



Sales Tax Assessment Act 1992

No. 114 of 1992

**An Act relating to the imposition and collection of a tax
on dealings with goods that have been manufactured in
Australia or imported into Australia,
and for related purposes**

[Assented to 30 September 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Sales Tax Assessment Act 1992*.

5 Commencement

2. This Act commences on the 28th day after the day on which it receives the Royal Assent.

How the sales tax law applies to things outside Australia and things happening before commencement

3.(1) The sales tax law extends to acts, omissions, matters and things outside Australia (except where a contrary intention appears).

(2) The sales tax law applies to acts and omissions happening before or after the commencement of this Act (except where there is an express statement to the contrary). 5

States and Territories are bound by the sales tax law

4. The sales tax law binds the Crown in right of each of the States, of the Australian Capital Territory and of the Northern Territory. However, it does not make the Crown liable to be prosecuted for an offence. 10

PART 2—GENERAL DEFINITIONS

General definitions

5. In this Act, unless the contrary intention appears: 15

“accompanied baggage”, in relation to the export of goods, means goods that are exported on a flight or voyage on which the owner of the goods is a passenger;

“AD1a” means the assessable dealing of that name in Table 1, and AD1b, AD2a etc. have corresponding meanings; 20

“airport shop goods” has the same meaning as in the Customs Act;

“always-exempt goods” means assessable goods that are covered by an exemption Item that has effect no matter how, or by whom, the goods are dealt with;

“AOU” means application to own use; 25

“application to own use”, in relation to goods, includes any of the following:

- (a) consuming the goods;
- (b) giving the goods away, or transferring property in the goods under a contract that is not a contract of sale; 30

- (c) granting a lease of the goods, or granting any other right or permission to use the goods;
- (d) using the goods as materials in manufacture, construction, repair, renovation or other treatment or processing, whether or not it relates to or results in other goods; 35

- (e) doing anything with the goods that results in the goods becoming a container for other property;

- (f) if a person other than the owner has locally entered the goods—anything done by the person that would be an application to own use of the goods by the owner if it had been done by the owner; 40

but does not include:

- (g) selling the goods or consigning them for sale by consignment;
- (h) if the goods are imported goods—anything done with them after importation and before they are locally entered;
- (i) if a person processes or treats any exposed photographic or cinematograph film for another person (“the customer”) so as to produce a negative, transparency or film strip—anything done with the negative, transparency or film strip before it is delivered to the customer;

“application to own use in Australia” or **“AOU in Australia”**, in relation to goods, means an application to own use that happens while the goods are in Australia;

“assessable dealing” means any dealing covered by Table 1;

“assessable goods” means Australian goods or imported goods, but does not include Australian-used goods;

“assessment” means an assessment under Division 1 of Part 10 or under section 93A or 99;

“Australia” does not include:

- (a) the Territory of Christmas Island;
- (b) the Territory of Cocos (Keeling) Islands;

and has a meaning affected by section 6;

“Australian goods” means goods that have been manufactured in Australia, but does not include imported goods;

“Australian-used goods” means:

- (a) goods that have been applied to a person’s own use in Australia (whether the goods are Australian goods or imported goods); or
- (b) imported goods that were a container at the time of importation;

but has a meaning affected by sections 9 and 10;

“authorised officer”, when used in a particular provision of this Act, means a person authorised by the Commissioner to exercise powers or perform functions under that provision;

“borne tax” has the meaning given by section 11;

“Commissioner” means the Commissioner of Taxation;

“company” includes any body or association (whether or not it is incorporated), but does not include a partnership;

“computer program” has the same meaning as in the *Copyright Act 1968*;

“container” means:

- (a) packaging in which, or with which, any property (“the contents”) is packed or secured, in the ordinary course of a business, for the purpose of the marketing or delivery of the contents;
- (b) ancillary items that are packed or secured with the contents and are intended, and reasonably necessary, to allow or facilitate the use of the contents;

- “CR1”** means the credit ground of that name in Table 3, and CR2, CR3 etc. have corresponding meanings;
- “credit”** means a credit under Part 4;
- “Customs Act”** means the *Customs Act 1901*;
- “customs clearance area”** means an area that is designated or set aside for the performance of functions under the Customs Act; 5
- “customs dealing”** means AD4b, AD10 or AD14b;
- “customs duty”** means any duty of customs imposed by that name under a law of the Commonwealth;
- “Customs Tariff”** means the *Customs Tariff Act 1987* as amended by any Act, and as proposed to be amended by Customs Tariff Proposals introduced into the House of Representatives; 10
- “delivery of customer’s materials goods”** has the meaning given by section 22;
- “Deputy Commissioner”** means a Deputy Commissioner of Taxation; 15
- “duplicate”**, in relation to a computer program, means:
- (a) to copy or reproduce the program (with or without related information) so as to embody the program in goods; or
 - (b) to convert the computer program to another language so as to embody the program in goods; 20
- “duplicate”**, in relation to visual images or sounds, means to copy or reproduce the images or sounds so as to embody them in goods;
- “eligible Australian traveller”** means a person defined to be an eligible Australian traveller by regulations made for the purposes of this definition; 25
- “eligible foreign traveller”** means a person defined to be an eligible foreign traveller by regulations made for the purposes of this definition;
- “eligible long-term lease”** means a lease of goods that meets all the following conditions:
- (a) the term of the lease is at least as long as the statutory period; 30
 - (b) at or before the time of the grant of the lease, the lessor has been given evidence, in a form approved by the Commissioner, of the intention of the lessee or a sub-lessee to use the goods, during the whole of the statutory period, so as to satisfy an exemption Item; 35
 - (c) no part of any tax borne by the lessor on the goods before the grant has been passed on by the lessor to any person;
- “eligible short-term lease”** has the meaning given by section 15A;
- “embodied”** has the meaning given by section 13;
- “excise duty”** means any duty of excise imposed by that name under a law of the Commonwealth; 40
- “exemption declaration”** means a statement or declaration for the purposes of any provision of the sales tax law that refers to quoting an exemption declaration;

- “**exemption Item**” means an Item or subitem in Schedule 1 to the Exemptions and Classifications Act;
- “**exemption [R] Item**” means an exemption Item that is marked [R];
- 5 “**Exemptions and Classifications Act**” means the *Sales Tax (Exemptions and Classifications) Act 1992*;
- “**export**”, in relation to goods, means export the goods from Australia, but:
- (a) has a meaning affected by section 6;
 - 10 (b) in relation to an eligible Australian traveller, includes taking the goods out of Australia as accompanied baggage;
 - (c) in relation to Australian-used goods, includes taking or sending the goods out of Australia for alteration, repair, renovation or upgrading;
- 15 “**first taxing day**” means the first day of the 4th month after the month of the year in which this Act receives the Royal Assent;
- “**goods**” means any form of tangible personal property, but:
- (a) does not include property that is sold as second-hand and is manufactured exclusively or principally from goods that:
 - 20 (i) were already Australian-used goods before the manufacture began; and
 - (ii) in their condition as parts of the property so manufactured, retain their character as Australian-used goods; and
 - (b) has a meaning affected by section 12;
- 25 “**import**” means import into Australia, but has a meaning affected by section 6;
- “**imported goods**” means goods that have been imported (whether or not the goods were manufactured in Australia);
- “**increase**” includes increase from nil;
- 30 “**indirect marketing sale**” has the meaning given by section 20;
- “**inwards duty free shop**” has the same meaning as in section 96B of the Customs Act;
- “**late-payment penalty**” means penalty under section 68;
- 35 “**lease**”, in relation to goods, means a lease by the owner of the goods and includes the letting or hiring of the goods under a hire-purchase agreement;
- “**lease AOU**” means an application to own use that consists of granting a lease;
- 40 “**liquidator**” means a person who is required by law to carry out the winding-up of a company (whether or not the person has been appointed as a liquidator);
- “**local entry**” has the meaning given by section 23;
- “**locally enter goods under quote**” has the meaning given by section 15;
- “**manufacture**” includes:

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- (a) production;
 - (b) combining parts or ingredients so as to form an article or substance that is commercially distinct from the parts or ingredients;
 - (c) applying a treatment to foodstuffs as a process in preparing them for human consumption; 5
 - (d) processing or treating exposed photographic film or cinematograph film so as to produce a negative, transparency or film strip;
 - (e) duplicating a computer program; 10
 - (f) duplicating visual images or sounds, or both;
- but does not include:
- (g) any action or process by which goods come into existence incidentally to the performance of work whose essential character is the performance of skilled services and not the bringing into existence of goods for the essential object of selling the goods or applying them to own use; 15
 - (h) the duplication of a computer program by a person ("the duplicator") if:
 - (i) the duplication results in a tax-advantaged computer program that is embodied in goods that are to be for retail sale by the duplicator; and 20
 - (ii) the duplicator did not manufacture the goods in which the program was to be embodied, and tax had become payable (either by the duplicator or someone else) on those goods sometime before the duplication; 25
 - (i) any prescribed combination of parts or ingredients;
- "manufacturer"**, in relation to particular goods, means the person who (not as an employee) manufactured the goods, whether or not the person owned the materials out of which the goods were manufactured; 30
- "monthly remitter"** has the meaning given by section 62;
- "non-lease AOU"** means an application to own use that does not consist of the granting of a lease;
- "obtain goods under quote"** has the meaning given by section 15;
- "packing AOU"** means an AOU that consists of doing something with goods that results in the goods becoming a container for other property; 35
- "passed on"**, in relation to an amount of tax that has been borne by a person, does not include an amount that the person has passed on to another person, but has later refunded to that other person;
- "permanent media"** means goods designed to have computer programs embodied in them on a permanent basis being goods which do not allow the erasement and replacement of the computer programs originally embodied in them; 40
- "person"** means any of the following:

- (a) a company;
 - (b) a partnership;
 - (c) a person in a particular capacity of trustee;
 - (d) a body politic;
 - 5 (e) any other person;
- “prescribed rules for export sales”** means the rules prescribed by the regulations setting out conditions that must be complied with in order for dealings with goods to be exempted on the basis of the export, or intended export, of the goods;
- 10 **“purchase goods under quote”** has the meaning given by section 15;
- “quarterly remitter”** has the meaning given by section 62;
- “quote”** means quote a registration number or exemption declaration;
- “raw materials”** has the meaning given by section 7;
- “reduce”** includes reduce to nil;
- 15 **“registered person”** means a person who is registered under Part 6;
- “registration number”** means the number allocated by the Commissioner in respect of a registration under this Act;
- “relevant traveller”** has the same meaning as in section 96B of the Customs Act;
- 20 **“retail sale”** means any sale that is not a wholesale sale;
- “sale”** includes barter or exchange;
- “sales tax”** or **“tax”** means tax that is payable under this Act and imposed as sales tax by another Act;
- “sales tax law”** means:
- 25 (a) this Act and the regulations under this Act;
- (b) the Exemptions and Classifications Act;
- (c) any Act that imposes any of the tax payable under this Act;
- (d) the *Sales Tax Amendment (Transitional) Act 1992*;
- 30 (e) the *Taxation Administration Act 1953*, so far as it relates to the Acts covered by paragraphs (a) to (d);
- (f) any other Act, so far as it relates to any Act covered by paragraphs (a) to (e);
- (g) regulations under an Act other than this Act, so far as the regulations relate to any Act covered by paragraphs (b) to (f);
- 35 For the purposes of this definition, a reference to an Act includes a reference to part of an Act, and a reference to an Act covered by a paragraph of this definition is a reference to that Act so far as it is covered by that paragraph;
- “sales tax quarter”** means a period of 3 months ending on 31 July,
- 40 31 October, 31 January or 30 April;
- “Second Commissioner”** means a Second Commissioner of Taxation

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- “statutory period”**, in relation to goods, means the period that starts at the time when the goods are first applied to a person’s own use in Australia and ends at the earliest of the following times:
- (a) the end of 2 years after the time of that first application to own use; 5
 - (b) the time when the goods are no longer reasonably capable of being used for the purpose for which goods of that kind are ordinarily used;
 - (c) a time that the Commissioner considers to be appropriate in special circumstances; 10
- “Table 1”**, **“Table 2”** or **“Table 3”** means the table of that number in Schedule 1;
- “taxable dealing”** means an assessable dealing that happens on or after the first taxing day and for which no exemption is available under Division 2 of Part 3; 15
- “taxable value”** means the taxable value that applies under Division 3 of Part 3;
- “tax-advantaged computer program”** has the meaning given by section 14;
- “tax-bearing dealing”**, in relation to an amount of tax borne by a person, means the dealing through which, or because of which, the tax was borne; 20
- “tax borne”** has the meaning given by section 11;
- “taxpayer”** means:
- (a) a person who is, has been or may be liable to tax;
 - (b) a person who is or has been the claimant for a credit; 25
- “temporary media”** means goods designed to have computer programs embodied in them on a temporary basis being goods which allow computer programs to be embodied, erased and replaced from time to time;
- “trustee”** includes any of the following: 30
- (a) a person appointed or constituted as trustee by act of parties, by order or declaration of a court, or by operation of law;
 - (b) an executor, administrator or other personal representative of a deceased person;
 - (c) a guardian or committee; 35
 - (d) a receiver, or a receiver and manager;
 - (e) an official manager of a company or a liquidator of a company;
 - (f) a person who has the administration or control of any property that is affected by any express or implied trust;
 - (g) a person who is acting in any fiduciary capacity; 40
 - (h) a person who has the possession, control or management of any property of another person who is under any legal or other disability;

“wholesale sale” means a sale to a person who purchases for the purpose of resale, but does not include:

- 5 (a) a sale of goods from stock in a retail store (or retail section of a store) to make up for a temporary shortage of stock of the purchaser, if the goods are of a kind that are usually manufactured by the purchaser or are usually purchased by the purchaser for resale;
- (b) a sale of school requisites or sporting equipment to a teacher or school authority, for resale to students;
- 10 (c) a sale of sporting equipment to a club for resale to members of the club.

Offshore installations: modified meaning of “Australia”, “export” and “import”

15 **6.(1)** An installation (within the meaning of the Customs Act) that is deemed by section 5C of the Customs Act to be part of Australia is also taken to be part of Australia for the purposes of the sales tax law.

(2) Goods (within the meaning of the Customs Act) that are deemed by section 49B of the Customs Act to be imported at a particular time are also taken to be imported at that time for the purposes of the sales tax law.

20 (3) Goods (within the meaning of the Customs Act) that are deemed by section 126A or 126B of the Customs Act to be exported at a particular time are also taken to be exported at that time for the purposes of the sales tax law.

25 **Use of goods as raw materials in manufacturing goods, or in constructing or repairing property**

7.(1) Goods (“the materials”) are taken to be used as raw materials in manufacturing other goods if, and only if, the materials are dealt with in such a way that the materials, or some essential element of the materials, become an integral part of the other goods in their finished condition.

30 (2) Goods are taken to be used as raw materials in constructing or repairing property if, and only if, the goods are dealt with in such a way that the goods, or some essential element of the goods, become an integral part of the property in its finished condition.

Manufacture of certain goods treated as happening in the course of a business

40 **8.(1)** In certain circumstances, the manufacture of goods (“the current goods”) is treated as having happened in the course of a business even though it did not.

(2) This treatment applies if all the following conditions are met:

- (a) the current goods were manufactured on premises that had

been sold, leased or otherwise made available to the manufacturer under an agreement entered into for the purpose, or for purposes that included the purpose, of bringing about the manufacture of the current goods;

- (b) when the current goods were manufactured, the premises were ordinarily used by any person in the course of carrying on a business in the ordinary course of which goods identical in all material respects with the current goods could reasonably be expected to be manufactured; 5
- (c) more than half of the labour used in the manufacture of the current goods was paid labour. 10

(3) In this section:

“paid labour” does not include labour provided by the manufacturer;

“premises” includes land or a building or part of a building.

Goods sent overseas for alteration: affects meaning of “Australian-used goods” 15

9.(1) This section applies if:

- (a) Australian-used goods have been exported for alteration; and
- (b) the goods are later imported, after having been altered outside Australia. 20

(2) In applying the sales tax law at or after the time of that importation, the goods are not taken to be Australian-used goods only because of an AOU of the goods that happened before they were taken or sent outside Australia for alteration.

(3) In this section: 25

“alteration” includes repair, renovation or upgrading.

Leased goods exported before being used: affects meaning of “Australian-used goods”

10.(1) This section applies to particular goods if:

- (a) the first AOU in Australia of the goods consists of granting a lease of the goods; and 30
- (b) the intended export or actual export of the goods after the grant had either of the following results:
 - (i) the grant of the lease was exempted by section 32; or
 - (ii) the lessor became entitled to a credit under CR19; and 35
- (c) the goods are later imported (after having been exported).

