



Sales Tax Laws Amendment Act (No. 3) 1991

No. 202 of 1991

An Act to amend the law relating to sales tax

[Assented to 18 December 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Sales Tax Laws Amendment Act (No. 3) 1991*.

Commencement

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

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

Principal Act

3. In this Part, “**Principal Act**” means the *Sales Tax (Exemptions and Classifications) Act 1935*¹.

The First Schedule

4. The First Schedule to the Principal Act is amended as set out in Schedule 1 to this Act.

PART 3—AMENDMENT OF THE SALES TAX REGULATIONS

Amendments

5. The Sales Tax Regulations are amended as set out in Schedule 2 to this Act.

Amendment or repeal of Sales Tax Regulations

6. The amendment of the Sales Tax Regulations by this Part does not prevent the amendment or repeal, by regulations, of the Sales Tax Regulations as amended by this Part.

PART 4—TRANSITIONAL PROVISIONS AND APPLICATION OF AMENDMENTS

Application of amendments

7. The amendments made by this Act apply in relation to transactions, acts and operations effected or done in relation to goods after the commencement of this Act.

Transitional—refund for goods that become eligible business goods

8.(1) If:

- (a) a person purchased goods after 12 March 1991 and before the commencement of this section at a price that includes tax that some other person has paid or is liable to pay on the sale value of the goods; and
- (b) in the 3 year period that starts at the commencement of this section, the person uses the goods:
 - (i) for the first time; and
 - (ii) as eligible business goods; and
- (c) in that 3 year period, the person makes a written application to the Commissioner for a payment under this section; and
- (d) the person is not entitled to a payment or refund in respect of the tax under any other Act or any regulations;

the Commissioner must:

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- (e) pay the person an amount equal to the amount of tax paid or payable; or
- (f) apply that amount against any liability of the person to the Commonwealth arising under, or because of, an Act of which the Commissioner has the general administration, and pay the person any part of the amount that is not so applied.

(2) If:

- (a) after 12 March 1991 and before the commencement of this section, a person has entered imported goods for home consumption; and
- (b) the person has paid, or pays, tax upon the sale value of the goods; and
- (c) in the 3 year period that starts at the commencement of this section, the person uses the goods:
 - (i) for the first time; and
 - (ii) as eligible business goods; and
- (d) in that 3 year period, the person makes a written application to the Commissioner for a refund under this section; and
- (e) the person is not entitled to a payment or refund in respect of the tax under any other Act or any regulations;

the Commissioner must:

- (f) refund the tax paid; or
- (g) apply the tax paid against any liability of the person to the Commonwealth arising under, or because of, an Act of which the Commissioner has the general administration, and refund any part of the tax paid that is not so applied.

(3) A decision made under this section in relation to an application for a refund or payment is taken to be a refund decision within the meaning of Part VII of the *Sales Tax Assessment Act (No. 1) 1930*.

(4) If an amount has been erroneously refunded or paid to a person under this section, the person must pay the amount on demand being made by the Commissioner within 3 years after the date of the refund or payment.

(5) In this section:

“**tax**” has the same meaning as in the Sales Tax Regulations.

SCHEDULE 1

Section 4

**AMENDMENT OF THE FIRST SCHEDULE TO THE SALES TAX
(EXEMPTIONS AND CLASSIFICATIONS) ACT 1935**

Subclause 1(1) (definition of “aids to manufacture”):

- (a) Omit paragraphs (h) and (n).
- (b) Omit “computer” from paragraph (p).

Subclause 1(1) (definition of “architectural/structural design computer equipment”):

Omit all the words before “mainly”, substitute “ ‘architectural/structural design equipment’ means goods that are”.

Subclause 1(1) (definition of “audio-visual production computer equipment”):

Omit all the words before “mainly”, substitute “ ‘audio-visual production equipment’ means goods that are”.

Subclause 1(1) (definition of “author/secretary computer equipment”):

Omit all the words before “where”, substitute “ ‘author/secretary equipment’ means goods”.

Subclause 1(1) (definition of “item of computer equipment”):

Omit paragraphs (h), (j) and (k).

Subclause 1(1) (definition of “main”):

Omit the definition, substitute:

“ ‘mainly’ means to the extent of more than 50%.”.

Subclause 1(1) (definition of “software-generation computer equipment”):

Omit all the words before “where”, substitute “ ‘software-generation equipment’ means goods”.

Subclause 1(1):

Insert:

“ ‘ancillary activity’, in relation to an activity (in this definition called the ‘core activity’) of a person (in this definition called the ‘first person’), means any of the following activities of the first person:

- (a) the scheduling, sequencing, monitoring, controlling or costing of the core activity;
- (b) the ordering, storage, handling, monitoring, controlling or costing of goods used, or for use, mainly in carrying out the core activity;

