

1990

THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Sales Tax Laws Amendment Bill (No. 3) 1990

EXPLANATORY MEMORANDUM

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



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A General Outline

What the Bill will do	<p>The Bill will amend the <i>Sales Tax (Exemptions and Classifications) Act 1935</i> to exempt items of computer equipment from sales tax if they are used in any of the following activities:</p> <ul style="list-style-type: none">• the engineering or technical design of goods for manufacture;• production-related activities such as the scheduling of production, the purchasing of materials, the storage, handling and dispatch of certain finished goods;• the finalising of text or artwork to be printed;• combinations of the above uses together with use as aids to manufacture. <p>The exemptions will apply where 50% or more of the use of the computer equipment is for these activities.</p> <p>These changes were announced in the 1990-91 Budget.</p> <p>The Bill will also make some related changes to the <i>Sales Tax Regulations</i>.</p>
The financial impact of the Bill	<p>The estimated cost of providing exemption for this computer equipment is \$44m in 1990-91 and \$70m in 1991- 92.</p>

B. Introduction: What is sales tax?

The following outline of sales tax law will help you 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 applied to goods. In general, it applies at the wholesale level, but both manufacturers and importers, as well as wholesalers, may have to pay it. The tax is based on the last wholesale price of goods or a value equivalent to it.

To what goods does the tax apply?

Produced here or overseas - All goods produced in, or imported into, Australia for use here bears the tax unless the law specifically exempts them from it.

Imports by consumers - The tax may also apply to imported goods entered into Australia by someone other than a wholesaler for consumption here. For example, a retailer or consumer may have entered the goods.

Second-hand goods - Ordinarily, second-hand goods that have been used in Australia are not taxable. However, imported goods that have been used overseas are normally taxed as though they were new goods.

Leases - Sales tax can apply to leases of goods by manufacturers and wholesalers.

Own use - If manufacturers use their own manufactured goods they may have to pay sales tax on them.

How do Registration and the Sales Tax certificate system work?

The law requires manufacturers (other than small manufacturers) and wholesalers to register with the Australian Taxation Office (ATO) unless they deal only in goods exempt from sales tax. When they purchase goods, or enter imported goods, for use in Australia, they can acquire the goods free of tax by quoting their certificates.

Small manufacturers are those whose annual turnover is less than \$50,000 or whose annual sales tax liability would be less than \$1,000.

The system of quoting certificates is designed to defer payment of the tax until the last wholesale sale.

How does the ATO keep track of these transactions?

The ATO requires registered manufacturers and wholesale merchants to supply details of their 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). 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.

How do we know which goods are exempt?

Another Act, the *Sales Tax (Exemptions and Classifications) Act 1935* lists, in its First Schedule, classes of goods that are exempt from tax. It also specifies the circumstances in which the particular exemptions apply.

Some goods are exempted unconditionally, while others are exempted only in certain circumstances; for example, if the goods are used by specified organisations, or for a particular purpose.

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).

What procedures must registered persons follow?

The *Sales Tax Regulations* deal with such things as:

- registration
- quotation of certificates
- payment of tax
- refunds

What changes will the Bill make?

The Bill will amend both the *Sales Tax (Exemptions and Classifications) Act 1935* and the *Sales Tax Regulations*.

C. Main Features of the New Exemptions

1. The Background to the Exemptions

Manufacturing use is the basic link between the equipment and the exemptions

Computer hardware generally qualifies for sales tax exemption as an aid to manufacture where it is used directly in the physical manufacturing process. This process commences with the first treatment of raw materials, and finishes with completion of the manufactured product.

For example, exemption as an aid to manufacture is available for manufacturing machines and robots controlled by a computer residing in the machine.

The Bill will take account of new technologies

However, the aids to manufacture provisions do not recognise many of the activities which computers now perform in relation to manufacturing. This is partly because the activities involve new manufacturing technologies, and also partly because many of these activities take place before the physical manufacturing process begins.

For example, computers used for the computer-aided design (CAD) of goods to be manufactured generally do not qualify for exemption as aids to manufacture as they are not used directly in the actual processing or treatment of the raw materials or the work in progress.

There are three broad criteria for the exemptions

This Bill will provide exemptions for computer hardware where all three of the following broad criteria are satisfied:

- Firstly, the piece of equipment must be an "item of computer equipment" as defined;
- Secondly, 50% or more of the use of the equipment must be in any one or more of 4 broad categories of listed activities;
- Thirdly, the equipment must be for use by certain groups of people.

The Bill deals with these three areas - equipment, use and people - but not in that order

The clauses in the Bill do NOT follow this sequence. A cross-reference guide is provided at the end of this Explanatory Memorandum to help relate the clauses to the changes to be made.

2. Equipment: What equipment will be eligible?

To what equipment will the exemptions apply?

To qualify for exemption, each individual piece of computer equipment will need to satisfy the definition of "eligible computer equipment" given in the Bill.

The definition lists a number of pieces of computer hardware. This is not an exhaustive list. A piece of equipment which falls within the ordinary meaning of the term "item of computer equipment" will still be eligible for exemption.

The exemption will apply to mainframe computers, mini or personal computers and equipment associated with their operation, such as terminals, keyboards, printers, plotters, disk drives, storage devices and other similar equipment. Exemption will also apply to modems which form part of a computer system and cables for use in connecting eligible pieces of computer equipment.

What equipment will not qualify for exemption?

Some pieces of equipment are specifically excluded from the definition. Exemption will not be available for computer furniture such as desks and chairs; anti-static mats; and telecommunications equipment such as satellite dishes and PABX systems.

The next step

To be eligible for exemption, the second requirement is that the item of computer equipment must be used in a specified activity.

3. Uses: What activities will be eligible for exemption?

What activities will be eligible for exemption?

To be eligible for exemption, 50% or more of the use of an item of computer equipment must be in any one of the following four broad activities:

- engineering or technical design of goods for manufacture;
- production-related activities;
- finalisation of text or artwork to be printed;
- combinations of any of the above uses together with use in aids to manufacture activities.

These activities are outlined below.

DESIGN/ENGINEERING ACTIVITIES

What activities will qualify?

The Bill will define "design/engineering computer equipment". This term will cover computers for use in the engineering or technical design of goods for manufacture. Engineering will include analysis and testing of the specifications of goods, while technical design will cover all aspects involved in the detailed design of goods.

What activities will not qualify?

Certain activities are specifically excluded from this exemption. Broadly, these include:

- audio-visual production
- architectural/structural design
- certain computer software design
- the work of certain authors and secretaries.

PRODUCTION-RELATED ACTIVITIES

What activities will qualify?