(2) In applying the sales tax law at or after the time of that importation, the goods are not taken to be Australian-used goods only because of the AOU referred to in paragraph (1)(a).

Meaning of “borne tax” and “tax borne”

11.(1) This section sets out the 3 situations in which a person is taken to have borne tax on goods.

5 **(2)** A person is taken to have borne tax on goods if the person has become liable to tax on an assessable dealing with the goods. However, the tax for which the person has become liable is not counted to the extent to which it has been the basis of a credit entitlement.

10 **(3)** A person is taken to have borne tax on goods if the person purchased the goods for a price that included tax. However, the amount of tax borne is to be reduced by any amount of the tax included in that price that has been refunded or credited to the person.

(4) A person is taken to have borne tax on goods if the person was the customer for an AD4a delivery of the goods and did not quote for the delivery.

15 **Inserts in newspapers, magazines etc. are to be treated as separate goods**

12.(1) This section applies if:

20 (a) a newspaper, magazine or other printed matter (“**the publication**”) would (apart from this section) be goods covered by exemption Item 100 or 101; and

 (b) any part (“**the insert**”) of the publication is inserted separately into the remainder of the publication after it has been made, or differs from most of the remainder of the publication in any one or more of the following respects:

- 25 (i) it has a different sheet size;
 (ii) it is printed by a different process;
 (iii) it consists of different paper or other material.

(2) The insert is taken to be separate goods unless:

30 (a) the publication is a newspaper and the insert is a news, sport, entertainment, travel, leisure or similar section (other than an advertising section); or

35 (b) the publication is a magazine or similar publication (other than a newspaper) and the insert is a detachable part that is attached by perforation or is glued, sewn or stapled to the remainder of the publication.

Meaning of “embodying visual images, sounds or computer programs in goods”

40 **13.** Visual images, sounds or a computer program are taken to be embodied in goods only if the goods have been treated in such a way in relation to the images, sounds or computer program that the images, sounds or computer program can be reproduced from the goods (either with or without the aid of some other device).

Meaning of "tax-advantaged computer program"

14.(1) Any computer program that is not embodied in permanent media is a tax-advantaged computer program.

(2) A computer program that is embodied in a microchip in a cartridge is a tax-advantaged computer program if both the following conditions are met: 5

(a) the cartridge is marketed as being exclusively for use with:

- (i) a personal computer; or
- (ii) a home electronic device that is for use with a computer monitor or with a television screen; or 10
- (iii) either a personal computer or such a home electronic device;

(b) the program is marketed as being exclusively for educational use, entertainment use or a combination of both.

(3) In this section: 15

"home electronic device" does not include a device that consists of, or includes, one or more of the following:

- (a) a compact disc player;
- (b) a television;
- (c) a video camera; 20
- (d) a video cassette player;
- (e) a video cassette recorder;
- (f) an electronic device prescribed by the regulations for the purposes of this paragraph.

Meaning of "obtain goods under quote" etc. 25

15.(1) This section sets out the circumstances in which goods are taken to be obtained by a person under quote.

(2) A person purchases goods under quote if the person quotes on the purchase of the goods, and either:

- (a) the sale is an assessable dealing by the seller that is exempted from tax only because of the quote; or 30
- (b) on the basis of the quote, the seller agrees to exclude tax from the price of the goods.

(3) A person locally enters goods under quote if the person quotes on the local entry of the goods and the local entry is exempted from tax only because of the quote. 35

(4) A person obtains goods under quote if:

- (a) the person purchases, or locally enters, the goods under quote as described in subsections (2) and (3); or
- (b) the person quotes on a customs dealing with the goods and the dealing is exempted from tax only because of the quote; or 40

- (c) the person is the customer for an AD4a delivery and:
 - (i) the delivery is exempted from tax only because of the quote; or
 - (ii) on the basis of the quote, the manufacturer agrees to exclude tax from a charge made by the manufacturer for the manufacture of the goods; or
- (d) the person has obtained a CR2 credit for tax borne on a dealing with the goods.

Meaning of "eligible short-term lease" etc.

10 **15A.(1)** A lease of goods is an eligible short-term lease if the goods are covered by an agreement under subsection (2).

15 **(2)** The Commissioner and a person ("**the lessor**") who grants leases of goods in the course of a business may agree on a percentage (other than nil) as the exempt percentage in relation to goods of a particular kind. The percentage agreed on must be the percentage of the statutory period during which it is agreed to be likely that the goods will be used by the lessor for lease (other than eligible long-term lease) to persons who, or whose sub-lessees, intend to use the goods during the whole of the term of the lease or sub-lease so as to satisfy one or more exemption Items.

20 **(3)** The Commissioner and the lessor may agree on a percentage (other than nil) as the exempt percentage in relation to goods ("**the associated goods**") of a particular kind that are for use by the lessor exclusively:

- 25 (a) as parts, accessories, fittings or attachments for goods that are covered by an agreement with the lessor under subsection (2); or
- (b) so as to become an integral part of goods that are covered by such an agreement.

30 The percentage agreed on must be the percentage of the statutory period during which it is agreed to be likely that the use of the associated goods as mentioned in paragraph (a) or (b) will satisfy one or more exemption Items.

35 **(4)** The Commissioner and the lessor may, subject to subsection (5), agree on a percentage as the exempt percentage in relation to goods of a particular kind that are for use by the lessor exclusively for repairing or maintaining other goods that are:

- (a) covered by an agreement with the lessor under subsection (2); and
- 40 (b) for use so as to satisfy one or more of exemption Items 1, 2, 18, 23, 28, 29, 30, 33, 34, 35, 36 and 38.

The percentage agreed on must be the percentage of the statutory period during which it is agreed to be likely that the other goods will satisfy the requirements of paragraphs (a) and (b).

(5) The Commissioner and the lessor must not make an agreement under subsection (4) unless the percentage to be specified is greater than 50%.

(6) An agreement under this section may include conditions that are to be complied with for the agreement to have effect.

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Post-trial sale or post-trial lease

15B. If:

(a) a person grants a lease ("the trial-lease"), or makes a loan, of assessable goods to another person ("the trial user"); and

(b) immediately after the end of the trial-lease or the loan, the person sells the goods, or leases them for at least the remainder of the statutory period, to the trial user; and

(c) the trial user, at or before the end of the trial-lease or the loan, gives evidence to the person, in a form approved by the Commissioner, of the trial user's use or intended use of the goods during the trial-lease or the loan and the remainder of the statutory period so as to satisfy an exemption Item;

then the sale or the second lease in paragraph (b) is a post-trial sale or post-trial lease, as the case may be.

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PART 3—LIABILITY TO TAX

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Division 1—General rules for taxability

Subdivision A—Taxing assessable dealings

General rules for taxing assessable dealings

16.(1) Table 1 sets out all the assessable dealings that can be subject to sales tax.

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(2) If the time of an assessable dealing (as specified in column 4 of the Table) is on or after the first taxing day, and no exemption applies under Division 2 of this Part, then:

(a) the dealing is a taxable dealing;

(b) the person specified in column 3 is the person liable to the tax;

(c) the tax becomes payable at the time of the dealing, as specified in column 4;

(d) the tax is due for payment at the time that applies under Division 2 of Part 5.

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(3) To calculate the amount of the tax:

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(a) determine the taxable value of the dealing under Division 3 of this Part;

(b) deduct any exempt part of the taxable value that applies under Division 4 of this Part;

- (c) multiply the result by the rate that applies under the Exemptions and Classifications Act.

Sale time brought forward if purchaser uses the goods before title passes

- 5 **17.(1)** This section applies to an assessable dealing that consists of a sale, if the purchaser uses the goods after the time when the contract is made but before the time when title is to pass to the purchaser under the contract.
- 10 **(2)** The time when the purchaser first so uses the goods is taken to be the time of the sale for the purposes of the sales tax law.

Subdivision B—Assessable dealings

Overview of this Subdivision

18. This Subdivision contains details of some of the assessable dealings in Table 1.

15 **Royalty-inclusive sale (AD2c and AD12c) or AOU (AD3d and AD13d)**

- 19.(1)** A retail sale, or an AOU, of goods (“**the current goods**”) by a taxpayer in the course of a business is a royalty-inclusive sale or a royalty-inclusive AOU respectively if the following conditions are met:
- 20 (a) eligible royalty costs have been incurred at or before the time of the sale or AOU, or could reasonably be expected to be incurred after the time of the sale or AOU, by any or all of the following persons:
- (i) the taxpayer;
- (ii) any associate of the taxpayer;
- 25 (iii) any person (other than the manufacturer) under an arrangement with the taxpayer or with an associate of the taxpayer;
- (b) the sale or AOU is not covered by another category of assessable dealing in Table 1.

- 30 **(2)** In this section:
- “**eligible royalty cost**” means a royalty, within the meaning of section 36, that is paid or payable in connection with the current goods, except where the amount was paid or payable by any person before 27 May 1992.

35 **Indirect marketing sale (AD2d and AD12d)**

- 20.(1)** A sale of assessable goods is an indirect marketing sale if it is a retail sale made by a person (“**the marketer**”) who is not the manufacturer of the goods and the sale is made:
- 40 (a) under an arrangement that provides for the sale of the goods to be made by a person who is acting for the marketer but is not an employee of the marketer; or

(b) from premises that:

- (i) are used, mainly for making retail sales of goods, by a person or persons other than the marketer; and
- (ii) are held out to be premises of, or premises used by, the other person or persons.

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Untaxed-goods sale (AD2e and AD12e) or AOU (AD3a and AD13a)

21.(1) A retail sale of goods by a taxpayer is an untaxed-goods sale unless:

- (a) the taxpayer obtained the goods under quote; or
- (b) the goods have previously passed through a taxing point; or
- (c) the sale is an indirect marketing sale.

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(2) A non-lease AOU in the course of any business, or any lease AOU, by a taxpayer is an untaxed-goods AOU unless:

- (a) the taxpayer obtained the goods under quote; or
- (b) the goods have previously passed through a taxing point.

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(3) For the purposes of this section, goods are taken to have passed through a taxing point only if:

- (a) the goods have been the subject of a taxable dealing; or
- (b) the goods have been the subject of an assessable dealing that was exempted because of section 24 or 29 or because the taxpayer concerned could not be taxed or was entitled to an exemption arising outside the sales tax law.

20

Delivery of customer's materials goods (AD4a)

22.(1) This dealing involves assessable goods that are manufactured by a person, in the course of a business, for another person ("the customer") wholly or partly out of materials that:

25

- (a) were supplied by the customer (or by someone else at the request of the customer); or
- (b) were purchased from the manufacturer by the customer (or by someone else at the request of the customer).

30

(2) The dealing consists of the delivery of the goods either to the customer or to someone else at the direction of the customer or under an agreement to which the customer is a party.

(3) In this section:

"materials" includes exposed photographic film or cinematograph film that is to be processed or treated so as to produce a negative, transparency or film strip.

35

Local entry of imported goods (AD10)

23.(1) Table 2 sets out the situations that amount to a local entry of imported goods for the purposes of the sales tax law. The rest of this section deals with situations involving the withdrawal of a customs
5 entry, or multiple local entries of the same goods.

(2) The withdrawal of the customs entry underlying a formal local entry (“the earlier local entry”) usually has the effect that the earlier local entry is taken never to have happened. However, if:

- (a) there is a later formal local entry after the withdrawal; and
- 10 (b) the tax on that later entry would be less than the tax on the earlier local entry;

then the earlier local entry is taken never to have been extinguished and the later entry is taken never to have happened.

(3) If a formal local entry happens after a deemed local entry, the
15 formal local entry is taken never to have happened.

(4) If a deemed local entry happens after a formal local entry, the formal local entry is taken never to have happened.

(5) In this section:

20 “customs entry” means an entry for home consumption under the Customs Act;

“deemed local entry” means a local entry that is not a formal local entry;

“formal local entry” means a local entry covered by LE1 or LE2 in Table 2.

25 ***Division 2—Exemptions***

Subdivision A—Exemptions based on exemption Items

Exemption if exemption Item is unconditionally satisfied

24. An assessable dealing is not taxable if:

- 30 (a) the goods are covered by an exemption Item that is in force at the time of the dealing; and
- (b) all the requirements of that Item have been met at or before the time of the dealing.

Exemption for non-lease AOU if applier intends to satisfy exemption Item

35 25. A non-lease AOU is not taxable if the applier, at the time of the AOU, intends to deal with the goods so as to satisfy an exemption Item that is in force at the time of the AOU.

Exemption for lease AOU if lease is an eligible long-term lease or an eligible short-term lease

26. A lease AOU is not taxable if:
- (a) the lease is an eligible long-term lease; or
 - (b) the lease is an eligible short-term lease and the exempt percentage specified in the agreement under subsection 15A(2) is 100%. 5

Subdivision B—Exemptions based on quoting

Exemption if purchaser/customer quotes

27.(1) A sale is not taxable if the purchaser quotes for the sale at or before the time of the sale. 10

(2) An AD4a delivery is not taxable if the customer quotes for the delivery at or before the time of the delivery.

Exemption for customs dealing if taxpayer quotes

28. A customs dealing is not taxable if the taxpayer quotes for the dealing at or before the time of the dealing. 15

Subdivision C—Small business exemption

Exemption for taxpayer with annual sales tax liability of \$10,000 or less

29.(1) This section exempts an assessable dealing (“the current dealing”) by a taxpayer who has a small annual sales tax liability. 20

(2) The basic rule is that the current dealing is not taxable if the total tax liability for the current dealing and all countable dealings in the 12 months before the current dealing is \$10,000 or less.

(3) In addition, at the time of the current dealing the taxpayer must have an expectation (based on reasonable grounds) that the total tax liability for the current dealing and all countable dealings in the 12 months after the current dealing will be \$10,000 or less. 25

[Note: Credits are not deducted in making calculations under subsections (2) and (3). Although section 53 allows credits to be deducted from the tax payable on a return, they do not affect the amount of the liability.]

- (4) The exemption is not available in any of the following cases:
- (a) the taxpayer obtained under quote the goods (“the current goods”) that are the subject of the current dealing; 30
 - (b) the taxpayer has obtained a tax concession for any other goods that are connected with the current goods in the way described in subsection (5);
 - (c) the current dealing is a customs dealing or is an AD3a or AD13a; 35

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(d) the current goods were manufactured by the taxpayer in circumstances covered by section 8.

5 (5) The taxpayer has obtained a tax concession for other goods (“the input goods”) that are connected with the current goods if both the following conditions are met:

(a) the input goods are linked with the current goods in any of the following ways:

(i) the input goods, or some essential element of the input goods, has become an integral part of the current goods;

[For example, the input goods were used as raw materials in manufacturing the current goods]

10 (ii) the input goods were first applied to the taxpayer’s own use less than 2 years before the time of the current dealing and have been used by the taxpayer, in connection with the current goods, in carrying out an activity covered by an exemption [R] Item (whether or not the taxpayer
15 was registered at the time of using the input goods or at any other relevant time);

[For example, the input goods were machinery used in manufacturing the current goods]

(iii) something that formed part of the input goods at the time of an assessable dealing with the input goods has become an integral part of the current goods;

[For example, some part of defective input goods that were returned by a purchaser has been re-used in manufacturing the current goods]

20 (b) either of the following applies:

(i) the taxpayer has not borne tax on the input goods before the time of the current dealing, but would have borne tax except for the operation of an exemption [R] Item;
or

25 (ii) the taxpayer has borne tax on the input goods before the time of the current dealing, but has become entitled to a credit for any of that tax.

30 (6) The tax on the current dealing, and on any countable dealing that was exempted by this section, is to be calculated on the assumption that the dealing is or was a taxable dealing.

(7) In this section:

“countable dealing” means any assessable dealing except:

(a) a customs dealing;

35 (b) a dealing that would have been exempted from tax because of an exemption [R] Item, if the taxpayer had been registered at the time of the dealing.

[Appendix B has a chart for use in deciding whether the small business exemption is available for a particular dealing.]

Subdivision D—Exemptions based on export

Sale or AD4a of goods intended for export

30.(1) A sale is not taxable if:

- (a) the sale is made in accordance with the prescribed rules for export sales to a purchaser who is an eligible foreign traveller; 5
or
- (b) the purchaser has given evidence to the seller of the purchaser's intention to export the goods (otherwise than as accompanied baggage) while they are still assessable goods; or
- (c) the contract of sale requires the seller to export the goods while they are still assessable goods. 10

(2) An AD4a delivery is not taxable if:

- (a) the delivery is made in accordance with the prescribed rules for export sales to a customer who is an eligible foreign traveller; 15
or
- (b) the customer has given evidence to the manufacturer of the customer's intention to export the goods (otherwise than as accompanied baggage) while they are still assessable goods.