SCHEDULE 1—continued

- (c) training a person, or preparing materials for training a person, where the training is mainly for the purpose of developing, improving or maintaining the person's skills in performing the core activity, and the person:
 - (i) is the first person; or
 - (ii) performs, or is likely to perform, the core activity as an employee of the first person; or
 - (iii) otherwise performs, or is likely to perform, the core activity on the first person's behalf;
- (d) the repair or maintenance of goods used, or for use, mainly in carrying out the core activity;
- (e) a supporting activity in relation to the core activity;
- (f) the scheduling, sequencing, monitoring, controlling or costing of one or more activities covered by any of paragraphs (a) to (e);
- (g) the ordering, storage, handling, monitoring, controlling or costing of goods used, or for use, mainly in carrying out one or more activities covered by any of paragraphs (a) to (e);
- (h) training a person, or preparing materials for training a person, where the training is mainly for the purpose of developing, improving or maintaining the person's skills in performing one or more activities covered by any of paragraphs (a) to (e), and the person:
 - (i) is the first person; or
 - (ii) performs, or is likely to perform, that activity or those activities as an employee of the first person; or
 - (iii) otherwise performs, or is likely to perform, that activity or those activities on the first person's behalf;
- (i) the repair or maintenance of goods used, or for use, mainly in carrying out one or more activities covered by any of paragraphs (a) to (e);
- (j) a supporting activity in relation to one or more activities covered by any of paragraphs (a) to (e);

'domestic or staff amenities' means:

- (a) residential accommodation; or
- (b) recreational or similar facilities; or
- (c) facilities for the provision of meals; or
- (d) washrooms, toilets or similar facilities; or
- (e) retail shops or similar facilities; or
- (f) amenities provided directly in connection with such accommodation or facilities (including, for example, the provision of water, light, power, access or communications);

'eligible business goods' has the meaning given by clause 3;

SCHEDULE 1—continued

‘eligible products’, in relation to a person, means:

- (a) if the person is the manufacturer of goods—those goods; or
- (b) if the person is covered by paragraph (b) of the definition of ‘goods producer’—goods manufactured by the person; or
- (c) if the person is covered by paragraph (c) of the definition of ‘goods producer’—goods to which the person applies the process or treatment concerned; or
- (d) if the person is a minerals producer or explorer or a primary producer—goods produced or manufactured by the person;

‘general purpose road vehicle’ means a road vehicle of a kind ordinarily used for the transport of persons or the transport or delivery of goods;

‘goods producer’ means a person who:

- (a) is a manufacturer; or
- (b) manufactures goods but, because of the definition of ‘Manufacturer’ in subsection 3(1) of the *Sales Tax Assessment Act (No. 1) 1930*, is deemed not to be the manufacturer of the goods; or
- (c) applies a process or treatment to goods as specified in subparagraph (a)(iii) of the definition of ‘Wholesale Merchant’ in that subsection; or
- (d) is a minerals producer or explorer; or
- (e) is a primary producer;

‘minerals producer or explorer’ means a person who carries on a business of carrying out:

- (a) mining operations (including exploration or prospecting); or
- (b) petroleum mining operations (including exploration or prospecting); or
- (c) quarrying operations (including exploration or prospecting);

‘primary producer’ means a person who carries on a business of carrying out primary production operations;

‘primary production operations’ means:

- (a) agricultural operations; or
- (b) operations involved in maintaining animals reared for the production of food, fibres, skins, fur or feathers, or for use in the farming of land, for the purpose of selling the animals or their bodily produce, including natural increase; or
- (c) forest operations; or
- (d) fishing operations; or
- (e) pearling operations;

‘production’, in the definition of ‘eligible products’ and in clauses 3 to 14, means production of goods by carrying out:

- (a) primary production operations; or

SCHEDULE 1—continued

- (b) mining operations; or
- (c) petroleum mining operations; or
- (d) quarrying operations;

whether or not that production constitutes manufacture of the goods; **‘supporting activity’**, in relation to an activity (in this definition called the **‘key activity’**), means an activity:

- (a) undertaken mainly for one or more of the following purposes:
 - (i) the provision of access to a building, or to a part of a building, being a building or part that is used, or for use, mainly in carrying out the key activity;
 - (ii) lighting for the purpose of carrying out the key activity;
 - (iii) the control of the temperature in an area used, or for use, mainly in carrying out the key activity;
 - (iv) the covering of floors or windows in an area used, or for use, mainly in carrying out the key activity;
 - (v) the monitoring or control of pollution resulting from carrying out the key activity;
 - (vi) the disposal of waste products resulting from carrying out the key activity;
 - (vii) the production, supply or regulation of power (including electricity, gas, compressed air or hydraulic power) for use in carrying out the key activity;
 - (viii) transporting people (otherwise than by air or sea), within an area used, or for use, mainly in carrying out the key activity, for the purpose of assisting those people to carry out the key activity;
 - (ix) the monitoring of the weather for a purpose related to carrying out the key activity;
 - (x) the prevention of accidents:
 - (A) involving persons carrying out the key activity; and
 - (B) occurring in an area used, or for use, mainly in carrying out the key activity;
 - (xi) the treatment of injuries in an area used, or for use, mainly in carrying out the key activity, where:
 - (A) the person injured was carrying out the key activity; and
 - (B) the injury occurred in such an area;
 - (xii) preventing people who are carrying out the key activity from being injured while in an area used mainly in carrying out the key activity;

SCHEDULE 1—continued

- (xiii) the prevention, detection or extinguishing of fires in an area used, or for use, mainly in carrying out the key activity;
 - (xiv) the cleaning, including decontamination, of an area used, or for use, mainly in carrying out the key activity;
 - (xv) the security of an area used, or for use, mainly in carrying out the key activity;
 - (xvi) the supply or regulation of water for use mainly in carrying out the key activity;
 - (xvii) communication for the purpose of carrying out the key activity; and
- (b) undertaken otherwise than mainly for a purpose related to the repair or maintenance of buildings or structures;

‘year of income’ has the same meaning as in the *Income Tax Assessment Act 1936*.”.

Subclause 1(7):

Omit “computer”.

