

International Organisations (Privileges and Immunities) Regulations Amendment (Indirect Tax Concession Scheme) Regulations 2000 (No. 1) 2000 No. 201

EXPLANATORY STATEMENT

Statutory Rules 2000 No. 201

Issued by the authority of the Minister for Foreign Affairs

INTERNATIONAL ORGANISATIONS (PRIVILEGES AND IMMUNITIES) ACT 1963

International Organisations (Privileges and Immunities) Regulations Amendment (Indirect Tax Concession Scheme) Regulations 2000 (No 1)

Introduction

1. Regulations may provide details of the Indirect Tax Concession Scheme (Scheme) for international organisations in Australia in accordance with the *International Organisations (Privileges and Immunities) 1963* (Act) (section 11C).

2. The Act provides that the Commissioner must re-pay to specified missions any indirect tax paid on specified acquisitions the missions may make for their official use. The Regulations specify:

- a. the organisations covered;
- b. the types of acquisitions that are covered for official or personal use; and
- c. 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 for diplomatic missions, consular posts and overseas missions 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 forgone. While direct reciprocity is not possible in relation to international organisations, Australian and international practice is to adopt similar privileges and immunities regimes for these organisations. Australian policy is for such concessions to be determined on the basis of functional need, often set out in international agreements, and to ensure the minimisation of global operating costs for international organisations.

4. The Scheme also relieves business from the burden of administering the previous sales tax exemptions for international organisations 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. Act means the *International Organisations (Privileges and Immunities) Act 1963*.
- b. **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999*.
- c. Scheme means the Indirect Tax Concession Scheme.

6. This Explanatory Statement provides details of the standard package of concessions provided to international organisations and their personnel. However, the 'specific packages vary for some organisations. Annex A to this Statement lists the organisations which are covered by the Regulations and also details variations from the standard package of concessions covered.

Preliminary Provisions

7. The Regulations will be taken to have commenced with the commencement of *A New Tax System (Goods and Services) Act 1999*, on 1 July 2000 (**regulation 2**). The Regulations, by granting conditional concessions which did not previously exist, 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)).

8. The Regulations make a number of consequential minor amendments to most international organisations' regulations to ensure that there is consistency with the provisions of the Scheme. In accordance with general government drafting guidelines, this includes updating the format and style of the name of many regulations.

9. The definition of **member of the family** is consistent with Australian practice, in that privileges and immunities are accorded to specified members of the family who form part of the household of specified personnel of the international organisation and who have been nominated by the organisation and accepted by Australia. 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.

10. The expression **official use** refers to the official use of the international organisation. An official use is a use that has a direct relation with the exercise of the functions of the organisation in accordance with the 1946 *Convention on Privileges and Immunities of the United Nations* (Australian Treaty Series No. 3 of 1949) and other relevant international agreements or arrangements.

Acquisitions - Official Use

11. Repayment of any indirect tax paid by, or on behalf of, an international organisation, in relation to acquisitions of any goods and specified services for the official use of the organisation, must be made to the organisation. The specified services, which reflect international practice concerning such concessions, are mail services; telecommunications services; electricity or gas services; protection of premises services; removal of goods services; and freight and cartage other than removal of goods. In addition, for technical organisations, services which directly concern their respective objects and purposes are also covered.

12. Generally, these acquisitions must be on a single tax invoice for a taxable supply (including indirect tax) of at least \$200. This minimum threshold is consistent with international practice and ensures the administration of the Scheme is manageable. Consistent with established Australian practice for indirect tax concessions, the invoice value threshold does not apply to acquisitions of goods that are freed from excise under the Act (section 6 and schedule 1, Item 7), nor to acquisitions of 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. Under the Act, direct imports are not subject to indirect tax (section 11B). 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. Most international organisations enjoy these exemptions.

13. 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 international organisation and the Commonwealth, to enable the repayment of indirect tax.

Acquisitions - Personal Use

14. In general, reflecting international and previous Australian practice, it is proposed that the Scheme be available for the acquisition or importation of one motor vehicle by an officer, for the personal use of that officer or a member of his or her family, if within the previous three years the officer has not received a similar concession on another vehicle. In **exceptional circumstances**, indirect tax concessions on the acquisition of a second vehicle are permitted. This includes the situation where the original vehicle is stolen or damaged beyond repair. The requirements remain for the pro rata repayment of the indirect tax on the original acquisition.

