



Overseas Missions (Privileges and Immunities) Act 1995

Act No. 57 of 1995 as amended

This compilation was prepared on 3 October 2006
taking into account amendments up to Act No. 101 of 2006

The text of any of those amendments not in force
on that date is appended in the notes section.

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An Act about privileges and immunities of certain overseas missions, and for related purposes

1 Short title [see Note 1]

This Act may be cited as the *Overseas Missions (Privileges and Immunities) Act 1995*.

2 Commencement [see Note 1]

This Act commences on the day on which it receives the Royal Assent.

3 Definitions

In this Act:

acquisition has the meaning given by section 195-1 of the GST Act.

approved form has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

Australia, when used in a geographical sense, includes the external Territories.

Commissioner means the Commissioner of Taxation.

designated overseas mission has the meaning given by section 4.

foreign territory means:

- (a) a colony, overseas territory, overseas province or protectorate of a foreign country; or
- (b) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; or
- (c) a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

indirect tax means:

- (a) GST within the meaning of section 195-1 of the GST Act; or
- (b) luxury car tax within the meaning of section 27-1 of the Luxury Car Tax Act; or
- (c) wine equalisation tax within the meaning of section 33-1 of the Wine Equalisation Tax Act.

Luxury Car Tax Act means the *A New Tax System (Luxury Car Tax) Act 1999*.

mission means a mission, agency or office.

overseas mission means an official mission established in Australia to represent a foreign territory in one or more capacities.

Wine Equalisation Tax Act means the *A New Tax System (Wine Equalisation Tax) Act 1999*.

4 Designated overseas missions

- (1) For the purposes of this Act, an overseas mission is a **designated overseas mission** if:
 - (a) the overseas mission is declared by the regulations to be a designated overseas mission; and
 - (b) there is in force a written instrument signed by the Minister authorising the overseas mission to operate in Australia in one or more specified capacities.
- (2) If an instrument is made under paragraph (1)(b), the Minister must notify the making of the instrument in the *Gazette*.

5 Application to external Territories

This Act extends to each external Territory.

6 Privileges and immunities of designated overseas missions

The regulations may confer on a designated overseas mission any or all of the privileges and immunities set out in Schedule 1.

7 Privileges and immunities of persons associated with designated overseas missions

The regulations may confer on:

- (a) the head of a designated overseas mission; or
- (b) a member of the staff of a designated overseas mission; or
- (c) a member of the family of a person covered by paragraph (a) or (b), where the family member is part of the person's household;

any or all of the privileges and immunities set out in Schedule 2.

8 Privileges and immunities may be conferred subject to limitations or conditions

- (1) Privileges and immunities may be conferred by the regulations either:
 - (a) unconditionally; or
 - (b) subject to any limitations or conditions specified in the regulations.
- (2) This section does not affect the application of subsection 33(3A) of the *Acts Interpretation Act 1901*.

9 Scope of privileges and immunities

- (1) Privileges and immunities conferred by the regulations are privileges and immunities in relation to the operation of:
 - (a) the laws of the Commonwealth (including Acts other than this Act); and
 - (b) the laws of the States and Territories.
- (2) Despite:
 - (a) section 177-5 of the GST Act; and
 - (b) section 21-5 of the Luxury Car Tax Act; and
 - (c) section 27-25 of the Wine Equalisation Tax Act;indirect tax that would be payable on an importation under one of those Acts is not payable on an importation covered by an immunity from taxation (including customs duties) conferred by the regulations.

10 Waiver

The regulations may deal with the waiver of any privileges or immunities conferred by the regulations.

11 Evidentiary certificate

- (1) The Minister may give a written certificate certifying any fact relating to whether a mission or person:
 - (a) is entitled to any privileges or immunities conferred by the regulations; or
 - (b) was at any time entitled to any privileges or immunities conferred by the regulations; or
 - (c) was during any period entitled to any privileges or immunities conferred by the regulations.
- (2) In any proceedings, a certificate given under this section is *prima facie* evidence of the facts certified.

12 Exemption from customs duty and excise duty

- (1) The regulations may provide that:
 - (b) a duty of customs; or
 - (c) a duty of excise;is not payable on goods that are for:
 - (d) the official use of a designated overseas mission; or
 - (e) the personal use of a person referred to in section 7.
- (2) Regulations made for the purposes of subsection (1) may provide for an exemption from customs duty or excise duty either:
 - (a) unconditionally; or
 - (b) subject to any limitations or conditions specified in the regulations.
- (3) The regulations may deal with the waiver of an exemption provided for by regulations made for the purposes of subsection (1).
- (4) Subsection (2) does not affect the application of subsection 33(3A) of the *Acts Interpretation Act 1901*.

