SALES TAX LAWS AMENDMENT BILL 1985

Date Introduced: 9 May 1985
House: House of Representatives
Presented by: Hon. P.J. Keating, M.P., Treasurer

Short Digest of Bill

Purpose

To amend the Sales Tax Assessment Acts (Nos. 1 to 9) 1930 and the Sales Procedure Act 1934 in order to outlaw sales tax evasion and avoidance and to correct deficiencies in the existing machinery and liability provisions.

Background

The wholesale sales tax, introduced in 1930, is a multi-rated, single stage tax levied on selected goods sold by manufacturers and wholesalers to retailers. Unless specifically exempted, all goods produced in, or imported into, Australia for domestic use are taxable. Goods imported by retailers and consumers, therefore, will also be taxable.

Manufacturers, wholesalers and importers pay the tax to the Commonwealth, the tax being based on a sale value equal to the wholesale value of the goods. Where tax is payable on a sale by a manufacturer to a consumer (effectively, a retail sale), a fair wholesale value must be determined.

Manufacturers and wholesalers are required to register with the Taxation Office except for those who deal only with exempt goods. A certificate of registration is issued and the certificate number, when quoted, allows a registered person to acquire tax free goods. This system is necessary to avoid double taxing of goods, e.g. where a manufacturer acquires tax-free raw materials by quoting his certificate but is required to pay tax on his sales of finished products. Importers who are wholesalers and manufacturers may acquire imports tax free by quoting their certificates. However, retailers and consumers importing taxable goods pay sales tax on entry for home consumption.

Monthly returns of the transactions must be lodged with the Taxation Office by registered manufacturers and wholesalers. They are required to calculate the tax payable
on their taxable transactions and to forward payment of tax with each return.

The sales tax legislation is comprised of a number of Acts and regulations under the Acts. There are nine Sales Tax Acts which specify the rates of tax. The corresponding Sales Tax Assessment Acts provide the machinery for assessment, collection and administration of the tax. The Sales Tax (Exemptions and Classifications) Act 1935 contains Schedules specifying the exempt classes of goods and those that are taxable at the current rates of 7.5%, 10%, 20% and 32.5%. Goods not specified in any of the Schedules are taxable at the general rate of 20%. The Sales Tax Procedure Act is a machinery Act containing provisions having common application to all classes of transactions.

In 1975, the Asprey Committee made the comment that "a wholesale sales tax tends to encourage activity at the retail level with a view of minimising tax".[1] It stated that while "no objection can be taken to agency sales by retailers where the arrangement between the taxpayer and the retailer has proper commercial basis, arrangements entered into for the sole purpose of avoiding sales tax require scrutiny".[2] The Committee recommended that where retail sales appear to be agency sales, the law should specify conditions which would ensure a true commercial relationship of principal and agent.

On 20 August 1981, the former Government announced that it would correct deficiencies in the machinery and liability provisions of the sales tax legislation. Later, in March 1983, the present Government announced that it would proceed with these proposals including measures to eliminate tax avoidance.

Outline

Apart from dealing with some of these proposals, the Bill addresses tax avoidance schemes based on agency and other marketing arrangements and strengthens existing sales tax registration and quotation procedures to remove tax evasion. This Bill is one in a package of 6 Bills designed to amend sales tax legislation.

1. Indirect Marketing Arrangements

Marketing of goods usually involves the manufacturer or importer selling either directly to a retailer or to a wholesaler who generally then sells to a retailer. The last wholesale sale in the marketing chain is the taxable sale. Sales tax is levied not only on the price charged for the goods but also on the profit margin,
freight, insurance and other marketing costs. However, if a retailer makes his own delivery and insurance arrangements, these costs will not form part of the taxable sale value.

Arrangements exist whereby a taxpayer reduces the amount of sales tax payable. Where a wholesaler appoints a retailer as an agent, the wholesaler as principal, technically becomes the retailer for sales tax purposes. Consequently, the taxable sale is the sale to the wholesaler and has a lower sales value as it excludes the wholesaler's profit margin and marketing costs.

A similar situation is achieved under floor-plan arrangements. A wholesaler leases a section of the retailer's store from which the wholesaler's goods are sold direct to the public by the wholesaler who technically, is a retailer. Consequently, sales tax is based on a sales value exclusive of the wholesaler's costs and profit margin.

It must be mentioned that some businesses sell goods on a genuine commercial basis through agency arrangements without the motive of reducing sales tax.

Under clause 4 of the Bill, the revised definition of "wholesale merchant" will include persons who sell goods under such indirect marketing arrangements as agency and floor plan arrangements. Consequently, the wholesale cost margin will be included in the taxable value of the goods as these vendors will be deemed to be "wholesale merchants". This new arrangement will come into effect on the date of Royal Assent.

