an exemption from tax for the packing AOU if the container and its contents are intended for export. However, the exemption will only apply if the contents of the container consist of wholly assessable goods. If the contents of the container consist wholly or partly of Australian used goods, the exemption does not apply *[section 31 of Sales Tax Assessment Act 1992]*. A similar restriction applies to the related Credit ground for containers exported *[Credit ground CR 13 in Table 3 of Schedule 1 to Sales Tax Assessment Act 1992]*.

4.8 The exemption should be available for all new containers for export regardless of the nature of the contents of the container.

4.9 The amendment will remove the condition that the contents of containers for export must consist wholly of assessable goods from both the exemption provision and the related credit provision.
[Clauses 11 and 16 of Sales Tax Laws Amendment Bill (No. 2) 1992].

C Taxable dealings with goods that are the contents of a container

Summary

4.10 The value of a container will not be excluded from the taxable value of an assessable dealing with its contents if:

- the container has previously been the subject of a taxable dealing; and
- a taxpayer has obtained a credit for the tax on that dealing.

Explanation

4.11 The general scheme of the new law is that containers for assessable goods will not be taxable in their own right. Instead, the value of the container will be included in the taxable value of the contents. However, the value of a container will not be so included if the container has previously been the subject of a taxable dealing in its own right (i.e. before it became a container). The purpose of the exclusion is to prevent double taxation of the container [*subsection 35(4) of the Sales Tax Assessment Act 1992*].

4.12 There is a technical defect in that, while there may have been a previous taxable dealing with the container, a taxpayer may have subsequently obtained a credit for the tax payable on that dealing. If this happens, the new law would still exclude the value of the container from the taxable value of a dealing with its contents. As a result, no tax would ever be payable on the value of the container.

4.13 The amendment will ensure that the value of the container is excluded from an assessable dealing with its contents only if, at the time of the dealing, the taxpayer for that dealing 'has previously borne tax on the container'.

[Clause 12 of the Sales Tax Laws Amendment Bill (No. 2) 1992]

D. Registration entitlement

Summary

4.14 A person will be excluded from an entitlement to register if that person's only qualifying activity involves the manufacture of goods on another manufacturer's premises, and the goods are identical to the goods manufactured by the other manufacturer.

Explanation

4.15 Under the new law, a dealing with goods by the manufacturer is an assessable dealing only if the goods were manufactured in the course of a business. However, there is one situation where the new law will treat the manufacture as occurring in the course of a business, even if it does not. This is where, broadly, a person manufactures goods on another manufacturer's premises and the goods are identical to goods manufactured by the other manufacturer. The intention of the new law is that persons who manufacture goods only in these circumstances, and who are not carrying on a business, should not be entitled to register.

4.16 There are two general grounds for registration under which these persons could register if not specifically excluded. The new law only excludes them from one [*Subsection 78 (4) of Sales Tax Assessment Act 1992*].

4.17 The amendment will exclude these persons from registration under the second of the relevant general grounds for registration.
[Clause 14 of Sales Tax Laws Amendment Bill (No. 2) 1992]

E. Credits

Clawback of CR9 credit on later sale of faulty goods

Summary

4.18 A minor technical amendment is required to section 58 of the *Sales Tax Assessment Act 1992*.

Explanation

4.19 The amount to be paid under this provision is calculated by reference to a formula set out in the Act. The formula is designed to clawback the amount of the original credit to the extent that the claimant has recouped some or all of the tax originally borne by later selling the faulty goods [*Section 58 of Sales Tax Assessment Act 1992*].

4.20 The formula contains a minor printing error and therefore delivers an incorrect result.

4.21 The "minus" sign in the formula will be changed to a "plus" sign. This will ensure that the correct proportion of the credit is recouped. Also the term 'faulty' as it appears in section 58 will be amended to read 'defective' to bring the terminology into line with that in Credit ground CR9 in Table 3.