Subclause 1(8):

Omit “main”, substitute “mainly”.

Paragraph 2(1)(e):

Omit “subclause (6));”, substitute “subclause (6)).”.

Paragraph 2(1)(f):

Omit the paragraph.

Paragraph 2(2)(c):

Omit “computer”.

Paragraph 2(2)(d):

Omit “computer”.

Paragraph 2(2)(e):

Omit “computer”.

Paragraph 2(2)(f):

Omit “computer”.

After clause 2:

Insert:

SCHEDULE 1—continued

Eligible business goods

“3. In this Schedule:

‘eligible business goods’ means goods covered by any of the following categories:

- (a) eligible primary production goods;
- (b) eligible mineral production goods;
- (c) eligible manufacturing goods;
- (d) eligible transport goods;
- (e) eligible engineering and technical design goods;
- (f) eligible storage, handling and dispatch goods;
- (g) eligible computer equipment;
- (h) eligible R&D goods;
- (i) eligible sea cargo handling goods;
- (j) eligible international air cargo handling goods;
- (k) mixed-use eligible business goods;
- (l) mixed-use eligible road vehicles;
- (m) parts for goods covered by any of categories (a) to (l);

but does not include:

- (n) goods covered by item 61 in the Second Schedule (other than vehicles known as four-wheel drive vehicles); or
- (o) goods covered by paragraph (f) of the definition of ‘aids to manufacture’ in subclause 1(1); or
- (p) goods that form, or are to form, part of the infrastructure of a telecommunications network; or
- (q) goods for use mainly in connection with domestic or staff amenities; or
- (r) goods for use mainly in connection with the construction of buildings or other structures; or
- (s) parts for goods covered by any of paragraphs (n) to (r).

Eligible primary production goods

“4. In this Schedule:

‘eligible primary production goods’ means goods where all of the following conditions are satisfied:

- (a) the goods are for use by a primary producer;
- (b) the goods are for use mainly in one or more of the following:
 - (i) carrying out primary production operations of a particular kind in the course of a business of carrying out that kind of primary production operations;

SCHEDULE 1—continued

- (ii) carrying out an ancillary activity in relation to an activity of the primary producer that is covered by subparagraph (i);
- (c) the goods are not for use mainly in connection with administrative activities (except activities covered by subparagraph (b)(ii));
- (d) in the case of a general purpose road vehicle, or parts for such a vehicle—the vehicle is for use exclusively within premises that are:
 - (i) owned, leased or controlled by the primary producer; and
 - (ii) used, or for use, by the primary producer mainly in carrying out activities covered by subparagraph (b)(i) or (ii).

Eligible mineral production goods

“5.(1) In this Schedule:

‘eligible mineral production goods’ means goods where all of the following conditions are satisfied:

- (a) the goods are for use by a minerals producer or explorer;
- (b) the goods are for use mainly in one or more of the following:
 - (i) carrying out mining operations (including exploration or prospecting) in the course of a business of carrying out such operations;
 - (ii) carrying out petroleum mining operations (including exploration or prospecting) in the course of a business of carrying out such operations;
 - (iii) carrying out quarrying operations (including exploration or prospecting) in the course of a business of carrying out such operations;
 - (iv) carrying out a rehabilitation-related activity;
 - (v) carrying out an ancillary activity in relation to an activity of the minerals producer or explorer that is covered by any of subparagraphs (i) to (iv);
- (c) the goods are not for use mainly in connection with administrative activities (except activities covered by subparagraph (b)(v));
- (d) in the case of a general purpose road vehicle, or parts for such a vehicle—the vehicle is for use exclusively within premises that are:
 - (i) owned, leased or controlled by the minerals producer or explorer; and
 - (ii) used, or for use, by the minerals producer or explorer mainly in carrying out activities covered by a subparagraph of paragraph (b);

SCHEDULE 1—continued

other than so much of such premises as is used, or for use, mainly in connection with:

- (iii) domestic or staff amenities; or
- (iv) airports.

“(2) In this clause:

‘extractive activities’ means:

- (a) mining operations (including exploration or prospecting); or
- (b) petroleum mining operations (including exploration or prospecting); or
- (c) quarrying operations (including exploration or prospecting);

‘pre-mining condition of a site’ means the condition the site was in before extractive activities were first commenced on the site, whether by the minerals producer or explorer or a predecessor, whether immediate or otherwise, of the minerals producer or explorer;

‘rehabilitation-related activity’ means the restoration or rehabilitation of a site on which the minerals producer or explorer conducted extractive activities to, or to a reasonable approximation of, the pre-mining condition of the site, but does not include an activity in connection with domestic or staff amenities or airports;

‘restoration of a site’ includes the partial restoration or rehabilitation of the site (even if the minerals producer or explorer had no intention of completing the restoration or rehabilitation);

‘site’ includes a part of a site.

