Taipei Economic and Cultural Office (Privileges and Immunities) Regulations 1998

Statutory Rules 1998 No. 300

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations under the Overseas Missions (Privileges and Immunities) Act 1995.


Governor-General

By His Excellency’s Command,

ALEXANDER DOWNER
Minister for Foreign Affairs
Taipei Economic and Cultural Office (Privileges and Immunities) Regulations 1998


made under the

Overseas Missions (Privileges and Immunities) Act 1995

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1 Name of regulations
These regulations are the Taipei Economic and Cultural Office (Privileges and Immunities) Regulations 1998.

2 Commencement
These regulations commence on gazettel.

3 Definitions
(1) In these regulations:

authorised person means:
(a) the Minister for Customs and Consumer Affairs; or
(b) a person authorised in writing, for these regulations, by that Minister.

Canberra office means the TECO office in Canberra.

employee of a State office means a person employed in the technical or administrative service of a State office.

employee of the Canberra office means a person employed in the technical or administrative service of the Canberra office.

head of a State office means the person in charge of the functions of the State office of which the person is an officer.

officer of a State office means a person, including the head of that State office, entrusted in that capacity with the exercise of functions of TECO for that office, but does not include an employee of that office.

officer of the Canberra office means a person, including the Representative, entrusted in that capacity with the exercise of functions of TECO for the Canberra office, but does not include an employee of that office.

Representative means the person in charge of the functions of the Canberra office.

staff member of a State office means:
(a) the head of a State office; or
(b) an officer of a State office; or
(c) an employee of a State office.

staff member of the Canberra office means:
(a) the Representative; or
(b) an officer of the Canberra office; or
(c) an employee of the Canberra office.

State office includes the TECO offices in Sydney and Melbourne.

TECO means the Taipei Economic and Cultural Office.

(2) In these regulations, a reference to a person on whom privileges and immunities are conferred by these regulations is a reference to a person who:

(a) is assigned (in whatever capacity) to TECO by the responsible agency in Taipei and is not engaged in employment in Australia other than by TECO, or is a member of the family of such a person; and

(b) is not a permanent resident of Australia; and

(c) is not an Australian citizen.

(3) Reference to a member of the family of a person is a reference to a member of the family who forms part of the household of the person.

4 Act to apply to TECO

For subsection 4 (1) of the Act, TECO is declared to be a designated overseas mission.

Note For TECO to be effectively a designated overseas mission, there must also be in force an authority signed by the Minister (see subsection 4 (1) of the Act).

5 Privileges and immunities of TECO offices

(1) The Canberra office has the privileges and immunities mentioned in items 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in Schedule 1 to the Act.

(2) A State office has the privileges and immunities mentioned in items 1, 2, 4, 5, 6, 7, 8, 9, 10 and 12 in Schedule 1 to the Act.
(3) However, a privilege or immunity mentioned in column 2 of an item in Schedule 1 to these regulations is subject to the limitation or condition set out in column 3 of that item.

(4) Subregulation (1) does not exempt TECO from any dues and taxes that constitute payment for specific services for:
   (a) premises owned, leased or occupied by TECO; or
   (b) the private residence of the Representative.

6 Privileges and immunities of the Representative

The Representative has all the privileges and immunities set out in Schedule 2 to the Act.

7 Privileges and immunities of staff of TECO

(1) Officers of the Canberra office (other than the Representative) have the privileges and immunities mentioned in items 2, 3, 4, 5, 6, 7, 8, 9 and 10 in Schedule 2 to the Act.

(2) Officers of a State office (including the head of that State office) have the privileges and immunities mentioned in items 2, 3, 4, 5, 7, 8 and 9 in Schedule 2 to the Act.

(3) Employees of the Canberra office or of a State office have the privileges and immunities mentioned in items 2, 3, 4, 7 and 8 in Schedule 2 to the Act.

(4) The operation of subregulation (1), (2) or (3) is not affected by a temporary secondment of a person who is a TECO officer or employee from the person's usual TECO office to another.

(5) However, a privilege or immunity mentioned in column 2 of an item in Schedule 2 to these regulations is subject to the limitation or condition mentioned in column 3 of that item.

8 Duties of customs and excise

(1) TECO, and a person who, in relation to TECO, is a person mentioned in section 7 of the Act, are exempt from duties of customs on articles imported into Australia and from excise duties on excisable goods produced in Australia purchased:
   (a) for use by TECO; or
(b) for personal use by the person or a member of his or her family.