The Bill will define "production-related computer equipment". Production-related activities will include the scheduling, sequencing, monitoring, controlling and costing of the processes of manufacture. It will extend to the ordering, handling and controlling of new materials to be used in the manufacture of goods, such as Just-In-Time materials control systems.

What activities will not qualify?

Broadly speaking, marketing, sales and management accounting activities will not qualify as production-related activities.

PRINT-RELATED ACTIVITIES

What activities will qualify?

The Bill will define equipment used in these activities to be "print-related computer equipment". Exemption will be available for computer equipment used for the following activities:

- the finalisation of text or artwork for printing, including for example the final layout of text by a typesetter, or the production of forms by a commercial printer;
- the recording of newspaper advertisements;
- sub-editing newspaper articles;
- the production of technical manuals and other manufacturing documentation.

What activities will not qualify?

Exemption will not be available for an author who finalises the format or typesetting of his/her original works. Nor will exemption be available for the activities of an office secretary.

MIXED USE ACTIVITIES

What about mixed uses of the equipment?

The Bill will also provide exemption for computers that are used for more than one exempt activity, and where the total use on all the exempt activities is 50% or more. This exemption will cover the aids to manufacture provisions as well as the new exempt activities.

For example, where a computer is used 30% of its time in an aid to manufacture activity and 30% for technical design work, then exemption will apply because the total exempt usage of the computer exceeds 50%.

HOW MUCH USE MUST THERE BE TO QUALIFY?

To be eligible for any exemption, 50% or more of the use of the computer equipment will have to be in the relevant activity or activities. For example, a terminal shared by a marketing manager and a production control manager will have to be used more than half of the time for production activities to qualify for exemption.

4. People: Which users will qualify for the exemptions?

What categories of people are involved?

There are broadly four groups of people who will be eligible for these exemptions:

- Manufacturers registered under the sales tax law.
- Unregistered manufacturers other than those who operate in a small way - where their average turnover is less than \$50,000 per annum.
- Persons carrying out processes or treatment to goods on behalf of manufacturers (whether or not registered).
- Sub-contractors engaged by manufacturers to carry out the exempt activities on their behalf.

5. Procedure: What steps are required to obtain an exemption?

Registered persons

A registered manufacturer will be able to purchase eligible computer equipment free of sales tax by quoting a sales tax certificate to the supplier. The *Sales Tax Regulations* will be amended to require quotation of certificate in these circumstances.

Unregistered persons

An unregistered person who is entitled to exemption will be able to claim exemption by providing to the supplier a written certificate claiming exemption. This is the same procedure that presently applies to unregistered persons who are entitled to an exemption from sales tax but who are not registered. No amendments to the law are required for this procedure.

When will the exemptions be available?

The changes in the Bill will generally apply from 19 October 1990.

D Detailed Notes on the Clauses

THE STRUCTURE OF THE BILL

In what ways does the Bill change the Act?	<p>The Bill will make the following changes to the <i>Sales Tax (Exemptions and Classifications) Act 1935</i> (referred to as the "E & C Act").</p> <ol style="list-style-type: none">1. It will insert in subclause 1(1) of the First Schedule the definitions that are necessary to support the proposed exemption items referred to in 3.2. It will insert proposed clause 2 in the First Schedule. This clause will define the six categories of computer equipment which will be eligible for exemption from sales tax in certain circumstances.3. It will insert four new exemption items in the First Schedule identifying the circumstances in which eligible computer equipment will be exempt.
In what ways does the Bill change the Regulations?	<p>The Bill will also change the <i>Sales Tax Regulations</i> in the following ways:</p> <ol style="list-style-type: none">1. It will insert two of the new definitions to be inserted in subclause 1(1), First Schedule, in the Regulations. This is necessary because those definitions are also used in the Regulations.2. It will make several changes to allow the quotation of certificates for eligible computer equipment.3. It will enable refunds to be obtained where eligible computer equipment has been purchased at a price which includes sales tax.
When will these changes take place?	<p>The Bill will come into effect on 19 October 1990 except for a minor technical amendment to be made to Regulation 12 which does not affect the exemption for eligible computer equipment.</p>

PART 1 - PRELIMINARY

Clause 1: Short title

The title of the amending Act is the *Sales Tax Laws Amendment Act (No. 3) 1990*.

Clause 2: Commencement

The amending Act will commence on 19 October 1990, except for *paragraph 7(a)*, which will commence on the day that the Act receives the Royal Assent.

Paragraph 7(a) will make a minor correction to the *Sales Tax Regulations*. This change is not directly related to computer equipment, and does not have to commence on the same day as the other provisions.

PART 2 - AMENDMENT OF THE SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT 1935

Part 2 of the Bill will amend the *Sales Tax (Exemptions and Classifications) Act 1935* to exempt certain computer equipment from sales tax.

Clause 3: Principal Act

The *Sales Tax (Exemptions and Classifications) Act 1935* is referred to as the 'Principal Act' in Part 2 of the Bill.

Clause 4: First Schedule

Summary

This clause will amend the First Schedule to the Principal Act. The clause has five parts :

Paragraph (a) will make a change to the definition of "aids to manufacture" in subclause 1(1) of the First Schedule.

Paragraph (b) will insert in subclause 1(1), in alphabetical order, the definitions that are necessary to support the new exemption items for computer equipment that are proposed to be inserted in the First Schedule by paragraph (e).

Paragraph (c) adds two new subclauses at the end of clause 1. These subclauses provide further clarification of some of the definitions proposed to be inserted by paragraph (b).

Paragraph (d) inserts a new clause 2 after clause 1. Clause 2 is central to the operation of the new exemptions as it defines the six categories of equipment which will qualify as "eligible computer equipment" for which exemption will be available.

Paragraph (e) inserts four new exemption items in the First Schedule. These items set out circumstances in which eligible computer equipment will be exempt from sales tax.

Paragraph 4(a): Change to the definition of "aids to manufacture"

Goods which are aids to manufacture are exempt from sales tax. The definition of "aids to manufacture" is included with other definitions in subclause 1(1) of the First Schedule.

Paragraph (a) will amend the definition of "aids to manufacture" by excluding "author/secretary computer equipment". A definition of this term will be inserted in subclause 1(1).

The effect of this exclusion is that if an item of computer equipment is "author/secretary computer equipment" then a manufacturer will not be entitled to obtain exemption for it as an aid to manufacture. The broad principle is that exemption will not be available for computer equipment used by authors or secretaries to finalise their work for printing.

Paragraph 4(b): New definitions

This paragraph will further amend subclause 1(1) of the First Schedule by inserting new definitions and interpretative provisions. These are necessary for determining entitlement to exemption under the proposed exemption items for computer equipment contained in paragraph 4(e).