15. Holders of high offices of some international organisations are entitled to privileges and immunities equivalent to that of diplomatic staff members. The details of this aspect of the Scheme are set out in the Explanatory Statements to the *Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Determination* and the *Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment Determination 2000 (No. 1)*. A list of these persons is at **Annex B** to this Statement.

16. Entitlements to repayment of the indirect tax paid for specified acquisitions for personal use is not granted to Australian citizens, in accordance with the Act (subsection 6(6)).

Conditions

17. Consistent with established Australian practice for indirect tax concessions, a series of conditions requiring repayment of the concession apply if there is the disposal of goods before a 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. A pro rata amount must be refunded if the disposal is not to a person entitled to the same concession under the Scheme. In this regard, a buyer may be entitled to the same concessions as the seller albeit under a different instrument (for example, under the *Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Determination 2000*). However, the concessions of the buyer must match or exceed those of the seller at the time of sale. Thus, for example, in the standard package of concessions, a diplomatic mission could not sell goods to an international organisation official more than six months after the latter arrives and be free of obligations in regard to repayment.

19. The minimum time conditions reflect Australian interpretation of a key element in determining whether a purchase is for reasonable official or personal use. 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). Similarly, the specified time for other goods is two years.

20. There is no minimum time condition specified for most other acquisitions. Services and most other acquisitions may only be assigned to a person entitled to the same concession, under this or any other law of the Commonwealth, without any requirement to make a full refund of the indirect tax repayment. It is expected that the specific arrangements made for property purchases 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. Motor vehicles may be imported

for personal use without payment of an indirect tax, under section 11 B of the Act. These vehicles are often sold to a finance company then leased-back. 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 lease) of an imported vehicle is permitted.

22. Repayment is required on behalf of the original acquirer (that is, in effect, by the relevant international organisation), 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 in relation to whom the concession was made. 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.

23. It may be that indirect tax payments are made on goods over the life of a lease, which is terminated before the specified periods. There is no requirement that a person repay such indirect tax repayments made on periodic lease payments up to the time of termination.

24. Payment for any acquisition can not be made if the reasonable needs of the international organisation or person for official or personal use, respectively, were met by previous acquisitions.

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.

Delegation

26. The Minister may delegate his or her powers in relation to two compliance tools. The first compliance tool is a decision that the reasonable needs of the international organisation or person for its official or his or her personal use, respectively, were met by previous acquisitions. The second tool is the imposition of further conditions to ensure repayment of indirect tax, in circumstances where the entitlement may no longer apply.

Schedules

27. The Regulations set out the details of the Scheme by amendment of the Regulations under the Act specific to the 25 organisations covered by separate Schedules. The specific concessions available to the various organisations covered are set out in **Annex A**.

Annex A

Concessions granted to International Organisations

These organisations receive indirect tax concessions on *all* acquisitions for the official use of the Mission.

[Schedules 1, 2, 3, 9 and 17].

* Asian Development Bank

* Commission for the Conservation of Antarctic Marine Living Resources.

* Commission for the Conservation of Southern Bluefin Tuna.

- * International Centre for Settlement of Investment Disputes
- * Multilateral Investment Guarantee Agency

These organisations receive the standard package of concessions:

[Schedules 4, 6, 7, 15, 19, 21, 23 to 25].

- * Commonwealth Secretariat
- * Energy Charter Conference
- * European Bank for Reconstruction and Development
- * International Sea-Bed Authority
- * Organisation for Economic Co-operation and Development
- * South Pacific Forum Secretariat
- * United Nations' Specialized Agencies
- * United Nations
- * World Trade Organization

These Organisations receive the standard package of concessions, and, in addition, the concessions set out below:

- * Customs Co-operation Council: services directly relating to technical or economic analyses of customs systems (Article III(b) of the *1950 Agreement Establishing a Customs Co-operation Council*) [schedule 5, item 4, subparagraph 10A(1)(a)(viii)].
- * International Atomic Energy Agency: services relating to research on, and the development and practical application of, atomic energy for peaceful uses (Article III(A)(i) of the *1956 Statute of the International Atomic Energy Agency*) [schedule 8, item 4, subparagraph 9A(1)(a)(viii)].
- * International Hydrographic Organisation: services directly relating to the development of the sciences in the field of hydrography and the techniques employed in descriptive oceanography, including research into same (Article 11(d) of the *1967 Convention on the International Hydrographic Organisation*) [schedule 11, item 7, subparagraph 8A(1)(a)(viii)].
- * International Institute for Democracy and Electoral Assistance: services directly relating to research and the application of research findings concerning democratic electoral processes (Article II(2)(d) of the *1995 Agreement Establishing the International Institute for Democracy and Electoral Assistance*) [schedule 12, item 9, subparagraph 9A(1)(a)(viii)].
- * International Maritime Satellite Organisation: repair, maintenance and related services performed with respect to communication satellites or component parts of same [schedule 13, item 5, subparagraph 5A(1)(a)(viii)].
- * International Organisation for Migration: migration services including language training, orientation activities, medical examinations, and advice on migration questions; and services

directly relating to research on migration (Article 1(1) of the *Constitution of the International Organisation for Migration*) [schedule 14, item 4, subparagraph 6A(1)(a)(viii)].

