

Explanatory Statement

Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (India, Malaysia and the United Kingdom) Determination 2022

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

Subject: *Diplomatic Privileges and Immunities Act 1967*

Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (India, Malaysia and the United Kingdom) Determination 2022 (“Amendment”).

Section 10B of the *Diplomatic Privileges and Immunities Act 1967* provides that the Minister may make Determinations for the Commissioner of Taxation to pay the head of a mission (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 *Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Determination 2000* (“Determination”) to upgrade the Indirect Tax Concession Scheme (ITCS) packages for India, Malaysia and the United Kingdom for the benefit of diplomatic missions and accredited staff. The effect of the Amendment is to update items in Schedule 1 of the Determination, which lists the ITCS packages available to particular diplomatic missions.

Diplomatic missions and accredited staff are exempt from paying direct taxes under the *Vienna Convention on Diplomatic Relations 1961* (Articles 23, 34, 36 and 37). In line with international practice, indirect tax concessions are also extended to diplomatic missions 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. 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 missions and accredited staff from either the date the mission opened or a date agreed during negotiations. Reciprocity in terms of the date of effect means that relevant Australian diplomatic missions overseas will also have access to the same or similar benefits in the relevant overseas country.

The ITCS and its extension to new and existing diplomatic missions 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, the Department of the Treasury confirmed that the estimated net benefit to Australia in pursuing reciprocal agreements covering GST 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 diplomatic missions 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 likely 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 diplomatic missions. The Amendment was therefore judged to be of a minor nature where consultation is unnecessary under the *Legislation Act 2003*.

This 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*.