"Architectural/structural design computer equipment"

This term will be defined to mean individual items of computer equipment mainly for use in connection with the preparation of documents relating to the construction of buildings or other structures, or the carrying out of civil engineering works.

Examples of such equipment would be computer equipment used by architects in the design of buildings or bridges, or computer equipment used by civil engineers in the design of roads or other landworks which are not goods for sales tax purposes.

NOTE: This expression appears in proposed clause 2(2)(f) as an exclusion from computer equipment for use in the engineering or technical design of goods. Consequently, this type of equipment will not be exempt.

"audio-visual production computer equipment"

This term will be defined to mean individual pieces of computer equipment that are mainly for use by the makers of cinematograph film or sound recordings in making an original film or sound recording. The phrase "cinematograph film", for copyright purposes, includes videotapes and video discs. The making of a film or sound recording means the production of the first copy of the film or the first 'master' recording.

For example, computer equipment used to generate cartoon images on a master video disc would be classified as "audio-visual production computer equipment".

NOTE: This definition appears in proposed clause 2(2)(e) as an exclusion from computer equipment for use in the engineering or technical design of goods. Consequently, this type of equipment will not be exempt.

"author"

This term has the same meaning as in the Copyright Act 1968.

Although not defined in that Act, its meaning is determined by reference to the creation of an "original work" for copyright purposes.

The general rule is that the author of a work is the person who creates the work, eg the actual writer of a play, and not those who merely supply the idea for the work.

A person who mechanically copies another's work is not an author.

The author of the work must not be confused with the owner of the copyright. For example, if "A" produced a literary work during the course of employment and the work has not been published, then A's employer owns the copyright. However, A remains the author.

NOTE: This term appears in the following definitions:-

- . "author/secretary computer equipment";
- . "eligible original literary, dramatic, musical or artistic work";
- . "eligible print finalisation activities"; and
- . "software-generation computer equipment".

"author/secretary computer equipment"

This term identifies equipment used by originators of material which is to be printed. The general principle is that exemption is not to be available for such equipment.

Computer equipment which falls within this definition will be excluded from both the technical design exemption - see proposed subclause 2(1) - and the definition of aids to manufacture.

There will be four conditions to be met for goods to satisfy this definition.

Condition 1: Item of computer equipment

The goods must be an individual "item of computer equipment". This term will be extensively defined.

**Condition 2:
Manufacture of printed matter**

The equipment must be "mainly for use in connection with the manufacture of printed matter".

This means that 50% or more of the use of the goods are connected with the manufacture of printed matter. An example of computer equipment used in this way would be equipment for the design of advertising material to be printed.

An example of computer equipment **not** for use in this way would be equipment used in the design of parts for a motor car. This would be the case even though the specifications of the part may be printed later.

**Condition 3:
Particular use**

50% or more of the use of the equipment must be in any one or more of the four following activities:

Authors. The use of computer equipment by an author to create, change or copy the author's original work. An example of this would be the writing of a novel by an author, or the writing of a business letter by a company director.

Secretaries. The use of the equipment by a person in carrying out "the functions of a secretary".

In this context, "secretary" means an office secretary. The functions of a secretary would include:

- inputting handwritten or dictated text into a word processing system for the author;
- making changes to an existing word processing document at the direction of the author;
- printing out the final copy of a document or letter of advice for signing and despatch;
- preparing standard letters of acknowledgement or general correspondence;
- making travel arrangements, preparing itineraries, agendas and schedules for travel, conferences, meetings, etc.

This is not an exhaustive list. In many cases, a person employed as a secretary may have significant responsibilities for the preparation of original reports, correspondence and other documents. Their duties may also include carrying out comprehensive research activities at the direction of their employer. It may be that such material will be original works for copyright purposes, and that the secretary will be the author of those works. In this case, the activities would be covered by the author test (above).

Inputting of Images. The equipment is used in carrying out, in relation to graphics or other images, similar functions to those that a secretary performs in relation to text. For example, the inputting into a standard computer format of the rough drawings of an architect or graphic designer.

General Journalists. The equipment is used in carrying out the functions of a "general journalist". This term will be separately defined to mean a journalist who is not carrying out the functions of a sub-editor in relation to other people's work.

**Condition 4: Not
print-related
equipment**

The equipment must not be print-related computer equipment.

This exclusion is necessary to ensure that print-related equipment, which is exempt, (ie, equipment covered by proposed subclause 2(4)) and author/secretary computer equipment, which is taxable, are mutually exclusive categories of equipment.

This distinction will prevent any individual item of computer equipment from falling into both descriptions.

NOTE: *This definition appears in:*

- *proposed paragraph (p) of the definitions of "aids to manufacture" contained in subclause 1(1) in the First Schedule to the E&C Act and in Sales Tax Sub-Regulation 4(1); and*
- *proposed paragraph 2(2)(c) as an exclusion from computer equipment for use in the engineering or technical design of goods.*

"eligible computer equipment"

This term identifies an extensive range of computer equipment, and is defined separately in proposed clause 2. Only eligible computer equipment will be exempt from sales tax under the proposed new exemption items.

"eligible original literary, dramatic, musical or artistic work"

The term is defined to mean an original literary, dramatic, musical or artistic work for copyright purposes, with three exceptions discussed later. Its purpose is to define original works to determine if the use of certain computer equipment qualifies for exemption or not.

Examples of literary work include novels, printed advertisements, written tables of factual information, business letters, catalogues of stock, etc.

There are three categories of works which are specifically excluded from the definition. These can be broadly referred to as the exclusions for layout, sub-editors and as prescribed by regulations.

1st Exclusion - layout

Any work which is "an original work wholly or principally because of features of layout".

There are some situations where the text of an article is an original literary work and the layout of that text by another person, such as a printer, may also be an original literary work in its own right. The exclusion prevents the layout work of the printer from being an original literary work. The layout work of the printer could thus result in an exempt use, because the equipment will not be "author/secretary computer equipment".

**2nd Exclusion -
sub-editors**

Works "where the author was performing the functions of a sub-editor on the work of another person" will be excluded. This would include the activities of both a checking sub-editor and a chief sub-editor.

There are times in the publishing industry when a sub-editor may alter an article written by a contributor to such an extent that the sub-editor becomes the author of a new work for copyright purposes.

The exclusion ensures that such a work is not an eligible original literary work and that an item of computer equipment mainly for use by a sub-editor in this way could result in an exempt use.

3rd Exclusion - regulations

Works which may be prescribed by way of future regulations will be excluded. This will allow for exemption to be provided to computers used in situations which, although coming within this definition, are used in a manner where exemption was intended.