(2) In the case of a person who is an employee of a State office or an employee of the Canberra office, or a member of an employee's family, the exemption applies only to the personal effects of that employee or a family member of that employee imported within 6 months after the person's first arrival in Australia.

(3) The exemption does not apply unless an authorised person holds a written undertaking that, if the exemption is lost under subregulation 10 (2), the authorised person will:
(a) be given written notice of that fact; and
(b) be paid the amount determined in relation to the lost exemption under that subregulation.

(4) The written undertaking is to be given:
(a) in the case of goods for use by TECO — by the Representative; or
(b) in the case of goods for personal use — by the person who (or a member of whose family) had the benefit of the exemption.

(5) The exemption does not apply to goods:
(a) to which a declaration under subregulation 10 (1) applies; or
(b) to which a declaration under subregulation 10 (4) applies, unless an authorised person is given the further undertaking and security (if required).

9 Sales tax

(1) The sale of goods mentioned in regulation 8, to TECO or a person mentioned in subregulation 8 (1), is exempt from sales tax.

(2) The exemption does not apply unless an authorised person holds a written undertaking that, if the exemption is lost under subregulation 10 (2), the authorised person will:
(a) be given written notice of that fact; and
(b) be paid the amount determined in relation to the lost exemption under that subregulation.

(3) The written undertaking is to be given by:
   (a) in the case of goods for use by TECO — the Representative; or
   (b) in the case of goods for personal use — the person who (or a member of whose family) had the benefit of the exemption.

(4) The exemption does not apply to goods:
   (a) to which a declaration under subregulation 10 (1) applies; or
   (b) to which a declaration under subregulation 10 (4) applies, unless an authorised person is given the further undertaking and security (if required).

10 Loss of exemption — sales tax, customs duty and excise duty

(1) An authorised person may declare, in writing, in relation to particular goods, that in his or her opinion, the reasonable requirements of TECO or the person purchasing the goods, have adequately been met by other goods for which TECO or the person has already had the benefit of an exemption claimed under regulation 8 or 9.

(2) If goods for which an exemption has been claimed under regulation 8 or 9 are sold or disposed of within the forfeiture period, the exemption is lost and the Commonwealth must be paid an amount for duties or tax, as the case requires, equal to the amount that an authorised person determines would have been payable, if the exemption had not been claimed.

(3) Liability for payment under subregulation (2) is borne by:
   (a) in the case of goods for use by TECO — TECO; or
   (b) in the case of goods for personal use — the person who (or a member of whose family) had the benefit of the exemption.

(4) The forfeiture period is:
   (a) in the case of a motor vehicle — 3 years from:
(i) the date of entry of the motor vehicle into Australia (if imported); or
(ii) the date of purchase of the motor vehicle (if produced in Australia); and

(b) in any other case — 2 years from:
   (i) the date of entry of the goods into Australia (if imported); or
   (ii) the date of purchase of the goods (if produced in Australia).

(5) If a person (the *exempt person*) fails to comply with subregulation (2) or an undertaking under regulation 8 or 9, an authorised person may, declare in writing, that the exempt person cannot claim any further exemption under those regulations unless that person gives a further written undertaking, for any other goods purchased, that may include a condition that the person give security, satisfactory to an authorised person, that the exempt person will comply with the undertaking.

11 Period of entitlement

(1) An entitlement to a privilege or immunity under these regulations for a matter that is not of an official nature commences on the date when:
   
   (a) in the case of a staff member of the Canberra office, or a staff member of a State office — the staff member first arrives in Australia for service with TECO; or
   
   (b) in the case of a member of the family of a staff member — the last occurring of the following:
       
       (i) the staff member first arrives in Australia for service with TECO;
       
       (ii) the member of the family first arrives in Australia;
       
       (iii) the person becomes a member of the family.

(2) An entitlement to a privilege or immunity under these regulations for a matter that is not of an official nature ceases for a staff member when:
   
   (a) the staff member permanently leaves Australia; or
(b) if, before permanently leaving, the staff member ceases to perform his or her official functions — that cessation occurs.

(3) An entitlement to a privilege or immunity under these regulations for a matter that is not of an official nature ceases for a member of the family of the staff member when the staff member's eligibility ceases.