12A Indirect tax concession scheme

- (1) If:
- (a) an acquisition covered by regulations made for the purposes of this section is made:
 - (i) by or on behalf of the head of a designated overseas mission that has been granted an exemption (to some extent) from taxation under the regulations; or
 - (ii) by a person referred to in section 7, or another person, who is covered by regulations made for the purposes of this section; and
 - (b) at the time of the acquisition, it was intended for:
 - (i) the official use of the mission; or
 - (ii) a use covered by regulations made for the purposes of this section;

the Commissioner must, on behalf of the Commonwealth and subject to subsection (3), pay to the head of the mission (or a person in a class of persons determined by the Minister) an amount equal to the amount of indirect tax payable (if any) in respect of the supply of that acquisition.

- (2) A claim for an amount covered by subsection (1) must be in the approved form.
- (3) The amount is payable:
- (a) in accordance with the conditions and limitations; and
 - (b) within the period and in the manner;
- set out in regulations made for the purposes of this section.
- (4) Regulations made for the purposes of subsection (3) may permit the Commissioner to determine the period within which, and the manner in which, the amount is payable.
- (5) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

13 Regulations

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.

Schedule 1—Privileges and immunities of designated overseas missions

Section 6

1. Inviolability of premises of, or occupied by, the mission.
2. Inviolability of property and assets of, or in the custody of, or administered by, the mission.
3. Exemption of property and assets of, or in the custody of, or administered by, the mission from restrictions and controls.
4. Inviolability of official documents and archives of the mission.
5. Freedom of communication for all official purposes of the mission.
6. Absence of censorship of official communications of the mission.
7. The right to use codes and to send and receive official documents by courier or in a sealed bag, and to have such a courier or bag treated as a diplomatic courier or a diplomatic bag, as the case may be.
8. Exemption from taxation of fees and charges imposed by the mission in the course of its official duties.
9. Exemption from taxation of premises of, or occupied by, the mission, where the taxation is imposed directly on the mission or on the foreign territory that the mission represents.
10. Exemption from taxation of the head of mission's residence, where the taxation is imposed directly on the mission or on the foreign territory that the mission represents.
11. Exemption from taxation of the residence of a member of the staff of the mission, where the taxation is imposed directly on the mission or on the foreign territory that the mission represents.
12. Exemption from taxation of articles for the official use of the mission.

Schedule 2—Privileges and immunities of persons associated with designated overseas missions

Section 7

1. Inviolability of private residences.
2. Exemption from taxation.
3. Exemption from the application of laws relating to immigration or work permits.
4. Exemption from obligations under social security laws.
5. Exemption from inspection of personal baggage accompanying persons entering or leaving Australia, other than inspection for purposes relating to quarantine.
6. Immunity from arrest, search or detention.
7. Immunity from criminal, civil and administrative jurisdiction.
8. Exemption from obligations to give evidence in judicial or administrative proceedings.
9. Exemption from restrictions on the export of movable property of a deceased person.
10. Inviolability of papers, correspondence and property.

Table of Acts**Notes to the *Overseas Missions (Privileges and Immunities) Act 1995*****Note 1**

The *Overseas Missions (Privileges and Immunities) Act 1995* as shown in this compilation comprises Act No. 57, 1995 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Overseas Missions (Privileges and Immunities) Act 1995</i>	57, 1995	28 June 1995	28 June 1995	
<i>A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999</i>	177, 1999	22 Dec 1999	Schedule 7 (items 29-37): (a)	—
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 5 (items 130, 131) and Schedule 6 (items 5–11): Royal Assent	Sch. 6 (items 5–11)

Act Notes

(a) The *Overseas Missions (Privileges and Immunities) Act 1995* was amended by Schedule 7 (items 29-37) only of the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*, subsection 2(9) of which provides as follows:

(9) Schedules 7 and 8 (other than items 1 to 6 of Schedule 8) commence immediately after the commencement of the *A New Tax System (Goods and Services Tax) Act 1999*.

The A New Tax System (Goods and Services Tax) Act 1999 came into operation on 1 July 2000.

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 12	am. No. 101, 2006
S. 12	am. No. 101, 2006

Table A

Table A

Application, saving or transitional provisions

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

5 Application of Schedule 5 amendments

The repeals and amendments made by Schedule 5 apply to acts done or omitted to be done, or states of affairs existing, after the commencement of the amendments.

6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Table A

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

Table A

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
 - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901*

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.