NOTE: This expression appears in the definitions of:

- "author/secretary computer equipment";
- "eligible print finalisation activities"; and
- "software-generation computer equipment" as "eligible original literary works".

"eligible print finalisation activities" and "finalisation"

These definitions relate to activities in the printing industry in bringing text and images into a final form ready for printing. "Finalisation" includes the editing, formatting or typesetting of the text or images or similar activities.

An example of finalisation is where a typesetter is engaged to put typed text into a format suitable for final printing. It also covers the arranging of the layout of the text or images.

How is the definition relevant?

These terms are used in identifying print-related computer equipment, which is one of the categories of eligible computer equipment.

What are eligible print finalisation activities?

To carry out an eligible print finalisation activity four conditions must be met.

Condition 1: The activity must bring the text or images into a form from which a bromide, printing plate or a thing having the same purpose as a bromide or printing plate can be made.

An example is where an annual report is sent to a typesetter to be put into the desired form for printing.

Sometimes an activity involves the processing of text or images contained on magnetic tape or disk. In this case, the processing must result in the electronic information being processed to a condition where it can give instructions to a printing machine to produce a bromide or other article in final form.

An example is where a floppy disk on which text is contained is processed by a typesetter to rearrange that text in a form suitable for final printing.

Condition 2: If the text or images is an original work the finalisation must not be carried out by the author of the work.

An example is where a journalist writes a story for a newspaper, any editing or formatting of the story must be performed by a different person, such as a sub-editor, for the second condition to be met. Where a journalist writes, edits and formats his or her own story then the second condition will not be met and the computer used by the journalist will not qualify as being for use in an eligible print finalisation activity.

Condition 3: The third condition is that the editing or formatting of the text of images must **not** be carried out by a person performing the functions of a secretary. These functions are discussed under the notes on 'author/secretary computer equipment'.

An example is where a public officer of a company prepares the annual report in long hand and has it typed and formatted by the office secretary. The office secretary is carrying out secretarial service to the public officer and therefore the third condition is not met. The position would be the same if the public officer engaged a secretarial company to type and format the report. It is the nature of the service that is important, not who carries it out. For the third condition to be met the editing and formatting of the text must be carried out by a person who is not performing the functions of a secretary.

Condition 4: The fourth condition is that the finalisation must not be carried out by a person performing the functions of a general journalist. Ordinarily a general journalist would be involved in the creation of original

work rather than finalisation activities and therefore the activities of such a person are excluded.

However, some journalists may be involved mainly in sub-editing the work of other journalists. Where this occurs the journalist will be engaged in eligible print finalisation activities because the definition of general journalist, which follows, excludes such sub-editing.

It is necessary for all four conditions to be met for the editing, formatting or typesetting to be an eligible print finalisation activity. The meeting of one or two of the conditions will not be sufficient to make the activity an eligible one.

NOTE: The term "eligible print finalisation activities" appears in clause 2(4). Its purpose is to identify those printing activities which will result in an entitlement to exemption for computer equipment used in the printing industry.

NOTE: The term "finalisation" appears in:-

- (a) the definition of eligible print finalisation activities;
- (b) the definition of "main"; and
- (c) clause 2(4)(b)(iii).

Its purpose is to define the meaning of "finalisation" to determine whether or not exemption applies to computers used in the printing industry.

"General journalist"

A general journalist is a journalist who is not carrying out the functions of a sub-editor in relation to the work of another person.

A general journalist will include, for example, a journalist who writes articles for a newspaper or magazine. These articles may draw on externally sourced research and reference materials, and the final article will reflect the knowledge, labour, analytical judgement and literary skill of the journalist.

The term will not include a journalist who performs predominantly an editing role on third party sourced material such as international news which comes into a publishing house via a wire service.

The term will also not include a sub-editor or a journalist performing the duties of a sub-editor. Such duties would include editing material prepared by other journalists for the purposes of determining the amount of material that will be published.

NOTE: This term appears in paragraph (iv) of the definition of:

(a) "author/secretary computer equipment"; and
in paragraph (d) of the definition of:

(b) "eligible print finalisation activities".

Computers used 50% or more by general journalists will NOT qualify for exemption.

"item of computer equipment"

This term defines what equipment will be regarded as an "item of computer equipment". The definition has seven inclusive paragraphs which are largely self-explanatory.

Paragraph (a) covers a central processing unit or other processing device which is equipment designed to process electronic data. The central processing unit is usually the heart of most computer systems.

Paragraph (b) covers various storage devices on which electronic data can be stored.

Paragraph (c) covers a range of input/output devices which are used to either key or input information into a computer system or extract information from the system.

Paragraph (d) covers a range of equipment which is used in computer systems to convert computer language from one format to another or to link computer systems.

Paragraph (e) provides for prescribing computer devices by regulation. It will enable any equipment for use with computers that comes on to the market in the future to be prescribed as an item of computer equipment should it not be covered by the definition.

Paragraph (f) covers computer equipment that comprises any of the named items in the definition and any other devices. The combined items must be contained in the same housing and they must be identified as an item of computer equipment.

Paragraph (g) covers cables for use in linking together the various items of computer equipment.

While the definition specifically includes a considerable number of goods that have an identity as computer equipment, it is not exhaustive. Goods that are not named in the definition but which are known as computer equipment will be covered by the definition.

Exclusions to the definition

Certain goods are specifically excluded from the definition. These are set out below:

Paragraph (h) excludes furniture such as computer chairs and desks.

Paragraph (j) excludes anti-static mats.

Paragraph (k) excludes consumable items used with computer systems such as disks, diskettes, tapes and paper.

Paragraph (m) excludes telecommunication devices such as satellite dishes, telephone exchanges and PABX systems.

Paragraph (n) excludes a device prescribed by regulations. There are no such devices presently prescribed but provision is made to allow the exclusion of any computer device should the need arise.

NOTE: *This definition appears in*

- (a) *subclauses 2(2); 2(3), 2(4), 2(5) and 2(6); and*
- (b) *the definitions of -*
 - (i) *"architectural/structural design computer equipment"*
 - (ii) *"audio-visual production computer equipment"*
 - (iii) *"author/secretary computer equipment" and*
 - (iv) *"software-generation computer equipment".*

Its purpose is to define those items of computer equipment which will come within the exemptions for eligible computer equipment.

"main"

This definition is central to the proposed exemptions. "Main" in relation to the use of goods or the finalisation of text or images is defined to mean not less than 50%. In the exemption items and some of the definitions, the term "mainly" is used rather than "main". Because "mainly" is a derivation of "main" it has the same meaning as "main". Thus where "mainly" is used in the exemption items or definitions, it means that the use of the goods or the activity must be at least 50% for exemption to apply or the activity to be an eligible one.