2. Registration and Quotation Procedures

When purchasing or importing goods, a registered manufacturer or wholesaler, by quoting the sales tax certificate number issued upon registration, obtains goods sales tax free. This practice has led to tax evasion whereby unregistered persons quote bogus certificate numbers, false names and addresses, or quote in circumstances not permitted under sales tax law.

This Bill provides for measures to strengthen registration and quotation procedures:

- the maximum amount of security that the Commissioner may require from a registered taxpayer or a person seeking registration, when the revenue is at risk, will be increased from $2,000 to $25,000 (new sub-section 11(8A) inserted by clause 6);
the Commissioner will be empowered to refuse or revoke a sales tax registration where the application for registration is false or misleading or where security required is not provided (amendment to section 11, inserted by clause 6 and new section 16, inserted by clause 10);

the Commissioner will be able to prohibit a registered person from quoting his certificate where the Commissioner has reason to believe that the person has abused or has assisted others in abusing quotation procedures (new section 15A inserted by clause 9);

the Commissioner will be authorised to publish in the Gazette, or to provide vendors with, details of cancelled, revoked or withdrawn sales tax numbers (new section 16A inserted by clause 10);

to provide that the vendor will be liable to pay tax where the vendor has sold goods tax-free and has reasonable grounds for believing that a purchaser's quotation of a sales tax certificate is unlawful, false or misleading, the purchaser is unregistered or the certificate number has been published by the Commissioner (new sub-section 3(3), inserted by clause 4). The Commissioner will, however, be able to remit or refund the tax where the quotation is found to be valid (new sub-section 26(3A), inserted by clause 13);

a Collector of Customs will be allowed to retain imported goods until sales tax is paid should the Collector have reasonable grounds for doubt about the legitimacy of the quotation.

A person affected by the Commissioner's decision relating to registration and certificates may object and if dissatisfied, may then apply to the Administrative Appeals Tribunal for a review of the original decision (new section 44B, inserted by clause 16).

3. Definition of Manufacture

The current definition of manufacture excludes the combination of parts or ingredients which is customary or reasonably practicable for users or consumers to undertake. Some companies, however, have applied this exclusion to
their activities by arranging for associate companies (technically users of the assembled product) to engage employees with the necessary expertise to assemble products. Exclusion to paying sales tax then rested on the argument that, because of the expertise, it was reasonably practicable for the associate company to have performed the assembly.

The new definition of "manufacture" will make it clear that the exception will only apply where the assembly is a kind that is customarily undertaken by persons who ultimately use the finished product.

The revised definition will apply from 20 August 1981, the announcement date of the measure by the former Government (sub-section 3(1) amended by sub-clause 4(2)).

4. Sales Tax on Imported Goods

The Sales Tax Assessment Act (No. 5) 1930 provides for the collection and imposition of sales tax on imported goods. Sales tax, paid when goods are entered for home consumption, is collected by Customs. The liability for sales tax, however, is determined at the time of importation. Administrative problems occur when the rates of sales tax differ between the date of importation and the date of entry for home consumption.

Consequently, in Part VI, this Bill provides that the sales tax rate applicable to imported goods is the rate applying at the time the goods are entered for home consumption under the Customs Act 1901 (amendment to section 3 by clause 27).

5. Anti-avoidance amendments

The Bill provides a termination date of 20 August 1981 to the operation of the transitional provisions applicable to certain anti-tax avoidance amendments made in 1978 (clauses 11, 12, 54 to 56).

6. Information gathering power

Under the Sales Tax Assessment Acts, the Commissioner or authorised officer has access to all buildings, places, books, documents and papers. In addition to these powers, this Bill will provide for the examination, removal and sampling of goods. Also, the necessity to specify under which Assessment Act the information gathering power is being exercised will be removed (section 71 repealed by clause 17; new section 12E inserted into Sales Tax Procedure Act 1934 by clause 59).
7. Royalties

A new section 3A will be inserted into the Principal Act by clause 5 to clarify the application of sales tax law to payments of royalties. Royalty is defined to include an amount paid however described, paid or computed, in consideration for certain rights. Royalties paid for the performance, broadcasting, televising, or exhibiting of works, films or articles are excluded. The proposed Sales Tax Assessment Bill (No. 10) 1985 and the three complementary taxing Bills cover royalties (see Digest Nos. 85/73; 85/74; 85/75; 85/76).

For a detailed explanation of the provisions of the Bill, refer to the Explanatory Memorandum.

For further information, if required, contact:

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References

2. ibid, p.527.