

COMMONWEALTH OF AUSTRALIA.

SALES TAX.

Explanatory Notes on Amendments
contained in Bills

FOR

ACTS

TO AMEND THE

Sales Tax Assessment Acts (Nos. 1-9) 1930-1931.

*(Issued under Authority of the Commonwealth Treasurer,
Rt. Hon. J. A. LYONS, P.C., M.P.)*

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Explanatory Notes on Amendments contained in the several Bills for Acts to amend the *Sales Tax Assessment Acts* (Nos. 1-9) 1930-1931.

The object of these Bills may be broadly stated as follows:—

- (1) To give effect to the exemptions, in aid of primary production, which were announced in detail in the Budget Speech, and additional exemptions since decided upon with the same object in view.
- (2) To provide for several other exemptions and abatements the main effect of which will be to bring the operation of the Sales Tax into line, on certain matters of principle, with the operation of Customs and primage duties.
- (3) To remove certain anomalies, remedy certain technical defects, grant certain concessions, and provide, by clarifying amendments, for certain matters of doubt and difficulty which have arisen in the administration of the law.

A complete list of the exemptions which will be added by these Bills to those already allowed by law is as follows:—

- (1) Agricultural and other machinery and implements, viz.:—
 - Chaff cutters and horse gears.
 - Chaff cutter knives.
 - Cheese presses.
 - Churns.
 - Combined corn shellers, huskers and baggers.
 - Corn shellers and corn huskers and combined corn shellers and huskers.
 - Cotton gins.
 - Cream separators.
 - Cultivators.
 - Dairy coolers.
 - Discs for agricultural implements.
 - Drills—seed, grain and fertilizer.
 - Engines for use in farming or pastoral pursuits.
 - Farm tractors.
 - Field mowers.
 - Fruit grading, sorting and cleansing machines.
 - Garden and field spraying machines and spray pumps.
 - Harrows.
 - Hay presses.
 - Hay rakes—horse-drawn, and hand-worked rakes and ploughs combined.
 - Hay tedders.
 - Lucerne bunchers.
 - Maize harvesters and maize binders.
 - Milking machines.

Pasteurizers and jacketed vats or jacketed tanks and also enamelled vats or tanks not jacketed, including those fitted with agitators or stirrers capable of use as pasteurizers or coolers or as storage receptacles.

Ploughs, plough shares, plough mouldboards and mould-board plates in the flat.

Potato planters, raisers, diggers and sorters.

Reapers and binders.

Reaper threshers and harvesters.

Seats, poles, swingle bars, yokes and trees for agricultural machines.

Scarifiers.

Scoops for use in farming or pastoral pursuits.

Sheep shearing machines.

Straw stackers.

Strippers and stripper harvesters.

Stamp extractors and lifting jacks for use in farming or pastoral pursuits.

Sub-surface packers for agricultural purposes.

Threshing machines.

Wagons, drays and spring drays for use in farming or pastoral pursuits.

Wheat grading and pickling machines.

Winnowers and winnower forks (wood and steel).

Wool presses,

and parts thereof not being parts of a kind that are ordinarily used for any other purpose.

- (2) Agricultural, horticultural and viticultural spraying and dusting materials, and preparations to be used in the checking of noxious weeds, plant and seed insect pests and plant and seed diseases.
- (3) Binder twine.
- (4) Cakes, but not including block cake.

NOTE.—This exemption is not to operate on and from 2nd September, but from the date of assent to the amending Bills.

- (5) Chemicals sold to a person engaged in the mining industry for use in the recovery of gold by the flotation, cyaniding or similar processes.

NOTE.—This is an extension of the exemption hitherto limited to flotation reagents.

- (6) Dips and washes for cattle or sheep.
- (7) Exchange publications (including manuscripts, typescripts, pictures, maps and plans which the Commissioner is satisfied are of such historical educational value or of historical interest as to justify their inclusion in a national or State institution within the Commonwealth) consigned to international exchange centres in Australia, and publications donated to a Commonwealth or State Government or to an institution or society and not intended to be sold by the donee.

NOTE.—Imports only—to operate from date of assent to amending Bills.