Note: *This definition appears in new subclause (8). It also appears as "mainly" in-*

- (i) *architectural/structural design computer equipment;*
- (ii) *audio-visual production computer equipment;*
- (iii) *author/secretary computer equipment;*
- (iv) *eligible print finalisation activities;*
- (v) *software-generation computer equipment;*
- (vi) *paragraphs 2(2)(b), 2(3)(b), 2(4)(b), 2(5)(a), 2(5)(b), 2(6)(a), 2(6)(b); and*
- (vii) *item 158*

"software-generation computer equipment"

This definition covers individual items of computer equipment that are for use mainly in the writing or producing of computer programs other than where the equipment is for use in embodying a program in a microchip.

Exclusion to the definition

There is a second exclusion to the definition. If the computer is mainly for use in producing operating instructions for computers for use in controlling manufacturing equipment, it will not come within the definition. This is important because software-generation computer equipment will not qualify for exemption under the provisions of this Bill.

NOTE: This definition appears in clause 2(2)(d) as an exclusion to computer equipment for use in the engineering or technical design of goods. Its purpose is to ensure that the writing of a computer program does NOT qualify as the technical design of goods. - except where the program is embodied in a microchip or is to operate manufacturing equipment.

Subclause 4(c): new subclauses 1(7) and (8) of the First Schedule

New Subclause (7) : same meanings as in the Copyright Act 1968

This subclause defines a number of terms used in the definition of "audio-visual production computer equipment" to have the same meanings as in the Copyright Act 1968.

The particular terms are "cinematograph film", "make" and "sound recording".

"cinematograph film"

A cinematograph film is one where consecutive visual images on the one length of film, when screened, will produce a moving picture. The definition has been interpreted by the courts to also include motion pictures produced on video tape.

"make"

A reference to the making of a cinematograph film means, for the purposes of the Copyright Act, the doing of the things necessary for the production of the first copy of the film. The maker of the film is the person by whom the arrangements necessary for the making of the film were undertaken.

A reference to the making of a sound recording, for the purposes of the Copyright Act, means when the first record embodying the recording was produced. The maker of the sound recording is the person who owned that record at that time.

"sound recording"

This term is defined in sub-section 10(1) of the Copyright Act . It means the aggregate of the sounds embodied in a "record", which is defined to mean a disc, tape, paper or other device.

New Subclause (8) : definition of main

This subclause states that the new subclause (1) definition of main - ie, not less than 50% - does **not** affect the meaning of other terms used in the sales tax law. One of these terms is "primarily or principally".

The effect of this subclause is that it cannot be argued that the legislation uses the term "main" to describe cases of "not less than 50%," and that therefore "primarily and principally" must have some other different meaning.

Subclause 4(d)

New subclause 2(1) of the First Schedule

Eligible computer equipment

It is only eligible computer equipment that will be able to qualify for exemption from sales tax under the provisions of the Bill. This subclause defines the phrase "eligible computer equipment". It provides that the following categories of computer equipment will be eligible computer equipment:-

- (a) design/engineering computer equipment (subclause 2(2))
- (b) production-related computer equipment (subclause 2(3))
- (c) print-related computer equipment (subclause 2(4))
- (d) non-print mixed-use computer equipment (subclause 2(5))
- (e) print-related mixed-use computer equipment (subclause 2(6))
- (f) parts for computers covered by any of the above categories.

Details of each of the categories follow.

New subclause 2(2) of the First Schedule

Design engineering computer equipment

For computer equipment to qualify as "design engineering computer equipment", it must be an individual item of computer equipment as defined. It then must pass all of the following tests:

First test: who can use the equipment?

- (a) The equipment must be used by a person who:
 - (i) is a manufacturer; or

**Second test:
Engineering or
technical design**

- (ii) manufactures goods out of materials supplied by a person who will also sell the manufactured goods; or
- (iii) processes or treats goods on behalf of the manufacturer.

- (b) The equipment is to be used by a person mainly in the engineering or technical design of all goods.

The term "engineering or technical design" is not defined in the Bill. It will take its ordinary meaning and will cover all aspects involved in the technical design of goods to be manufactured.

For example it will cover the drawing up of specifications, the stress testing of the design on the computer and any other computer activity that is necessary to bring the design into a form where it can be manufactured. Engineering will also cover computers used to convert existing drawings of tools and other goods to computer specifications.

The use of the equipment must be for any or all of the following engineering or technical design activities:

- (i) the design or engineering of goods to be manufactured, processed or treated, or for likely manufacture.

It will not be necessary for goods to be actually manufactured for the exemption to apply. The term "likely manufacture" is intended to cover those situations where a manufacturer may ask two separate persons to produce a design of the same goods. The manufacturer will then select the best design. The fact that one design is not proceeded with will not prevent an exemption from applying. Both design activities will qualify because at the time the manufacturer sought them they were both for likely manufacture.

- (ii) the design or engineering of machinery, implements or apparatus to be used in the manufacturing process.

This will cover the design of equipment used by a person as aids to manufacture.

- (iii) the design of any processes, including plant layout or machining and assembly steps for goods to be manufactured.

This will cover working out the way in which the plant will operate and how the goods being manufactured will be organised through their manufacturing steps.

- (iv) the design of any processes, including plant layout or machining and assembly steps for plant and equipment used in the manufacture of machinery used to manufacture goods.

- (v) the design of operating instructions for robotic equipment used in the manufacturing process or treatment of goods.

This will cover production of computer programs (or of punched tape instructions) for use to operate robotic or other computer controlled manufacturing equipment.

- (vi) the design of operating instructions for robotic equipment used in the manufacture of plant or machinery used to manufacture goods.

This is a similar situation to (v) except that it concerns the manufacture of plant or equipment for use as aids to manufacture in producing goods.

Exclusions

Certain computer equipment will not qualify as design/engineering computer equipment even though it may be used for design or engineering. These exclusions are explained below.

**Exclusion of
Author/secretary
computer equipment**

Author/secretary computer equipment is a defined term referred to in the notes on clause 1.

Word processors and computers are widely used in the creation of original text and where this text is incorporated into printed matter it could be argued that the word processors and computers are used in the technical design of goods.

The purpose of this provision is to provide exemption for design/engineering computer equipment used to produce goods other than printed matter. Excluding paragraph (c) will ensure that the design or creation of printed matter will not gain exemption as design/engineering computer equipment.

**Exclusion of Software -
generation computer
equipment**

Software-generation computer equipment is separately defined.

