



Sales Tax Assessment Act (No. 11) 1985

No. 179 of 1985

**An Act relating to the imposition, assessment and collection
of a tax upon the sale value of certain airport shop goods,
and for other purposes**

[Assented to 16 December 1985]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Sales Tax Assessment Act (No. 11) 1985*.

Commencement

2. This Act shall come into operation, or shall be deemed to have come into operation, as the case requires, on the commencement of section 7 of the *Customs and Excise Legislation Amendment Act (No. 2) 1985*.

Interpretation

3. In this Act, unless the contrary intention appears—

“airport shop goods” has the same meaning as in the Customs Act;

“Collector” has the same meaning as it would have if the Customs Act were incorporated and read as one with this Act;

“Customs Act” means the *Customs Act 1901*;

“excise duty” means duty of excise—

(a) imposed by the *Excise Tariff Act 1921*; or

(b) demanded or collected in pursuance of—

(i) an Excise Tariff Proposal introduced into the House of Representatives; or

(ii) a notice published in the *Gazette* in accordance with section 160B of the *Excise Act 1901*;

“inwards duty free shop” and “relevant traveller” have the same meanings as in section 96B of the Customs Act;

“proprietor” means a person who is a proprietor within the meaning of section 96B of the Customs Act and is not a person who is registered, or required to be registered, under a law providing for the assessment of sales tax;

“Taxing Act” means the *Sales Tax Act (No. 11A) 1985* or the *Sales Tax Act (No. 11B) 1985*, as the case requires;

“taxpayer”, in relation to goods dealt with in a taxable manner, means—

(a) in a case to which paragraph 5 (a) applies—the purchaser of the goods; or

(b) in a case to which paragraph 5 (b) or (c) applies—the proprietor of the inwards duty free shop.

PART II—LIABILITY TO TAXATION

Sales tax

4. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by a Taxing Act shall be levied and paid upon the sale value of airport shop goods dealt with in a taxable manner.

Taxable dealings

5. For the purposes of this Act, airport shop goods are dealt with in a taxable manner if the goods are—

(a) purchased from an inwards duty free shop by a relevant traveller;

(b) sold by the proprietor of an inwards duty free shop to a person who is not a relevant traveller; or

(c) applied by the proprietor of an inwards duty free shop to the proprietor’s own use.

Sale value

6. For the purposes of this Act, the sale value of airport shop goods dealt with in a taxable manner by a taxpayer is the sum of—

- (a) in a case to which—
 - (i) paragraph 5 (a) applies—the amount for which the goods were purchased by the taxpayer;
 - (ii) paragraph 5 (b) applies—the amount for which the goods were sold by the taxpayer less so much of that amount as includes excise duty that is, or may become, payable in respect of the goods; or
 - (iii) paragraph 5 (c) applies—the amount for which the goods were purchased by the taxpayer; and
- (b) the amount of excise duty, if any, that is, or may become, payable in respect of the goods.

Liability for tax

7. Sales tax upon the sale value of airport shop goods dealt with in a taxable manner by a taxpayer shall be paid by the taxpayer.

Exemptions

8. Notwithstanding anything contained in section 7, sales tax is not payable under this Act by the person specified in section 7 upon the sale value of airport shop goods the sale value of which is, by virtue of the *Sales Tax (Exemptions' and Classifications) Act 1935*, exempt from sales tax under this Act.

PART III—RETURNS

Returns

9. Where airport shop goods are dealt with in a taxable manner by a person, being the proprietor of an inwards duty free shop, and sales tax is payable under this Act by the person upon the sale value of the goods, the person shall forthwith after so dealing with the goods—

- (a) if the goods are so dealt with at the place where the inwards duty free shop is located—lodge with a Collector; or
- (b) in any other case—furnish to the Commissioner,

a return in a form approved by the Commissioner, setting forth full particulars of the goods so dealt with and other such information as is required.

Further returns

10. In addition to any return that may have been required under section 9, the Commissioner may, by notice in writing, call upon any person to furnish to the Commissioner, within the time specified in the notice, such return, or such further or fuller return, as the Commissioner requires, whether in that person's own behalf or as an agent or a trustee.

PART IV—COLLECTION AND RECOVERY OF TAX

Time for payment of tax

11. Sales tax upon the sale value of airport shop goods is due and payable at the time when the goods are dealt with in a taxable manner.

Power to question relevant travellers, &c.

12. For the purposes of this Act, sub-section 195 (1) of the Customs Act applies as if paragraph (d) of that sub-section included a reference to airport shop goods in relation to which sales tax is payable under this Act.

Customs may seize or impound goods

13. (1) Where—

(a) a Collector believes on reasonable grounds that an amount of sales tax is payable upon the sale value of airport shop goods; and
(b) the amount is not paid when demanded by the Collector,
the Collector may seize or impound the goods, and the following sub-sections apply.