(3) The evidence referred to in paragraph (1)(b) or (2)(b) must be given at or before the time of sale and in a form approved by the Commissioner. 20

Packing AOU if container and contents intended for export

31. A packing AOU is not taxable if:

- (a) immediately after the AOU, the contents of the container consist wholly of assessable goods, or of assessable goods and their containers; and 25
- (b) at the time of the AOU:
 - (i) the applier has the intention of exporting the container with those contents; or
 - (ii) if the applier packed the contents on behalf of another person—the applier expects that the other person will export the container with those contents. 30

Lease AOU of goods intended for export

32. A lease AOU is not taxable if:

- (a) the lessee gives evidence to the lessor of the lessee's intention to export the goods before using them; or 35
- (b) the lease agreement requires the lessor to export the goods before they are used.

The evidence referred to in paragraph (a) must be given at or before the time the lease is granted, and in a form approved by the Commissioner. 40

Subdivision E—Miscellaneous exemptions

Exemption for local entry if goods have been taxed while in bond

33. A local entry is not taxable if the taxpayer or anyone else became liable to tax on a previous assessable dealing with the goods while they were in bond or under the control of the Customs.

Division 3—Taxable value

Subdivision A—General rules for working out taxable value

How to work out the taxable value of a taxable dealing

- 34.(1) The general rules for calculating the taxable value are set out in Table 1.

(2) In some cases, amounts must be added to the amount set out in Table 1. These additions are set out in Subdivision B of this Division.

- (3) In some cases, a special taxable value applies instead of the amount that would normally apply under Table 1 and Subdivision B of this Division. These substitute taxable values are set out in Subdivision C of this Division.

Subdivision B—Additions to taxable value

Taxable dealing with goods that are the contents of a container

- 35.(1) This section deals with situations in which a container is associated with goods (“the contents”) that are the subject of a taxable dealing. The aim of this section is to ensure that the taxable value will include a component for the container, even though the parties may have allocated a separate amount to the container.

- (2) If:
- (a) the taxable value of the dealing is calculated by reference to the price (excluding tax) for which the contents were sold; and
 - (b) the parties have allocated a separate amount to the container;
- then the taxable value is increased by so much of the value of the container as is recouped by the seller in connection with the sale of the contents.

- (3) If the taxable value of the dealing is not calculated as mentioned in subsection (2), then the taxable value is increased by so much of the value of the container as could reasonably be expected to have been recouped by the taxpayer in connection with a hypothetical sale of the contents at the time of the actual taxable dealing with the contents.

- (4) This section does not apply if:

- (a) the container itself was the subject of a taxable dealing at or

before the time when it became a container in relation to the contents; or

- (b) the container is a shipping container covered by exemption Item 60.

Assessable dealing with goods that involve the payment of an associated royalty 5

36.(1) If a royalty is paid or payable, or likely to be paid or payable, in connection with any of the following events in respect of particular goods:

- (a) the manufacture of the goods; 10
- (b) the importation or local entry of the goods;
- (c) a sale of the goods;
- (d) the granting of a lease of the goods;
- (e) an AD4a delivery of the goods;

then the taxable value of any taxable dealing with those goods that happens at or after that event includes the amount or value of the royalty. 15

(2) In this section:

“**royalty**” means any amount to the extent to which it is paid or payable (whether or not periodically) as consideration for any of the following things (or for the right to do them): 20

- (a) doing anything that would be an infringement of copyright if it were done without the licence of the copyright owner, but not including any of the following:
 - (i) performing a work; 25
 - (ii) broadcasting a work, sound recording or cinematograph film;
 - (iii) causing a cinematograph film, a work, or a television program that includes a work, to be transmitted to the subscribers to a diffusion service; 30
 - (iv) causing a sound recording to be heard in public;
 - (v) causing a cinematograph film to be seen in public;
 - (vi) exhibiting an article in public;
- (b) making, using, exercising or vending an invention (each of those terms having the meaning it has in the *Patents Act 1990*); 35
- (c) using a design that is of a kind capable of being registered under the *Designs Act 1906* (whether or not it is registered under that Act or under any other law);
- (d) using a trade mark that is of a kind capable of being registered under the *Trade Marks Act 1955* (whether or not it is registered under that Act or under any other law), but not including a mark that relates to a service; 40
- (e) using confidential information;

- (f) using machinery, implements, apparatus or other equipment;
- (g) supplying scientific, technical, industrial, commercial or other knowledge or information;
- 5 (h) supplying assistance that is ancillary to, and is supplied as a means of enabling the application or enjoyment of, any matter covered by paragraphs (a) to (g);
- (i) a total or partial forbearance in respect of any matter covered by paragraphs (a) to (h);

10 Terms used in paragraph (a) of this definition have the same meaning as in the *Copyright Act 1968*.

Assessable dealing with goods in bond

37. If a taxable dealing happens while the goods are in bond or otherwise subject to the control of the Customs, the taxable value is increased by the amount of customs duty or excise duty to which the
- 15 goods would have been subject if they had been entered for home consumption under the Customs Act or the law relating to excise (as the case requires) at the time of the taxable dealing.

Amounts not to be added if they are already included in the taxable value

- 20 38. This Subdivision does not add any amount to the taxable value so far as it would already be included in the taxable value.

Subdivision C—Substitute taxable value in special cases

Assessable dealing with prefabricated building or building section

- 25 39.(1) This section sets out the taxable value of a taxable dealing with a prefabricated building or prefabricated building section. The taxable value is the amount that would have been the total taxable value of all the taxable goods incorporated in the building or building section if the dealing had involved only those taxable goods.

- 30 (2) If the building or building section incorporates ineligible duct work (or fittings, accessories or attachments for ineligible duct work), then that duct work, and those fittings, accessories or attachments, are to be treated for the purposes of subsection (1) as being separate goods (and not as consisting of other goods that are component parts of the duct work, fittings, accessories or attachments).

- 35 (3) In this section:

“ineligible duct work” means prefabricated duct work, or prefabricated channelling, that is of a kind ordinarily used in forced-draught ventilating or air-conditioning systems;

“prefabricated building section” does not include ineligible duct work;

- 40 “taxable goods” means any assessable goods except always-exempt goods.

Sale of newspaper, magazine etc. inserts

40. If the taxable dealing is a sale of inserts that are treated under section 12 as being separate from a newspaper, magazine or other printed matter, the taxable value is the amount that would have been the taxable value if the sale had instead been an AOU. 5

AD2a sale of photographs exposed in the camera by the seller

41.(1) This section applies to an AD2a sale of photographs that were manufactured to the order of a particular customer if all the following were done by the seller:

- (a) exposing the negative in the camera; 10
- (b) printing from the negative;
- (c) finishing the photographs in the condition in which they are supplied to the customer.

(2) The taxable value is 40% of the amount (excluding tax) payable by the customer to the seller. 15

Taxable dealing with goods imported after being exported for alteration

42.(1) This section applies to any taxable dealing with goods that have been imported after having been exported for alteration as described in section 9.

(2) If customs duty has or will become payable on the importation, and that duty is calculated solely by reference to the customs value of the alterations, the taxable value is: 20

Customs value of the alterations + Customs duty on the importation

(3) If customs duty has or will become payable on the importation, but subsection (2) does not apply, the taxable value is: 25

$$\text{Notional customs value of the alterations} + \left[\text{Customs duty on the importation} \times \frac{\text{Notional customs value of the alterations}}{\text{Value of the goods for the purposes of calculating the customs duty on the importation}} \right]$$

(4) If customs duty has not, and will not, become payable on the importation, the taxable value is the amount that would have been the taxable value under subsection (2) if customs duty had become payable on the importation and had been calculated solely by reference to the value of the alterations. 30

(5) In this section:

“notional customs value of the alterations” means the amount that would have been the customs value of the alterations for the purposes of calculating duty if the duty had been calculated solely by reference to the value of the alterations. 35

Agreement between taxpayer and Commissioner regarding calculation of taxable value

5 **43.(1)** The Commissioner may enter into an agreement with a taxpayer about calculating the taxable values of particular taxable dealings.

(2) So far as the agreement is inconsistent with this Act, the agreement prevails.

Division 4—Exempt parts of taxable value

Overview of this Division

10 **44.** This Division sets out the exempt parts of the taxable value. Exempt parts are deducted from the taxable value before applying the appropriate rate of tax.

Goods incorporating tax-advantaged computer programs

15 **45.(1)** This section applies if a tax-advantaged computer program is embodied in (or in part of) the goods that are the subject of the taxable dealing.

(2) The exempt part is so much of the taxable value as is attributable to the computer program.

Goods incorporating videotex equipment

20 **46.(1)** This section applies if:
 (a) the goods incorporate videotex equipment; and
 (b) an exemption based on exemption Item 95 would have been available if the dealing had involved only the videotex equipment.

25 **(2)** The exempt part is the amount that would have been the taxable value if the dealing had involved only the videotex equipment (assuming the dealing to be taxable).

(3) In this section, “**videotex equipment**” means systems or devices referred to in exemption Item 95.

30 **Goods incorporating solar panels etc.**

47.(1) This section applies if:
 (a) the goods incorporate a solar panel; and
 (b) an exemption based on exemption Item 171 would have been available if the dealing had involved only the solar panel.

35 **(2)** The exempt part is the amount that would have been the taxable value if the dealing had involved only the solar panel (assuming the dealing to be taxable).

(3) In this section, “**solar panel**” means goods covered by subitem (1) of exemption Item 171.

Goods incorporating a milk tank

48.(1) This section applies if:

- (a) the goods incorporate a tank; and
- (b) an exemption based on exemption Item 5 would have been available if the dealing had involved only the tank. 5

(2) The exempt part is the amount that would have been the taxable value if the dealing had involved only the tank (assuming the dealing to be taxable).

Luxury motor vehicle for disabled person

49.(1) This section applies if an exemption based on exemption Item 96 or 97 would have been available except for subitem (2) of the Item concerned. 10

(2) The exempt part is 44.733% of the motor vehicle depreciation limit that applies under section 57AF of the *Income Tax Assessment Act 1936* for the financial year in which the dealing happens. 15

Customs dealing with goods that are partly exempt from customs duty

50. In the case of a customs dealing, if a proportion of the value of the goods is not liable to customs duty because of by-laws made for the purposes of item 15 in Part I of Schedule 4 to the Customs Tariff, then an equivalent proportion of the taxable value is an exempt part. 20

Agreements relating to eligible short-term leases

50A.(1) If:

- (a) the dealing is the granting of an eligible short-term lease of the goods; and
- (b) the exempt percentage specified in the agreement under subsection 15A(2) is less than 100%; 25

then the exempt part is the taxable value multiplied by the exempt percentage.

(2) If:

- (a) the goods that are the subject of the taxable dealing are covered by an agreement under subsection 15A(3) or (4), and are for use exclusively as mentioned in that subsection; and 30
- (b) the exempt percentage specified in the agreement is less than 100%;

then the exempt part is the taxable value multiplied by the exempt percentage. 35

PART 4—CREDITS

Credit entitlements

51.(1) Table 3 sets out the situations in which a claimant is entitled to a credit.

5 **(2)** A claimant is not entitled to a credit for an amount of tax for which a credit entitlement has previously arisen (whether for the claimant or another person).

(3) A claimant is not entitled to a credit unless the claim for the credit is lodged within 3 years after the time when the credit arises.

10 **(4)** A claim for a credit must be made in the form and manner approved by the Commissioner, and must be accompanied by such supporting evidence as the Commissioner requires.

Sufficient link between input goods and output goods

15 **52.** For the purposes of credit grounds CR6, CR7 and CR12, the input goods have a sufficient link with the output goods in the following cases:

- (a) the input goods, or some essential element of the input goods, has become an integral part of the output goods;
- 20 (b) the input goods have been used in connection with the output goods in the carrying out of an activity that would have been covered by an exemption [R] Item if the person carrying out the activity had been registered at all relevant times;
- (c) something that formed part of the input goods at the time of the tax-bearing dealing with the input goods has become an
- 25 integral part of the output goods.

Claimant may deduct credit from tax payable in respect of return

53. If the claimant lodges a credit claim together with a return, the claimant may deduct the credit to which the taxpayer is entitled from the tax payable in respect of the return.

30 Commissioner not required to consider credit claims for less than \$200

54.(1) The Commissioner is not required to consider a claim for a credit if the total amount claimed is less than \$200.

(2) This section does not apply to a claim that the claimant lodges together with a return.

35 Credits to be applied against tax liabilities and excess refunded

55. If the claimant has claimed a credit to which the claimant is entitled, the Commissioner must apply the credit as follows (so far as the claimant has not already deducted the credit under section 53):

- 40 **(a)** the Commissioner may apply the credit against any liability that the claimant has under the sales tax law or under any

other Act of which the Commissioner has the general administration;

(b) the Commissioner must refund any excess to the claimant.

Excess credits must be repaid

56. If the amount deducted by the claimant under section 53, or applied by the Commissioner under section 55, is more than the amount of the credit to which the claimant is properly entitled, the excess is to be treated as if it were tax that became payable, and due for payment, by the claimant at the time when it was deducted or applied, as the case may be. 5 10

[The main effect of treating the amount as if it were tax is to apply the collection and recovery rules in Part 5.]

Clawback of CR21 credit on later recovery of bad debt

57.(1) A credit under CR21 in relation to an amount written off by the claimant as a bad debt is subject to the condition that the claimant is liable to pay an amount under this section if the claimant later recovers some or all of the amount written off. 15

(2) The amount payable by the claimant is calculated using the following formula:

$$\text{CR21 credit} \times \frac{\text{Amount recovered}}{\text{Amount written off}}$$

(3) The amount is to be treated as if it were tax that became payable by the claimant at the time of recovery of the bad debt, and were due for payment as follows: 20

(a) if the claimant is a quarterly remitter for the sales tax quarter in which the recovery happened—21 days after the end of that quarter; or

(b) in any other case—21 days after the end of the month in which the recovery happened. 25

[The main effect of treating the amount as if it were tax is to apply the collection and recovery rules in Part 5.]

Clawback of CR9 credit on later sale of faulty goods

58.(1) A credit under CR9 for tax on goods that were used to replace the whole or part of faulty goods is subject to the condition that the claimant is liable to pay an amount under this section if the claimant later sells the faulty goods. 30

(2) The amount payable by the claimant is calculated using the following formula:

$$\text{CR9 credit} \times \frac{\text{Consideration for later sale of faulty goods}}{\text{Taxable value of earlier dealing with the faulty goods} - \text{Tax payable on the earlier dealing with the faulty goods}}$$

(3) The amount is to be treated as if it were tax that became 35

payable by the claimant at the time of the later sale of the faulty goods, and were due for payment as follows:

- 5 (a) if the claimant is a quarterly remitter for the sales tax quarter in which the later sale happened—21 days after the end of that quarter;
- (b) in any other case—21 days after the end of the month in which the later sale happened.

[The main effect of treating the amount as if it were tax is to apply the collection and recovery rules in Part 5.]

Agreement with Commissioner regarding credits

- 10 **59.(1)** The Commissioner may enter into an agreement with a person regarding the circumstances in which the person is to be entitled to credits and the manner of calculating and claiming such credits.

 (2) So far as the agreement is inconsistent with this Act, the agreement prevails.

Claimant may object against Commissioner's decision on credit claim

- 15 **60.(1)** If the Commissioner decides to disallow the whole or a part of a claim for a credit, the Commissioner must notify the claimant of the decision.

- 20 (2) If the claimant is dissatisfied with the Commissioner's decision, the claimant may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

PART 5—COLLECTION AND RECOVERY

Division 1—Returns

Requirement to lodge returns

- 25 **61.(1)** A person who is a monthly remitter for a month during which the person becomes liable to tax must lodge a return within 21 days after the end of the month.

 (2) A person who is a quarterly remitter for a sales tax quarter during which the person becomes liable to tax must, within 21 days after the end of the quarter, lodge either:

- 30 (a) a return for the quarter; or
- (b) a separate monthly return for each month in the quarter.

- 35 (3) In addition to the returns required under subsections (1) and (2), the Commissioner may direct a person to lodge such further or fuller return as the Commissioner requires (including a return in the person's capacity as agent or trustee).

 (4) In this section, "tax" does not include tax payable on a customs dealing.

Meaning of “monthly remitter” and “quarterly remitter”

62.(1) A person is a monthly remitter for a particular month if the person is not a quarterly remitter for the sales tax quarter in which that month happens.

(2) A person is a quarterly remitter for a sales tax quarter (“**the current quarter**”) beginning in a financial year (“**the current year**”) if the total sales tax that became payable by the person during the previous financial year was less than the quarterly remitter threshold that applies under subsection (3) for the current year and:

(a) the person was a quarterly remitter for the sales tax quarter before the current quarter; or

(b) as at the 22nd day of the current quarter, the person has no outstanding liability to lodge returns, or to pay tax, in respect of assessable dealings that happened before the current quarter.

