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2000B00209

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Hong Kong Economic and Trade Office (Privileges and Immunities) Amendment Regulations 2000 (No. 1)

Statutory Rules 2000 No. 1

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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*.

Dated **24 JUL 2000** 2000

WILLIAM DEANE

Governor-General

By His Excellency's Command

ALEXANDER DOWNER
Minister for Foreign Affairs



Hong Kong Economic and Trade Office (Privileges and Immunities) Amendment Regulations 2000 (No. /)¹

Statutory Rules 2000 No. / ²

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made under the

Overseas Missions (Privileges and Immunities) Act 1995

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Regulation 1

1 Name of Regulations

These Regulations are the *Hong Kong Economic and Trade Office (Privileges and Immunities) Amendment Regulations 2000 (No. 1)*.

2 Commencement

These Regulations are taken to have commenced on the commencement of Schedule 7 to the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*.

3 Amendment of Hong Kong Economic and Trade Office (Privileges and Immunities) Regulations

Schedule 1 amends the Hong Kong Economic and Trade Office (Privileges and Immunities) Regulations.

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Hong Kong Economic and Trade Office (Privileges and Immunities) Amendment Regulations 2000 (No. 1)

2000, 1

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Schedule 1 Amendments

(regulation 3)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Hong Kong Economic and Trade Office (Privileges and Immunities) Regulations 1996*.

[2] Subregulation 2 (1), after definition of *Head of Mission*

insert

member of the family or *family member*, in relation to a person (the *first person*), means a person who is:

- (a) a part of the first person's household; and
- (b) any of the following members of the first person's family:
 - (i) the first person's spouse;
 - (ii) an unmarried child who is under the age of 21 years;
 - (iii) an unmarried child who is under the age of 25 years and is undertaking full-time studies at an Australian educational institution;
 - (iv) an unmarried child who is incapable of self-support because of a physical or mental disability.

[3] **Subregulation 2 (1), after definition of *officer of the Mission***

insert

taxable supply has the meaning given by section 195-1 of the GST Act.

tax invoice has the meaning given by section 29-70 of the GST Act.

[4] **Subregulation 2 (3)**

omit

[5] **After regulation 9**

insert

9A Indirect tax concession scheme — acquisitions

- (1) For paragraph 12A (1) (a) of the Act, the following acquisitions by a person mentioned in section 7 of the Act are covered by these Regulations:
- (a) an acquisition of any of the following, on a single tax invoice for a taxable supply of at least \$200 (including indirect tax):
 - (i) goods (by purchase or lease);
 - (ii) mail services for the Mission;
 - (iii) telecommunications services;
 - (iv) electricity or gas services;
 - (v) protection of premises services;
 - (vi) removal of goods services;
 - (vii) freight and cartage other than removal of goods;
 - (b) an acquisition of goods that are freed from duties of excise by regulation 6;
 - (c) an acquisition of warehoused goods (within the meaning of the *Customs Act 1901*), the

- importation of which is covered by an immunity from taxation (including customs duties) conferred by these Regulations;
- (d) an acquisition of any of the following, if the acquisition is subject to an arrangement between the Head of Mission and the Commonwealth for reimbursement of indirect tax:
- (i) construction or renovation services;
 - (ii) real property;
 - (iii) any other thing.
- (2) However, subject to subregulations (3) and (5), an acquisition is covered by these Regulations only if, at the time of the acquisition, it was intended for the official use of the Mission.
- (3) For paragraph 12A (1) (a) of the Act, the following acquisitions by an officer of the Mission (including the Head of the Mission) or a member of an officer's family are covered by these Regulations:
- (a) an acquisition of any of the following, on a single tax invoice for a taxable supply of at least \$200 (including indirect tax):
 - (i) goods (by purchase or lease);
 - (ii) removal of goods services;
 - (b) an acquisition of goods that are freed from duties of excise by regulation 6;
 - (c) an acquisition of warehoused goods (within the meaning of the *Customs Act 1901*), the importation of which is covered by an immunity from taxation (including customs duties) conferred by these Regulations.
- (4) However:
- (a) an acquisition by an officer of the Mission or a member of an officer's family is covered by these Regulations (under subregulation (3)) only if, at the time of the acquisition, it was intended for the personal use of the person, or of a member of the family of the person; and