Eligible manufacturing goods

“6. In this Schedule:

‘eligible manufacturing goods’ means goods where all of the following conditions are satisfied:

- (a) the goods are for use by a goods producer;
- (b) the goods are for use mainly in carrying out one or more of the following:

- (i) if the goods producer is a registered person:

- (A) an activity that would qualify the goods as aids to manufacture (as defined by regulations made under the Sales Tax Assessment Acts) if the first reference in paragraph (a) of the definition of ‘aids to manufacture’ in those regulations, the references in paragraphs (b) and (i) of that definition and the second reference in paragraph (f) of that definition to primarily and principally were references to partly; or

- (B) an activity that would qualify the goods as auxiliaries to aids to manufacture (as defined by

SCHEDULE 1—continued

regulations made under the Sales Tax Assessment Acts) if all references in the definition of ‘auxiliaries to aids to manufacture’ in those regulations to primarily and principally were references to partly;

- (ii) if the goods producer is not a registered person:
 - (A) an activity that would qualify the goods as aids to manufacture if the first reference in paragraph (a) of the definition of ‘aids to manufacture’ in subclause 1(1), the references in paragraphs (b) and (i) of that definition and the second reference in paragraph (f) of that definition to primarily and principally were references to partly; or
 - (B) an activity that would qualify the goods as auxiliaries to aids to manufacture if all references in the definition of ‘auxiliaries to aids to manufacture’ in subclause 1(1) to primarily and principally were references to partly;
 - (iii) if the goods producer is covered by paragraph 2(4)(a)—an activity covered by a subparagraph of paragraph 2(4)(b);
 - (iv) unless the goods are of a kind excluded from sub-item 113D(1)—an activity described in a paragraph of that sub-item;
 - (v) unless the goods are of a kind excluded from sub-item 113D(2)—an activity described in that sub-item;
 - (vi) an activity covered by sub-item 113D(3) or (4);
 - (vii) if the goods are machinery, implements, apparatus or materials—an activity covered by sub-item 113E(1);
 - (viii) an activity that would result in the goods being covered by item 113F if the first reference in that item to exclusively were a reference to partly;
 - (ix) an ancillary activity in relation to an activity of the goods producer that is covered by any of subparagraphs (i) to (viii);
- (c) in the case of a general purpose road vehicle, or parts for such a vehicle—the vehicle is for use exclusively within premises that are:
- (i) owned, leased or controlled by the goods producer; and
 - (ii) used, or for use, by the goods producer mainly in carrying out activities covered by a subparagraph of paragraph (b).

SCHEDULE 1—continued

Eligible transport goods

“7.(1) In this Schedule:

‘eligible transport goods’ means goods where all of the following conditions are satisfied:

- (a) the goods are for use by a goods producer;
- (b) the goods are for use mainly in one or more of the following:
 - (i) the operation, maintenance or repair of:
 - (A) a railway; or
 - (B) a pipeline; or
 - (C) a conveyor;used, or for use, mainly to convey qualifying goods within, between, or within and between, eligible premises;
 - (ii) carrying out an ancillary activity in relation to an activity covered by subparagraph (i);
- (c) in the case of a general purpose road vehicle, or parts for such a vehicle—the vehicle is for use exclusively within the eligible premises.

“(2) In this clause:

‘eligible premises’ means:

- (a) premises:
 - (i) owned, leased or controlled by the goods producer; and
 - (ii) used, or for use, by the goods producer mainly for the production, manufacturing, processing, treatment, storage or distribution of qualifying goods; or
- (b) a place or facility covered by paragraph (a) of the definition of ‘eligible sea cargo handling goods’ in subclause 11(1); or
- (c) a place or facility covered by paragraph (a) of the definition of ‘eligible international air cargo handling goods’ in subclause 12(1);

‘qualifying goods’ means:

- (a) eligible products of the goods producer; or
- (b) goods to be used in, wrought into or attached to eligible products of the goods producer; or
- (c) goods that, after further manufacture, processing or treatment by the goods producer, will be eligible products of the goods producer; or
- (d) eligible business goods (other than eligible transport goods).

SCHEDULE 1—continued

Eligible engineering and technical design goods

“8. In this Schedule:

‘eligible engineering and technical design goods’ means goods where all of the following conditions are satisfied:

- (a) the goods are for use by a goods producer;
- (b) the goods are for use mainly in one or more of the following:
 - (i) the engineering or technical design of any or all of the following:
 - (A) goods that are, or are likely to be, eligible products of the goods producer;
 - (B) goods for use, or likely use, by the goods producer in the production, manufacturing, processing or treatment of eligible products of the goods producer;
 - (C) processes (including the detailing of plant layout or of machining and assembly steps) for use, or likely use, by the goods producer in the production, manufacturing, processing or treatment of eligible products of the goods producer;
 - (D) processes (including the detailing of plant layout or of machining and assembly steps) for use, or likely use, by the goods producer in the production, manufacturing, processing or treatment of goods covered by sub-subparagraph (B);
 - (E) operating instructions for computer-controlled equipment for use, or likely use, by the goods producer in the production, manufacturing, processing or treatment of eligible products of the goods producer;
 - (F) operating instructions for computer-controlled equipment for use, or likely use, by the goods producer in the production, manufacturing, processing or treatment of goods covered by sub-subparagraph (B);
 - (ii) carrying out an ancillary activity in relation to an activity covered by subparagraph (i);
- (c) in the case of a general purpose road vehicle, or parts for such a vehicle—the vehicle is for use exclusively within premises that are:
 - (i) owned, leased or controlled by the goods producer; and
 - (ii) used, or for use, by the goods producer mainly in carrying out activities covered by subparagraph (b)(i) or (ii);
- (d) the goods are not author/secretary equipment;

SCHEDULE 1—continued

- (e) the goods are not software-generation equipment;
- (f) the goods are not audio-visual production equipment;
- (g) the goods are not architectural/structural design equipment;
- (h) the goods are not covered by paragraph 2(4)(b).