(3) The quarterly remitter threshold for the 1992-93 financial year is \$51,200. For any later financial year, the threshold is calculated by multiplying the quarterly remitter threshold for the financial year before the later year by the following indexation factor:

Sum of the index numbers for the CPI quarters for the 12 months ending on
31 March before the later year

Sum of the index numbers for the CPI quarters for the 12 months ending on
the previous 31 March

(4) The indexation factor is to be calculated to 3 decimal places, but increased by .001 if the 4th decimal place is more than 4.

(5) Calculations under subsection (3):

(a) are to be made using only the index numbers published in terms of the most recently published reference base for the Consumer Price Index; and

(b) are to disregard indexation numbers that are published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the reference base).

(6) In this section:

“**CPI quarter**” means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December;

“**index number**” means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician.

Division 2—Due date for payment

Normal due date for payment of tax (other than tax on a customs dealing)

63.(1) Tax that is payable by a monthly remitter for a month becomes due for payment at the end of the 21st day after the end of that month.

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(2) Tax that is payable by a quarterly remitter for a sales tax quarter becomes due for payment at the end of the 21st day after the end of that quarter.

(3) This section does not apply to tax payable on a customs dealing.

5 **Normal due date for payment of tax on a customs dealing**

64.(1) Tax that is payable on a customs dealing is due for payment at the time of the dealing.

(2) A customs officer may refuse to deliver the goods concerned unless the tax has been paid.

10 **Commissioner may bring forward due date if taxpayer about to leave Australia**

65.(1) If the Commissioner has reason to believe that a person may leave Australia before a particular amount of tax would (apart from this section) become due for payment, that tax becomes due for payment on such date as the Commissioner fixes and notifies to the person.

(2) In this section:

“tax” includes penalty under Part 9.

Commissioner may extend time for payment

66.(1) The Commissioner may, in a particular case, extend the time for payment of tax, or allow it to be paid by instalments.

(2) In this section:

“tax” includes penalty under Part 9 and late-payment penalty.

Manner in which tax must be paid

67.(1) Tax on a customs dealing must be paid at the same place, and in the same manner, as customs duty is payable on the goods (or would be payable if the goods were subject to customs duty).

(2) Any other tax must be paid at the place, and in the manner, determined by the Commissioner.

(3) In this section:

30 “tax” includes penalty under Part 9 and late-payment penalty.

Penalty for late payment

68.(1) If tax payable by a person remains unpaid after the usual due date, the person is liable to pay a penalty at the rate of 20% per year on the unpaid amount. The penalty is calculated from the usual due date, or from a later date determined by the Commissioner if the Commissioner has granted an extension, or permitted payment by instalments, under section 66.

(2) The fact that a judgment is entered or given in a court for the payment of tax, or of a composite amount that includes tax, does not

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of itself cause the tax to stop being unpaid for the purposes of subsection (1).

(3) If the judgment debt bears interest, the penalty payable under subsection (1) is reduced by the following amount:

$$\text{Interest on judgment debt} \times \frac{\text{Tax component of judgment debt}}{\text{Judgment debt}} \quad 5$$

(4) The Commissioner may remit some or all of the penalty in any of the following cases:

(a) the Commissioner is satisfied that the person did not contribute to the delay in payment and has taken reasonable steps to mitigate the causes of the delay; 10

(b) the Commissioner is satisfied that:

- (i) the person contributed to the delay but has taken reasonable steps to mitigate the causes of the delay; and
- (ii) having regard to the nature of the things that caused the delay, it would be fair and reasonable to remit some or all of the penalty; 15

(c) the Commissioner is satisfied that there are special circumstances that make it reasonable to remit some or all of the penalty.

(5) In this section:

“tax” includes penalty under Part 9; 20

“usual due date” means the date on which tax becomes due for payment, ignoring any extension of time granted under section 66.

Division 3—Recovery of tax

Recovery of unpaid tax

69.(1) Unpaid tax may be recovered as a debt in any court of competent jurisdiction by the Commissioner, or by a Deputy Commissioner, suing in his or her official name. 25

(2) In this section:

“tax” includes penalty under Part 9 and late-payment penalty.

Recovery of tax paid on behalf of another person

70.(1) A person who pays any tax for or on behalf of a taxpayer may: 30

- (a) recover the amount from the taxpayer as a debt (together with the cost of recovery), in any court of competent jurisdiction; or
- (b) retain or deduct the amount out of money in the payer’s hands that belongs to, or is payable to, the taxpayer. 35

(2) In this section:

“tax” includes penalty under Part 9 and late-payment penalty.

Recovery of tax from joint taxpayers

- 71.(1) If 2 or more persons are jointly liable to tax on any goods, they are each liable for the whole of the tax. However, any of them who has paid the tax may recover the following contribution from any other person jointly liable to pay the tax:

$$\text{Tax paid} \times \frac{\text{Interest of contributor in the goods}}{\text{Total interests in the goods of all the persons jointly liable}}$$

- (2) The person entitled to the contribution:
- (a) may recover it as a debt in any court of competent jurisdiction; or
- (b) may retain or deduct it out of money in the person's hands that belongs to, or is payable to, the contributor.
- (3) In this section:
- "tax" includes penalty under Part 9 and late-payment penalty.

Recovery of tax from trustee of deceased taxpayer

- 72.(1) This section applies if, at the time of a taxpayer's death, some tax due by the taxpayer has not been assessed or has not been paid.
- (2) The Commissioner has the same powers and remedies for the assessment and recovery of the tax from the trustee of the estate as the Commissioner would have had against the taxpayer if the taxpayer were still alive.
- (3) The trustee must provide any returns and other information that the taxpayer was liable to provide, or would have been liable to provide if the taxpayer had not died. The trustee must also provide any other returns or other information that the Commissioner requires.
- (4) If the trustee fails to lodge any return or other information, the Commissioner may make an assessment of tax in relation to the deceased taxpayer.
- (5) The trustee is liable to penalty under Part 9 and late-payment penalty to the same extent as the taxpayer would be if the taxpayer were still alive.
- (6) Any amount payable by the trustee is a charge on all of the deceased taxpayer's estate in the trustee's hands in priority to any other encumbrance (other than a charge in relation to a debt payable to the Commissioner).
- (7) A trustee who is dissatisfied with an assessment made under this section may object in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (8) In this section:

“tax” includes penalty under Part 9 and late-payment penalty.

Recovery of tax from unadministered deceased estate

73.(1) This section applies if administration of a taxpayer’s estate did not begin within 6 months after the taxpayer’s death. For this purpose, administration of a taxpayer’s estate is taken to begin when either probate of the taxpayer’s will is granted, or letters of administration of the taxpayer’s estate are granted. 5

(2) The Commissioner may make an assessment of tax in relation to the deceased taxpayer. If the taxpayer resided in a State or Territory at the time of death, the Commissioner must publish notice of the assessment twice in a daily newspaper circulating in the State or Territory. 10

(3) Subject to any amendment, the assessment is conclusive evidence of the liability of the deceased taxpayer.

(4) A person who claims an interest in the deceased taxpayer’s estate, and who is dissatisfied with the assessment, may object in the manner set out in Part IVC of the *Taxation Administration Act 1953*. 15

(5) If a person is granted probate of the taxpayer’s will, or letters of administration of the taxpayer’s estate, and the person is dissatisfied with the assessment, the person may object in the manner set out in Part IVC of the *Taxation Administration Act 1953*. 20

(6) Part IVC of the *Taxation Administration Act 1953* applies in relation to an objection made by a person under subsection (4) or (5) as if the person were the deceased taxpayer.

(7) In this section: 25
“tax” includes penalty under Part 9 and late-payment penalty.

Commissioner may collect money from person who owes money to a taxpayer

74.(1) This section allows the Commissioner to collect money from a person who owes money to a taxpayer who has a sales tax debt. 30

(2) The Commissioner may direct a person (“the third party”) who owes, or may later owe, money (“the available money”) to the taxpayer to pay some or all of the available money to the Commissioner in accordance with the direction. The Commissioner must send a copy of the direction to the taxpayer to the last place of address known to the Commissioner. 35

(3) The direction cannot require an amount to be paid to the Commissioner at a time before it becomes owing by the third party to the taxpayer.

(4) The third party must comply with the direction, so far as the third party is able to do so. 40

Penalty: \$2,000.

5 (5) If a person is convicted of an offence in relation to a refusal or failure of the third party to comply with subsection (4), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to the Commissioner an amount up to the amount involved in the refusal or failure of the third party.

10 (6) Any payment made by the third party under this section is taken to have been made with the authority of the taxpayer and of all other persons concerned, and the third party is indemnified for the payment.

(7) If the whole of the sales tax debt of the taxpayer is discharged before any payment is made by the third party, the Commissioner must immediately give notice to the third party of that fact.

15 (8) The third party is taken to owe money to the taxpayer if:
(a) money is due or accruing by the third party to the taxpayer; or
(b) the third party holds money for or on account of the taxpayer;
or
(c) the third party holds money on account of some other person for payment to the taxpayer; or
20 (d) the third party has authority from some other person to pay money to the taxpayer;

whether or not the payment of the money to the taxpayer is dependent on a pre-condition that has not been fulfilled.

25 (9) For the purposes of this section, money that has been paid by a person to a building society for the issue of withdrawable shares in the capital of the society, but has not been repaid, is taken to be:

(a) if the money is repayable on demand—money due by the building society to the person;
(b) if the money is not repayable on demand—money that may
30 become due by the building society to the person.

(10) In this section:

“**building society**” means a society registered or incorporated as a building society, co-operative housing society or other similar society under the law in force in a State or Territory;

35 “**person**” includes:

- (a) the Commonwealth, a State or a Territory;
- (b) a public authority of the Commonwealth or of a State or Territory, whether or not the authority is incorporated;

40 “**sales tax debt**” means any of the following amounts payable by a person (whether or not the amount has become due for payment):

- (a) sales tax;
- (b) penalty under Part 9 and late-payment penalty;

- (c) a judgment debt, or costs, for sales tax, penalty under Part 9 or late-payment penalty;
- (d) a fine, or costs, that a court has imposed for an offence against the sales tax law;
- (e) an amount that a court has ordered the person to pay to the Commissioner, following conviction of the person for an offence against the sales tax law. 5

Service of notices in recovery proceedings if taxpayer absent from Australia etc.

- 75.(1)** This section applies if: 10
- (a) a document needs to be served on a taxpayer for the purposes of any proceedings under the sales tax law for the recovery of any amount from the taxpayer; and
 - (b) after making reasonable inquiries, the Commissioner is satisfied that: 15
 - (i) the taxpayer is absent from Australia and does not have any agent or attorney in Australia on whom the document can be served; or
 - (ii) the taxpayer cannot be found.
- (2)** The document may be served by posting the document, or a sealed copy of the document, in a letter addressed to the taxpayer at the taxpayer's residence or place of business last known to the Commissioner. 20
- (3)** Service under this section does not require the leave of the court. 25

Division 4—Remission of tax

Remission of tax not paid within 3 years after it became payable

- 76.(1)** The Commissioner must remit any tax that has not been paid within 3 years after the time when it became payable, unless:
- (a) within the period of 3 years, the Commissioner has required payment of the tax by a notice in writing served on the person liable to pay the tax; or 30
 - (b) the Commissioner is satisfied that payment of the tax was avoided by fraud or evasion.
- (2)** Any payment made in part satisfaction of several amounts that became payable at different times is taken to have been applied in satisfaction of those amounts of tax in the order in which they became payable, unless the Commissioner determines a different order. 35
- (3)** In this section:
- "tax"** includes penalty under Part 9 and late-payment penalty. 40

Remission if tax underpaid in reliance on Commissioner's interpretation of the sales tax law

77.(1) This section applies to a taxpayer if:

- 5 (a) the Commissioner alters a previous ruling that applied to the taxpayer; and
- (b) in reliance on the previous ruling, the taxpayer has underpaid tax on a dealing that happened before the alteration.

10 (2) The Commissioner must remit the underpaid tax unless the Commissioner is satisfied that the taxpayer contributed to the giving, or continuing in force, of the earlier ruling by a mis-statement or suppression of a material fact.

(3) The following rules apply in deciding whether a ruling applies to a particular taxpayer, or whether a ruling has been altered:

- 15 (a) a private ruling applies only to the person to whom it was given;
- (b) so far as a private ruling conflicts with an earlier public ruling, the private ruling prevails;
- (c) so far as a public ruling conflicts with an earlier private ruling, the public ruling prevails;
- 20 (d) an alteration that a later ruling makes to an earlier ruling is disregarded so far as the alteration results from a change in the law that came into operation (or was taken to have come into operation) after the time when the earlier ruling was given.

(4) In this section:

- 25 **"private ruling"** means a ruling given to a particular person;
- "public ruling"** means a ruling other than a private ruling;
- "ruling"** means any written ruling, decision, advice or assessment given or published by the Commissioner, including one that has been previously altered.

30 **PART 6—REGISTRATION**

Registration

78.(1) A person ("**the applicant**") may apply for registration if the applicant does, or intends to do, any of the following in the course of a business:

- 35 (a) manufacturing assessable goods in Australia;
- (b) making any of the following kinds of Australian sales of assessable goods:
 - (i) wholesale sales;
 - (ii) indirect marketing sales;
 - 40 (iii) sales of goods for use by the purchaser as raw materials in the manufacture in Australia of assessable goods;

- (c) making Australian sales of assessable goods to eligible Australian travellers, or eligible foreign travellers, in accordance with the prescribed rules for export sales;
 - (d) things that would satisfy the requirements of an exemption [R] Item (if they were done by a registered person). 5
- (2) If the applicant complies with this section, the Commissioner must register the applicant unless the Commissioner refuses registration under section 79.
- (3) The registration remains in force until the applicant ceases to exist or the registration is cancelled. 10
- (4) Section 8 is to be disregarded in deciding whether the applicant satisfies the ground in paragraph (1)(a) of this section.
- (5) In this section:
- “Australian sale”** means a sale that happens at a time when the goods are in Australia; 15
- “manufacture”** does not include the duplication of a computer program so as to produce a tax-advantaged computer program.
- Commissioner may refuse registration**
- 79.(1) The Commissioner may refuse to register the applicant if:
- (a) the application is false or misleading in a material particular (either because of something stated in the application or something left out); or 20
 - (b) the applicant has at any time been convicted of an offence against section 91.
- (2) A person who is affected by a decision to refuse to register and is dissatisfied with the decision may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*. 25
- Cancellation of registration**
- 80.(1) The Commissioner may cancel a person’s registration if:
- (a) the person no longer satisfies any registration ground; or 30
 - (b) the person’s application for registration is false or misleading in a material particular (either because of something stated in the application or something left out); or
 - (c) the person has at any time been convicted of an offence against section 91. 35
- (2) The Commissioner must cancel a person’s registration if the person applies for the registration to be cancelled.
- (3) A person who is affected by a cancellation decision and is dissatisfied with the decision may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*. 40

Registered person must notify Commissioner of certain matters

81.(1) A registered person must notify the Commissioner if:

- (a) the person changes address; or
- (b) a time comes when the person no longer satisfies any registration ground.

(2) The notification must be made within 21 days after the change of address or the time mentioned in paragraph (1)(b).

PART 7—QUOTING

Standard grounds for quoting registration number

82.(1) A registered person (“the quoter”) may quote a registration number for a dealing with goods if, at the time of quoting, the quoter has the intention of dealing with the goods in any of the following ways:

- (a) selling the goods by wholesale, or by indirect marketing sale, while the goods are in Australia;
- (b) selling the goods, by any kind of sale, while they are in Australia (this ground is available only if the quoter is mainly a wholesaler at the time of quoting);
- (c) selling the goods to any registered person who quotes for the sale;
- (d) selling the goods, while they are in Australia, to a particular unregistered person who has quoted an exemption declaration for the sale;
- (e) selling the goods in circumstances that will be exempted by section 30;
- (f) using the goods so as to satisfy an exemption Item that is in force at the time of quoting;
- (g) granting an eligible long-term lease, an eligible short-term lease or a lease that will be exempted by section 32;
- (h) using the goods exclusively as mentioned in subsection 15A(3) or (4), while the goods are covered by an agreement under that subsection.

(2) For the purposes of paragraph (1)(b), the quoter is mainly a wholesaler at the quoting time only if:

- (a) wholesale sales and indirect marketing sales account for more than half of the total value of all sales of assessable goods by the quoter during the 12 months ending at the quoting time; or
- (b) the quoter has an expectation (based on reasonable grounds) that wholesale sales and indirect marketing sales will account for more than half of the total value of all sales of assessable

goods by the quoter during the 12 months starting at the quoting time.