- (8) Films covered by clause B of paragraph 2 of sub-item (c) of Item 320 of the Customs Tariff 1921-1930.

NOTE.—Imports only—to operate on and from 10th August, 1931.

- (9) Machinery and parts thereof to be used in the mining industry.
- (10) Newspaper blocks (i.e., blocks used in the production of newspapers).

NOTE.—Blocks manufactured in Australia only.

- (11) Posters, display signs, pamphlets, books and other printed matter issued by Government tourist bureaux, railway authorities or steamship companies, advertising or having reference to places beyond the Commonwealth.

NOTE.—Imports only—to operate on and from 18th April, 1932.

- (12) Poultry farmers' equipment, viz., incubators, breeders, trap nests, feeders, hoppers, fountains and waterers.
- (13) Preparations for use in the prevention, cure or eradication of diseases or pests in poultry, birds or live-stock.
- (14) Re-imported goods which are covered by Item 401 of the Customs Tariff 1921-1930.

NOTE.—To operate from inception of Sales Tax.

- (15) Rabbit poisons.
- (16) Rape seed for pasture purposes.

NOTE.—Imports only—local production, if any, already exempt.

- (17) Sheet iron galvanized—flat and corrugated.
- (18) Stockinette and hessian for use in the manufacture of meat wraps.
- (19) Traps for rabbits and dingoes.
- (20) Water bore casings.
- (21) Water pipes (galvanized) not exceeding 3 inches in diameter, and galvanized pipe fittings; windmills and towers, pumps, pump jacks, power pumping heads, pump valves, tanks and troughing for use in farming, pastoral, or mining activities.

NOTE.—This is a revision of the exemption announced in the Budget Speech in respect of water pipes.

- (22) Wire netting, barbed wire, and wire of gauges 8 to 14; manufactured field wire fencing and gates; wire fencing droppers and fencing droppers and posts made of iron or steel ordinarily used in farming or pastoral pursuits.

NOTE.—This is a revision of the exemption of wire, &c., as announced in the Budget Speech.

These exemptions will be made operative as from 2nd September, 1932, except where the list indicates a different commencing date, and they will relate to imported as well as to domestic goods except where the list contains a statement to the contrary.

It will be seen that most of the articles added to the exempt list consist of plant machinery and other goods used by primary producers as aids to production. These exemptions, together with certain remissions outside the scope of these Bills, are intended to operate as a contribution towards the reduction of the high costs which press upon the export industries.

These Bills also contain the following provisions for the relief of primary producers :—

1. The retrospective application, as from 1st August, 1930, of the exemption of imported chaff bags, which at present only applies as from 11th July, 1931.—*Assessment Bill No. 5, Clause 5 (5), and corresponding provisions of Bills 6, 7, and 8.*

2. The exemption of fish when smoked and dried, and of lobsters and other crustacea when boiled, for the purpose of being marketed in a wholesome condition.—*Assessment Bill No. 1, Clause 5, and corresponding provisions of other Bills.*

The exemption of Australian primary products ceases to apply when the natural products of the particular primary industry have been subjected to any process or treatment which alters their form, nature or condition.

This limitation has unexpectedly had the effect of excluding from the benefits of the exemption a large section of those engaged in the fishing industry, the conditions of which are such that the use of some boiling, smoking or drying process, which alters the natural condition of the fish, is frequently necessary in order to prevent the fish from becoming unfit for human consumption in the course of being placed on the market.

It has been decided to alleviate this position by extending the exemption of primary products to lobsters and other crustacea which have been boiled, and to other fish which have been smoked or dried, by the fisherman himself or by the merchant who purchased the fish from the fisherman, provided the Commissioner is satisfied that it was necessary to subject the fish to such treatment to enable them to be marketed in a wholesome condition.

In addition to the exemptions in aid of primary production, the Bills provide for certain exemptions and concessions (some of which appear in the above list) which may be stated and explained as follows :—

1. **Cakes (not including block cakes).**—*Assessment Bill No. 1, Clause 8 (h).*

This will remove difficulties which have arisen in the application of the exemption of pastry and will be in line with other exemptions of foodstuffs.

2. **Newspaper blocks.**—*Assessment Bill No. 1, Clause 8 (h).*

This exemption is considered desirable in view of the existing exemption of newspapers.

