

Explanatory Statement

Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Albania and Lithuania) Determination 2022

Issued by the Authority of the Minister for Foreign Affairs (the Minister)

Subject: *Consular Privileges and Immunities Act 1972*

Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Albania and Lithuania) Determination 2022 (“Amendment”).

Section 10A of the *Consular Privileges and Immunities Act 1972* provides that the Minister may make Determinations for the Commissioner of Taxation to pay the head of a consular post (or a person in a class of persons determined by the Minister) an amount equal to the indirect tax payable (if any) in respect of an acquisition covered by the Minister’s Determination.

The purpose of the Amendment is to amend the *Consular Privileges and Immunities (Indirect Tax Concession Scheme) Determination 2000* (“Determination”) to create a new Indirect Tax Concession Scheme (ITCS) package for Albania and Lithuania by providing indirect tax concessions to their respective consular posts in Australia and staff accredited to those posts. The effect of the Amendment is to add new and updated items to Schedule 1 of the Determination, which lists the ITCS packages available to particular consular posts.

Consular posts and accredited staff are exempt from paying direct taxes under the *Vienna Convention on Consular Relations 1963* (Articles 32, 49, 60 and 66). In line with international practice, indirect tax concessions are also extended to consular posts and accredited staff. In Australia, indirect tax concessions are provided for under the ITCS. Individual packages are negotiated with each country, and the level of concessions provided is broadly based on reciprocity.

Commencement dates for individual packages form part of the negotiations for tax concessions. In some cases, the commencement date reflects the date when the agreement was reached. In other cases, the commencement date allows access to concessions for purchases of goods and services already made, including by our overseas missions and posts. As concession packages are usually agreed before they come into force under Australian legislation, they need to be made retrospective. This retrospectivity is not to the detriment of any person or organisation; rather it extends concessions to posts and accredited staff from either the date the post opened or a date agreed during negotiations. Reciprocity in terms of the date of effect means that relevant Australian consular posts overseas will also have access to the same or similar benefits in the relevant overseas country.

The ITCS, and its extension to new or existing consular posts in Australia by way of periodic amendments to Schedule 1 of the Determination (such as this Amendment), are beneficial to Australia. In determining the scope of the economic benefit to Australia, in 1999 the then Assistant Treasurer, Mr Rod Kemp, advised that the estimated net benefit to Australia in pursuing reciprocal agreements under the ITCS would be several million dollars, and that the most practical means of assessing the financial benefit to Australia would be to take a global approach, rather than an approach based on individual agreements. In the current instance, Treasury has advised the concessions covered by the Amendment will have a negligible impact on revenue. In addition, the provision of tax concessions encourages consular posts and accredited staff to purchase goods in Australia rather than directly importing them, which further assists the Australian economy.

The Office of Best Practice Regulation has confirmed that amendments to Schedule 1 of the Determination are not expected to have regulatory impacts on business, individuals or community organisations, and do not require the preparation of a Regulation Impact Statement.

The Amendment does not alter the way the ITCS works, but extends tax concessions to specific consular posts. The Amendment was therefore judged to be of a minor nature where consultation is unnecessary under the *Legislation Act 2003*.

The Amendment is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.