For this purpose, the value of a sale of goods is the price for which the goods are sold.

(3) The quoter may also quote a registration number for a dealing with goods ("**the current goods**") if: 5

(a) at the time of quoting, the quoter has the intention that:

(i) the current goods will be applied to the quoter's own use in a way that results in them becoming a container for other property; and 10

(ii) immediately after that application to own use, the contents of the current goods will consist wholly of assessable goods (or assessable goods and their containers); and

(b) at the time of quoting: 15

(i) the quoter has the intention of exporting the current goods with those contents; or

(ii) if the contents are to be packed on behalf of another person—the quoter expects that the other person will export the current goods with those contents. 20

[The subsection (3) quoting ground would be available, for example, to a registered manufacturer when purchasing boxes to be used to pack the manufacturer's products that are to be exported.]

Standard grounds for quoting exemption declaration

83.(1) An unregistered person ("**the quoter**") may quote an exemption declaration for a dealing with goods if, at the time of quoting, the quoter has the intention of dealing with the goods in any of the following ways: 25

(a) using the goods so as to satisfy an exemption Item that is in force at the time of quoting;

(b) selling the goods, while they are in Australia, to a particular person who has quoted for the sale;

(c) granting an eligible long-term lease, an eligible short-term lease or a lease that will be exempted by section 32; 30

(ca) using the goods exclusively as mentioned in subsection 15A(3) or (4), while the goods are covered by an agreement under that subsection;

(d) selling the goods in circumstances that will be exempted by paragraph 30(1)(c). 35

(2) The quoter may also quote an exemption declaration for a dealing with goods ("**the current goods**") if:

(a) at the time of quoting, the quoter has the intention that:

(i) the current goods will be applied to the quoter's own use 40

in a way that results in them becoming a container for other property; and

- 5 (ii) immediately after that application to own use, the contents of the current goods will consist wholly of assessable goods (or assessable goods and their containers); and

(b) at the time of quoting:

- (i) the quoter has the intention of exporting the current goods with those contents; or
10 (ii) if the contents are to be packed on behalf of another person—the quoter expects that the other person will export the current goods with those contents.

[The subsection (2) ground would be available, for example, to an unregistered manufacturer when purchasing boxes to be used to pack the manufacturer's products that are to be exported.]

Additional quoting grounds in special circumstances

- 15 **84.** The Commissioner may authorise a registered person to quote a registration number, or an unregistered person to quote an exemption declaration, in special circumstances in which the person would not otherwise be entitled to quote.

Monthly quoting with approval of Commissioner

- 20 **85.(1)** A registered person (“the quoter”) may, with the approval of the Commissioner, make a monthly quote under this section for purchases that the registered person proposes to make from another registered person (“the supplier”) during a month covered by the approval.

- 25 (2) If the quoter makes such a monthly quote on or before the first day of the month to which the quote relates, the quoter is taken to have quoted a registration number for all purchases during the month from the supplier, other than purchases in respect of which the quoter has notified the supplier in accordance with subsection (3).

- 30 (3) If the quoter is not entitled to quote for a particular purchase from the supplier during the month, the quoter must notify the supplier of that fact at or before the time of the purchase. The notification must be in the form and manner approved by the Commissioner.
Penalty for a contravention of this subsection: \$2,000.

- 35 (4) Section 89 applies to a quote that the quoter is taken to have made under subsection (2) of this section for a particular purchase.

Manner in which quote must be made

86.(1) A quote (including a monthly quote) must be made in the form and manner approved by the Commissioner.

- 40 (2) A quote for a dealing is not effective unless it is made at or before the time of the dealing.

Registered person not entitled to quote an exemption declaration, and vice versa

87.(1) An unregistered person is not entitled to quote a registration number.

(2) A registered person is not entitled to quote an exemption declaration. 5

Incorrect quote nevertheless effective for certain purposes

88. If a person quotes in circumstances in which the person is not entitled to quote, or in a manner that does not comply with subsection 86(1), the quote is nevertheless: 10

- (a) effective for the purposes of section 15; and
- (b) effective for the purpose of sections 27 and 28, unless section 89 applies.

Quote not effective for certain purposes if there are grounds for believing it was improperly made 15

89. A quote is not effective, so far as it would have resulted in an exemption or a ground for a CR8 credit, if at the time of the quote the person to whom the quote is made has reasonable grounds for believing that:

- (a) the quoter is not entitled to quote in the particular circumstances; or 20
- (b) the quote is not made in the form and manner required by subsection 86(1); or
- (c) the quote is false or misleading in a material particular (either because of something stated in the quote or something left out). 25

Quote on goods applies also to container for the goods

90. A quote made for an assessable dealing with goods ("the contents") applies also to any other assessable goods that are a container for the contents at the time of the assessable dealing.

Improper quoting is an offence 30

91. A person must not, in relation to any dealing with goods:

- (a) falsely represent that the person is a registered person; or
- (b) quote a registration number or exemption declaration:
 - (i) in circumstances in which the person is not entitled to quote; or 35
 - (ii) in contravention of subsection 86(1); or
- (c) in any other way falsely quote a registration number or exemption declaration.

Penalty: \$2,000.

**PART 8—AVOIDANCE SCHEMES, NON-ARM'S LENGTH
TRANSACTIONS ETC.**

Division 1—Avoidance schemes

Division allows cancellation of tax benefits under avoidance schemes

5 **92.(1)** This Division allows the Commissioner to cancel tax benefits obtained under schemes to which the Division applies.

(2) Section 93 explains what it means to obtain a tax benefit under a scheme to which this Division applies.

10 **(3)** Section 93A sets out the way in which the Commissioner may cancel a tax benefit.

Obtaining a tax benefit under a scheme to which this Division applies

93.(1) A taxpayer obtains a tax benefit under a scheme to which this Division applies that has been entered into or carried out by a person or persons (whether or not the taxpayer) if:

- 15 **(a)** the taxpayer has obtained a tax benefit that:
- (i) the taxpayer would not have obtained if the scheme had not been entered into or carried out; or
 - (ii) the taxpayer could reasonably be expected not to have obtained if the scheme had not been entered into or carried out (taking into account, among other relevant matters, any things that did not actually happen but could reasonably be expected to have happened if the scheme had not been entered into or carried out); and
- 20 **(b)** having regard to the matters set out in subsection (2), it would be concluded that the scheme was entered into, or carried out, by all or any of the parties for the purpose or dominant purpose of obtaining a tax benefit for any person (whether or not that person is the taxpayer and whether or not that person is one of the parties).
- 25 **(2)** For the purposes of paragraph (1)(b), the matters to have regard to are:
- (a) the manner in which the scheme was entered into or carried out;
 - (b) the form and substance of the scheme;
 - 35 (c) the time at which the scheme was entered into and the length of the period during which the scheme was carried out;
 - (d) the result in relation to the operation of the sales tax law that, but for this Division, would be achieved by the scheme;
 - 40 (e) any change in the financial position of the taxpayer that has resulted, or may reasonably be expected to result, from the scheme;
 - (f) any change in the financial position of any person who has, or

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- has had, any connection (whether of a business, family or other nature) with the taxpayer, being a change that has resulted, will result or may reasonably be expected to result, from the scheme;
- (g) any other consequence for the taxpayer, or for any person referred to in paragraph (f), of the scheme having been entered into or carried out; 5
- (h) the nature of any connection (whether of a business, family or other nature) between the taxpayer and any person referred to in paragraph (f);
- but the matters do not include the actual purpose for which any person entered into or carried out the scheme. 10
- (3) This Division applies to:
- (a) a scheme that was entered into after 26 May 1992; or
- (b) a scheme that began to be carried out after 26 May 1992 (not including a scheme that was entered into on or before 26 May 1992). 15
- (4) In this section:
- “carrying out”** includes carrying out together with one or more other persons;
- “dominant purpose”**, in relation to several purposes, means a purpose that is dominant when compared to all the remaining purposes taken together; 20
- “scheme”** includes:
- (a) an arrangement that is not legally enforceable;
- (b) a course of conduct; 25
- (c) a unilateral scheme or course of conduct;
- “tax benefit”** means:
- (a) any reduction in liability to tax; or
- (b) any increase in an entitlement to a credit.
- Commissioner may cancel tax benefits obtained under schemes to which this Division applies** 30
- 93A.(1)** If a taxpayer obtains a tax benefit under a scheme to which this Division applies, the Commissioner may make an assessment that cancels the tax benefit.
- (2) The Commissioner may, in the assessment, do all or any of the following: 35
- (a) determine, for the purpose of cancelling the tax benefit, that particular things are to be treated as not having happened;
- (b) determine, for the purpose of cancelling the tax benefit, that particular things are to be treated as having been done by a different person or to have happened at a different time; 40
- (c) determine, for the purpose of cancelling the tax benefit, that

particular things that did not actually happen are to be treated as having happened and, where appropriate:

- (i) to have been done by a particular person; or
- (ii) to have happened at a particular time.

- 5 (3) An amount that is payable by a taxpayer because of the cancellation of an entitlement to a credit is to be treated as if it were an amount of tax payable by the taxpayer.

[The main effect of treating the amount as if it were tax is to apply the collection and recovery rules in Part 5.]

(4) Notice of the assessment may be included in any other notice of assessment under this Act that relates to the same person.

- 10 (5) An amount payable under an assessment that is made under this section becomes due for payment on the day specified in the notice of assessment. The day must be at least 14 days after the date of issue of the assessment.

Division 2—Non-arm's length transactions

- 15 **Alteration of tax liability or credit if affected by non-arm's length transaction**

94.(1) This section applies to a taxpayer if:

- (a) the taxpayer (or an associate) has been a party to a non-arm's length transaction; and
- 20 (b) if the transaction had instead been an arm's length transaction, it would have been the case (or could reasonably be expected to have been the case) that:
 - (i) the liability of the taxpayer to tax on the non-arm's length transaction, or any other transaction, would have
 - 25 been increased; or
 - (ii) the entitlement of the taxpayer to a credit in connection with the non-arm's length transaction, or any other transaction, would have been reduced.

- 30 (2) The liability or credit is taken always to have been the amount that it would have been (or could reasonably be expected to have been) if it had been based on an arm's length transaction instead of on the non-arm's length transaction.

Division 3—Apportionment of global amounts

Apportionment of global amounts

- 35 95.(1) If there is a need to know the price for which particular goods were sold, but the parties have not allocated a particular amount to those goods, the price for which those goods were sold is (for the purposes of the sales tax law) the price for which the goods could

reasonably be expected to have been sold if they had been sold separately.

(2) Similarly, if there is a need to know how much of a global amount relates to some other element of a transaction, but the parties have not allocated a particular amount to that element, the amount to be allocated to that element (for the purposes of the sales tax law) is the amount that could reasonably be expected to have been allocated to that element if that element had been the only subject matter of the transaction. 5

PART 9—PENALTIES FOR NON-COMPLIANCE 10

Penalty for failure to provide return or other information

96. A taxpayer who fails to provide a return or other information that the person is required to provide under the sales tax law in relation to goods is liable to a penalty equal to double the tax payable by the taxpayer on any assessable dealing with the goods. 15

Penalty for making false statements etc.

97.(1) A person is liable to a penalty if:

(a) the person:

- (i) makes a false statement to a taxation officer; or
- (ii) makes a false statement to someone who is not a taxation officer, for a purpose in connection with the operation of the sales tax law; 20

(whether or not the person making the statement knows that it is a false statement); and

- (b) the tax properly payable by the person making the statement, or by the person to whom the statement is made, exceeds the tax that would have been calculated on the assumption that the statement was not a false statement. 25

[An example of a statement covered by subparagraph (1)(a)(ii) is a false statement that a lessee of goods makes to the lessor about the lessee's intended use of the goods.]

(2) The amount of the penalty is double the excess specified in paragraph (1)(b). 30

(3) In this section:

“false statement” means a statement (whether made orally, in a document or in any other way) that:

- (a) is false or misleading in a material particular; or
- (b) omits any matter or thing without which the statement is misleading in a material particular; 35

but does not include a statement made in a document produced under paragraph 108(1)(c);

“taxation officer” means a person who is exercising powers, or performing functions, under or in connection with the sales tax law.

Penalty if general anti-avoidance provision applies

- 5 **98.** If the Commissioner applies section 93A so as to cancel a tax benefit, the taxpayer who would have obtained the tax benefit is liable to pay a penalty equal to double the amount of that tax benefit.

Assessment of penalty and due date for payment

- 10 **99.(1)** The Commissioner must make an assessment of penalty that is payable under this Part.
- (2)** Notice of the assessment may be included in any other notice of assessment under this Act that relates to the same person.
- (3)** Penalty under this Part becomes due for payment on the day specified in the notice of assessment. The day must be at least 14 days after the date of issue of the assessment.

15 **Remission of penalty**

100. The Commissioner may remit all or any of the penalty that a person is liable to pay under this Part. The remission may be made either before or after the penalty is assessed.

PART 10—ADMINISTRATION OF THE SALES TAX LAW

20 *Division 1—Assessments*

General powers of Commissioner to make an assessment of tax payable by a person

- 25 **101.(1)** The Commissioner may at any time make an assessment of tax payable by a person on an assessable dealing or assessable dealings (whether or not the Commissioner has previously made an assessment in relation to that dealing or any of those dealings).
- (2)** This section does not apply to an amount payable because of the cancellation of a tax benefit under section 93A.

Taxpayer may require Commissioner to make an assessment

- 30 **102.(1)** A taxpayer may make a written request to the Commissioner for an assessment on a specified dealing on which tax may be payable by the taxpayer. The Commissioner must comply with the request if it is made within the time limits set by subsection (2).
- 35 **(2)** The request must be lodged with the Commissioner:
- (a)** if the taxpayer is a quarterly remitter for the sales tax quarter in which the dealing happened—within 21 days after the end of that quarter, or within such further time as the Commissioner allows;

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- (b) if the taxpayer is not a quarterly remitter for that sales tax quarter—within 21 days after the end of the month in which the dealing happened, or within such further time as the Commissioner allows.

Taxpayer's liability not dependent on assessment 5

103.(1) A taxpayer's liability to tax on an assessable dealing, and the due date for payment of that tax, are not dependent on, or in any way affected by, the making of an assessment in respect of that dealing.

(2) This section does not apply to an amount payable because of the cancellation of a tax benefit under section 93A. 10

Amendment of assessment

104. The Commissioner may at any time amend an assessment. An amended assessment is an assessment for all purposes of the sales tax law.

Commissioner must give the taxpayer notice of the assessment 15

105. The Commissioner must give the taxpayer notice of the assessment as soon as practicable after the assessment is made. However, failure to give the notice does not affect the validity of the assessment.

Later assessment prevails in case of inconsistency

106. If there is an inconsistency between assessments that relate to the same subject matter, the later assessment prevails to the extent of the inconsistency. 20

Taxpayer may object against assessment

107. A taxpayer who is dissatisfied with an assessment made in relation to the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*. 25

Division 2—Information gathering

Commissioner may direct a person to provide information

108.(1) The Commissioner may direct a person to do all or any of the following: 30

- (a) to provide the Commissioner with such information as the Commissioner requires;
- (b) to attend and give evidence before the Commissioner or an authorised officer;
- (c) to produce to the Commissioner any documents in the custody or under the control of the person; 35

for the purpose of enabling the Commissioner to apply the sales tax law in relation to the person, or in relation to any other person.

(2) The Commissioner may direct that:

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- (a) the information or answers to questions be given either orally or in writing (as the Commissioner requires);
- (b) the information or answers to questions be verified or given on oath or affirmation (being an oath or affirmation that the information or answers the person will give will be true).

(3) The Commissioner or an authorised officer may administer the oath or affirmation.

(4) The regulations may prescribe scales of expenses to be allowed to persons who are required to attend under this section.

Access to premises etc.

109.(1) For the purposes of the sales tax law, an authorised officer:

- (a) may, at all reasonable times, enter and remain on any land or premises;
- (b) is entitled to full and free access at all reasonable times to any documents, goods or other property;
- (c) may inspect, examine, make copies of, or take extracts from, any documents;
- (d) may inspect, examine, count, measure, weigh, gauge, test or analyse any goods or other property and, to that end, remove or take samples.

(2) An authorised officer is not entitled to enter or remain on any land or premises if, after having been requested by the occupier to produce proof of his or her authority, the officer does not produce an authority signed by the Commissioner stating that the officer is authorised to exercise powers under this section.

(3) If an authorised officer enters, or proposes to enter, land or premises under this section, the occupier must provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty for contravention of this subsection: \$1,000.

Protection of confidentiality of information

110.(1) This section restricts what a person ("the entrusted person") may do with protected information, or protected documents, that the person has obtained in the course of official employment.

(2) The entrusted person must not make a record of protected information and must not disclose it to anyone else.