3. **British films.**—*Assessment Bill No. 5, Clause 4 (d), and corresponding provisions of other Bills.*

These are admitted free of duty under Customs Tariff Item 320 (c)(2)(b) and therefore do not come within the existing Sales Tax exemption, which is limited to films upon which duty has been paid under that item.

The amendment now proposed will effectuate the original intention of exempting all films, whether British or foreign, covered by the Tariff Item referred to.

4. Exchange publications consigned to international exchange centres in Australia and publications donated to a Commonwealth or State Government Department, or to an institution or society, and not intended to be sold by the donee.—Assessment Bill No. 5, Clause 4 (c).

Although unable, in view of the sacrifice of income involved, to accede to the representations for the exemption of all imported books and journals, the Government has agreed to exempt importations of the publications described, in view of their non-commercial character.

5. Goods re-imported.—Assessment Bill No. 5, Clause 4 (h).

Customs Tariff Item 401 provides for the admission free of duty, in certain circumstances, of goods sent out of Australia and subsequently re-imported.

In August 1930 it was decided that goods so re-imported should also be free of Sales Tax, and, in August 1931, the law was amended retrospectively with a view to implementing that decision. It was subsequently discovered that the terms of the amendment were not wide enough to include, as intended, the goods covered by sub-item B of Tariff Item 401. This oversight will be remedied in the Bill to amend Sales Tax Assessment Act No. 5.

6. Posters (and other printed advertising matter) issued by overseas tourist bureaux, railway authorities or steamship companies advertising places beyond the Commonwealth.—Assessment Bill No. 5, Clause 4 (h).

This exemption is the outcome of representations made on behalf of Canadian Railway Authorities for the exemption of advertising matter sent out by them to Australia with the object of attracting tourists. It is considered desirable to grant the exemption. As the sale value of such goods is inconsiderable, very little loss of revenue is involved. Freedom from Customs Duty and primage has already been granted.

7. Drawback of Sales Tax.—Assessment Bill No. 5, Clause 3.

Where goods are imported subject to Sales Tax and Customs Duty and the importer is subsequently obliged to export the goods because he finds them unsuitable or defective, a drawback of the Customs Duty is allowed, but there is no relief from the Sales Tax paid.

The exaction of Sales Tax in such cases constitutes a hardship and runs counter to the general principles underlying the Sales Tax law.

It has therefore been decided to adopt the relevant provisions of the Customs Act and Regulations for the purpose of permitting a drawback of Sales Tax in circumstances in which a drawback of Customs Duty is allowed.

The amendments designed to remove defects and anomalies and to clarify the law may be briefly stated and explained as follows :—

(a) Extension of the definition of "manufacture" to include the formation of a commercial article by the combining of parts into a completed whole.—Assessment Bill No. 1, Clause 2 (a).

In consequence of a decision of the High Court, some doubt exists as to whether a person who imports or purchases fabricated parts and combines them into a distinct commercial article can be treated as a manufacturer.

It is essential that the law should be clarified for the purpose of ensuring that the tax should fall, as intended, on the sale value of the completed article and that the person who both fabricates and combines the parts of any commercial article should not be at a disadvantage in competition with persons who produce a similar article by a combination of purchased or imported parts.

(b) A definition of "wholesale sale".—*Assessment Bill No. 1, Clause 2 (b).*

It is proposed to include in the definition any sale of goods—

- (1) to a person who buys the goods for re-sale; or
- (2) to a builder or a like contractor who transfers the property in the goods, for valuable consideration, in the course of carrying out a contract for work and labour; or
- (3) at a discount of the kind allowed by the vendor to persons engaged in trade or business.

In the absence of any established authority as to the meaning of "wholesale sale", it is considered desirable to make declaratory provision in the law to the extent which, in the light of the experience of the Department, appears to be necessary for the protection of the revenue.