Eligible storage, handling and dispatch goods

“9.(1) In this Schedule:

‘eligible storage, handling and dispatch goods’ means goods where all of the following conditions are satisfied:

- (a) the goods are for use by a goods producer;
- (b) the goods are for use mainly:
 - (i) on premises owned, leased or controlled by the goods producer; or
 - (ii) on premises:
 - (A) that are used, or for use, mainly for the storage, handling or dispatch of qualifying goods of one or more goods producers; and
 - (B) that are not owned, leased or controlled by a person whose main business is the sale of goods (other than eligible products of the person) by retail or by wholesale;

other than so much of such premises as is used, or for use, mainly in connection with the retail sale of goods at those premises to the general public;

- (c) the goods are for use mainly in carrying out one or more of the following:
 - (i) the storage, handling (including transport) or dispatch of qualifying goods of the goods producer;
 - (ii) an ancillary activity in relation to an activity covered by subparagraph (i);
- (d) if the goods producer’s business is, or is in part, the sale of goods (other than eligible products of the goods producer) by retail or by wholesale—the goods are not for use mainly in connection with that business, or that part, as the case may be;
- (e) in the case of a general purpose road vehicle, or parts for such a vehicle—the vehicle is for use exclusively within those premises.

“(2) In this clause:

‘qualifying goods’ means:

- (a) eligible products of the goods producer; or
- (b) goods to be used in, wrought into or attached to eligible products of the goods producer; or

SCHEDULE 1—continued

- (c) goods that, after further manufacture, processing or treatment by the goods producer, will be eligible products of the goods producer; or
- (d) eligible business goods (other than eligible storage, handling and dispatch goods).

Eligible R&D goods

“10.(1) In this Schedule:

‘eligible R&D goods’ means goods where all of the following conditions are satisfied:

- (a) the goods are for use by a person, being:
 - (i) a goods producer; or
 - (ii) an eligible R&D entity;
- (b) the goods are for use mainly in carrying out one or more of the following:
 - (i) an eligible R&D activity;
 - (ii) an ancillary activity in relation to an eligible R&D activity of the person;
- (c) in the case of a general purpose road vehicle, or parts for such a vehicle—the vehicle is for use exclusively within premises that are:
 - (i) owned, leased or controlled by the person; and
 - (ii) used, or for use, by the person mainly in carrying out activities covered by subparagraph (b)(i) or (ii);
- (d) the goods are not software-creation goods in relation to the person.

“(2) For the purposes of this clause, a person is an eligible R&D entity at a particular time if:

- (a) the person has, as at that time, entered into an agreement under section 28 or 31 of the *Industry Research and Development Act 1986* in respect of a project that is being carried out at that time; or
- (b) as at that time:
 - (i) the Industry Research and Development Board has registered the person under section 39F of that Act; and
 - (ii) that registration is in force; or
- (c) as at that time, the Industry Research and Development Board has registered the person under section 39J of that Act, or registered the person jointly with another person or persons under section 39P of that Act, in respect of the year of income of the person in which that time occurs.

“(3) In this clause:

SCHEDULE 1—continued

‘eligible process’ means a process made up mainly of activities where, if goods were for use exclusively to perform one or more of those activities, the goods would be:

- (a) eligible business goods (other than eligible R&D goods); or
- (b) aids to manufacture; or
- (c) auxiliaries to aids to manufacture;

‘eligible R&D activity’ means any of the following:

- (a) systematic, investigative or experimental activities that involve innovation or technical risk and are carried out mainly for one or more of the following purposes:
 - (i) creating new or improved goods that are, or are likely, to be produced, manufactured, processed or treated in Australia;
 - (ii) creating new or improved eligible processes for use, or likely use, in Australia;
 - (iii) acquiring new knowledge mainly for the purpose of creating such new or improved goods or processes;
- (b) other activities that are carried out mainly for a purpose directly related to the carrying out of an activity covered by paragraph (a);

but does not include any of the following activities:

- (c) market research, market testing or market development, or sales promotion (including consumer surveys);
- (d) prospecting, exploring or drilling for minerals or petroleum;
- (e) making cosmetic modifications or stylistic changes to products, processes or production methods;
- (f) management studies or efficiency surveys;
- (g) research in social sciences, arts or humanities;
- (h) feasibility studies;
- (i) activities the main purpose of which is:
 - (i) creating new or improved services; or
 - (ii) acquiring new knowledge mainly for the purpose of creating new or improved services;
- (j) quality control;
- (k) activities that are carried out mainly for a purpose directly related to the carrying out of an activity covered by any of paragraphs (c) to (j);

‘software-creation goods’, in relation to a person, means goods that:

- (a) are for use mainly in making, altering or reproducing computer programs (other than programs for use by the person mainly in carrying out an eligible process); and

SCHEDULE 1—continued

- (b) are not for use mainly in connection with the embodying of computer programs in microchips.

Eligible sea cargo handling goods

“11.(1) In this Schedule:

‘eligible sea cargo handling goods’ means goods where all of the following conditions are satisfied:

- (a) the goods are for use by a person mainly at a place or facility (in this clause called the **‘eligible sea cargo activity area’**) that is used, or for use, mainly in carrying out eligible sea cargo handling activities;
- (b) the goods are for use mainly in carrying out one or more of the following:
 - (i) an eligible sea cargo handling activity;
 - (ii) an ancillary activity in relation to an eligible sea cargo handling activity;
- (c) if the person’s business is, or is in part, the sale of goods (other than eligible products of the person) by retail or by wholesale—the goods are not for use mainly in connection with that business, or that part, as the case may be;
- (d) in the case of a general purpose road vehicle, or parts for such a vehicle—the vehicle is for use exclusively within the eligible sea cargo activity area.