Penalty: Imprisonment for 2 years.

(3) Each of the following is an exception to the prohibition in subsection (2):

- (a) the recording or disclosure is for the purposes of the sales tax law;

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- (b) the recording or disclosure happens in the course of the official employment of the entrusted person;
 - (c) the entrusted person is the Commissioner or a Deputy Commissioner and the disclosure is to:
 - (i) the Comptroller-General of Customs; or 5
 - (ii) another person for the purpose of that other person carrying out functions under a taxation law; or
 - (iii) the Administrative Appeals Tribunal in connection with proceedings under a taxation law;
 - (d) the disclosure is by a person authorised by the Commissioner or a Deputy Commissioner to disclose the information and the disclosure is made to:
 - (i) the Comptroller-General of Customs; or 10
 - (ii) another person for the purpose of that other person carrying out functions under an Act administered by the Commissioner. 15
- (4) None of the exceptions in subsection (3) applies if the information is disclosed to a Minister.
- (5) Except where it is necessary to do so for the purpose of giving effect to the sales tax law, the entrusted person is not to be required: 20
- (a) to produce any protected document to a court; or
 - (b) to disclose protected information to a court.
- (6) In this section:
- “disclose”** means divulge or communicate;
- “official employment”** means: 25
- (a) appointment or employment by the Commonwealth, or the performance of services for the Commonwealth; or
 - (b) the exercise of powers or performance of functions under a delegation by the Commissioner;
- “protected document”** means any document made or given under, or for the purposes of, the sales tax law (for example, a return or notice of assessment); 30
- “protected information”** means information that meets all the following conditions:
- (a) it relates to the affairs of a person other than the entrusted person; 35
 - (b) it was obtained by the entrusted person, or by any other person, in the course of official employment;
 - (c) it was disclosed or obtained under the sales tax law.

Division 3—Miscellaneous

Commissioner has general administration of sales tax law

111. The Commissioner has the general administration of the sales tax law.

5 Commissioner must prepare annual report

112.(1) As soon as practicable after 30 June in each year, the Commissioner must prepare and give to the Minister a report on the working of the sales tax law during the year ending on that 30 June.

10 (2) The report must include a report on any breaches or evasions of the sales tax law that the Commissioner knows about.

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Formal requirements for returns, notifications etc.

15 113. Any return, application, notification or other document that a person is required or permitted to give to the Commissioner under this Act:

- (a) must be in a form approved by the Commissioner; and
- 20 (b) must contain such information as the form requires, and such further information as the Commissioner requires; and
- (c) must be lodged at the place and in the manner that the Commissioner requires.

Notices etc. by Commissioner must be in writing

25 114. Any notice, approval, direction or authority that the Commissioner may give, or must give, to a person under this Act must be in writing.

PART 11—MISCELLANEOUS

Division 1—Evidence in proceedings

Court must take judicial notice of signature of Commissioner etc.

30 115.(1) A court must take judicial notice of the signature of a person who holds or has held the office of Commissioner, Second Commissioner or Deputy Commissioner, if that signature appears on any official document in connection with the sales tax law.

35 (2) In this section, “court” includes a tribunal and any judge or person acting judicially or authorised by law or consent of parties to hear, receive and examine evidence.

Evidentiary effect of notice of assessment etc.

116.(1) The production of:

(a) a notice of assessment; or

(b) a document that is signed by the Commissioner and appears to be a copy of a notice of assessment;

5

is conclusive evidence that the assessment was duly made and that the amounts and other particulars in the assessment are correct. This subsection does not apply in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the assessment.

(2) The production of:

10

(a) a notice of a credit decision; or

(b) a document that is signed by the Commissioner and appears to be a copy of a notice of a credit decision;

is conclusive evidence that the credit decision was duly made and is correct. This subsection does not apply in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the credit decision.

15

(3) The production of a document that is signed by the Commissioner and appears to be a copy of a document issued or served by the Commissioner is *prima facie* evidence that the document was so issued or served.

20

(4) The production of a document that is signed by the Commissioner and appears to be a copy of, or extract from, any document made or given by any person for the purposes of the sales tax law is evidence of the matter set out in the document to the same extent as the original document would have been evidence of that matter.

25

(5) The production of a certificate signed by the Commissioner certifying that an amount was, at the date of the certificate, due and payable by a person under the sales tax law is *prima facie* evidence of the matters stated in the certificate.

30

(6) The production of a *Gazette* containing a notice that appears to have been issued by the Commissioner is *prima facie* evidence that the notice was issued by the Commissioner in the *Gazette*.

(7) In this section:

35

“**Commissioner**” includes a Second Commissioner or a Deputy Commissioner;

“**credit decision**” means the Commissioner’s decision on a claim for a credit.

Division 2—Special obligations etc. for particular taxpayers and other persons

Application of sales tax law to partnerships

5 **117.(1)** The sales tax law applies to a partnership as if the partnership were a person, but it applies with the following changes:

- (a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners;
- 10 (b) the partners are jointly and severally liable to pay any amount that would be payable by the partnership;
- (c) any offence against the sales tax law that would otherwise be committed by the partnership is taken to have been committed by each of the partners.

15 **(2)** In a prosecution of a person for an offence that the person is taken to have committed because of paragraph (1)(c), it is a defence if the person proves that the person:

- (a) did not aid, abet, counsel or procure the relevant act or omission; and
- 20 (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the person).

Application of sales tax law to unincorporated companies

25 **118.(1)** The sales tax law applies to an unincorporated company as if the company were a person, but it applies with the following changes:

- (a) obligations that would be imposed on the company are imposed instead on each member of the committee of management of the company, but may be discharged by any of those members;
- (b) any offence against this Act that would otherwise be committed by the company is taken to have been committed by each member of the committee of management of the company.
- 30

(2) In a prosecution of a person for an offence that the person is taken to have committed because of paragraph (1)(b), it is a defence if the person proves that the person:

- 35 (a) did not aid, abet, counsel or procure the relevant act or omission; and
- (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the person).

Trustee to be treated as separate person for each trustee capacity

40 **119.** For the purpose of the sales tax law, a person who is a trustee in more than one capacity is to be treated as a separate person in relation to each of those capacities.

Public officer of a company

120.(1) In the case of a company that is entitled to be registered, the person who is, from time to time, the public officer of the company for the purposes of the *Income Tax Assessment Act 1936* is also the public officer of the company for the purposes of the sales tax law, and the public officer's address for service under that Act is also the public officer's address for service for the purpose of the sales tax law. 5

(2) The public officer is answerable for doing everything required to be done by the company under the sales tax law, and in case of default is liable to the same penalties. 10

(3) A proceeding under the sales tax law that is brought against the public officer is taken to have been brought against the company, and the company is liable jointly with the public officer for any penalty imposed on the public officer.

(4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the company. 15

(5) Service of a notice or other document on the public officer or at the public officer's address for service is sufficient service on the company for the purposes of the sales tax law. If at any time there is no public officer of the company, service on a person who is acting or appears to be acting in the business of the company is sufficient. 20

(6) This section does not, by implication, reduce any of the obligations or liabilities of the company.

Liability of directors etc. of a company 25

121.(1) Any notice, process or proceeding that may be given to, served upon or taken against a company or its public officer under the sales tax law may, if the Commissioner thinks fit, be given to, served on, or taken against a person ("**the representative**") who is:

- (a) a director, secretary or other officer of the company; or 30
- (b) an attorney or agent of the company.

(2) The representative has the same liability in respect of the notice, process or proceeding as the company or public officer would have had if it had been given to, served upon or taken against the company or public officer. 35

(3) This section does not, by implication, reduce any of the obligations or liabilities of the company or public officer.

Special obligations for agents and trustees

122.(1) This section sets out special obligations that apply to a person ("**the representative**") who is an agent or trustee. 40

(2) The representative has the following obligations:

- (a) the representative is answerable as taxpayer for doing all the things that the sales tax law requires to be done in relation to assessable dealings;
- 5 (b) the representative must provide any returns or other information that this Act requires concerning the dealings;
- (c) the representative is liable to the tax on the dealings, but only in a representative capacity.

10 (3) The representative must retain sufficient money to pay the tax out of any money that the representative holds in a representative capacity. The representative is indemnified for payments that the representative makes under the sales tax law in a representative capacity.

15 (4) If the representative, without the permission of the Commissioner, disposes of money that the representative was required by subsection (3) to retain, the representative is personally liable to pay any tax that remains unpaid. This liability is limited to the amount that the representative disposed of in contravention of subsection (3).

20 (5) For the purpose of ensuring payment of the tax, the Commissioner has the same remedies against attachable property under the control of the representative as the Commissioner has against the property of any other taxpayer.

(6) This section does not reduce any obligation or liability of the representative that arises outside this section.

(7) In this section:

25 “agent” includes a person in Australia who manages or controls any business or property for another person who is outside Australia;
“tax” includes penalty under Part 9 and late-payment penalty.

Obligations of liquidator or receiver

123.(1) This section applies to a person (“the asset holder”):

- 30 (a) who becomes a liquidator of a company; or
- (b) in the capacity of a receiver, or a receiver and manager, for debenture holders of a company, takes possession of assets of the company.

35 (2) The asset holder must, within 14 days after becoming liquidator or taking possession of the assets, give written notice of that fact to the Commissioner.

(3) The Commissioner must as soon as practicable notify the asset holder of the amount (“the notified sales tax amount”) that the Commissioner considers is enough to cover any sales tax that the company is liable to pay or may become liable to pay.

40 (4) The asset holder must not, without the Commissioner’s permission, part with any of the company’s assets before receiving the notice from the Commissioner. However, this prohibition does not

prevent the asset holder from parting with the company's assets to pay debts of the company that are not ordinary debts.

(5) After receiving the Commissioner's notice, the asset holder must set aside, out of the assets available for paying the company's ordinary debts, assets with a value calculated using the following formula: 5

$$\begin{array}{c} \text{Total value of} \\ \text{assets available} \\ \text{to pay ordinary} \\ \text{debts} \end{array} \times \left[\begin{array}{c} \text{Notified sales tax amount} \\ \hline \begin{array}{ccc} \text{Notified sales} & + & \text{Notified} \\ \text{tax amount} & & \text{other taxes} \end{array} \\ \hline \text{Sum of} \\ \text{company's other} \\ \text{ordinary debts} \end{array} \right]$$

In the formula, "Notified other taxes" means the total of any amounts that the Commissioner has notified in relation to the company under a section of another Act that corresponds to this section.

(6) The asset holder is liable as trustee to pay sales tax payable by the company, to the extent of the value of assets that the asset holder is required to set aside. 10

(7) If the asset holder, without reasonable excuse, contravenes this section or fails as trustee to pay the sales tax for which the asset holder is liable under subsection (6), the asset holder: 15

- (a) is personally liable to pay the sales tax, to the extent of the value of the assets that the asset holder is required to set aside under subsection (5); and
- (b) is guilty of an offence punishable on conviction by a fine of up to \$1,000. 20

(8) If 2 or more persons are liquidators of the company, or take possession of assets of the company, the obligations and liabilities under this section apply to all those persons jointly.

(9) This section does not reduce any obligation or liability of the asset holder that arises outside this section. 25

(10) In this section:

"ordinary debt" means a debt that is unsecured and is not required, by a law of the Commonwealth or of a State or Territory, to be paid in priority to some or all of the other debts of the company;

"sales tax" includes penalty under Part 9 and late-payment penalty. 30

Obligations of agent winding up business for absentee principal

124.(1) This section applies to an agent for a non-resident principal who has been instructed by the principal to wind up so much of the principal's business as is carried on in Australia.

(2) The agent must give written notice to the Commissioner of the instruction, within 14 days after receiving the instruction from the principal. 35

(3) The Commissioner must as soon as practicable notify the agent of the amount that the Commissioner considers is enough to cover any sales tax that the principal is liable to pay or may become liable to pay.

5 (4) The agent must not (without the Commissioner's permission) part with any of the assets of the principal before receiving the notice from the Commissioner.

10 (5) After receiving the Commissioner's notice, the agent must set aside, out of the assets available for paying sales tax, assets to the value of the amount notified, or the whole of the assets so available if they are less than that value.

(6) The agent is liable as trustee to pay sales tax payable by the principal, to the extent of the value of assets that the agent is required to set aside.

15 (7) If the agent, without reasonable excuse, contravenes this section or fails as trustee to pay the sales tax for which the agent is liable under subsection (6), the agent:

20 (a) is personally liable to pay the sales tax, to the extent of the value of the assets that the agent is required to set aside under subsection (5); and

(b) is guilty of an offence punishable on conviction by a fine of up to \$1,000.

25 (8) If 2 or more persons are instructed by the same principal to wind up the business, the obligations and liabilities under this section apply to all of those persons jointly.

(9) This section does not reduce any obligation or liability of the agent that arises outside this section.

(10) In this section:

"sales tax" includes penalty under Part 9 and late-payment penalty.

30 ***Division 3—Miscellaneous offences***

Sales tax must be specified on invoice for wholesale sales

125. A person who sells goods by wholesale at a price that includes tax that the person has or will become liable to pay on the goods must specify the amount of the tax on any invoice given to the purchaser.

35 Penalty: \$2,000.

False pretence concerning amount of sales tax borne

126. A person must not obtain any payment or other benefit by means of a false pretence concerning the amount of tax borne by the person on goods.

40 Penalty: \$5,000.

Persons with possible sales tax liability must keep records

127.(1) A person who is the taxpayer for an assessable dealing, or the claimant for a credit, must:

- (a) keep records that record and explain all transactions and other acts engaged in by the person that are relevant to that assessable dealing or credit claim; 5
- (b) retain those records for at least 5 years after the completion of the acts or transactions to which they relate.

(2) A person who is required by this section to keep records must keep the records: 10

- (a) in writing in the English language, or in such a form that they are readily accessible and can easily be converted into writing in the English language; and
- (b) so as to enable the person's liability under the sales tax law to be readily ascertained. 15

(3) The person is not required to retain the records if:

- (a) the Commissioner has notified the person that the person is not required to retain the records; or
- (b) the person is a company that has gone into liquidation and been finally dissolved. 20

Penalty: \$3,000.

Division 4—Miscellaneous

Alteration of contracts if cost of supplying etc. assessable goods is affected by later alteration to sales tax law

128.(1) If, after a contract involving assessable goods has been made, an alteration to the sales tax law happens and the alteration directly causes an increase or decrease in the cost to a party to the agreement of complying with the agreement, then the contract is altered as follows: 25

- (a) if the cost is increased—by allowing the party to add the increase to the contract price; 30
- (b) if the cost is decreased—by allowing the other party to deduct the decrease from the contract price.

(2) The contract is not altered if:

- (a) the contract has express written provision to the contrary; or 35
- (b) it is clear from the terms of the contract that the alteration of the sales tax law has been taken into account in the agreed contract price.

Amending Acts cannot impose penalties etc. earlier than 28 days after Royal Assent

5 **129.(1)** A sales tax amending Act does not have the effect of making a person liable to a sales tax penalty for any act or omission that happens before the postponed day.

(2) If a sales tax amending Act would (apart from this section) have the effect of making a person liable to a sales tax penalty because the person contravened a requirement to do something:

- 10 (a) within a specified period ending before the postponed day; or
 (b) before a specified time happening before the postponed day;
the requirement has effect instead by reference to a period ending at the start of the postponed day, or by reference to the start of the postponed day, as the case requires.

(3) In this section:

15 “**postponed day**” means the 28th day after the day on which the sales tax amending Act receives the Royal Assent;

 “**sales tax amending Act**” means an Act that amends the sales tax law;

 “**sales tax penalty**” means:

- 20 (a) an offence; or
 (b) penalty under Part 9 or late-payment penalty.

Cancellation of certain exemptions provided under other Acts in relation to Commonwealth-controlled authorities

25 **130.(1)** This section cancels the effect of a provision of another Act (other than an Act that is part of the sales tax law) that would have the effect of:

- (a) exempting a particular Commonwealth-controlled authority from sales tax; or
 (b) exempting another person from sales tax on goods for use by a particular Commonwealth-controlled authority.

30 **(2)** The cancellation does not apply if the provision of the other Act is enacted after 13 May 1987 and refers specifically to sales tax (whether or not it uses the words “sales tax”).

(3) In this section:

 “**Commonwealth-controlled authority**” means:

- 35 (a) a body established before 14 May 1987 and specified in regulations made for the purposes of this paragraph;
 (b) any of the following bodies established on or after 14 May 1987:
40 (i) a corporation established for a public purpose by a law of the Commonwealth;
 (ii) a company in which the Commonwealth has a controlling interest;

- (iii) a company in which a controlling interest is held by:
 - (A) a corporation established for a public purpose by a law of the Commonwealth; or
 - (B) a company in which the Commonwealth has a controlling interest.