12 Waiver of privileges and immunities

(1) The responsible agency in Taipei may waive a privilege or immunity conferred by these regulations.

(2) The Representative may waive a privilege or immunity to which a person is entitled under regulation 7.

13 Privileges and immunities subject to quarantine laws etc

(1) These regulations do not affect the application of any law of the Commonwealth, a State or a Territory about:
   (a) quarantine; or
   (b) importation into, or exportation from, Australia or an external Territory.

(2) However, subregulation (1) does not affect any immunity from civil or criminal process.
## Schedule 1

**Limitations and conditions — TECO**

(regulation 5)

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<th>Column 3: Limitations or conditions</th>
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<tbody>
<tr>
<td>Item</td>
<td>Item in Schedule 1 to the Act</td>
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</table>
| 1        | 1        | Inviolability of premises is limited to the extent that local authorities cannot enter:  
(a) the Canberra office except with the consent of the Representative; and  
(b) a State office, except:  
(i) with the consent of the head of that office; or  
(ii) in cases of emergency. |
<p>| 2        | 2        | Inviolability of property and assets is limited, for a State office, to the extent that property and assets (including furnishings and means of transport) will not be requisitioned for purposes of national defence or public utility. |
| 3        | 7        | The privileges and immunities relating to TECO documents sent or received by courier are not conferred. |
| 4        | 9        | Exemption from taxation is limited to premises used exclusively for the purposes of TECO. |</p>
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<thead>
<tr>
<th>Column 1</th>
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<tbody>
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<td>Item in Schedule 1 to the Act</td>
<td>Limitations or conditions</td>
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<td>5</td>
<td>12</td>
<td>Exemption from taxation of articles does not apply in relation to:</td>
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<td></td>
<td></td>
<td>(a) indirect taxes of a kind normally incorporated in the price of goods and services, including sales tax (other than sales tax for which an exemption is granted under regulation 9);</td>
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<td>(b) duties levied in Australia on transfers;</td>
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<td>(c) registration, court and record fees, mortgage dues and stamp duties, other than stamp duty payable for the lease or purchase of:</td>
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<td>(i) TECO premises; and</td>
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<td>(ii) the private residence of the Representative.</td>
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## Schedule 2  
**Limitations and conditions — staff of TECO**

(regulation 7)

<table>
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<td>Limitations or conditions</td>
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<td>1</td>
<td>1</td>
<td>The only inviolable residence is the private residence of the Representative.</td>
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<td>2</td>
<td>2</td>
<td>Exemption from taxation does not apply in relation to:</td>
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- (a) indirect taxes of a kind normally incorporated in the price of goods and services, other than sales tax for which an exemption has been granted under regulation 9;
- (b) dues and taxes on private immovable property situated in Australia (except TECO premises and the private residence of the Representative);
- (c) estate, succession or inheritance duties, and duties on transfers, levied in Australia;
- (d) dues and taxes on private income, including capital gains, having its source in Australia;
- (e) capital taxes relating to investments made in commercial or financial undertakings in Australia;
- (f) charges levied for specific services rendered;
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<th>Column 2</th>
<th>Column 3</th>
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<tr>
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<td>Item in Schedule 2 to the Act</td>
<td>Limitations or conditions</td>
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<td>(g) registration, court and record fees, mortgage dues and stamp duties (except in relation to goods and services for premises used by TECO and the private residence of the Representative).</td>
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<td>(a) made by a staff member of the Canberra office, or a staff member of a State office, to a person employed by the staff member; and</td>
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<td>(b) that are not payments exempted, under the Act, from taxation.</td>
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<td>(a) arising out of a private contractual matter; or</td>
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<td>(b) instituted by a third party for damages arising in Australia; or</td>
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<td>(c) for an offence for which conviction would result in a sentence of at least 5 years imprisonment.</td>
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<tr>
<td>Item</td>
<td>Item in Schedule 2 to the Act</td>
<td>Limitations or conditions</td>
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<td>5</td>
<td>8</td>
<td>Exemption from obligations to give evidence is limited to:</td>
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<td>(a) evidence of matters connected with the exercise of an official function of a staff member of a State office or an employee of the Canberra office; and</td>
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<td>(b) evidence requiring production of an official document; and</td>
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<td>(c) evidence as an expert witness in relation to the law of Taiwan.</td>
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**Note**