Of the three classes of sale included in the definition, class (1) falls clearly within the common conception of wholesale sale. Class (2) is open to some doubt in view of the judgment of a local Court in a Sales Tax case in which it was pointed out that the transfer of the property in goods in the course of a contract for the erection of a building or other fixture did not constitute a sale. It is considered, however, that a sale to a builder is in substance a wholesale sale because even if a builder does not sell the goods he supplies in the course of his contract, he transfers the property in those goods for valuable consideration. Class (3) is also considered in substance to be in the nature of a wholesale sale, but, in the absence of clear judicial decision, there is some doubt as to the view the Court might take of that class of transaction.

(c) A provision which will have the effect of deeming a sale of goods to take place where the property in the goods is transferred for valuable consideration in the course of carrying out a contract for work and labour.—*Assessment Bill No. 1, Clause 2 (d).*

Wherever it is contemplated by the terms of any particular contract involving work and labour that goods shall be installed in or affixed to any land, building, fixture or chattel before the property in the goods passes, no sale of goods takes place. Contracts of this class cover a wide field of industrial activity, e.g., the ordinary building contract, contracts for repairs or for installation of various services in buildings, &c.

Under the existing law it is not possible to collect Sales Tax on the value of goods manufactured in Australia and disposed of by the manufacturer in the course of carrying out any such contract. It was fully intended that goods so manufactured and disposed of should be subject to Sales Tax because, although, technically, a sale of goods does not take place in such cases, the goods are, in fact, disposed of for valuable consideration.

The amendment proposed by this paragraph will remedy the position and, in conjunction with the amendment in paragraph (b) of this Clause, will simplify some of the administrative problems which have been encountered by the Department in determining what constitutes a wholesale sale.

(d) A provision to remove difficulties in the levying of Sales Tax where the businesses of registered persons are taken over by receivers and like persons.—*Assessment Bill No. 1, Clause 2 (c).*

Where a receiver is not declared by the relevant debenture deed or other mortgage deed to be the agent of the registered person, he is only liable to become registered and pay tax if he engages in the manufacture of goods or in the sale of goods by wholesale. Prima facie those conditions of liability do not exist where a receiver proceeds merely to wind-up or realize the assets of the business. In such a case, therefore, the receiver's sales would escape tax and this would mean that goods which the registered person, whose business was taken over, had purchased tax-free by quotation of certificate would entirely escape Sales Tax. It is proposed to remove the possibility of such a serious and unjustifiable loss of revenue.

(e) A provision to enable registration and lodgment of security to be enforced in the case of persons who failed to comply with their obligation to renew registration and security prior to the commencement of last year's Amending Acts.—*Assessment Bill No. 1, Clause 3 (a).*

The Amending Acts of 1931 made several important alterations of the law in relation to registration and securities. The amendments were made to apply to all certificates and securities in force at the commencement of the Amending Acts and to all registrations and securities required to be effected or furnished after the commencement of these Acts. The Taxation Department has been advised that there are technical difficulties in the way of enforcing registration and the furnishing of securities in the case of manufacturers and wholesale merchants who originally became registered and gave security as required by law, but who, at the commencement of the 1931 Amending Acts, had failed to renew their registration and security as required by the original Sales Tax Assessment Acts. The proposed amendment is necessary to ensure that such defaulters are placed in no better position, as regards Sales Tax, than those taxpayers who complied with the provisions of the original Acts.

(f) A provision to ensure that where a registered person who has furnished security enters into a Deed of Arrangement under Part XII. of the Bankruptcy Act, the Commissioner's assent to that Deed shall not release the surety from his obligations under the security.—*Assessment Bill No. 1, Clause 3 (b).*

The practice of the Department is not to assent to such deeds but to submit a proof of debt for the tax due. The necessity for the amendment arises from implications, arising from a recent judicial decision, that proof of debt in such cases is tantamount to assent to the Deed of Arrangement.

(g) **An amendment to simplify the ascertainment of the sale value of goods, in the case of manufacturers, where the required sale value is not the actual sale price of the goods.**—*Assessment Bill No. 1, Clause 4.*

There are three classes of case affected, viz. :—

- (1) Goods treated by the manufacturer as stock for retail sale.

The prescribed sale value is the fair market value of such goods if sold by wholesale **by the manufacturer** (subject to increase on review by Commissioner).

- (2) Goods which though not treated as stock for retail sale, are actually sold by the manufacturer by retail.

The prescribed sale value of such goods is their fair market value if sold by wholesale (subject to increase on review by Commissioner).

