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

Short Digest of Bill

Purpose

To provide that sales tax will be payable by the person who pays royalties where they have been excluded from the taxable sale value of goods, and for the assessment, collection and administration of the tax.

Background

This Bill is one of a package of Bills dealing with sales tax avoidance. Refer also to Bills Digest Nos. 85/74, 85/75 and 85/76.

Under section 18 of Sales Tax Assessment Act (No. 1) 1930 sales tax is levied on the wholesale value of goods which reflects all costs associated with the production, wholesale distribution and sale of goods. Where the goods are sold subject to the payment of a royalty, the value of the royalty is then included in the taxable sale value (subsection 3(3)). However, not all royalty payments are caught by this sub-section. In the High Court case, RCA Ltd v Federal Commissioner of Taxation (1977) 137 CLR 583, RCA Ltd entered into an agreement with Reader's Digest Association Pty Ltd, to manufacture records and cassette tapes which would be sold by Reader's Digest who paid royalties to the holders of copyrights. RCA Ltd did not receive an amount representing the value of royalties. The Court held that the payments made by Reader's Digest did not form part of the taxable sale value as it was not a manufacturer nor a wholesale merchant and, therefore, was not liable to pay sales tax.

Sales tax is also avoided through other indirect marketing arrangements such as agency and shop-floor agreements. For information on these arrangements, refer to the digest for the Sales Tax Laws Amendment Bill 1985 (Digest No. 85/71).

On two occasions, namely 20 August 1981 and 6 January 1982, the previous Government announced that sales
tax legislation would be amended to overcome tax avoidance through indirect marketing arrangements. In March 1983, the current Government announced that it would proceed with amending sales tax legislation. Royalties paid by retailers under agency and floor-plan arrangements will be subject to tax under measures contained in the Sales Tax Laws Amendment Bill 1985. That Bill, by clause 5, will replace sub-section 3(3) with a new section 3A to clarify the application of the existing sales tax law to royalty payments (see Digest No. 85/71).

Main Provisions

This Bill provides for the additional situation where the person who pays royalties is not liable for sales tax under current law.

The Bill will come into operation on 9 May 1985.

The definition of "goods" will be extended to include both goods and commodities that have gone into use or consumption into Australia (sub-clause 3(1)).

Sales tax, imposed by Sales Tax Bills (No. 10A), (No. 10B) and (No. 10C) 1985, will be payable on the sale value of goods (clause 4) namely, the value of the royalty (clause 5). The person who pays royalties on goods which are subject to sales tax, is liable to pay sales tax on the value of the royalties (clause 6).

Part III of the Bill deals with sales tax returns, while Part IV contains provisions relating to the collection and recovery of tax. Taxpayers affected by this Bill will be required to be registered with the Commissioner and to pay sales tax on royalty payments under the same rules that currently apply to other registered sales taxpayers.

Part V deals with the application of certain machinery provisions of Sales Tax Assessment Act (No. 1) 1930 to this Bill.

For detailed information on the provisions of the Bill, refer to the Explanatory Memorandum.

For further information, if required, contact:

27 May 1985
Economics and Commerce Group
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