

SALES TAX ASSESSMENT (No. 2) AMENDMENT ACT 1978

No. 198 of 1978

An Act to amend the *Sales Tax Assessment Act (No. 2) 1930*.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

Short title,
&c. 1. (1) This Act may be cited as the *Sales Tax Assessment (No. 2) Amendment Act 1978*.¹

(2) The *Sales Tax Assessment Act (No. 2) 1930*² is in this Act referred to as the Principal Act.

Commence-
ment 2. This Act shall come into operation on the day on which it receives the Royal Assent.¹

Sale value of
goods 3. Section 4 of the Principal Act is amended—

(a) by omitting from sub-section (1) “For the purposes of this Act” (first occurring) and substituting “Subject to sub-sections (2), (3) and (5) of this section, to section 4A and to sub-sections (5B) and (5C) of section 18 of the *Sales Tax Assessment Act (No. 1) 1930* in their application in accordance with section 12 of this Act, for the purposes of this Act”; and

(b) by omitting sub-section (3) and substituting the following sub-sections:

“(2) Subject to sub-section (5), where—

(a) goods have been sold after 20 September 1978 by a person (in this sub-section referred to as the ‘vendor’), being a registered person or a person required to be registered, to a person (in this sub-section referred to as the ‘purchaser’), being an unregistered person or a registered person who has not quoted his certificate in respect of the purchase of the goods; and

(b) the goods—

(i) were purchased by the vendor from the manufacturer of the goods;

(ii) were manufactured for the purchaser in whole or in part out of materials supplied by the purchaser; and

- (iii) were sold by the vendor to the purchaser for an amount that is less than—
 - (A) if the goods are of a class which the vendor himself sells by wholesale—the amount for which the goods could reasonably be expected to have been sold by the vendor by wholesale if all the materials used in the manufacture of the goods had been purchased by the manufacturer in the ordinary course of his business from a person with whom he was dealing at arm's length; or
 - (B) in any other case—the amount for which the vendor could reasonably be expected to have purchased identical goods from a manufacturer if the manufacturer had, in the ordinary course of his business, manufactured the identical goods for sale wholly out of materials purchased in the ordinary course of his business from a person with whom he was dealing at arm's length and had sold the identical goods to the vendor by wholesale,

the sale value of the goods, for the purposes of this Act, is—

- (c) where all the relevant materials used in the manufacture of the goods consisted of goods the sale values of which were exempt from sales tax by virtue of the *Sales Tax (Exemptions and Classifications) Act 1935*—
 - (i) if the goods are of a class which the vendor himself sells by wholesale—the amount for which the goods could reasonably be expected to have been sold by the vendor by wholesale if all the materials used in the manufacture of the goods had been purchased by the manufacturer in the ordinary course of his business from a person with whom he was dealing at arm's length; or
 - (ii) in any other case—the amount for which the vendor could reasonably be expected to have purchased identical goods from a manufacturer if the manufacturer had, in the ordinary course of his business, manufactured the identical goods for sale wholly out of materials purchased in the ordinary course of his business from a person with whom he was dealing at arm's length and had sold the identical goods to the vendor by wholesale;

- (d) where all the relevant materials used in the manufacture of the goods comprised—
- (i) excluded goods;
 - (ii) goods the sale values of which were not exempt from sales tax by virtue of the *Sales Tax (Exemptions and Classifications) Act 1935*; or
 - (iii) excluded goods and goods referred to in subparagraph (ii),
- the amount charged to the purchaser by the vendor in respect of the goods; or
- (e) in any other case—the sum of—
- (i) the amount for which the vendor could reasonably be expected to have purchased by wholesale materials identical in all material respects with the relevant materials used in the manufacture of the goods which consisted of goods the sale values of which were exempt from sales tax by virtue of the *Sales Tax (Exemptions and Classifications) Act 1935* from another person who sold by wholesale the materials identical in all material respects with the relevant materials in the ordinary course of his business; and
 - (ii) the amount charged to the purchaser by the vendor in respect of the goods.