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- (b) an acquisition of a motor vehicle for the personal use of an officer of the Mission is covered by these Regulations only if:
- (i) the vehicle was acquired in exceptional circumstances to replace a motor vehicle for which the officer received:
 - (A) a concession under section 12A of the Act; or
 - (B) an exemption from indirect tax under subsection 9 (2) of the Act; or
 - (ii) within the previous 3 years, the officer has not received:
 - (A) a concession under section 12A of the Act for the acquisition of another motor vehicle; or
 - (B) an exemption from indirect tax under subsection 9 (2) of the Act on the importation of another motor vehicle; and
- (c) an acquisition of a motor vehicle for the personal use of a member of the family of an officer of the Mission is covered by these Regulations only if:
- (i) the vehicle is acquired in exceptional circumstances to replace a motor vehicle for which a family member (except the officer) received:
 - (A) a concession under section 12A of the Act; or
 - (B) an exemption under subsection 9 (2) of the Act; or
 - (ii) the family member is eligible to hold a driver's licence that is valid in Australia and, within the previous 3 years, no family member (except the officer) has received:
 - (A) a concession under section 12A of the Act for the acquisition of another motor vehicle; or

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- (B) an exemption from indirect tax under subsection 9 (2) of the Act on the importation of another motor vehicle.
- (5) For paragraph 12A (1) (a) of the Act, the acquisition of a locally-manufactured motor vehicle by an employee of the Mission for the personal use of the employee is covered by these Regulations if:
- (a) the vehicle is acquired within the first 6 months of the employee's installation in Australia and the employee has not previously received:
- (i) a concession under section 12A of the Act for the acquisition of another motor vehicle; or
- (ii) an exemption from indirect tax under subsection 9 (2) of the Act on the importation of another motor vehicle; or
- (b) the vehicle is acquired in exceptional circumstances to replace a motor vehicle for which the employee has received:
- (i) a concession under section 12A of the Act; or
- (ii) an exemption from indirect tax under subsection 9 (2) of the Act.

- (6) In subparagraphs (4) (b) (i) and (c) (i), and paragraph (5) (b):

exceptional circumstances, in relation to the replacement of a motor vehicle, includes the original vehicle being stolen or damaged beyond repair.

Note Section 12A of the Act establishes an indirect tax concession scheme that provides for reimbursement by the Commissioner of Taxation of indirect tax payable for acquisitions covered by these Regulations.

9B Indirect tax concession scheme — conditions

- (1) For paragraph 12A (3) (a) of the Act, the amount mentioned in subsection 12A (1) of the Act is payable only if the following conditions are satisfied:
- (a) the person who made the acquisition is subject to an agreement in writing between the Head of Mission and the Commonwealth to repay to the Commonwealth the amount worked out under subregulation (2) if:
 - (i) for a payment in relation to an acquisition of a motor vehicle — the person disposes of the motor vehicle (except to another person entitled to an indirect tax concession under these Regulations or another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory within 3 years after it was acquired; or
 - (ii) for a payment in relation to an acquisition of goods other than a motor vehicle — the person disposes of the goods (except to another person entitled to an indirect tax concession under these Regulations or another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory within 2 years after they were acquired; or
 - (iii) for a payment in relation to an acquisition of services or any other acquisition (except for an acquisition covered by paragraph 9A (1) (d)) — the person assigns the services to another person (except to another person entitled to an indirect tax concession under these Regulations or another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory;