“(2) In this clause:

‘container’ means a receptacle covered by item 154;

‘eligible sea cargo handling activity’ means any of the following:

- (a) the loading or unloading of sea cargo;
- (b) the storage, movement, packing or unpacking of sea cargo;
- (c) the physical protection, preservation or decontamination of sea cargo;
- (d) the storage, movement, packing or unpacking of containers used to contain sea cargo;
- (e) the physical protection or decontamination of such containers;

‘sea cargo’ means cargo (including cargo consisting of a bulk commodity, for example, oil or wheat) that has been, or is to be, carried on a ship, but does not include:

- (a) stores for the ship; or
- (b) fuel or ballast for the ship; or
- (c) passengers’ baggage; or
- (d) goods to be used, consumed, or sold by retail, on the ship; or

SCHEDULE 1—continued

- (e) goods to be used, consumed, or sold by retail, at a place or facility that is used, or for use, mainly in carrying out eligible sea cargo handling activities.

Eligible international air cargo handling goods

“12.(1) In this Schedule:

‘eligible international air cargo handling goods’ means goods where all of the following conditions are satisfied:

- (a) the goods are for use by a person mainly at a place or facility (in this clause called the **‘eligible international air cargo activity area’**) that is used, or for use, mainly in carrying out eligible international air cargo handling activities;
- (b) the goods are for use mainly in carrying out one or more of the following:
 - (i) an eligible international air cargo handling activity;
 - (ii) an ancillary activity in relation to an eligible international air cargo handling activity;
- (c) if the person’s business is, or is in part, the sale of goods (other than eligible products of the person) by retail or by wholesale—the goods are not for use mainly in connection with that business, or that part, as the case may be;
- (d) in the case of a general purpose road vehicle, or parts for such a vehicle—the vehicle is for use exclusively within the eligible international air cargo activity area.

“(2) In this clause:

‘container’ means a receptacle for repeated use on aircraft for the purpose of transporting cargo by air;

‘eligible international air cargo handling activity’ means any of the following:

- (a) the loading or unloading of international air cargo;
- (b) the storage, movement, packing or unpacking of international air cargo;
- (c) the physical protection, preservation or decontamination of international air cargo;
- (d) the storage, movement, packing or unpacking of containers used to contain international air cargo;
- (e) the physical protection or decontamination of such containers;

‘international air cargo’ means cargo that:

- (a) has been, or is to be, carried on an aircraft; and
- (b) is consigned on a bill of lading to or from an airport outside Australia;

but does not include:

- (c) stores for the aircraft; or

SCHEDULE 1—continued

- (d) fuel for the aircraft; or
- (e) passengers' baggage; or
- (f) goods to be used, consumed, or sold by retail, on the aircraft; or
- (g) goods to be used, consumed, or sold by retail, at a place or facility that is used, or for use, mainly in carrying out eligible international air cargo handling activities.

Mixed-use eligible business goods

“13.(1) Goods (other than general purpose road vehicles or parts for such vehicles) are mixed-use eligible business goods if they are for use by a person mainly in carrying out 2 or more eligible activities.

“(2) In this clause:

‘eligible activity’, in relation to goods for use by a person, means an activity such that the goods would be eligible business goods if they were for use by the person mainly in carrying out that activity, but does not include an activity in so far as:

- (a) the goods would be eligible business goods, if they were for use by the person mainly in carrying out that activity, only if they were for use by the person mainly in carrying out the activity at a particular place; and
- (b) the goods are for use by the person in carrying out the activity otherwise than at that place.

Mixed-use eligible road vehicles

“14.(1) In this Schedule:

‘mixed-use eligible road vehicle’ means a general purpose road vehicle that:

- (a) is for use by a person mainly in carrying out one or more eligible activities; and
- (b) is for use exclusively:
 - (i) within areas; or
 - (ii) in going between contiguous areas; or
 - (iii) both within areas and in going between contiguous areas; where each of those areas is an eligible area in relation to that eligible activity, or one or more of those eligible activities, as the case may be.

“(2) In this clause:

‘eligible activity’, in relation to a general purpose road vehicle that is for use by a person, means an activity such that, if the vehicle were goods other than a general purpose road vehicle, the vehicle would be eligible business goods if:

SCHEDULE 1—continued

- (a) unless paragraph (b) applies—it were for use by the person mainly in carrying out that activity; or
- (b) if it would be eligible business goods, if it were for use by the person mainly in carrying out that activity, only if it were for use by the person mainly in carrying out the activity at a particular place—it were for use by the person mainly in carrying out that activity at that place;

‘eligible area’, in relation to an activity of a person, means an area such that a general purpose road vehicle would be eligible business goods if it were for use by the person exclusively in carrying out that activity within that area.”.

Sub-item 14A(1):

Omit “, but not including lubricants”.

Sub-item 20B(1):

Omit the sub-item, substitute:

“(1) Machinery, equipment and materials for use in the pearling industry in carrying out pearling operations, but not including road vehicles of the kinds ordinarily used for the transport of persons or the transport or delivery of goods, or parts for those road vehicles”.

Item 113B:

Omit “(other than lubricants)”.

Item 113C:

Omit “(other than lubricants)”.

Sub-item 113D(4):

Omit “(other than lubricants)”.

Sub-item 113E(1):

Omit “, but not including lubricants”.

