


STNS 2 - SALES TAX : SCHEME OF THE SALES TAX LEGISLATION

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TAXATION RULING NO. ST NS2

SALES TAX : SCHEME OF THE SALES TAX LEGISLATION

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SUBJECT REFS:

Scheme of Sales Tax Legislation;
Sales Tax Legislation; Liability to
Sales Tax; Taxpayers; Registration;
Quotation; Aids to Manufacture;
Raw Materials; Sale Value;
Classification; Returns and
Payments; Penalties; Disputes;
Refunds.

LEGISLATIVE REFS:

Sales Tax Acts (Nos 1-9) 1930, Sales
Tax Acts (Nos 10A-11B) 1985, Sales
Tax Assessment Acts (Nos 1-9) 1930,
Sales Tax Assessment Acts (Nos 10-
11) 1985, Sales Tax Regulations,
Sales Tax (Exemptions and
Classifications) Act 1935, Sales Tax
(Exemptions and Classifications)
Regulations, Sales Tax Procedure
Act 1934-1973, Sales Tax Procedure
Regulations, Crimes (Taxation
Offences) Act 1980, Crimes Act 1914,
Taxation (Interest on Overpayments)
Act 1983, Taxation Administration
Act 1953, Taxation Administration
Regulations. Administrative
Decisions (Judicial Review) Act
1977, Ombudsman Act 1976, Freedom
of Information Act 1982.

OTHER RULINGS ON TOPIC: ST 2273; ST 2442
(See Appendix B for rulings withdrawn)

PREAMBLE

1.1 This ruling is designed to be an introductory guide to the main features of the sales tax legislation. It is designed to assist persons who are required to register for sales tax to understand the basic nature of the tax and their sales tax liabilities and obligations. It is not, however, intended to be an exhaustive statement of the law and subjects which are dealt with in detail in other Rulings are only briefly discussed in this Ruling.

INTRODUCTION

2.1 Sales tax is essentially a tax on the wholesale value of goods. It is a federal tax administered and collected by the Australian Taxation Office. It is imposed on goods which are manufactured in, or imported into Australia for use or consumption in Australia. All such goods attract sales tax unless specifically exempted from the tax by the legislation.

2.2 The basic scheme of the sales tax legislation is to impose a tax on one of the transactions or dealings which occur in respect of goods after they are manufactured in or imported into Australia and before they reach the consumer. Generally, the point at which the tax is intended to fall is the last wholesale sale of the goods - that is, the sale to the retailer by the manufacturer or wholesale merchant. It is not intended to be levied on successive sales but is intended to fall only once in the course of dealing with any particular goods. Note, however, that it is possible for goods to reach the taxing point and then be dealt with in a manner which leads to sales tax being imposed again. There are provisions to ensure that sales tax is only paid once in such circumstances.

2.3 The tax is payable by manufacturers, wholesale merchants and importers. In certain circumstances, it is also payable by other classes of persons. Although these persons remit the tax to the Australian Taxation Office and are the actual taxpayers, sales tax is designed to be passed on to the consumer or end-user. When a retailer purchases taxable goods from a taxpayer, he does so at a price which includes sales tax. The retailer in turn can pass the tax on to the end-user or consumer of the goods in the retailer's selling price. The amount of tax to be paid by the taxpayer usually is calculated as a percentage of the final wholesale value of the goods, regardless of whether a wholesale sale occurs or not.

2.4 The system of registration and quotation of certificates is important in implementing the scheme of the legislation. Generally speaking, manufacturers and wholesale merchants are required to be registered. Once they become registered persons, they are issued with a numbered certificate. The Sales Tax Regulations list the circumstances in which these certificates are to be quoted.

2.5 A sale of goods in respect of which a purchaser quotes a certificate is normally free of tax. On the other hand, a sale of taxable goods to an unregistered person such as a retailer or to a registered person who does not quote his certificate will be subject to tax. This system of quotation operates to defer payment of tax until the appropriate transaction occurs and ensures thereby that the sale value on which the amount of tax is based takes into account the appropriate wholesale value.

2.6 The imposition of sales tax is not, of course, restricted to goods sold by wholesale. If this were the case, goods could be dealt with in such a way they would avoid the net of sales tax in their passage to retail distribution. The legislation therefore imposes sales tax in a number of circumstances other than when goods are sold by wholesale.

2.7 Most of the matters raised in this introduction are discussed more fully later in the Ruling. An index can be found at Appendix A.