“(3) Subject to sub-section (5), where—

- (a) goods have been sold after 20 September 1978 by a person (in this sub-section referred to as the ‘vendor’), being a registered person or a person required to be registered, to a person (in this sub-section referred to as the ‘purchaser’), being an unregistered person or a registered person who has not quoted his certificate in respect of the purchase of the goods;
- (b) the goods were purchased by the vendor from the manufacturer of the goods; and
- (c) the goods were manufactured for the purchaser in whole or in part out of materials sold to the manufacturer—
 - (i) by the purchaser; or
 - (ii) by another person who did so at the request of, or under an agreement with, the purchaser,

the sale value of the goods, for the purposes of this Act, is—

- (d) if the goods are of a class which the vendor himself sells by wholesale—the amount for which the goods could reasonably be expected to have been sold by the vendor

by wholesale if all the materials used in the manufacture of the goods had been purchased by the manufacturer in the ordinary course of his business from a person with whom he was dealing at arm's length; or

- (e) in any other case—the amount for which the vendor could reasonably be expected to have purchased identical goods from another manufacturer if the other manufacturer had, in the ordinary course of his business, manufactured the identical goods for sale wholly out of materials purchased in the ordinary course of his business from a person with whom he was dealing at arm's length and had sold the identical goods to the vendor by wholesale.

“(4) Where—

- (a) goods (in this sub-section referred to as the ‘relevant goods’) have been sold by a registered person, or a person required to be registered, who purchased the goods from the manufacturer, to an unregistered person or to a registered person who has not quoted his certificate in respect of the purchase of the goods;
- (b) the Commissioner is satisfied that, having regard to any connection between the vendor and the purchaser of the relevant goods or to any other relevant circumstances (including circumstances arising out of any agreement entered into between the vendor and the purchaser, or out of any other agreement, that was related, directly or indirectly, to the sale of the goods), the vendor and the purchaser were not dealing with each other at arm's length in relation to the transaction; and
- (c) the Commissioner is also satisfied—
 - (i) that the amount for which the relevant goods were sold is less than the amount (in this sub-section referred to as the ‘arm's length price’) for which, in the opinion of the Commissioner, the relevant goods could reasonably be expected to have been sold if the vendor and the purchaser had been dealing with each other at arm's length in relation to the transaction; or
 - (ii) that—
 - (A) the purchaser could have purchased identical goods from another person (not being a manufacturer of identical goods) by wholesale and obtained delivery of the identical goods at or about the time when the purchaser obtained delivery of the relevant goods; and

- (B) the amount for which the relevant goods were sold is less than the amount (in this sub-section referred to as the 'alternative price') for which, in the opinion of the Commissioner, the identical goods could reasonably be expected to have been sold to the purchaser,

the Commissioner shall alter the sale value of the relevant goods to the amount ascertained in accordance with the following paragraphs:

- (d) if the Commissioner is satisfied as to the matter mentioned in sub-paragraph (i) of paragraph (c) but not as to the matters mentioned in sub-paragraph (ii) of that paragraph—an amount equal to the arm's length price;
- (e) if the Commissioner is satisfied as to the matters mentioned in sub-paragraph (ii) of paragraph (c) but not as to the matter mentioned in sub-paragraph (i) of that paragraph—an amount equal to the alternative price;
- (f) if the Commissioner is satisfied as to the matter mentioned in sub-paragraph (i) of paragraph (c) and also as to the matters mentioned in sub-paragraph (ii) of that paragraph—an amount equal to the lesser of—
 - (i) the arm's length price; and
 - (ii) the alternative price.

“(5) Where the Commissioner alters the sale value of goods in pursuance of sub-section (4), the sale value so altered shall be the sale value of the goods for the purposes of this Act.

“(6) For the purposes of this section, the sale value of goods shall not be increased by any amount payable in respect of sales tax but, when the goods are sold in bond, the sale value shall be increased by the amount of any duty of excise to which the goods would be subject if entered for home consumption at the time at which they are sold.

“(7) For the purposes of this section—

- (a) goods manufactured for a person (in this sub-section referred to as the 'customer') shall be taken to have been manufactured in whole or in part out of materials supplied by the customer if the goods were manufactured in whole or in part out of materials—
 - (i) which were supplied by the customer or by another person at the request of, or under an agreement with, the customer; or
 - (ii) which the customer purchased, or agreed to purchase, from the manufacturer; and

- (b) the materials which were so supplied or purchased and were used in the manufacture of the goods shall be taken to have been the relevant materials used in the manufacture of the goods.

