

Taipei Economic and Cultural Office (Privileges and Immunities) Amendment Regulations 2000 (No. 1) 2000 No. 203

EXPLANATORY STATEMENT

Statutory Rules 2000 No. 203

Issued by the authority of the Minister for Foreign Affairs

OVERSEAS MISSIONS (PRIVILEGES AND IMMUNITIES) ACT 1995

Taipei Economic and Cultural Office (Privileges and Immunities) Amendment Regulations 2000 (No. 1)

Introduction

Regulations may provide details of the Indirect Tax Concession Scheme (Scheme) for Overseas Missions in Australia in accordance with the *Overseas Missions (Privileges and Immunities) Act 1995* (Act) (section 12A).

2. The Act provides that the Commissioner must pay any indirect tax paid for specified acquisitions for the official use of specified missions. The Regulations specify:

- a. the types of acquisitions that are covered for official or personal use; and
- b. the conditions, limitations and the period and manner of payment in relation to any amounts payable.

3. The Scheme presents an opportunity to maximise benefits for Australia through reciprocal arrangements to provide limited tax concessions. Australia's position on these limited reciprocal concessions is that we must maintain our global advantage, taking into account the value of foreign taxation concessions and Australian taxation foregone.

4. The Scheme also relieves business from the burden of administering the previous sales tax exemptions for Overseas Missions and their staff members and the Regulations impose no new burdens. Accordingly, a Regulation Impact Statement is not necessary.

5. Unless the contrary intention appears, a bracketed reference to a regulation or paragraph is a reference to a regulation or paragraph of the Regulations as amended, and:

- a. Act means the *Overseas Missions (Privileges and Immunities) Act 1995*.
- b. **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999*.
- c. TECO means the Taipei Economic and Cultural Office.
- d. Scheme means the Indirect Tax Concession Scheme.

Preliminary Provisions

6. The Regulations will be taken to have commenced with the commencement of the GST Act, on 1 July 2000 (regulation 2 of the amending Regulations). The Regulations neither

disadvantage the rights of a person (other than the Commonwealth) nor impose any liabilities as at or prior to the date of notification, in accordance with the Acts *Interpretation Act 1901* (subsection 48(2)).

7. The amending regulations make a number of consequential minor amendments to the current regulations to ensure that there is no inconsistency with the Scheme. The old subregulation 3(3), which deals with family members, has been omitted, as a new definition is created by the regulations for the purposes of the Scheme (schedule 1 item 5 of the amending Regulations and **subregulation 3(1)**). Similarly, references in the current Regulations to indirect tax exemptions are removed, ensuring that there is no inconsistency with the Scheme (schedule 1 items 8 and 9 of the amending Regulations).

8. The Regulations provide definitions of **employee of TECO** and officer of TECO, to recognise that employees and officers of TECO may be based either in TECO's Canberra office or in its State offices (**subregulation 3(1)**). The definition of **member of the family (subregulation 3(1))** is amended to be consistent with Australian practice that privileges and immunities may be accorded to specified members of the family who form part of the household of an officer or employee of TECO and who have been nominated and accepted. Other terms used throughout the Regulations have the same meaning as in the Act, in accordance with the Acts *Interpretation Act 1901* (paragraph 46(1)(a)). Therefore, the term **acquisition** means any form of acquisition whatsoever, which for goods includes purchase or lease.

9. The expression official use refers to the official use of TECO. An official use is a use that has a direct relation with the exercise of the functions of TECO in accordance with arrangements made between the Commonwealth and the head of TECO.

Acquisitions - Official Use

10. Repayment must be made to any person referred to in section 7 of the Act of any indirect tax paid in relation to acquisitions of any goods or specified services for the official use of TECO (paragraph 11A(1)(a)). The services specified reflect international practice concerning such concessions.

11. The specified acquisitions of goods include acquisitions of goods that are freed from excise under regulation 8 (**paragraph 11A(1)(b)**) and acquisitions of alcohol and tobacco that are warehoused goods (as defined under section 4(1) of the Customs *Act 1901*) where the acquisition is covered by an immunity from taxation conferred by the Regulations (paragraph 11A(1)(c)). Under the Act, direct imports are not subject to GST (section 9(2)). Imports made through licensed warehouses remain exempt from payment of customs duties. Accordingly, the concession in relation to warehoused goods maintains consistency with elements of the previous practice of parallel indirect tax and customs treatment for such goods.

12. Large scale property development and its management is a complex issue. Specific arrangements, especially for purchase, leasing, construction and renovation of property, must be made between the head of TECO and the Commonwealth, to enable the repayment of indirect tax (paragraph 11A(1)(d)). A key element of such arrangements would normally be a commitment to the provision of a similar concession to Australia, if necessary.

13. The Scheme applies to persons (on behalf of TECO), rather than to TECO itself, because it is considered that TECO does not have an individual legal personality. Persons referred to in section 7 of the Act, being officers or employees of TECO, including the head of mission, and members of the families of any of these staff members, can be repaid the indirect tax paid for specified acquisitions for the official use of TECO (**subregulation 11A(1)**). This structure provides maximum flexibility for Mission for their management of the Scheme.