Like the situation with author/secretary computer equipment, the exemption for design/engineering computer equipment is not intended to cover the creation or writing of certain computer programs. Because it could be argued that the writing of a computer program is the technical design of goods, it is necessary to exclude computer equipment used for such purposes. Note that computer programs embodied in micro chips or used to operate manufacturing equipment are not excluded - see the notes in subclause 1.

**Exclusion of Audio-
visual production
equipment**

Audio-visual production computer equipment is defined in clause 1.

The use of computer equipment to generate images to be incorporated in the master copy of a film or video does not involve the manufacture of goods. Nor does the use of computer equipment to generate sounds in the making of a first recording. Consequently, sales tax is not payable on the value of the master copy of the film, video or recording.

However, the subsequent production of multiple copies of the master does involve the manufacture of goods and it could be argued that computers used to produce master copies are for use in the design of the multiple copies which are manufactured goods. This exclusion thus

ensures that exemption is not available for computer equipment used in a non-manufacturing activity, ie the design of master films and videos.

**Exclusion of
Architectural/
structural design
computer equipment**

This equipment is defined in clause 1.

The exemption for design/engineering computer equipment is directed to the manufacture of goods, not buildings or structures. Buildings, structures and other fixtures are not "goods" for sales tax purposes and their final value or worth is not subject to sales tax. The designing of buildings and other fixtures is not an activity that is subject to sales tax. Consequently, computer equipment used for architectural and civil engineering design work is excluded from this exemption.

**Exclusion of Print-
related computer
equipment**

Paragraph 4(b) of this clause covers certain printing activities.

The creation of written work could be regarded as the technical design of the final printed matter produced. Because computers used by authors and other originators of text or graphics are to remain taxable, it is necessary to exclude such computers from this subclause. This is achieved by referring to goods not covered by paragraph 4(b) because computers used for manufacturing design purposes do not come within that paragraph.

New Subclause: 2(3) of the First Schedule

***Production-related
computer equipment***

For equipment to qualify as production-related computer equipment, it must be an individual item of computer equipment as defined. It then must pass all of the following tests:

- (a) The equipment must be used by a person who:
 - (i) is a manufacturer; or
 - (ii) manufactures goods out of materials supplied by another person who will also sell the manufactured goods; or
 - (iii) processes or treats goods on behalf of the manufacturer.

- (b) Goods must be mainly for use in any or all of the following activities;
- (i) the scheduling, sequencing, monitoring, controlling or costing of manufacture or the processing or treatment of goods. It will cover arranging how the goods will be manufactured and monitoring the various stages of manufacture. It will also cover checking the actual costs of manufacture against budgeted costs.
 - (ii) the ordering, storage, handling, monitoring, controlling or costing of materials to be purchased for use in the manufacture of goods. It will cover computers for use in inventory control such as just-in-time systems. This subparagraph will not extend to a person who merely processes or treats goods on behalf of a manufacturer. Such a person is covered by subparagraph (iii).
 - (iii) this subparagraph has the same effect as subparagraph (ii) except that it applies specifically to a person who processes or treats goods on behalf of a manufacturer. The reason for the two subparagraphs is that (ii) deals with the actual manufacture of goods while (iii) covers only the processing or treatment of goods to be manufactured.
 - (iv) the storage, handling, monitoring, controlling or dispatch of manufactured goods to other manufacturers who will use those goods in their manufacturing processes. An example is the dispatch of motor vehicle parts by a parts manufacturer to a motor vehicle manufacturer. The dispatch of completed goods is not an eligible activity where that dispatch is to a wholesaler, retailer or consumer for sale or use by such persons because it is an activity after the manufacturing process has been completed. It is more in the nature of a marketing activity.

- (v) the ordering, storage, handling, monitoring, controlling or costing of equipment for use as aids to manufacture by the manufacturer or person processing the goods. The subparagraph is of the same affect as subparagraphs (ii) and (iii) except that it relates to the manufacturing equipment rather than the goods being manufactured.

New Subclause 2(4) of the First Schedule

Print-related computer equipment

This subclause relates to the individual items of computer equipment used in print finalisation activities. It sets the conditions of use, all of which must be met.

Who must use the equipment?

The equipment must be for use by either manufacturers of printed matter, ie. a printer, or manufacturers of goods used to produce printed matter, ie. a plate maker or typesetter.

How the equipment is to be used.

50% or more of the use of the equipment must be in any or all of the following:

- (i) eligible print finalisation activities as defined in clause 1.
- (ii) the recording of advertisements for inclusion in publications such as newspapers, periodicals and magazines. The advertisements can be either classified or display. An example of an eligible use is a computer display terminal used by an employee of a newspaper to record classified advertisements received by telephone.
- (iii) the preparation or finalisation of technical manuals or other documents relating to the design/engineering activities listed in subclause 2(2) or the production-related activities listed in subclause 2(3). The subject matter of the documents must be the goods to be manufactured, which must **not** be printed matter.

This provision enables exemption for computers used in the preparation for printing of, for example, specifications and operation manuals as well as regular factory work schedules.

New Subclause: (2)(5) of the First Schedule

***Non-print related,
mixed-use computer
equipment***

This subclause relates to the individual items of computer equipment that have mixed uses, excluding any use for printing.

It allows the 50% or more use test to be met by a combination of eligible uses.

**Which persons are
eligible?**

There are two conditions that must be satisfied by the equipment in order for it to be covered by this definition. First it must be a registered manufacturer, a registered person who manufactures goods out of materials supplied by a person who will also sell the manufactured goods or a registered person who carries out a process or treatment of goods on behalf of a manufacturer or an unregistered manufacturer (subparagraphs (a)(i) and (b)(i)).

What use will qualify?

The equipment must also be mainly for use for any or all of the three classes of use identified in subclause 2(5). This means that the uses can be combined to reach 50% or more and thus qualify the computer equipment for exemption.

The use of the word "partly" in each of the three classes poses a hypothetical situation where it is not necessary for the 50% (or the primarily and principally) use test to be met in each class for the computer equipment to be eligible. A lesser use will qualify provided that it can be linked with another lesser use to reach at least 50% of total eligible use.

The first class of uses or activities this subclause covers (subparagraphs (a)(i)(A) and (b)(i)(A)) is:

- design/engineering activities (see proposed subclause 2(2)); or
- production-related activities (see proposed subclause 2(3)).

The second class of use (subparagraphs (a)(i)(B) and (b)(i)(B)) is as a hypothetical aid to manufacture (ATM), where the hypothetical use test is "partly" rather than "primarily and principally". Partial use will apply to all the activities specified in subparagraphs (a)(i) to (a)(xi) and paragraphs (b), (c) and (d) of the "ATM" definition.