[Clause 13 of Sales Tax Laws Amendment Bill (No. 2) 1992]

Credits for registered persons who did not quote when entitled to quote

Summary

4.22 A credit will not be allowable (under Credit ground CR2) to a registered person who was entitled to quote in respect of an assessable dealing but did not quote, if the registered person:

- has subsequently sold the goods; or
- has applied the goods to own use ("AOU") and the AOU was either a taxable dealing, or would have been a taxable dealing if it was an assessable dealing.

Explanation

4.23 The new law will allow a credit for a registered person who has borne tax in respect of an assessable dealing with goods, provided that the person was entitled to quote on that dealing and has not passed the tax on to some other person [*Credit ground CR2 in Table 3 of Schedule 1 to Sales Tax Assessment Act 1992*].

4.24 A credit would be available even though the claimant may have subsequently dealt with the goods in taxable circumstances before claiming the credit. The subsequent dealing will generally not be a taxable dealing, so that the goods would ultimately not bear tax even though they are dealt with in a taxable manner. While the credit would only be available to the extent that the claimant has not passed on the tax, the claimant could obtain a commercial advantage by selling (or leasing) the goods for a tax-exclusive price and then obtaining a credit from the Commissioner.

4.25 The amendment will exclude any entitlement to a credit under Credit ground CR2 if either of the following conditions is satisfied:

- the claimant has sold the goods; or
- the claimant has applied the goods to own use and the AOU was taxable (or would have been taxable if the AOU had been a taxable dealing).

[Clause 16 of Sales Tax Laws Amendment Bill (No. 2) 1992]

Note: This amendment will not affect the registered person's entitlements under other credit grounds.

Credits for Repairs under warranty

Summary

4.26 A credit will be available for tax borne on replacement goods used in repairs carried out under warranty, regardless of whether the repairer is the warranty giver, provided that the value of the warranty was included in the taxable value of the last assessable dealing with the original goods.

Explanation

4.27 The new law will provide a credit for tax borne on goods that are used, while still assessable goods, as replacements for other goods that are found to be defective. The goods must be replaced under warranty [*Credit ground CR9 in Table 3 of Schedule 1 to Sales Tax Assessment Act 1992*].

4.28 The credit ground as currently drafted is restricted to cases where the replacement of the goods is carried out by the actual warranty giver. In many cases, however, warranty repairs are carried out by other persons on behalf of the warranty giver. Further, the credit ground does not require that the value of the warranty has been included in the taxable value of the original goods.

4.29 The amendment will ensure that credit ground CR9 will apply where warranty repairs are carried out by *any* person, provided that the value of the warranty has been included in the taxable value of the last assessable dealing with the original goods (or would have been included in the taxable value if the last assessable dealing with the original goods had been a taxable dealing).

[Clause 16 of Sales Tax Laws Amendment Bill (No. 2) 1992]

Credits for Bad debts

Summary

4.30 A credit will be available where tax has been paid in respect of a local entry by a person who has later written off as a bad debt some or all of the amount for which those goods were subsequently sold.

Explanation

4.31 The present law contains a credit provision for the tax component of bad debts written off in these circumstances. The corresponding credit ground in the new law refers only to tax paid on *an assessable dealing*

that is a sale or AD4a [Credit ground CR21 in Table 3 of Schedule 1 to Sales Tax Assessment Act 1992].

4.32 The new credit ground does not allow for a credit where tax has been paid at the time of local entry of goods by a retailer who later incurs a bad debt in respect of the sale of those goods.

4.33 The amendment will extend the coverage of credit ground CR21 to include amounts written off by retailers who have paid tax at the time of local entry of goods and who later incur bad debts in respect of the sale of those goods.

[Clause 16 of Sales Tax Laws Amendment Bill (No. 2) 1992]

F. Standard grounds for quoting a registration number

Summary

4.34 Registered persons will be entitled to quote their sales tax registration number when acquiring goods specifically for sale to eligible Australian travellers.

Explanation

4.35 Under the new law, persons who intend to sell assessable goods to *eligible Australian or foreign travellers* in accordance with the prescribed rules for export sales will be entitled to register for sales tax purposes *[Paragraph 78 (1) (c) of Sales Tax Assessment Act 1992]*.