5

Regulations

131.(1) The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

10

(2) In particular, the regulations may make provision:

- (a) allowing goods to be brought into Australia, on a temporary basis, without the payment of sales tax;
- (b) relating to the service of documents under, or for the purposes of, the sales tax law (including the service of process in proceedings for the recovery of tax or other amounts payable under the sales tax law);
- (c) for penalties for offences against the regulations by way of fines of up to \$1,000.

15

20

SCHEDULE 1

TABLES

Table 1: Assessable dealings

Part A: Australian goods				
[1] No.	[2] Assessable dealing	[3] Person liable	[4] Time of dealing	[5] Normal taxable value
AD1a	wholesale sale by a person who manufactured the goods in the course of any business	seller	time of sale	the price (excluding sales tax) for which the goods were sold
AD1b	wholesale sale by a person who is not the manufacturer of the goods	seller	time of sale	the price (excluding sales tax) for which the goods were sold
AD2a	retail sale by a person who manufactured the goods in the course of any business	seller	time of sale	the notional wholesale selling price
AD2b	retail sale by a person who is not the manufacturer of the goods, but who obtained the goods under quote; excludes case covered by AD2d	seller	time of sale	the notional wholesale selling price
AD2c	royalty-inclusive sale as defined by section 19	seller	time of sale	the amount that would be the notional wholesale purchase price of the goods if the manufacturer had incurred the eligible royalty costs mentioned in section 19
AD2d	indirect marketing sale as defined by section 20	seller	time of sale	the notional wholesale selling price
AD2e	untaxed-goods sale as defined by section 21, by a person who is not the manufacturer of the goods	seller	time of sale	the notional wholesale selling price
AD3a	untaxed-goods AOU as defined by section 21, by a person who is not the manufacturer of the goods	applier	time of AOU	the notional wholesale selling price
AD3b	AOU by a person who manufactured the goods in the course of any business	applier	time of AOU	the notional wholesale selling price

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SCHEDULE 1—continued

AD3c	AOU by a person who is not the manufacturer of the goods, but who obtained the goods under quote	applier	time of AOU	(a) the purchase price, if the goods were purchased under quote; (b) in other cases, the notional wholesale selling price
AD3d	royalty-inclusive AOU as defined by section 19	applier	time of AOU	the amount that would be the notional wholesale purchase price of the goods if the manufacturer had incurred the eligible royalty costs mentioned in section 19
AD4a	delivery of customer's materials goods as defined by section 22	manufacturer	time of delivery	the amount (excluding sales tax) charged by the manufacturer to the customer in respect of the goods, plus the notional wholesale purchase price for any always-exempt goods included in the materials supplied by the customer
AD4b	removal from a customs clearance area of airport shop goods purchased by a relevant traveller from an inwards duty free shop	relevant traveller	time of removal	the price for which the goods were purchased by the relevant traveller

SCHEDULE I—continued

Part B: Imported goods				
[1] No.	[2] Assessable dealing	[3] Person liable	[4] Time of dealing	[5] Normal taxable value
AD10	local entry	person who makes the local entry	time of local entry	120% of (customs value + customs duty)
AD11b	wholesale sale by any person	seller	time of sale	the price (excluding sales tax) for which the goods were sold
AD12b	retail sale by a person who obtained the goods under quote; excludes case covered by AD12d	seller	time of sale	the notional wholesale selling price
AD12c	royalty-inclusive sale as defined by section 19	seller	time of sale	the amount that would be the notional wholesale purchase price of the goods if the person who imported the goods had incurred the eligible royalty costs mentioned in section 19
AD12d	indirect marketing sale as defined by section 20	seller	time of sale	the notional wholesale selling price
AD12e	untaxed-goods sale as defined by section 21	seller	time of sale	the notional wholesale selling price
AD13a	untaxed-goods AOU as defined by section 21	applier	time of AOU	the notional wholesale selling price
AD13c	AOU by a person who obtained the goods under quote	applier	time of AOU	(a) if the goods were purchased under quote: the purchase price; (b) if the goods were locally entered under quote by the applier: 120% of (customs value + customs duty)
AD13d	royalty-inclusive AOU as defined by section 19	applier	time of AOU	the amount that would be the notional wholesale purchase price of the goods if the person who imported the goods had incurred the eligible royalty costs mentioned in section 19
AD14b	removal from a customs clearance area of airport shop goods purchased by a relevant traveller from an inwards duty free shop	relevant traveller	time of removal	the price for which the goods were purchased by the relevant traveller

SCHEDULE 1—continued

Notes:

1. Table 1 does not apply to a dealing with goods unless the goods are assessable goods immediately before the time of the dealing, and are in Australia at the time of the dealing.
2. In Table 1:
 “notional wholesale purchase price” means the price (excluding sales tax) for which the taxpayer could reasonably have been expected to purchase the goods by wholesale under an arm’s length transaction;
 “notional wholesale selling price” means the price (excluding sales tax) for which the taxpayer could reasonably have been expected to sell the goods by wholesale under an arm’s length transaction.
3. The numbering of items in the Table uses the following pattern:
 For Australian goods, the dealings are divided into 4 groups:
 - wholesale sales begin with AD1
 - retail sales begin with AD2
 - an AOU begins with AD3
 - miscellaneous dealings begin with AD4. Imported goods have an additional class of local entry (AD10). The other dealings with imported goods have a number that is 10 higher than the broadly corresponding dealing with Australian goods. For example, AD12b for imported goods corresponds to AD2b for Australian goods.

Table 2: Local entry of imported goods

[1] No.	[2] Situation giving rise to local entry	[3] Person to be regarded as making the local entry	[4] Time when local entry is made (but see note 2)
LE1	the goods are treated as entered for home consumption under section 36 of the Customs Act	person who gives the entry referred to in section 36 of the Customs Act	when the goods are treated as having been entered for home consumption
LE2	the goods are treated as entered for home consumption under section 37 of the Customs Act	person who gives the entry referred to in section 37 of the Customs Act	when the goods are treated as having been entered for home consumption
LE3	delivery of the goods is approved under section 71A of the Customs Act	person to whom the goods are delivered, or are to be delivered	when the approval is given
LE4	the goods are treated as entered for home consumption under section 71B of the Customs Act (except where the goods are forfeited under paragraph 229(1)(g) of the Customs Act before delivery)	person who delivered the goods as mentioned in section 71B of the Customs Act	when the goods are treated as having been entered for home consumption
LE5	the goods are sold under section 72, 87, 96, 206 or 207 of the Customs Act	person who was the owner (within the meaning of the Customs Act) of the goods immediately before the sale	when the goods are sold
LE6	the goods are delivered to a person under section 208 of the Customs Act	person to whom the goods are delivered	when the goods are delivered
LE7	the goods are delivered to a person under a court order made in an action under the Customs Act for condemnation or recovery of the goods	person to whom the goods are delivered	when the goods are delivered
LE8	the goods are delivered to a person under a court order made in an action for a declaration that the goods are not forfeited under the Customs Act	person to whom the goods are delivered	when the goods are delivered

SCHEDULE 1—continued

LE9	the goods have been siezed under section 203 of the Customs Act and are delivered to a person on the basis that they are not forfeited goods	person to whom the goods are delivered	when the goods are delivered
LE10	delivery of the goods is authorised under subsection 209(6) of the Customs Act	person to whom the goods are delivered or are to be delivered	when the authorisation is made
LE11	a demand is made under section 35A or 149 of the Customs Act in relation to the goods	person on whom the demand is made	when the demand is made
LE12	the goods are treated as entered for home consumption under subsection 96A(12) of the Customs Act	person treated under section 96A of the Customs Act as having entered the goods for home consumption	when the goods are treated as having been entered for home consumption
LE13	the goods are taken out of a warehouse under a permission granted under section 97 of the Customs Act	person to whom the permission is given	when the goods are taken out of the warehouse
LE14	the goods are delivered, under regulations made for the purposes of paragraph 131(2)(a), to a person who has given a security or undertaking for the payment of tax that may become payable on the goods	person to whom the goods are delivered	when the goods are delivered

Note:

1. If goods are deemed to be entered for home consumption under the Customs Act at a time before the goods are imported, the local entry of the goods is taken to occur immediately after the time of importation.

Table 3: Credit grounds

[1] No.	[2] Summary of ground	[3] Details of ground	[4] Amount of credit	[5] Time credit arises
CR1	Tax overpaid	Claimant has paid an amount as tax that was not legally payable.	the amount overpaid, to the extent that the claimant has not passed it on	when the amount became overpaid
CR2	Claimant has borne tax, even though entitled to quote registration number	Claimant has borne tax on a tax-bearing dealing for which the claimant was entitled to quote a registration number (whether or not the claimant quoted). If the claimant has applied the goods to own use, the claimant must also have been entitled to quote a registration number at the time of the application to own use.	the tax borne, to the extent that the claimant has not passed it on	time of the tax-bearing dealing
CR3	Claimant liable to tax because quote ineffective under section 89	Claimant has become liable to tax on an assessable dealing (or has lost an entitlement to a CR8 credit) because section 89 applied to an otherwise fully effective quote that was made to the claimant.	the tax payable on the assessable dealing (or the amount to which the CR8 credit would have related), to the extent that the claimant has not passed it on	time of the assessable dealing (or time CR8 credit would have arisen)
CR4	Avoiding double tax on the same goods	Claimant has become liable to tax on an assessable dealing ("the current dealing"), but has borne tax on the goods before the time of the current dealing. If the current dealing is an assessable dealing because of section 9, credit is not available under this ground for tax borne before the goods were exported for alteration as mentioned in that section.	the tax previously borne on the goods	time of the current dealing

SCHEDULE 1—continued

CR5	Ensuring exemption where latest assessable dealing is non-taxable	Claimant is the taxpayer for an assessable dealing ("the current dealing") that is not taxable (for any reason except section 29 or 33) and claimant has borne tax on the goods before the time of the current dealing. If the current dealing is an assessable dealing because of section 9, credit is not available under this ground for tax borne before the goods were exported for alteration as mentioned in that section.	the tax previously borne on the goods	time of the current dealing
CR5A	AOU in certain cases where exemption Items satisfied	Claimant has borne tax on goods and has applied the goods to own use while still assessable goods. The AOU satisfies exemption Item 192, 193 or 194.	the tax previously borne to the extent that the claimant has not passed it on	time of AOU
CR6	Avoiding "indirect taxing" resulting from tax on inputs	Claimant is liable to tax on an assessable dealing with goods ("the output goods") and has borne tax on other goods ("the input goods") that have a sufficient link (as defined by section 52) with the output goods.	the tax borne on the input goods	time of the assessable dealing
CR7	Avoiding "indirect taxing" of exempt outputs (where inputs have borne tax)	Claimant is the taxpayer for an assessable dealing with goods ("the output goods") that is not taxable (for any reason except section 29) and has borne tax on other goods ("the input goods") that have a sufficient link (as defined by section 52) with the output goods.	the tax borne on the input goods, to the extent that the claimant has not passed it on	time of the assessable dealing
CR8	Tax excluded from sale price of tax-paid goods sold to quoting purchaser	Claimant has sold goods, to a purchaser who quoted on the sale, for a price that excluded some or all of the tax previously borne by claimant on the goods.	the tax excluded from sale price	time of sale
CR9	Return of faulty goods	Claimant has become liable for tax on assessable dealing with goods that turned out to be faulty. Claimant has later used other goods for the purpose of replacing (free of charge and under warranty) the whole or any part of the faulty goods because of defects in the faulty goods and has borne tax on those replacement goods.	tax borne on replacement goods	time when replacement goods were used for purposes of replacement

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SCHEDULE 1—continued

[1] No.	[2] Summary of ground	[3] Details of ground	[4] Amount of credit	[5] Time credit arises
CR10	Tax excluded from sale price of tax-paid goods sold to purchaser for export	Claimant has sold goods to a purchaser who, at the time of sale, had the intention of exporting the goods (otherwise than as accompanied baggage) while they were still assessable goods. The price excluded some or all of the tax previously borne by the claimant on the goods.	the tax excluded from sale price	time of sale
CR11	Goods exported by claimant while still assessable goods	Goods on which claimant has borne tax have been exported by the claimant while still assessable goods.	the tax borne	time of export
CR12	Tax on "input goods" where "output goods" are exported while still assessable goods	Claimant has borne tax on goods (" the input goods ") that have a sufficient link (as defined by section 52) with other goods (" the output goods ") that are exported while still assessable goods.	the tax borne on the input goods	time of export
CR13	Export of container where first AOU in Australia of the container was packing it with assessable goods	This ground relates to goods (" the container ") for which the first AOU in Australia was a packing AOU by the claimant, with contents consisting wholly of assessable goods. The container was exported while still a container for those assessable goods and the claimant has borne tax on the container before the time of export.	tax borne on the container	time of export
CR14	Goods sold for tax-exclusive price to eligible Australian traveller who subsequently exported them	Claimant sold goods to an eligible Australian traveller in accordance with the prescribed rules for export sales for a price that excluded some or all of the tax previously borne by the claimant on the goods. The goods have been exported by the purchaser within the time, and in the manner, prescribed by the regulations.	tax excluded from sale price	time of export

SCHEDULE 1—continued

CR15	Goods sold for tax-exclusive price to eligible foreign traveller	Claimant sold goods to an eligible foreign traveller, in accordance with the prescribed rules for export sales, for a price that excluded some or all of the tax previously borne by the claimant on the goods.	tax excluded from sale price	time of sale
CR16	Refund of customs duty following destruction of imported goods	Claimant has become liable to tax on a local entry of goods that were imported under a contract of sale. The claimant rejected the goods for non-compliance with the contract and the goods were destroyed under Customs supervision. The Commissioner is satisfied that the destruction is or would be ground for remission of customs duty on the goods.	tax payable on the local entry	time of destruction of the goods
CR17	Drawback of customs duty on imported goods	Claimant has become liable to tax on a local entry of goods for which drawback of customs duty has been allowed under section 168 of the Customs Act (or, in the Commissioner's opinion, would have been allowed if goods had been liable to duty).	tax payable on the local entry	time when drawback was allowed (or would have been allowed)
CR18	First lease is an eligible long-term lease and claimant has previously borne tax	First AOU in Australia of goods consisted of the claimant granting an eligible long-term lease of the goods. The claimant has borne tax on the goods before the time of granting the lease.	tax previously borne	time of granting lease
CR18A	First lease is an eligible short-term lease and claimant has previously borne tax	First AOU in Australia of goods consisted of the claimant granting an eligible short-term lease of the goods. The claimant has borne tax on the goods before the time of granting the lease.	the tax previously borne multiplied by the exempt percentage specified in the agreement under subsection 15A(2)	time of granting lease
CR18B	Post-trial sale or post-trial lease	Post-trial sale or post-trial lease, within the meaning of section 15B, by the claimant. The claimant has borne tax on the goods before the time of the sale or granting of the lease.	the tax borne, to the extent that the claimant has not passed it on	time of sale or granting lease
CR19	Goods exported without being used by lessee of first lease	First AOU in Australia of goods consisted of the claimant granting a lease of the goods. The goods were exported before being used by the lessee. The claimant has borne tax on the goods before export.	tax previously borne	time of export

SCHEDULE 1—continued

{1} No.	{2} Summary of ground	{3} Details of ground	{4} Amount of credit	{5} Time credit arises
CR20	Claimant has obtained retrospective R&D registration or approval	Claimant has borne tax on a tax-bearing dealing for which the claimant would have been entitled to quote if there had been in force at the time of the dealing an agreement that was later entered into, or a registration that was later obtained, by the claimant under the <i>Industry Research and Development Act 1986</i> .	the tax borne	time when the agreement was entered into or the registration was obtained
CR21	Sale price or making-up charge written off as bad debt	Claimant has paid tax on an assessable dealing that is a sale or AD4a, and has later written off some or all of the price for which the goods were sold or the making-up charge, as the case requires.	a proportion of the tax paid that is equal to the proportion of the debt written off	time of writing off

APPENDIX A

EXAMPLES

Example 1

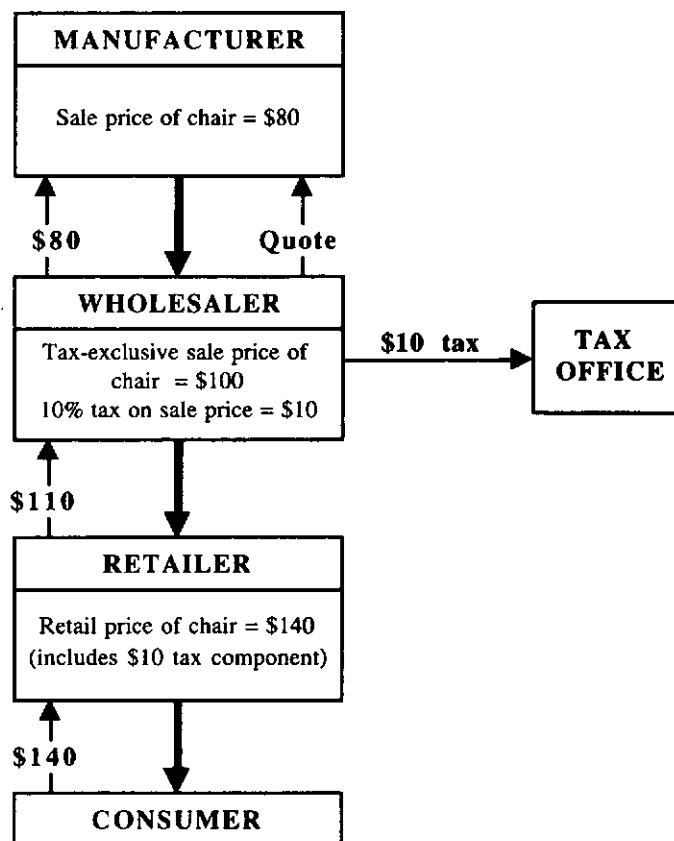
Typical chain of sales involving goods manufactured in Australia

This example shows a typical chain of sales involving a chair manufactured in Australia. The example assumes that no exemption Item is available and the 10% tax rate applies.

