

## EXPLANATORY STATEMENT

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

*Consular Privileges and Immunities Act 1972*

### ***Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Lebanon and Zimbabwe) Determination 2024 (the Amendment)***

#### **Legislative Authority**

Section 10A of the *Consular Privileges and Immunities Act 1972* (the Act) 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 *Consular 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 new Indirect Tax Concession Scheme (ITCS) packages for Lebanon and Zimbabwe by providing indirect tax concessions to their consular posts in Australia and accredited staff, and to update the wording of entries in Schedule 1 of the Determination which contain historical references to posts headed by Honorary Consuls. This wording change will promote consistency and administrative certainty by ensuring that all entries which provide a Standard package have consistent wording without changing the ITCS packages already provided. The effect of the Amendment is to update items and add an item 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 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, 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 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 Impact Analysis (OIA) 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 an Impact Analysis (OIA Reference Number: 22459).

### **Consultation**

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

Consultation via diplomatic correspondence took place with the Embassies and Consulates-General of Lebanon and Zimbabwe 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 specific consular posts.

### **Exemption from Sunsetting**

The Amendment and the Determination are exempt from sunsetting 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 sunsetting. These instruments implement an agreement between the Australian Government and the Governments of Lebanon and Zimbabwe as to the privileges and immunities to be accorded to Lebanese and Zimbabwean 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*

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Amendment (Lebanon and Zimbabwe) Determination 2024 (the Amendment)***

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**Overview of the Disallowable Legislative Instrument**

This disallowable legislative instrument will amend Schedule 1 within the *Consular 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 2023.

The purpose of the Amendment is to amend the Determination to create new Indirect Tax Concession Scheme (ITCS) packages for Lebanon and Zimbabwe by providing indirect tax concessions to their consular posts in Australia and accredited staff, and to update the wording of entries in Schedule 1 of the Determination which contain historical references to posts headed by Honorary Consuls. This wording change will promote consistency and administrative certainty by ensuring that all entries which provide a Standard package have consistent wording without changing the ITCS packages already provided. The effect of the Amendment is to update items and add an item to Schedule 1 of the Determination, which lists the ITCS packages available to particular consular posts.

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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 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.

### **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.