“(8) In this section—

- (a) a reference to excluded goods shall be read as a reference to goods, including commodities, of a kind referred to in paragraph (a) or (b) of the definition of ‘goods’ in sub-section (1) of section 3 of the *Sales Tax Assessment Act (No. 1) 1930* in its application in accordance with section 12 of this Act; and
- (b) a reference to identical goods shall be read as a reference to goods identical in all material respects with the goods in relation to which the expression is used.

“(9) In this section, ‘agreement’ means any agreement, arrangement or understanding—

- (a) whether formal or informal;
- (b) whether express or implied; or
- (c) whether or not enforceable, or intended to be enforceable, by legal proceedings.”.

4. After section 4 of the Principal Act the following section is inserted:

“4A. (1) Where—

- (a) goods (in this sub-section referred to as the ‘relevant goods’) have been sold by a registered person, or by a person required to be registered, who purchased the goods from the manufacturer, to an unregistered person or to a registered person who has not quoted his certificate in respect of the purchase of the goods;
- (b) under an agreement entered into for the purpose, or for purposes that included the purpose, of securing that the amount of the sale value of the relevant goods would be less than the amount that could reasonably be expected to be the amount of the sale value of the relevant goods if the agreement had not been entered into, valuable consideration (in this section referred to as the ‘relevant consideration’) has been given, directly or indirectly, by the purchaser, or by another person, to the vendor or another person for, or in connection with, any of, or any 2 or more of, the following acts:
 - (i) the grant of a right or option to purchase goods;
 - (ii) the exercise, in whole or in part, of a right or option to purchase goods;
 - (iii) the surrender or other termination, in whole or in part, of a right or option to purchase goods;

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- (iv) allowing a right or option to purchase goods to lapse in whole or in part;
 - (v) the assignment, in whole or in part, of a right or option to purchase goods;
 - (vi) the provision of, or procuring the provision of, services in connection with the relevant goods; and
- (c) the relevant goods were sold—
- (i) in a case where the relevant consideration has been so given, in whole or in part, for, or in connection with any of, or any 2 or more of, any acts referred to in sub-paragraphs (i) to (v) (inclusive) of paragraph (b)—after 20 September 1978; or
 - (ii) if sub-paragraph (i) does not apply but the relevant consideration has been given for, or in connection with, any acts referred to in sub-paragraph (vi) of paragraph (b)—after 16 November 1978,

the sale value of the relevant goods shall, for the purposes of this Act, be determined in accordance with the provisions of this section and not in accordance with the provisions of sub-section (1), (2), (3) or (4) of section 4.

“(2) In sub-section (1)—

- (a) a reference to a right or option to purchase goods shall be read as a reference to a right or option (including a contingent right or option) to purchase—
 - (i) goods, as defined in sub-section (1) of section 3 of the *Sales Tax Assessment Act (No. 1) 1930* in its application in accordance with section 12 of this Act;
 - (ii) excluded goods; or
 - (iii) goods as so defined and excluded goods, whether ascertained or not and whether they comprise or include the relevant goods or not; and
- (b) a reference to services in connection with the relevant goods shall be read as a reference to services in connection with the relevant goods or with the relevant goods and other goods (including excluded goods) and, without limiting the generality of the foregoing, shall be read as including a reference to—
 - (i) the doing of any act or thing in relation to the manufacture or marketing of the relevant goods or the relevant goods and other goods (including excluded goods);
 - (ii) the giving of a guarantee or warranty in respect of the relevant goods or the relevant goods and other goods (including excluded goods); or

- (iii) the doing of any act or thing in relation to the relevant goods or the relevant goods and other goods (including excluded goods) after their sale.

“(3) For the purposes of sub-section (1), where any valuable consideration given under an agreement entered into for the purpose, or for purposes that included the purpose, of securing that the amount of the sale value of the relevant goods would be less than the amount that could reasonably be expected to be the amount of the sale value of the relevant goods if the agreement had not been entered into is required to be calculated by reference to the value or quantity of goods (which may include excluded goods) sold to the purchaser of the relevant goods, the valuable consideration shall be deemed to have been given under an agreement for or in connection with the doing of acts by way of the provision of services in connection with the relevant goods.

