

EXPLANATORY STATEMENT

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

Diplomatic Privileges and Immunities Act 1967

Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Saudi Arabia) Determination 2023 (the Amendment)

Legislative Authority

Section 10B of the *Diplomatic Privileges and Immunities Act 1967* (the Act) provides that the Minister may make Determinations for the Commissioner of Taxation to pay the head of a diplomatic 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 *Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Determination 2000* (the Determination), determines acquisitions and persons for the purpose of section 10A of the Act.

Purpose

The purpose of the Amendment is to amend the Determination to create a new Indirect Tax Concession Scheme (ITCS) package for Saudi Arabia by providing indirect tax concessions to its diplomatic mission in Australia and accredited staff. The effect of the Amendment is to update an item 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 or 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 Treasury confirmed 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 non-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 Impact Analysis 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 an Impact Statement.

Consultation

The Department of Treasury was consulted in relation to this Amendment.

Consultation via diplomatic correspondence took place with the Embassy and Consulate-General of Saudi Arabia in Australia in relation to each package of tax concessions. This consultation was straightforward and uncontroversial as concessions were based on clear guidelines and reciprocity for Australian officials. To the extent that issues may arise during consultations of this nature, it is longstanding policy of the Department of Foreign Affairs not to make public the detail of bilateral discussions and negotiations with foreign governments.

Further consultation was considered to be unnecessary, as the Amendment does not alter the way the ITCS works, but extends tax concessions to a specific diplomatic mission.

Exemption from Sunsetting

The Amendment and the Determination are exempt from sunseting by virtue of section 11 table item 1 of the *Legislation Exemption and Other Matters Regulation 2015*, which exempts “An instrument the sole purpose of which, or a primary purpose of which, is to give effect to an international obligation of Australia”. The giving of effect to international obligations has long been recognised as justification for exemption from sunseting. These instruments implement an agreement between the Australian Government and the Government of Saudi Arabia as to the privileges and immunities to be accorded to Saudi Arabian officials.

Statement of Compatibility with Human Rights

This Disallowable Legislative Instrument 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*. The Statement of Compatibility with Human Rights is at [Attachment A](#).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

***Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme)
Amendment (Saudi Arabia) Determination 2023 (the Amendment)***

This Disallowable Legislative Instrument 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*.

Overview of the Disallowable Legislative Instrument

This disallowable legislative instrument will amend Schedule 1 within the *Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Determination 2000* (the Determination).

These amendments will reflect all new and upgraded Indirect Tax Concession Scheme arrangements that have been negotiated since the last amending determination in 2022.

The purpose of the Amendment is to amend the Determination to create a new Indirect Tax Concession Scheme (ITCS) package for Saudi Arabia by providing indirect tax concessions to its diplomatic mission in Australia and accredited staff. The effect of the Amendment is to update an item in Schedule 1 of the Determination, which lists the ITCS packages available to particular diplomatic missions.

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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 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 non-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.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.