Paragraphs (f), (h) and (i) of the definition of "ATM" exclude certain equipment from the definition. However, all three paragraphs, in turn, contain their own exclusions. These allow the excluded equipment to qualify as an ATM if it is used exclusively or primarily and principally in specified activities. Subparagraph 2(5)(a)(ii)(B) will allow the use of such excluded equipment as a hypothetical aid to manufacture where the use of that equipment is a partial use rather than a principal use.

The effect of subparagraphs 2(5)(a)(ii)(C) and (b)(ii)(C) is to allow partial use of a computer as an auxiliary to aids to manufacture to be an eligible use. Partial use will apply to all activities specified in paragraphs (a) to (g) of the definition of "auxiliaries to aids to manufacture".

Summary

To summarise by example, if a computer is used as follows:

- design use 20%
- production use 20%
- ATM use 20%

then those uses can be added together. Where they reach 50% or more (in the example it is 60%) the computer will satisfy the use test and qualify for exemption. If the combined use is less than 50% then the computer will not qualify for exemption.

NOTE: The only difference between proposed paragraphs 2(5)(a) and 2(5)(b) is that the definitions of "aids to manufacture" and "auxiliaries to aids to manufacture" are, in the case of eligible users covered by paragraph (a) contained in the Sales Tax Regulations and, in the case of eligible users covered by paragraph (b) are contained in clause 1 of the First Schedule to the E&C Act.

New Subclause 2(6) of the First Schedule

Print-related, mixed-use computer equipment

This subclause applies to individual items of computer equipment used in print finalisation activities and for other uses that qualify for exemption. It poses the same hypothetical tests as applied in subclause 2(5) by substituting "partly" for "mainly" or "primarily and principally".

It allows the 50% or more use test to be met by a combination of eligible uses.

There are two conditions that must be satisfied in order for equipment to be covered by this definition.

Which persons are eligible?

First, the equipment must be for use by registered manufacturers of printed matter or, registered persons who produce goods such as printing plates for use in the production of printed matter (subparagraph (a)(i)) or unregistered persons of the same description (subparagraph (b)(i)).

What use will qualify?

Second, the use of the computer for eligible purposes must be at least 50% of its use. The eligible uses that can be combined are:

- design use
- production use
- print finalisation use
- aids to manufacture use
- auxiliaries to aids to manufacture use

Subclause (6) concerns the printing area, and is very similar to subclause (5). The individual use of a computer in any of the uses specified above can be combined with the other uses indicated and where that combined use reaches 50% or more, then the computer will qualify for exemption.

Paragraph 4(e): New Exemption items 155, 156, 157 and 158

This paragraph will add 4 new exemption items to the First Schedule to provide exemption from sales tax for computer equipment used in the following eligible activities:

- design and engineering
- production control
- print finalisation

The items will also provide exemption where the above uses are combined with use of the computer in:

- aids to manufacture activities; or
- auxiliary to aids to manufacture activities.

What is eligible computer equipment?

Eligible computer equipment is individual items of computer equipment that are for use in the activities mentioned above. These terms are more extensively defined in the amendments proposed by paragraphs 4(b), (c) and (d) of the Bill.

What use will qualify?

The computer equipment must be for use at least 50% in the eligible activities to be exempt. The 50% can relate to a single eligible activity or it can be reached by combining the various eligible activities.

Item 155

This item will provide exemption where an unregistered person purchases, imports or leases eligible computer equipment. Exemption is obtained by the unregistered person supplying a conditional exemption certificate in the form approved by the Commissioner of Taxation to the vendor of the computer equipment.

Exclusion to Item 155

Item 155 does not apply to an unregistered manufacturer whose goods are exempt under item 100 or 103 of the First Schedule. These items exempt the manufactures of persons who carry on business in a small way - where the annual turnover of the business is less than \$50,000 or tax payable on the goods manufactured is less than \$1000.

Item 156

This item provides exemption for eligible computer equipment manufactured by a person and applied to that person's own use. It has limited application because it applies only to a person who manufactures items of computer equipment and then uses that equipment as eligible computer equipment in connection with manufacturing operations.

An example would be a computer manufacturer which uses the computers it manufactures in the technical design of other computers.

Item 157

This item exempts eligible computer equipment that is manufactured, purchased or imported by a registered person and **applied to that person's own use** where the equipment has been obtained by the registered person quoting their sales tax certificate number to the supplier under, for example, new regulation 12(1)(da).

Item 157 will be the most common exemption item used for eligible computer equipment because it applies to all registered sales tax persons.

Item 158

This item provides exemption for computer equipment manufactured, purchased, imported or leased by a person (called a sub-contractor) who carries out activities on behalf of one or more other persons (called the primary manufacturers) where the equipment would have been eligible computer equipment if each of the primary manufacturers had used the equipment in carrying out the contracted activities. The exemption is related back to items 155, 156 and 157 and poses a series of hypothetical situations in respect of each item. If each primary

manufacturer would have been entitled to exemption under items 155, 156 or 157 then, if the sub-contractor carries out those same activities mainly on behalf of the manufacturers, the equipment will be exempt under item 158.

An example is a person who uses a computer to design the process for chrome plating handlebars for a bicycle manufacturer. If the bicycle manufacturer would have been entitled to exemption for computer equipment used in designing the process for chrome plating the handlebars, then item 158 will apply to a sub-contractor where 50% or more of the use of the computer is for that activity.

Part 3 - Amendment of *Sales Tax Regulations*

Clause 5

This clause merely provides that where the term "Regulations" is used in this part of the Bill, it means the *Sales Tax Regulations*.

Clause 6

Regulation 4: "Aids to Manufacture"

Regulation 4 includes a definition of "aids to manufacture" which applies to a registered person.

This clause adds to the end of that definition a further exclusion. The new exclusion is in paragraph (p) and it applies to author/secretary computer equipment. It is a parallel amendment to that made to the definition of "aids to manufacture" that appears in sub-clause 1(1) of the First Schedule to the E&C Act. The amendment keeps the two definitions of "aids to manufacture" in line.

Regulation 4: New definitions

Under the sales tax legislation it is necessary for defined meanings to be uniform. To give effect to the exemption for eligible computer equipment it is necessary to insert definitions for "author/secretary computer equipment" and "eligible computer equipment" into this Regulation. Clause 6 provides that the definitions of "author/secretary computer equipment" and "eligible computer equipment", shall have the same meaning as in the First Schedule to the E&C Act (see the notes on clause 4 of this Bill).

Clause 7

Regulation 12 Quotation of Certificate

Regulation 12 sets out the situations in which sales tax certificates are to be quoted. Quotation of a sales tax certificate is the way a registered person can purchase goods free of sales tax.