“(4) Subject to sub-sections (5) and (6), for the purposes of this Act, the sale value of goods the sale value of which is required to be determined in accordance with the provisions of this section is—

- (a) if the relevant goods are of a class which the vendor himself sells by wholesale—the amount for which the goods could reasonably be expected to have been sold by the vendor by wholesale if no agreement of a kind referred to in paragraph (b) of sub-section (1) had been entered into; or
- (b) in any other case—the amount for which the vendor could reasonably be expected to have purchased identical goods from a manufacturer if the manufacturer had, in the ordinary course of his business, manufactured the identical goods for sale and had sold them to the vendor by wholesale and no agreement of a kind referred to in paragraph (b) of sub-section (1) had been entered into in relation to the sale of the identical goods.

“(5) Where—

- (a) the sale value of the relevant goods would, but for sub-section (1), be required to be determined, for the purposes of this Act, in accordance with the provisions of sub-section (2) or (3) of section 4; and
- (b) the return required to be furnished under this Act with respect to the goods—
 - (i) does not set forth any amount as the sale value of the goods; or
 - (ii) sets forth an amount as the sale value of the goods that is less than the amount which, in the opinion of the Commissioner, is a fair and reasonable wholesale value of the goods,

the Commissioner may determine the amount which, in his opinion, is a fair and reasonable wholesale value of the goods and, if he does so, the Commissioner shall be deemed to have altered the sale value of the

goods (whether a sale value was set forth in the return or not) to the amount so determined by him, and the value as so deemed to be altered shall be the sale value of those goods for the purposes of this Act.

“(6) Subject to sub-section (5), where—

- (a) the sale value of the relevant goods is required to be determined, for the purposes of this Act, in accordance with the provisions of this section;
- (b) the Commissioner is satisfied that, having regard to any connection between the vendor and the purchaser of the relevant goods or to any other relevant circumstances (including circumstances arising out of any agreement entered into between the vendor and the purchaser, or out of any other agreement, that is related, directly or indirectly, to the sale of the relevant goods), the vendor and the purchaser were not dealing with each other at arm’s length in relation to the transaction; and
- (c) the Commissioner is also satisfied—
 - (i) that the amount for which the relevant goods were sold is less than the amount (in this section referred to as the ‘arm’s length price’) for which, in the opinion of the Commissioner, the relevant goods could reasonably be expected to have been sold if the vendor and the purchaser had been dealing with each other at arm’s length in relation to the transaction and no agreement of a kind referred to in paragraph (b) of sub-section (1) had been entered into in relation to the sale of the relevant goods; or
 - (ii) that—
 - (A) the purchaser could have purchased identical goods from another person (not being a manufacturer of identical goods) and obtained delivery of the identical goods at or about the time when the purchaser obtained delivery of the relevant goods; and
 - (B) the amount for which the relevant goods were sold is less than the amount (in this section referred to as the ‘alternative price’) for which, in the opinion of the Commissioner, the identical goods could reasonably be expected to have been sold to the purchaser if no agreement of a kind referred to in paragraph (b) of sub-section (1) had been entered into in relation to the sale of the identical goods,

the Commissioner shall alter the sale value of the relevant goods to the amount ascertained in accordance with sub-section (7), and the sale value so altered shall be the sale value of the relevant goods for the purposes of this Act.

“(7) The amount ascertained in relation to the relevant goods for the purposes of sub-section (6) is—

- (a) if the Commissioner is satisfied as to the matter mentioned in sub-paragraph (i) of paragraph (c) of sub-section (6) but not as to the matters mentioned in sub-paragraph (ii) of that paragraph—an amount equal to the arm’s length price;
- (b) if the Commissioner is satisfied as to the matters mentioned in sub-paragraph (ii) of paragraph (c) of sub-section (6) but not as to the matter mentioned in sub-paragraph (i) of that paragraph—an amount equal to the alternative price; or
- (c) if the Commissioner is satisfied as to the matter mentioned in sub-paragraph (i) of paragraph (c) of sub-section (6) and also to the matters mentioned in sub-paragraph (ii) of that paragraph—an amount equal to the lesser of—
 - (i) the arm’s length price; and
 - (ii) the alternative price.

“(8) For the purposes of this section, an agreement shall be taken to have been entered into for a particular purpose, or for purposes that include a particular purpose, if any of the parties to the agreement entered into the agreement for that purpose or for purposes that included that purpose.

“(9) In this section—

- (a) a reference to excluded goods shall be read as a reference to goods, including commodities, of a kind referred to in paragraph (a) or (b) of the definition of ‘goods’ in sub-section (1) of section 3 of the *Sales Tax Assessment Act (No. 1) 1930* in its application in accordance with section 12 of this Act; and
- (b) a reference to identical goods shall be read as a reference to goods identical in all material respects with the goods in relation to which the expression is used.