The Manufacturer sells by wholesale to the Wholesaler for \$80. This sale is not taxable because the Wholesaler has quoted for the sale.

The Wholesaler adds \$20 markup and sells by wholesale to the Retailer. The Wholesaler is liable to \$10 tax on this sale (ie 10% of the sale price excluding tax). The Retailer pays \$110 (ie sale price + tax).

The Retailer adds \$30 markup and sells by retail to the Consumer. The Consumer pays \$140, which includes a \$10 component for the tax that was paid by the Wholesaler and passed on to the Retailer.

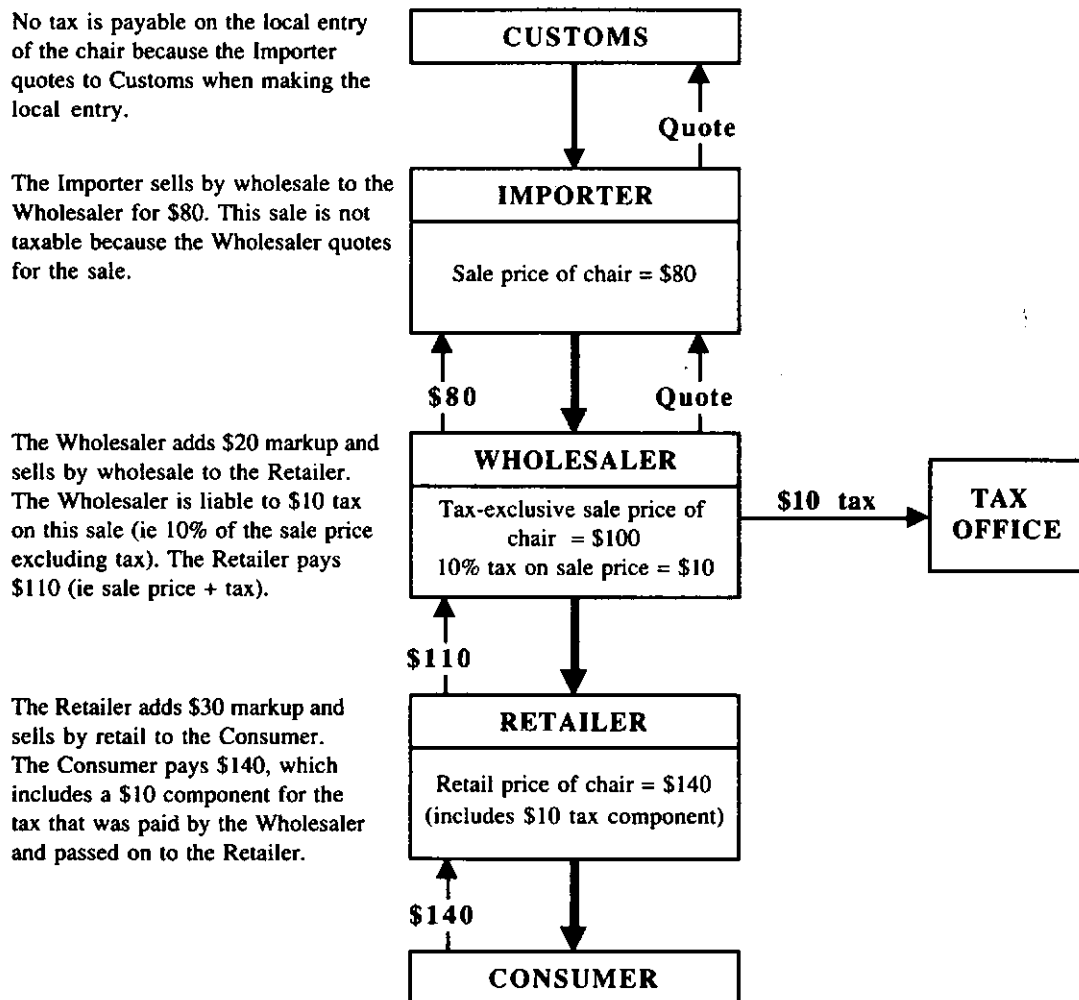


APPENDIX A—continued

Example 2

Typical chain of sales involving imported goods

This example shows a typical chain of sales involving an imported chair. The example assumes that no exemption Item is available and the 10% tax rate applies.



APPENDIX A—continued

Example 3

Typical chain of sales involving quote at retail level

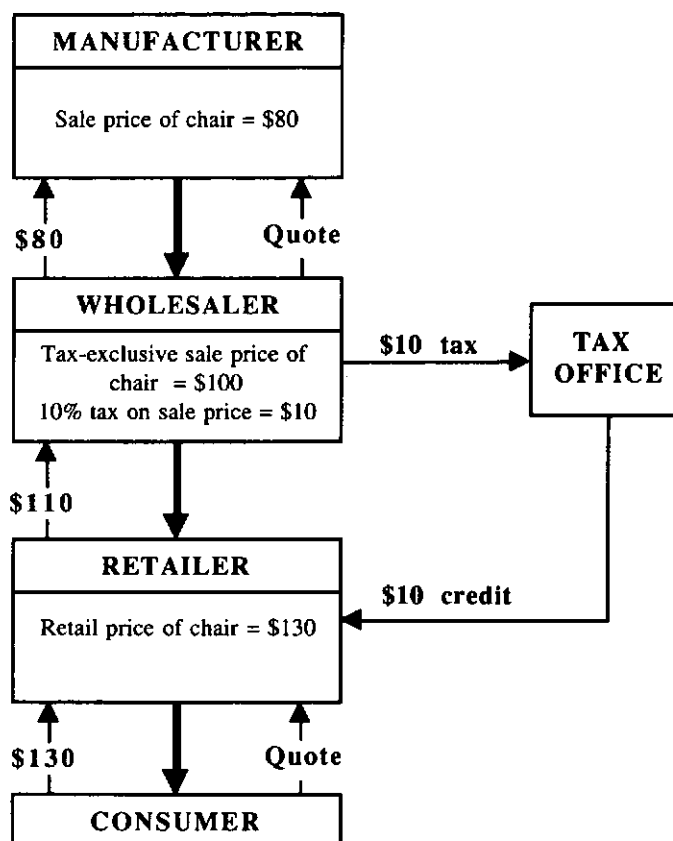
This examples shows a chain of sales involving a chair manufactured in Australia. In this example, the Consumer quotes for the final retail sale. The examples assumes that the 10% rate applies.

The Manufacturer sells by wholesale to the Wholesaler for \$80. This sale is not taxable because the Wholesaler has quoted for the sale.

The Wholesaler adds \$20 markup and sells by wholesale to the Retailer. The Wholesaler is liable to \$10 tax on this sale (ie 10% of the sale price excluding tax). The Retailer pays \$110 (ie sale price + tax).

The Retailer adds \$30 markup. On the basis of the quote by the Consumer, the Retailer agrees to sell for a price that excludes tax and claims a credit from the Tax Office.

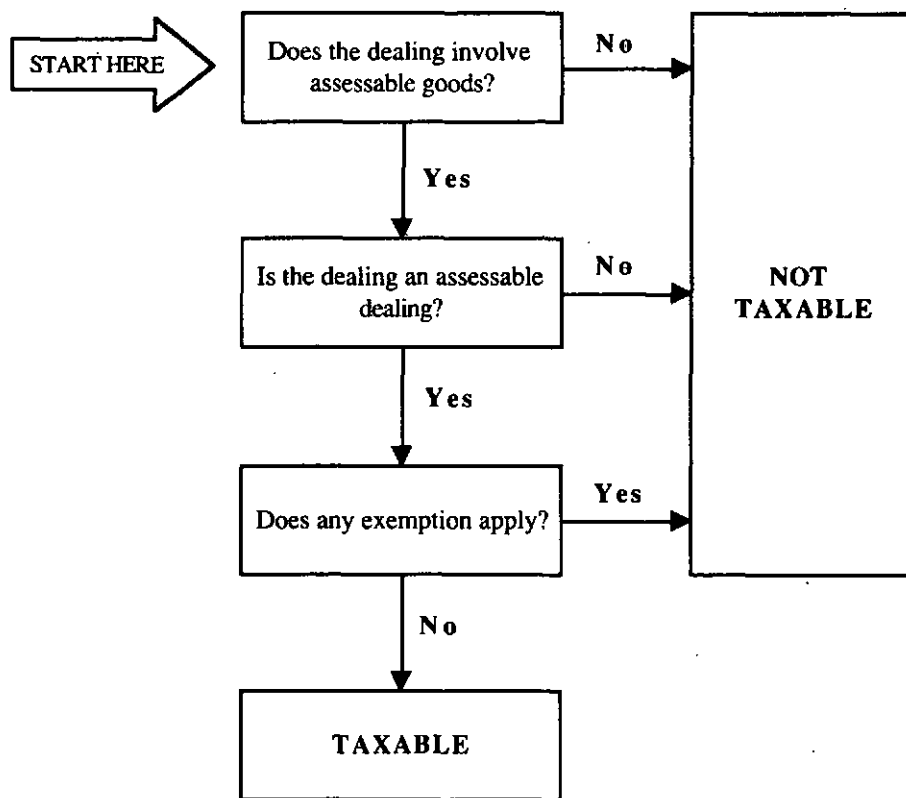
The Consumer intends to use the chair in accordance with an exemption Item, and quotes on that basis.



APPENDIX B
DECISION CHARTS

Decision chart 1

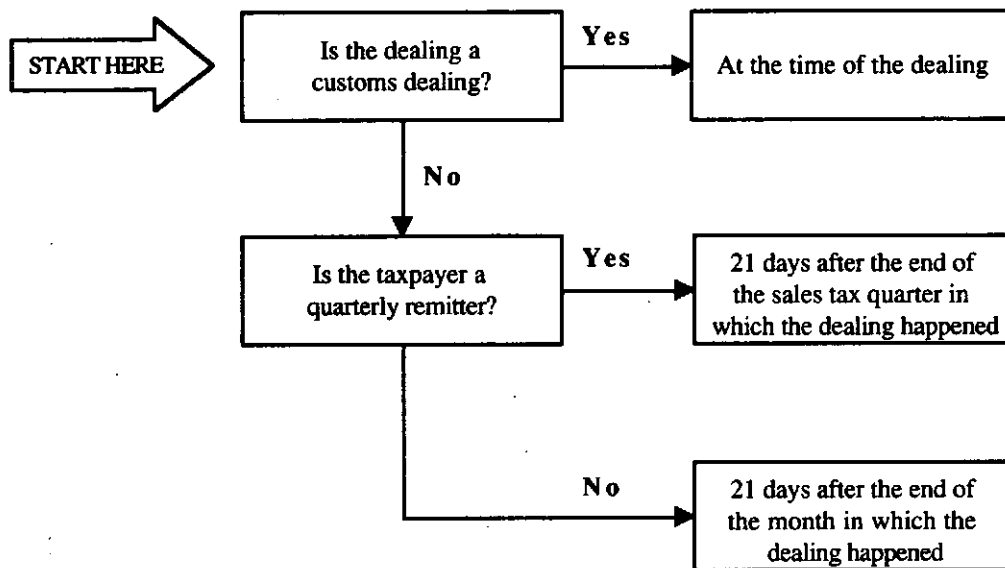
Is a dealing taxable?



APPENDIX B—continued

Decision chart 2

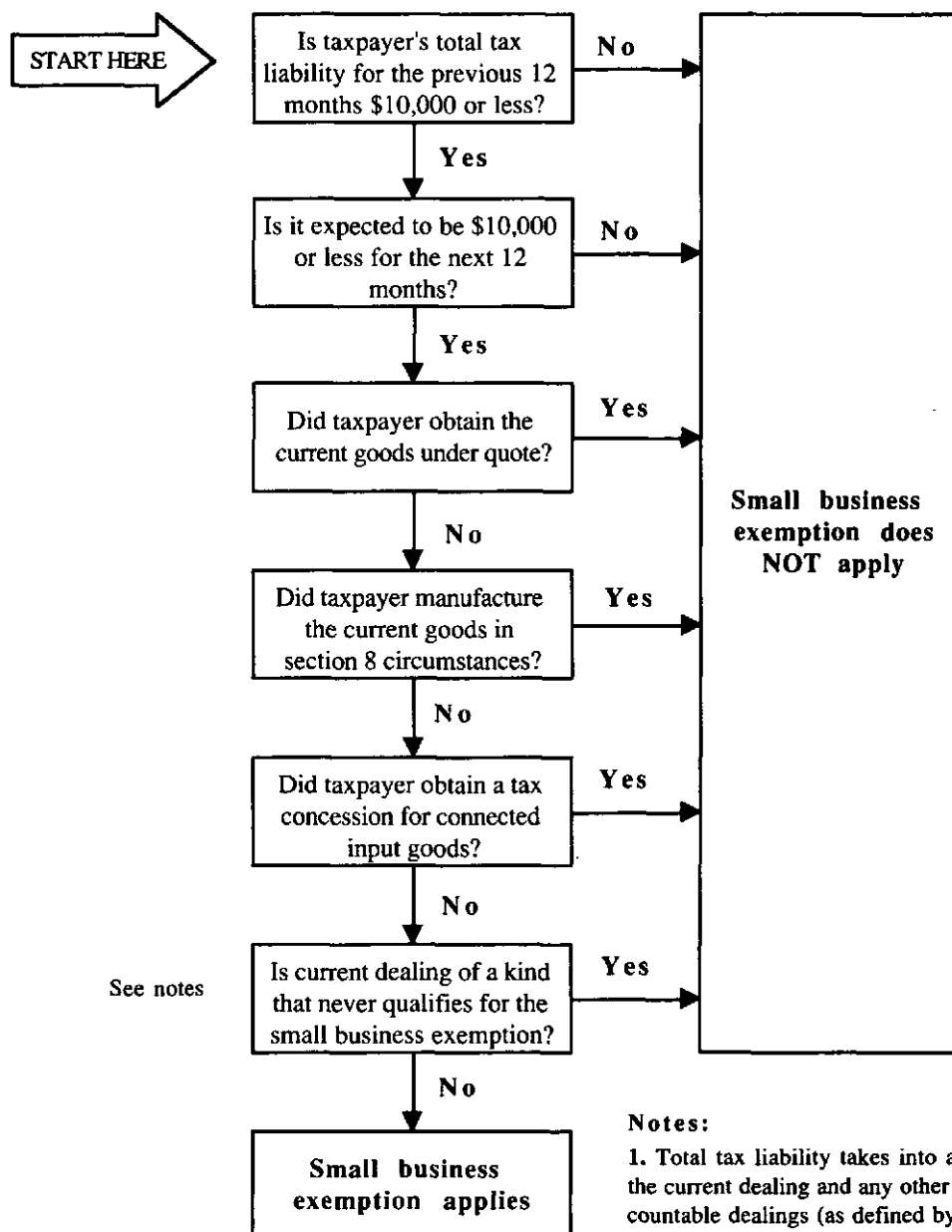
When must the tax on a dealing be paid?



APPENDIX B—continued

Decision chart 3

Does the small business exemption apply to the current dealing?



See notes

Notes:

1. Total tax liability takes into account the current dealing and any other countable dealings (as defined by section 29).
2. Customs dealings never qualify, nor do AD3a and AD13a.

Sales Tax Assessment No. 114, 1992

*[Minister's second reading speech made in—
House of Representatives on 26 May 1992
Senate on 1 June 1992]*