- (3) Goods manufactured and applied by the manufacturer to his own use.

The prescribed sale value of such goods is the amount which, in the Commissioner's opinion, would be their fair market value **if sold by the manufacturer in the ordinary course of trade.**

In all three classes, great difficulty has arisen in the administration of the law. One difficulty is that some classes of goods may never be sold by wholesale. A greater difficulty, and one which principally arises in class (1), lies in the ascertainment of what would be the fair market value of goods if the manufacturer sold them by wholesale, where the goods are of such a class that the manufacturer never sells them by wholesale. The most serious difficulty, however, is the implication in class (3) that the only goods in that class which are subject to tax are those which, although applied by the manufacturer to his own use, are ordinarily manufactured by him for sale. It was definitely intended that the Sales Tax should apply to all production in Australia of goods and commodities (except those specifically exempted), whether the goods were produced by manufacturers for sale or whether they were merely produced by manufacturers as aids in the production of goods for sale.

It is necessary to clarify that intention by a suitable amendment of the law. It is considered that the position will be met in all three classes of case by providing that the sale value shall be the amount for which the taxpayer concerned could have purchased the goods from another manufacturer who manufactured them in the ordinary course of his business for sale to the taxpayer. Experience indicates that evidence of such a sale value will be much more readily available than is evidence of the sale value at present prescribed.

The proposed sale value would be subject to increase on review by the Commissioner, from whose decision dissatisfied taxpayers would have a right of reference to the Board of Review; and the amendment is so drafted as to remove the implication that the taxation of goods applied by a manufacturer to his own use is limited to goods which are ordinarily manufactured by him for sale.

(h) A provision to make fully effective the exemption from Sales Tax of goods sold to or imported by Commonwealth and State Governments, Departments and Authorities in certain circumstances.—*Assessment Bill No. 1, Clause 6, and corresponding provisions of other Bills.*

At present the exemption is limited to—

- (1) sales direct to the Government, or Department or authority by persons who, but for the exemption, would be liable for Sales Tax in respect of those sales; and
- (2) goods directly imported by the Government Department or authority concerned.

It frequently happens that a Government Department buys goods from a retailer who has had tax passed on to him or who has paid tax on the importation of the goods, or from a registered person who has paid tax on the goods in respect of some prior transaction or operation.

Although such persons do not pay tax on their sales to Government Departments, they are forced either to absorb, themselves, or to pass on to the Government Department, the tax previously paid on the goods. In either case they suffer serious disabilities in competing for Government contracts against registered persons who are exempt from tax on their sales to Government Departments.

The remedy proposed is to empower the Taxation Department to make refunds or payments to the retailers and others under the disabilities mentioned, to the extent to which they exclude the tax previously paid by or passed on to them from the price for which they sell the goods to the Government Department.

(i) A provision for the imposition of a penalty by way of additional tax in certain cases in which misleading returns are furnished.—*Assessment Bill No. 1, Clause 7.*

The form of return which is most commonly in use provides for—

- (1) a return of the sales of taxable goods in respect of which tax is payable; and
- (2) a return of the sales of taxable goods in respect of which tax is not payable, i.e., sales to registered persons who quote their certificates.

Cases are coming under notice in which the taxable sales in the former class are included in the return of non-taxable sales in the latter class. In such cases it cannot be said that taxable sales have not been included in the return, but as defaults of this nature are just as prejudicial to the revenue and just as difficult to locate as defaults (for which penalty is already provided) by way of the complete omission of taxable sales from the returns, it is considered necessary to provide the same penalty for both classes of default.

(j) The inclusion of machinery in the relevant Acts to impose the same liability for tax upon persons who have failed to comply with their obligations to become registered as that which is imposed on registered persons.—*Assessment Bill No. 2, Clause 2, and corresponding provisions of other Bills.*

Except in Sales Tax Assessment Acts Nos. 1 and 5, the liability for Sales Tax is imposed only on registered persons.

Consequently, the only course which has been open for the Department to take in the case of defaulters who have failed to become registered as required has been to require payment of the tax for which the defaulters would have been liable if they had been registered, and, in default of payment, to prosecute for failure to register.