(2) Subject to sub-section (4), the Collector shall retain the goods until, but not after—

- (a) the full amount of sales tax payable upon the sale value of the goods is paid;
- (b) security is given to the satisfaction of the Collector for the payment of the amount referred to in paragraph (a);
- (c) the Collector is satisfied, or the Commissioner directs, that sales tax is not payable upon the sale value of the goods; or
- (d) a decision is made under Part VII of the Assessment Act that there is no sale value of the goods.

(3) The Collector may take the goods to a place approved for the purposes of section 204 of the Customs Act in relation to similar goods.

(4) Where—

- (a) the goods have been retained under sub-section (2) for any period of 4 months; and
- (b) during the whole of that period, no proceedings in relation to the goods have been pending,

they shall be deemed to be condemned as forfeited to the Crown, and may be dealt with and disposed of in accordance with the directions of the Commissioner.

(5) An action does not lie against the Commonwealth, the Commissioner or any officer of Customs in relation to anything done, or purported to have been done, under this section for which there was reasonable cause.

(6) In sub-section (2), “sales tax” includes—

- (a) further tax; and

(b) additional tax under section 29 or Part VIII of the Assessment Act.

(7) In this section—

“Assessment Act” means the *Sales Tax Assessment Act (No. 1) 1930* as applied by this Act;

“proceedings”, in relation to goods, means—

- (a) an objection, request, reference or appeal under Part VII of the Assessment Act; or
- (b) any proceedings in a court instituted by the owner of the goods in relation to the recovery of the goods.

Further tax

14. (1) Where the Commissioner finds in any case that tax is payable by any person, the Commissioner may—

- (a) assess the sale value upon which tax should be or should have been paid; and
- (b) calculate the tax which is payable.

(2) Where—

- (a) a person makes default in furnishing any return;
- (b) the Commissioner is not satisfied with the return made by a person; or
- (c) the Commissioner has reason to believe or suspect that a person is liable to pay sales tax (whether or not the person has furnished a return),

the Commissioner may cause an assessment to be made of the amount upon which, in the judgment of the Commissioner, sales tax ought to be levied, and the person is liable to sales tax on that amount, except so far as the person establishes on objection that the assessment is excessive.

(3) As soon as conveniently may be after an assessment has been made, the Commissioner shall cause notice in writing of the assessment and of the tax to be given to the person liable to pay the tax.

(4) The amount of tax specified in the notice is payable on or before the date specified in the notice together with any other amount that may be payable in accordance with any other provision of this Act.

(5) The omission to give such a notice does not invalidate the assessment and calculation made by the Commissioner.

(6) In this section, unless the contrary intention appears, “tax” includes further tax.

Refunds of tax

15. (1) Subject to sub-section (2), where the Commissioner finds in any case that tax has been overpaid by a person, the Commissioner shall—

- (a) refund the amount of any tax overpaid; or

- (b) apply the amount of any tax overpaid against any liability of the person to the Commonwealth, being a liability under, or by virtue of, an Act of which the Commissioner has the general administration, and refund any part of the amount that is not so applied.

(2) Sub-section (1) does not apply in relation to any tax paid by a person unless the Commissioner is satisfied that the tax has not been passed on by the person to another person or, if passed on by the person to another person, has been refunded by the person to the other person.

(3) In this section, unless the contrary intention appears, "tax" includes—

- (a) further tax; and
- (b) additional tax under section 29 or Part VIII of the *Sales Tax Assessment Act (No. 1) 1930* as applied by this Act.

PART V—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930

Application of provisions of *Sales Tax Assessment Act (No. 1) 1930*

16. (1) The following provisions of the *Sales Tax Assessment Act (No. 1) 1930*, namely, sections 3 and 3A, Part II, sub-sections 18 (5B) and (5C), sections 23, 25A, 27 to 39 (inclusive), and Parts VII, VIII (other than section 46) and X, and the Schedule apply, *mutatis mutandis*, in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act—

- (a) a reference in sub-section 32 (2A) of that Act as so applied to prescribed tax shall be read as including a reference to tax within the meaning of sub-section 32 (2) of that Act otherwise than in its application by virtue of this Act or any other Act;
- (b) the reference in paragraph (c) of the definition of "prescribed tax" in sub-section 32 (2D) of that Act as so applied to an Act providing for the assessment of sales tax shall be taken not to include a reference to this Act; and
- (c) the reference in sub-section 35 (2) of that Act as so applied to Part V shall be read as a reference to Part III.

(2) The power to make regulations conferred by the application, by sub-section (1) of this section, of section 73 of the *Sales Tax Assessment Act (No. 1) 1930* includes the power to make regulations for enabling certificates and securities made, issued or given for the purposes of that Act to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and includes the power generally to make regulations for treating acts, matters and things done, for the purposes of that Act, under the provisions of that Act made applicable to this Act, as done or deemed to be done under this Act.

Sales Tax Assessment (No. 11) No. 179, 1985

*[Minister's second reading speech made in—
House of Representatives on 21 November 1985
Senate on 2 December 1985]*