Paragraph 155(a):

Omit “eligible computer equipment”, substitute “eligible business goods”.

Paragraph 155(b):

Omit the paragraph, substitute:

- “(b) if the person manufactures, processes or treats goods—those goods are covered by any item or sub-item in this Schedule other than item 100 or 103”.

SCHEDULE 1—continued

Item 156:

Omit “eligible computer equipment”, substitute “eligible business goods”.

Item 157:

Omit “eligible computer equipment”, substitute “eligible business goods”.

Item 158:

Omit the item, substitute:

“158. (1) Goods (other than general purpose road vehicles or parts for such vehicles) in respect of which all of the following conditions are satisfied: Nos. 1 to 9

(a) the goods are for use by a person (in this item called the ‘subcontractor’) mainly in carrying out activities on behalf of one or more other persons (in this item called the ‘principals’);

(b) in the case of each of the principals, at least one of the following subparagraphs applies:

(i) the goods would have been covered by item 155 if they had been sold to the principal for use by the principal mainly in carrying out the contracted activities at the place where the subcontractor is to carry out the contracted activities;

(ii) the goods would have been covered by item 156 if they had been:

(A) manufactured by the principal; and

(B) applied by the principal to the principal’s own use mainly in carrying out the contracted activities at the place where the subcontractor is to carry out the contracted activities;

SCHEDULE 1—continued

(iii) the goods would have been covered by item 157 if they had been applied by the principal to the principal's own use in carrying out the contracted activities at the place where the subcontractor is to carry out the contracted activities;

(c) if:

(i) the goods would have been eligible storage, handling and dispatch goods, eligible sea cargo handling goods or eligible international air cargo handling goods if they had been for use by the principal as mentioned in subparagraph (b)(i), (ii) or (iii), as the case requires; and

(ii) the subcontractor's business is, or is in part, the sale of goods (other than eligible products of the subcontractor) by retail or by wholesale;

the goods are not for use mainly in connection with that business, or that part, as the case may be

“(2) In sub-item (1):

‘contracted activities’, in relation to one of the principals, means such of the activities referred to in paragraph (1)(a) as the subcontractor is to carry out on that principal's behalf

“159. (1) A general purpose road vehicle in respect of which all of the following conditions are satisfied: Nos. 1 to 9

(a) the vehicle is for use by a person (in this item called the **‘subcontractor’**):

(i) mainly in carrying out activities on behalf of one or more other persons (in this item called the **‘principals’**); and

(ii) exclusively:

(A) within areas; or

(B) in going between contiguous areas; or

(C) both within areas and in going between contiguous areas;

SCHEDULE 1—continued

where each of those areas is an area within which the subcontractor is to mainly carry out some or all of those activities;

(b) in the case of each of the principals, at least one of the following subparagraphs applies in relation to each of the areas referred to in subparagraph (a)(ii) that is an area where the subcontractor is to carry out some or all of the contracted activities:

(i) the vehicle would have been covered by item 155 if it had been sold to the principal for use by the principal:

(A) mainly in carrying out such of the contracted activities as the subcontractor is to carry out within that area; and

(B) exclusively within that area;

(ii) the vehicle would have been covered by item 156 if it had been manufactured by the principal and applied by the principal to the principal's own use:

(A) mainly in carrying out such of the contracted activities as the subcontractor is to carry out within that area; and

(B) exclusively within that area;

(iii) the vehicle would have been covered by item 157 if it had been applied by the principal to the principal's own use:

(A) mainly in carrying out such of the contracted activities as the subcontractor is to carry out within that area; and

(B) exclusively within that area;

(c) if:

SCHEDULE 1—continued

- (i) the vehicle would have been eligible storage, handling and dispatch goods, eligible sea cargo handling goods or eligible international air cargo handling goods if it had been for use by the principal as mentioned in subparagraph (b)(i), (ii) or (iii), as the case requires; and
- (ii) the subcontractor's business is, or is in part, the sale of goods (other than eligible products of the subcontractor) by retail or by wholesale;

the vehicle is not for use mainly in connection with that business, or that part, as the case may be

“(2) In sub-item (1):

‘contracted activities’, in relation to one of the principals, means such of the activities referred to in paragraph (1)(a) as the subcontractor is to carry out on that principal's behalf

“(3) Parts for general purpose road vehicles covered by sub-item (1)”.

SCHEDULE 2

Section 5

AMENDMENT OF THE SALES TAX REGULATIONS

Subregulation 4(1) (definition of “aids to manufacture”):

- (a) Omit paragraphs (h) and (n).
- (b) Omit “computer” from paragraph (p).

Subregulation 4(1) (definition of “author/secretary computer equipment”):

Omit all the words before “has”, substitute “**‘author/secretary equipment’**”.

Subregulation 4(1)(definition of “eligible computer equipment”):

Omit the definition.

SCHEDULE 2—continued

Subregulation 4(1):

Insert:

“ ‘eligible business goods’ has the same meaning as in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*;”.

Regulation 12:

Omit “eligible computer equipment” (wherever occurring), substitute “eligible business goods”.

Regulation 13:

Omit “eligible computer equipment” (wherever occurring), substitute “eligible business goods”.

Regulation 48:

Omit “eligible computer equipment” (wherever occurring), substitute “eligible business goods”.

Paragraph 51(1)(c):

Omit “eligible computer equipment”, substitute “eligible business goods”.

Paragraph 55(1)(c):

Omit “eligible computer equipment”, substitute “eligible business goods”.