Subclause 7(a) makes a technical amendment. Regulation 12(1)(d) allows a registered person to quote a sales tax certificate in two situations relating to aids to manufacture. However, the two situations are joined by the words "and" instead of "or". Clause 7(a) corrects this by omitting "and" and substituting "or".

New Quotation situations

Subclause 7(b) adds two new situations in subregulation 12(1) for which registered persons are required to quote their sales tax certificates. New paragraph 12(1)(da) will require a registered person to quote on the purchase, lease or importation of items of computer equipment for use as eligible computer equipment. This will enable a registered person to purchase such equipment free of sales tax.

New paragraph 12(1)(db) will require a registered person to quote a sales tax certificate on the purchase or importation of goods:

- (a) for use as raw materials in the manufacture of items of computer equipment which qualify as eligible computer equipment; or
- (b) for sale or lease to other persons for use by them as eligible computer equipment.

A registered person will therefore be able to purchase free of sales tax:

- (a) parts or components for use in the manufacture of eligible computer equipment; and
- (b) items of computer equipment for sale or lease to other persons who will use them as eligible computer equipment.

Clause 8

Regulation 13 : Non-Quotation of certificate

Regulation 13 sets out certain conditions where quotation of a sales tax certificate by a registered person is NOT permitted. Regulation 13(1) provides that a person who manufactures goods that are exempt under item 100 or 103, First Schedule, cannot quote a sales tax certificate on the purchase or lease of goods for use as "aids to manufacture" or "auxiliaries to aids to manufacture". Quotation of certificate is also not permitted on the purchase of raw materials for use in the manufacture of goods that become "aids to manufacture" or "auxiliaries to aids to manufacture".

Clause 8 amends regulation 13 by also excluding quotation of certificate for goods that are "eligible computer equipment".

A registered person whose goods are exempt under item 100 or 103 will NOT be able to quote a sales tax certificate on the purchase of:

- (a) eligible computer equipment; or
- (b) raw materials for use in the manufacture of eligible computer equipment.

Clause 9

Regulation 48: Refunds for Manufacturers of taxable goods

Regulation 48 provides for refunds of sales tax in certain situations to prevent sales tax being paid twice.

Regulation 48(1)(e) allows a refund of tax paid on the purchase of goods for use as aids to manufacture or auxiliaries to aids to manufacture where those goods have been used to produce taxable goods. Regulation 48(1)(f) allows a similar refund where the aids to manufacture or auxiliaries to aids to manufacture have been imported tax paid.

Clause 9 will amend regulations 48(1)(e) and 48(1)(f) by including eligible computer equipment in those refund provisions. This will allow the payment of refunds to registered persons who purchase eligible computer equipment tax paid and use that equipment in the manufacture of taxable goods.

Exclusions: Manufacturers of exempt goods

A refund under regulation 48 does not apply to a manufacturer of exempt goods who has purchased eligible computer equipment tax paid. In this situation a refund may be available under regulation 58 (see notes on clause 12 of this Bill).

Clause 10

Regulation 51 Claims for refund

Regulation 51(1) sets out the kind of evidence that is required to be submitted to the Commissioner of Taxation to support a refund claim under regulation 48(1). Clause 10 will amend regulation 51(1)(c) by including eligible computer equipment. This means that in some refund situations involving the purchase of eligible computer equipment at a price which includes sales tax, certain documentary evidence to support the refund claim may have to be provided to the Commissioner of Taxation. This will be the case with refund claims under regulation 48(1)(e).

Clause 11

Regulation 55 Refunds in special cases

Regulation 55 allows the Commissioner or a Deputy Commissioner to approve refunds where a registered person has difficulty in complying with the evidence requirements of regulation 51. Clause 11 will amend regulation 55(1)(c) by including eligible computer equipment among the special cases. This means that if a registered person has difficulty in establishing the amount of sales tax paid on the purchase of eligible computer equipment, a refund may be calculated and allowed on an average cost basis. The refund entitlement will not be lost because of difficulty in finding out the exact amount of sales tax paid.

Clause 12

Regulation 58 Exempt goods

Regulation 58(4) provides for a refund of sales tax to be made where tax paid goods are sold to a registered person for use as aids to manufacture or auxiliaries to aids to manufacture. The refund is payable to the vendor of the goods.

Clause 12 will amend regulation 58(4)(a)(i) by including eligible computer equipment as goods for which a refund can be claimed.

Conditions for exemption

There are certain conditions that have to be met for a refund to be payable under regulation 58(4).

They are:

- (a) the goods (eligible computer equipment) must be purchased by the vendor at a price which includes tax;
- (b) the goods must be sold to a registered person who quotes a sales tax certificate;
- (c) the goods will have to be used by the registered person as eligible computer equipment; and
- (d) that the tax paid on the purchase of the computer equipment is not passed on to the registered person.

Where all these conditions are met, a refund is paid to the vendor of the eligible computer equipment, NOT the registered person. The registered person effectively purchases the goods at a price that does not include sales tax. The registered person can be a manufacturer of exempt or taxable goods.

Clause 13
Amendment or repeal of Regulations

Generally amendments to regulations are made by amending regulations. In this instance the regulations are being amended by an Act. Clause 13(1) provides that the fact that these amendments are made in an Act, does not prevent their later amendment or repeal by regulation which is the more normal course of action.

As a result of amendments made by the *Sales Tax (Exemptions and Classifications) (Computer Programs) Amendment Act 1989*, a new excluding paragraph (o) was inserted into the definition of "aids to manufacture" as it appears in subclause 1(1) in the First Schedule to the E&C Act. A similar excluding paragraph is to be inserted in the "definition of aids to manufacture" appearing in sub regulation 4(1) but the amending regulations have not yet been made. Clause 13(2) provides that this amending Bill will allow excluding paragraph (o) to be added to the definition of "aids to manufacture" should the regulations effecting that amendment not be made until after this Bill has become law.

PART 4 - APPLICATION OF AMENDMENTS

Clause 14

Application of amendments

Clause 14 provides that the changes apply only to transactions involving eligible computer equipment after the commencement of the Bill which is 19 October 1990.

Exclusion

There is one exclusion to this position. The amendments made by clause 7(a) will come into effect on the day the Act receives the Royal Assent. Clause 7(a) is a technical amendment that does not affect in any way the exemption for eligible computer equipment. It is not necessary for it to operate immediately and its commencement is deferred to the more usual operative date of Royal Assent.

E. A Cross-Reference Guide to the Clauses and the Proposed Changes in the Bill

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11		Refunds in special cases - will amend Regulation 55 - will add "eligible computer equipment" to the list of goods.	43
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