* Network of Aquaculture Centres in Asia and the Pacific: services relating to aquaculture or aquaculture technologies, including research into same (Article 4 of the 1988 *Agreement on the Network of Aquaculture Centres in Asia and the Pacific*) [schedule 18, item 5, subparagraph 9A(1)(a)(viii)].

* South Pacific Commission: services directly relating to matters listed in Article IV of the 1947 *Agreement Establishing the South Pacific Commission* [schedule 20, item 4, subparagraph 9A(1)(a)(viii)].

* South Pacific Regional Environmental Programme: services directly relating to monitoring and assessing the state of the environment in the South Pacific Region or directly relating to research into environmental issues (Article 2 of the 1993 *Agreement Establishing the South Pacific Regional Environmental Programme*) [schedule 22, item 8, subparagraph 10A(1)(a)(viii)].

4. These organisations are not granted concessions in respect of any acquisitions by the Mission.

[Schedules 10 and 16].

* International Court of Justice

* International Tribunal for the Law of the Sea

Annex B High Officers of International Organisations

A number of holders of high offices of organisations are accorded, under their relevant international agreements, the same privileges and immunities as diplomatic agents. A list of these persons is as follows:

- * The Executive Secretary of Commission for the Conservation of Antarctic Marine Living Resources [schedule 2, item 6, subregulation 10C(4)];
- * The Executive Secretary of the Commission for the Conservation of Southern Bluefin Tuna [schedule 3, item 7, subregulation 13A(4)];
- * The Secretary-General, Assistant Secretary-General and Managing Director of the Commonwealth Fund for Technical Co-operation of the Commonwealth Secretariat [schedule 4, item 8, subregulation 10B(4)];
- * The Secretary-General and Deputy Secretary-General of the Customs Co-operation Council [schedule 5, item 4, subregulation 10A(4)];
- * The Secretary-General of the Energy Charter Conference [schedule 6, item 8, subregulation 9A(4)];
- * The Director-General, Deputy Director-General and Inspector-General of the Department of Safeguards and Inspection of the International Atomic Energy Agency [schedule 8, item 4, subregulation 9A(4)];
- * The Members of the International Court of Justice [schedule 10, item 3, subregulation 7A(2)];
- * The Members of the Directing Committee of the International Hydrographic Organisation [schedule 11, item 7, subregulation 8A(4)];
- * The Secretary-General of the International Institute for Democracy and Electoral Assistance [schedule 12, item 9, subregulation 9A(4)];
- * Members of the International Tribunal for the Law of the Sea (when engaged on business of the Tribunal) [schedule 16, item 2, subregulation 4A(2)];
- * The President of the Multilateral Investment Guarantee Agency [schedule 17, item 3, subregulation 10A(4)];
- * The Co-ordinator of the Network of Aquaculture Centres in Asia and the Pacific [schedule 18, item 5, subregulation 9A(4)];
- * The Secretary-General and Deputy Secretary-General of the OECD [schedule 19, item 6, subregulation 10A(4)];
- * The Secretary-General and Deputy Secretary-General of the South Pacific Commission [schedule 20, item 4, subregulation 9A(4)];
- * The Secretary-General of the South Pacific Forum Secretariat [schedule 21, item 7, subregulation 9A(4)];
- * The Director of the South Pacific Regional Environmental Programme [schedule 22, item 8, subregulation 10A(4)];

* In relation to the United Nations' Specialised Agencies, the holders of high offices specified in column 3 of an item in the schedule to the current *Specialised Agencies (Privileges and Immunities) Regulations* [schedule 23, item 4, subregulation 9A(4)];

* The Secretary-General, Under Secretaries-General and Assistant Secretaries-General of the United Nations [schedule 24, item 4, subregulation 11 A(4)]; and

* The Director-General of the World Trade Organisation [schedule 25, item 3, subregulation 9A(4)].