It has been decided to rectify this obvious anomaly.

(k) To extend the benefit of certain rebates granted last year to certain classes of wholesale merchants to trustees and beneficiaries upon whom the estates of such merchants devolve by will, statute or operation of law.—*Assessment Bill No. 2, Clause 3, and corresponding provisions of other Bills.*

Persons who are principally wholesale merchants obtain their goods tax-free by quotation of certificate, but are required to pay tax on both wholesale and retail sales. Registered persons who are principally retail merchants cannot obtain their goods tax-free, but are exempt from tax on their retail sales. Upon the increase in the rate of Sales Tax from $2\frac{1}{2}$ per cent. to 6 per cent. on 11th July, 1931, the former class of merchants were seriously prejudiced in competition with the latter class by reason of the fact that goods purchased by the latter class prior to that date, and sold by retail after that date, were only subject to a tax of $2\frac{1}{2}$ per cent., whereas goods purchased by the former class prior to that date and sold by retail after that date were subject to a tax of 6 per cent. To remove this anomaly, the relevant Assessment Acts were amended last year to enable the former class to obtain a rebate of the difference between 6 per cent. and $2\frac{1}{2}$ per cent. on their retail sales of goods purchased tax-free prior to 11th July, 1931. The terms of that amendment limit its application to the registered persons concerned, and do not provide for its continuance where the business is carried on by trustees or beneficiaries upon the death or bankruptcy of the registered person. The principle underlying the rebate is equally applicable to trustees and beneficiaries who succeed by devolution or statute to the business of the registered person. By the proposed amendment the rebate will be extended to that class of case.

(l) A provision for the purpose of imposing tax on goods which a registered person imports tax-free by quotation of certificate, and which are subsequently applied by that person to his own use.—*Assessment Bill No. 6, Clauses 3, 4 (b), 5, 7, 8.*

If a registered person, when importing goods, intends to apply them to his own use, he is forbidden to quote his certificate upon the entry of the goods for home consumption, and is required to pay tax upon the sale value prescribed by Sales Tax Assessment Act (No. 5). A registered person who imports goods tax-free by quotation of certificate,

and subsequently applies those goods to his own use, wholly escapes tax in respect of those goods. Such a person may correctly quote his certificate with the bona fide intention of re-selling the imported goods by wholesale, or of using them as raw materials in the manufacture of goods for sale, and may only decide to apply the goods to his own use after he has entered them for home consumption. On the other hand, he may incorrectly quote his certificate when entering the goods for home consumption, either dishonestly or in ignorance of the provisions of the law. In either case there is no reason why he should be at an advantage for Sales Tax purposes as compared with the registered person who correctly refrains from quoting his certificate when importing goods to be applied to his own use.

It has therefore been decided that where an importer applies to his own use any goods on which he has not paid tax under Sales Tax Assessment Act (No. 5), he shall be liable to pay the same tax as he would have paid under that Act if he had not quoted his certificate on the entry of those goods for home consumption. As this amendment will extend the subject-matter of Sales Tax Assessment Act (No. 6), a consequential amendment of Sales Tax Act (No. 6) will be necessary.

(m) A provision to cause Sales Tax to be paid on the same basis in all cases in which registered persons purchase goods and apply them to their own use.—*Assessment Bill No. 4, Clause 2; Assessment Bill No. 8, Clause 2.*

A registered person who purchases goods to be applied to his own use, is forbidden to quote his certificate when purchasing the goods, and tax is consequently paid on the purchase-price of those goods (that is, by the vendor of the goods). Where a registered person purchases goods tax-free by quoting his certificate, whether in accordance with the requirements of the law or otherwise, and he subsequently applies those goods to his own use, he is at present required to pay tax on the amount which, in the opinion of the Commissioner, would be the fair market value of the goods so applied if they had been sold by him in the ordinary course of trade. The ascertainment of the sale value so prescribed gives rise to considerable difficulties, especially in those cases in which the goods so applied are not of a class which are sold by the registered person in the ordinary course of trade.

It has been decided to provide that the sale value in such cases shall be the amount for which the goods were purchased. This will mean that tax will be levied on the same basis in all cases in which registered persons purchase goods which they apply to their own use.