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- (b) if the person has breached a previous agreement under paragraph (a) — the person complies with any written requirements, including a requirement to give security, that the Minister considers necessary to ensure that the person complies with the agreement.
- (2) For subparagraphs (1) (a) (i) and (ii):
- (a) a sale of goods to a finance company as part of a sale and lease-back arrangement is not a disposal of the goods; and
- (b) a person (the *first person*) is taken to have disposed of goods to which 1 of those subparagraphs applies within the period mentioned in that subparagraph to a person who is not entitled to an indirect tax concession in relation to similar acquisitions if:
- (i) the first person disposes of the goods to a person (the *second person*) who is entitled to the concession; and
- (ii) the second person disposes of the goods to another person; and
- (iii) the series of disposals of the goods to other persons continues (if necessary) until the goods are eventually acquired, within the period mentioned in that paragraph, by a person who is not entitled to the concession.
- (3) For paragraph (1) (a), the amount to be repaid is:
- (a) for an acquisition to which subparagraph (1) (a) (i) or (ii) applies — the proportion of the amount paid under section 12A of the Act in relation to the acquisition that is equal to the proportion of the period mentioned in that subparagraph remaining after the person disposes of the goods; and
- (b) for an acquisition to which subparagraph (1) (a) (iii) applies — the amount paid under section 12A of the Act in relation to the acquisition.

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- (4) However, for an acquisition to which subparagraph (1) (a) (i) or (ii) applies, a person is not required to repay an amount paid under section 12A of the Act in relation to a lease payment that relates to a period before the person disposes of the goods.
- (5) The amount mentioned in section 12A of the Act is not payable if:
- (a) an amount was payable for a similar acquisition; and
 - (b) the Minister tells the person in writing that, in his or her opinion, the person's reasonable needs were met by that acquisition.

9C Indirect tax concession scheme — claims for payment

A claim for payment under regulation 9A:

- (a) must be signed by, or for, the Head of Mission; and
- (b) must be sent with the tax invoice for the acquisition; and
- (c) must be sent:
 - (i) for an acquisition of a motor vehicle — to the Protocol Branch of the Department of Foreign Affairs and Trade; or
 - (ii) in any other case — to the Australian Taxation Office; and
- (d) for an acquisition of a motor vehicle or an acquisition of real property by lease — may be sent at any time after the acquisition; and
- (e) for an acquisition of a kind mentioned in paragraph 9A (1) (d), except an acquisition of real property by lease — may only be sent:
 - (i) in accordance with the arrangement mentioned in that paragraph; or
 - (ii) if the arrangement does not specify a time when a claim may be sent:
 - (A) with another claim; or

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- (B) at least 3 months after another claim from the Mission is sent; and
- (f) for an acquisition that is not mentioned in paragraph (d) or (e) — may only be sent:
- (i) with another claim; or
 - (ii) at least 3 months after another claim from the Mission.

Note Paragraphs 9C (e) and (f) are intended to limit the number of claims from the Mission to one in each quarter, to minimise delays in the processing of claims.

9D Indirect tax concession scheme — manner of payment

For paragraph 12A (3) (b) of the Act, the amount is to be paid to a single recipient, or an account, nominated by, or for, the Head of Mission.

[6] After regulation 12

insert

13 Delegation

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to a person, the Minister's powers under paragraphs 9B (1) (b) and (5) (b) of these Regulations.
- (2) A power delegated under subregulation (1), when exercised by the delegate, is taken to have been exercised by the Minister.
- (3) A delegation of power under subregulation (1) does not prevent the exercise of the power by the Minister.

[7] **Schedule 1, item 4, column 3, paragraph (a)**
omit

[8] **Schedule 2, item 2, column 3, paragraph (a)**
omit

Notes

1. These Regulations amend Statutory Rules 1996 No. 334.

2. Made by the Governor-General on *24 July* 2000, and notified in
the *Commonwealth of Australia Gazette* on *31 July* 2000.