“(10) In this section, ‘agreement’ means any agreement, arrangement or understanding—

- (a) whether formal or informal;
- (b) whether express or implied; or
- (c) whether or not enforceable, or intended to be enforceable, by legal proceedings.”.

5. Section 5 of the Principal Act is repealed and the following section substituted:

Liability for tax “5. Where a person (being a registered person or a person required to be registered) who has purchased goods manufactured in Australia from the manufacturer of the goods sells the goods to an unregistered person or to a registered person who has not quoted his certificate in respect of that purchase, sales tax shall be paid by the first-mentioned person.”

Returns, &c. 6. Section 7 of the Principal Act is amended by omitting “sub-section (1) of section four of this Act” and substituting “sub-section (1), (2) or (3) of section 4 or sub-section (1) of section 4A”.

Further tax 7. Section 10 of the Principal Act is amended by omitting from sub-section (2) “under sub-section (1) or (2) of section four of this Act” and substituting “under sub-section (1) or (4) of section 4 or sub-section (5) or (6) of section 4A”.

Application of provisions of Sales Tax Assessment Act (No. 1) 1930 8. Section 12 of the Principal Act is amended—

(a) by omitting from sub-section (1) “sub-sections (4), (5B) and (5C)” and substituting “sub-sections (5B) and (5C)”; and

(b) by omitting paragraph (a) of sub-section (1).

Formal amendments 9. The Principal Act is amended as set out in the Schedule.

Liability to pay sales tax 10. (1) Where—

(a) sales tax was not payable, or would not be payable, under the Principal Act on the sale value of any goods that were sold by a person before the day on which this Act receives the Royal Assent but is payable on the sale value of those goods under the Principal Act as amended by this Act; or

(b) the amount of sales tax that was payable, or would be payable, under the Principal Act on the sale value of any goods that were sold by a person before the day on which this Act receives the Royal Assent is less than the amount of sales tax that is payable on the sale value of those goods under the Principal Act as amended by this Act,

the person liable to pay sales tax on the sale value of the goods under the Principal Act as amended by this Act shall pay the sales tax, or the further sales tax, as the case may be, that is so payable on the sale value of those goods within 21 days after the close of the month in which this Act receives the Royal Assent.

(2) The Principal Act as amended by this Act applies to and in relation to sales tax, or further sales tax, payable by a person on the sale value of goods in accordance with sub-section (1) as if the sales tax or further sales tax were payable on the sale value of the goods under section 9 of the Principal Act as amended by this Act and the goods had been sold by the person in the month in which this Act receives the Royal Assent.

SCHEDULE

Section 9

FORMAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting any number expressed in words that is used, whether with or without the addition of a letter or letters, to identify a section of that Act or of another Act, and substituting that number expressed in figures:

Sections 6, 9 and 12.

2. The following provisions of the Principal Act are amended by omitting the words "of this Act":

Sections 6 and 9.

3. The Principal Act is further amended as set out in the following table:

Provision	Amendment
Section 3	(a) Omit " , either before or after the commencement of this Act ,". (b) Omit "on or after the first day of August One thousand nine hundred and thirty".
Section 4 (1)	Omit "which are sold on or after the first day of August One thousand nine hundred and thirty".
Section 8	Omit "the last preceding section", substitute "section 7".
Section 10 (2B)	Omit "the last preceding sub-section", substitute "sub-section (2A)".
Section 11 (4)	Omit " , either before or after the commencement of this sub-section ,".
Section 12 (1)	(a) Omit "the Second Schedule", substitute "the Schedule". (b) Omit "of this Act" (second, third, fourth and fifth occurring).
Section 12 (2)	(a) Omit "the last preceding sub-section", substitute "sub-section (1) of this section". (b) Omit "of Part X".

NOTES

1. No. 198, 1978; assented to 6 December 1978.
2. Act No. 27, 1930, as amended. For previous amendments *see* Act No. 64, 1930; No. 27, 1931; Nos. 40 and 64, 1932; Nos. 17 and 48, 1933; Nos. 16 and 30, 1934; Nos. 45 and 61, 1935; No. 78, 1936; No. 93, 1966; and No. 216, 1973 (as amended by No. 20, 1974).