After regulation 55:

Insert:

Refunds to R&D entities

“55A.(1) If:

- (a) a person (in this regulation called the ‘taxpayer’) has paid tax, or is liable to pay tax, on the sale value of goods in respect of an act, transaction or operation that occurred at a particular time (in this regulation called the ‘taxing time’); and
- (b) another person (in this regulation called the ‘R&D person’) has, at a time (in this regulation called the ‘sale time’) that is at or after the taxing time, purchased the goods (whether or not from the taxpayer) at a price that includes the tax; and
- (c) the R&D person:
 - (i) has entered into an agreement under section 28 or 31 of the *Industry Research and Development Act 1986* in respect of a project that was being carried out at the sale time; or
 - (ii) has been registered by the Industry Research and Development Board under section 39F of that Act in

SCHEDULE 2—continued

circumstances where the registration is taken to have had effect as at the sale time; or

- (iii) has been registered by the Industry Research and Development Board under section 39J of that Act, or jointly with another person or persons under section 39P of that Act, in respect of the year of income of the R&D person in which the sale time occurred; and
 - (d) as at the sale time, the R&D person had not entered into the agreement, or had not been so registered by the Industry Research and Development Board, as the case may be; and
 - (e) if:
 - (i) the taxpayer had sold the goods to the R&D person at the sale time; and
 - (ii) as at the sale time, the R&D person had entered into the agreement, or had been so registered by the Industry Research and Development Board, as the case may be;
- no tax would have been payable by the taxpayer in respect of the sale; and
- (f) no person is entitled to a payment or refund in respect of the tax under any Act or any other regulation;

the R&D person is entitled to be paid by the Commissioner an amount equal to the amount of the tax paid or tax payable by the taxpayer in respect of the act, transaction or operation.

“(2) If:

- (a) a person (in this regulation called the ‘**R&D person**’) has paid tax on the sale value of goods in respect of an act, transaction or operation that occurred at a particular time (in this regulation called the ‘**sale time**’); and
- (b) the R&D person:
 - (i) has entered into an agreement under section 28 or 31 of the *Industry Research and Development Act 1986* in respect of a project that was being carried out at the sale time; or
 - (ii) has been registered by the Industry Research and Development Board under section 39F of that Act in circumstances where the registration is taken to have had effect as at the sale time; or
 - (iii) has been registered by the Industry Research and Development Board under section 39J of that Act, or jointly with another person or persons under section 39P of that Act, in respect of the year of income of the R&D person in which the sale time occurred; and

SCHEDULE 2—continued

- (c) as at the sale time, the R&D person had not entered into the agreement, or had not been so registered by the Industry Research and Development Board, as the case may be; and
 - (d) no tax would have been payable by the R&D person in respect of the act, transaction or operation if, as at the sale time, the R&D person had entered into the agreement, or had been so registered by the Industry Research and Development Board, as the case may be; and
 - (e) the R&D person is not entitled to a payment or refund in respect of the tax under any Act or any other regulation;
- the R&D person is entitled to be paid by the Commissioner a refund of the tax paid in respect of the act, transaction or operation.”.

Subregulation 56(1):

- (a) Insert “or 55A” after “48”.
- (b) Omit “(m) of subregulation (1) of that regulation”, substitute “48(1)(m)”.

Subparagraph 58(4)(a)(i):

Omit “eligible computer equipment”, substitute “eligible business goods”.

NOTE

1. No. 60, 1935, as amended. For previous amendments, see No. 41, 1936; No. 78, 1938; No. 32, 1939; Nos. 29 and 76, 1940; No. 32, 1941; No. 6, 1942; Nos. 35 and 44, 1943; No. 31, 1944; No. 36, 1945; Nos. 12 and 67, 1946; No. 65, 1947; No. 42, 1948; No. 54, 1949; No. 37, 1950; No. 42, 1951; No. 44, 1952; No. 53, 1953; No. 45, 1954; No. 5, 1956; No. 71, 1957; Nos. 17 and 92, 1959; Nos. 65 and 88, 1960; Nos. 1 and 76, 1961; No. 4, 1962; No. 44, 1963; No. 30, 1965; Nos. 26 and 62, 1966; No. 78, 1970; Nos. 67 and 87, 1972; Nos. 17, 181 and 216, 1973; No. 24, 1975; Nos. 21, 29, 80 and 175, 1976; No. 107, 1978; Nos. 3, 94 and 157, 1979; No. 142, 1981; Nos. 64, 93 and 115, 1982; Nos. 63, 84 and 136, 1983; Nos. 81, 123 and 165, 1984; Nos. 65, 67, 145 and 178, 1985; Nos. 28, 76 and 98, 1986; Nos. 42, 135 and 140, 1987; Nos. 78, 89 and 152, 1988; Nos. 63, 72, 149, 150, 166 and 167, 1989; Nos. 18, 55, 57, 58, 82 and 131, 1990; and Nos. 51 and 143, 1991.

NOTES ABOUT CLAUSE HEADINGS

1. At the commencement of this Act, the following heading is inserted at the beginning of clause 1 of the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*:
“**Interpretation**”.
2. At the commencement of this Act, the following heading is inserted at the beginning of clause 2 of the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*:
“**Eligible computer equipment**”.

Sales Tax Laws Amendment (No. 3) No. 202, 1991

*[Minister's second reading speech made in—
House of Representatives on 7 November 1991
Senate on 12 November 1991]*