Acquisitions - Personal Uses

14. The acquisitions for personal use of officers and their family members for which concessions are available are acquisitions of goods freed from duties of excise by regulation 8, acquisitions of alcohol and tobacco that are warehoused goods within the meaning of the Customs Act 1901 (the importation of which is covered by an immunity from taxation conferred by the regulations) and an acquisition of a locally manufactured motor vehicle **(subregulation 11A(3))**.

15. The proposed number of acquisitions of motor vehicles for personal use for which a repayment of indirect tax may be made is also specified **(subregulations 11A(4) and (5))**. In ordinary circumstances, an officer is entitled to repayment of the indirect tax paid on one vehicle for personal use, if within the previous three years the officer has not received a similar concession on another vehicle **(subparagraph 11A(4)(b)(ii))**. The concession is also provided (on similar conditions) for a vehicle for a family member of an officer, who is a dependant forming part of the household, if the family member is eligible to hold a drivers licence that is valid in Australia **(subparagraph 11A(4)(c)(ii))**. Employees are entitled to repayment for one vehicle acquired within the first six months of arrival in Australia **(subregulations 11A(5) and (6))**. In the case of an employee of the Canberra office, a family member of the employee may utilise this concession instead of the employee **(subregulation 11A(5))**. In **exceptional circumstances**, including the situation in which a vehicle is stolen or damaged beyond repair, it may be replaced, with the pro rata repayment of the indirect tax on that acquisition **(subregulation 11A(5) and subparagraphs 11A(4)(b)(i) and (c)(i))**.

16. Entitlements to repayment of the indirect tax paid for specified acquisitions - for personal use is not granted to those persons who are permanent residents in Australia or Australian citizens **(paragraphs 2(2)(h) and (c))**.

Conditions

17. Consistent with established Australian practice for indirect tax concessions, a series of conditions requiring repayment of the concessions apply if there is the disposal of goods before the specified time has elapsed. The purpose of these provisions is to ensure that goods do not enter the general market at a price which does not reflect the impact of indirect taxes.

18. If the disposal is not to a person entitled to the same concession, a pro rata amount must be refunded **(subregulation 11B(3))**. In this regard, a buyer may be entitled to the same concessions as the seller albeit under a different instrument (for example, under regulations made under the *International Organisations (Privileges and Immunities Act 1963)*). However, the concessions of the buyer must match or exceed those of the seller at the time of sale **(paragraph 11B(1)(a))**.

19. The minimum time conditions reflect Australian interpretation of a key element in determining whether a purchase is for reasonable official or personal use. 1 The specified time for a vehicle is three years from its date of entry to Australia (where the vehicle is directly imported into Australia) or three years after the date of purchase (in the case of a locally purchased vehicle) **(subparagraph 11B(1)(a)(i))**. Similarly, the specified time for other goods is two years **(subparagraph 11B(1)(a)(ii))**.

20. There is no minimum time condition specified for most other acquisitions. It is expected that the specific arrangements made for property acquisitions would cover similar proportionate conditions.

21. The sale of goods to a finance company as part of a sale and lease-back arrangement is not a disposal of goods requiring repayment of a pro rata amount **(paragraph 11B(2)(a))**. It may

be that indirect tax payments are made on goods of the life of a lease, which is terminated before the specified periods. Consistent with the policy of the Scheme to maintain, so far as possible, current indirect tax concession practices, repayment of indirect tax on an acquisition (by regular lease payments) of an imported vehicle is permitted.

22. Repayment is required on behalf of the original acquirer (that is, in effect, by the relevant overseas mission), if any disposal is made within the specified times to any person not entitled to the same concession, even if the disposal is not made by the person to whom the concession was granted. It is assumed that the second or subsequent person will incorporate the pro-rata amount to be refunded in the sale price to the person not entitled to the concession **(paragraph 11B(2)(b))**.

23. It may be that indirect tax payments are made on goods over the life of a lease. There is no requirement that a person repay such indirect tax repayments made on periodic lease payments up to the time of termination **(subregulation 11B(4))**.

24. Payment for any acquisition can not be made if the reasonable needs of TECO or person for official or personal use, respectively, were met by previous acquisitions **(subregulation 11B(5))**.

Claims for and manner of payment

25. Procedural arrangements to ensure the efficient repayment of indirect tax are set out and are reflected in the approved forms **(regulations 11C and 11D)**.

Delegation

26. The Minister may delegate his or her powers in relation to two compliance tools **(regulation 14)**. The first compliance tool is a decision that the reasonable needs of TECO or the person for its official or his or her personal use, respectively, were met by previous acquisitions **(subregulation 11B(5))**. The second tool is the imposition of further conditions to ensure repayment of indirect tax, in circumstances where the entitlement may no longer apply (paragraph 11B(1)(b)).