4.36 The corresponding quoting ground refers only to goods for sale to *eligible foreign travellers* *[Paragraph 82 (1) (e) of Sales Tax Assessment Act 1992]*.

4.37 An extra quoting ground will be added to the standard quoting grounds for registered persons to allow registered persons to quote for goods intended for sale to *eligible Australian travellers* in accordance with the prescribed rules for export sales.

[Clause 15 of Sales Tax Laws Amendment Bill (No. 2) 1992].

G. Computer programs embodied on microchips

Summary

4.38 The value of a computer program will not be subject to tax unless the program is embodied in a non-erasable microchip.

Explanation

4.39 Under the present law, any computer program that is not embodied in a microchip is treated as a "tax advantaged computer program". In any taxable dealing with a *tax advantaged computer program*, the value of the computer program is excluded from the taxable value of the goods. Tax is effectively payable only on the value of the carrying medium.

4.40 Under the new law, a similar concession has been extended to computer programs embodied on erasable microchips [*Sections 5 and 14 of Sales Tax Assessment Act 1992*].

4.41 The amendments to give effect to the new treatment of computer programs embodied on erasable microchips have had the unintended effect of removing the concessional treatment of some other computer programs. For example, as currently expressed, the new law would deny the concessional treatment of computer programs embodied permanently on a medium other than a microchip. These programs are *tax advantaged computer programs* under the present law.

4.42 The amendments will retain the existing taxable value concessions for *tax advantaged computer programs* as well as providing a similar concession to computer programs embodied on erasable microchips.
[*Clauses 7 and 9 of Sales Tax Laws Amendment Bill (No. 2) 1992*]

H. Prescribed rules for export sales

Summary

4.43 The definition of *prescribed rules for export sales* will be amended to include a reference to the conditions that must be complied with in order for a credit to be available in respect of goods sold to eligible Australian or foreign travellers.

Explanation

4.44 Under the new law, tax will not be imposed on dealings with goods that are exported, or intended to be exported, by persons travelling overseas provided that certain conditions are satisfied. These conditions will be contained in regulations made under the *Sales Tax Assessment Act 1992*. If these conditions are satisfied:

in the case of a *foreign traveller*, a sale of the goods to the traveller will be exempt;

in the case of an *Australian traveller*, the sale will not be exempt but a credit will be available to the seller on proof of export by the seller.

4.45 The definition of the *prescribed rules for export sales* refers only to the conditions that must be satisfied in order for the goods to be exempt (i.e. the conditions to be satisfied in respect of sales to foreign travellers). It does not refer to the conditions that must be satisfied in order for a credit to be available in respect of sales to eligible Australian or foreign travellers.

4.46 The amendment will extend the definition of *prescribed rules for export sales* to include a reference to the conditions that must be satisfied in order for a credit to be available in respect of sales made to eligible Australian or foreign travellers.

[Clause 7 of Sales Tax Laws Amendment Bill (No. 2) 1992]

Commencement

4.47 The Bill will commence from the day on which it receives the Royal Assent. However, the changes to the *Sales Tax Assessment Act 1992* that are made by this Bill will not apply to dealings before 1 January 1993.

[clause 2 of the Sales Tax Laws Amendment Bill (No. 2) 1992]

Chapter 5

Miscellaneous changes to the
*Sales Tax (Exemptions and
Classifications) Act 1992*

Miscellaneous Changes to the Sales Tax (Exemptions and Classifications) Act 1992

This chapter discusses the miscellaneous changes proposed to the Sales Tax (Exemptions and Classifications) Act 1992 as part of the fine-tuning of the new sales tax law. The changes do not represent new policy but rather they restore or clarify existing concessions under the current law.

5.2 The changes discussed in this chapter cover the following goods:

- A. Business inputs for the oil industry**
- B. Building materials**
- C. Crude and diesel oil**
- D. Parts for spectacles and wheelchairs**

A. Business inputs for the oil industry

Summary

5.3 An amendment is proposed to ensure that all business inputs exemptions are available to qualifying company groups in the oil industry.

Explanation

5.4 Certain business inputs are available to companies engaged principally in the sale of petroleum and oil products by wholesale where the goods have been manufactured by another company in the same company group. The intention of the concession is to provide these companies with the same business input concessions that are available to other petroleum companies that sell similar products by wholesale. These other companies are entitled to business input concessions because they own the crude oil from which the various petroleum products sold by them are made.

5.5 However, insofar as oil companies in qualifying company groups are concerned, the new law does not cover all of the business inputs concessions that are available to the oil companies that supply the crude oil. In particular, exemption will not be available for equipment used to test the quality of the petroleum products, to label or package the petroleum products, to clean the storage receptacles for those products, or

to process or treat those products to bring them into the final form in which they are to be used or marketed.

5.6 The amendment will ensure that qualifying oil companies will receive the same business input concessions that are presently available to oil companies that own and supply the crude oil to independent refiners to be made up into petroleum products for sale by them.

[clause 18 of the Sales Tax Laws Amendment Bill (No. 2) 1992]

B. Building materials

Summary

5.7 Exemption Item 39 provides exemption for certain goods if they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures, structures or other works that are attached to land. The goods exempted are specifically listed. The following goods are to be added to the goods listed in Item 39:

- (a) goods having structural uses similar to plaster and plaster products; and
- (b) doors and door frames, windows, shutters, window frames, louvre frames, window sashes, and window screens.

Explanation

5.8 In simplifying the exemption items relating to building materials it was not considered necessary to specify all goods covered by the existing building materials items. The existing items overlap to a considerable extent and in a simplified law it was desirable to eliminate the overlaps as far as possible. The elimination of overlapping provisions has resulted in the possibility that certain building materials exempt under the existing law do not qualify for exemption under the new law.

5.9 For example, in the new law windows and window frames were considered to be covered by the term "structural building units", but doubts have been raised that they fit that description.

5.10 The goods listed in paragraphs (a) and (b) in the summary of the change above will be specifically added to Item 39. This will make it clear that the goods specified are exempt where they are of a kind ordinarily used as raw materials in the construction or repair of buildings, fixtures etc.

[clause 18 of the Sales Tax Laws Amendment Bill (No. 2) 1992]

C. Crude oil and diesel oil

Summary

5.11 Exemption Item 55 provides exemption for a range of fuels, subject to the goods specified not being marketed principally for a use other than as a fuel. There will be two changes to the Item:

- (a) diesel oil will be added to the goods listed in the Item; and
- (b) the marketing condition will be removed so that the goods listed will be exempt irrespective of how they are marketed.

Explanation

5.12 Under the existing law most goods used as fuels are unconditionally exempt from sales tax. They are not subject to any marketing test. Crude oil is among the goods presently unconditionally exempted. Diesel oil is not specifically listed in the existing law but it qualifies for exemption under sub-item 48(1) which exempts substances for use as fuel for internal combustion engines. Because diesel oil is used virtually exclusively as a fuel for internal combustion engines it has been treated administratively as unconditionally exempt.

5.13 The removal of the marketing test from Item 55 will automatically result in crude oil becoming an always exempt good because it is specifically listed in subitem 55(1). The listing of diesel oil in sub-item 55(2) will also make it an always exempt good.

[clause 18 of the Sales Tax Laws Amendment Bill (No. 2) 1992]

D. Parts for spectacles and wheelchairs

Summary

5.14 An exemption for parts will be added to Exemption Items 85 and 94.

Explanation

5.15 Under the existing law there is an exemption for parts for spectacles and parts for wheelchairs and other carriages for disabled persons. In drafting the new law the exemption for parts was inadvertently omitted from these Items.

5.16 Exemption Items 85 and 94 will be amended to include parts.

[clause 18 of the Sales Tax Laws Amendment Bill (No. 2) 1992]

Commencement

5.17 The Bill will commence from the day on which it receives the Royal Assent. However, the changes to the *Sales Tax (Exemptions and Classifications) Act 1992* that are made by this Bill will not apply to dealings before 1 January 1993.

[clause 2 of the Sales Tax Laws Amendment Bill (No. 2) 1992]