SALES TAX LEGISLATION

3.1 As Dixon J. noted in *D.F.C. of T. (S.A.) v. Ellis & Clark Ltd* (1934) 52 CLR 85, because of concern about the possible effect of section 55 of the Constitution on the validity of sales tax legislation if it were enacted in one Assessment Act and one taxing Act, it was passed in the form of separate machinery Acts and taxing Acts for each of the classes of goods on which the tax was to be imposed. Dixon J. went on to say at page 89 that the Acts:-

"constitute, however, a single legislative scheme to the complete operation of which all are necessary, and they should be construed together. Moreover, the legislation depends in a remarkable degree upon the regulations Without the regulations, not only is it unworkable, but the expression of legislative policy is so inadequate as almost to be unintelligible."

3.2 In a broad sense the legislation can be divided into four key categories:-

- (1) Liability;
- (2) Classification;
- (3) Administration; and
- (4) Enforcement.

Liability

3.3 There are fourteen "Sales Tax Acts" (Rating Acts) that impose the tax and specify the rates at which the tax is payable. These are Sales Tax Acts (Nos. 1-9, 10A, 10B, 10C, 11A and 11B). There are also eleven Sales Tax Assessment Acts which provide the machinery for the assessment, collection and administration of the tax imposed by the related Sales Tax Acts.

3.4 The relationship between the Sales Tax Acts and the Sales Tax Assessment Acts, together with a brief explanation of the circumstances in which each Act applies, is shown below:-

Assessment Acts and Sales Tax Acts	Subjects of Taxation
Sales Tax Assessment Act (No. 1) 1930. ("Assessment Act (No. 1)") Sales Tax Act (No. 1) 1930. ("Act (No. 1)")	Goods manufactured in Australia and sold by the manufacturer or treated by the manufacturer as stock for sale by retail or applied to the manufacturer's own use.
Sales Tax Assessment Act (No. 2) 1930. ("Assessment Act (No. 2)") Sales Tax Act (No. 2) 1930. ("Act (No. 2)")	Goods manufactured in Australia and sold by a purchaser from the manufacturer.

<p>Sales Tax Assessment Act (No. 3) 1930. ("Assessment Act (No. 3)") Sales Tax Act (No. 3) 1930. ("Act (No. 3)")</p>	<p>Goods manufactured in Australia and sold by a person not being either the manufacturer or a purchaser from the manufacturer.</p>
<p>Sales Tax Assessment Act (No. 4) 1930. ("Assessment Act (No. 4)") Sales Tax Act (No. 4) 1930. ("Act (No. 4)")</p>	<p>Goods manufactured in Australia and applied to own use by a purchaser who quoted a sales tax certificate number when purchasing the goods.</p>
<p>Sales Tax Assessment Act (No. 5) 1930. ("Assessment Act (No. 5)") Sales Tax Act (No. 5) 1930. ("Act (No. 5)")</p>	<p>Imported goods entered for home consumption in Australia.</p>
<p>Sales Tax Assessment Act (No. 6) 1930. ("Assessment Act (No. 6)") Sales Tax Act (No. 6) 1930. ("Act (No. 6)")</p>	<p>Goods imported into Australia and sold by the importer or applied to own use by the importer.</p>
<p>Sales Tax Assessment Act (No. 7) 1930. ("Assessment Act (No. 7)") Sales Tax Act (No. 7) 1930. ("Act (No. 7)")</p>	<p>Goods imported into Australia and sold by a person other than the importer.</p>
<p>Sales Tax Assessment Act (No. 8) 1930. ("Assessment Act (No. 8)") Sales Tax Act (No. 8) 1930. ("Act (No. 8)")</p>	<p>Goods imported into Australia and applied to own use by a purchaser who quoted a sales tax certificate number when purchasing the goods.</p>
<p>Sales Tax Assessment Act (No. 9) 1930. ("Assessment Act (No. 9)") Sales Tax Act (No. 9) 1930. ("Act (No. 9)")</p>	<p>Goods in Australia dealt with by lease.</p>
<p>Sales Tax Assessment Act (No. 10) 1985. ("Assessment Act (No. 10)") Sales Tax Act (No. 10A) 1985. ("Act (No. 10A)") Sales Tax Act (No. 10B) 1985. ("Act (No. 10B)") Sales Tax Act (No. 10C) 1985. ("Act (No. 10C)")</p>	<p>Certain royalties payable in respect of goods.</p>
<p>Sales Tax Assessment Act (No. 11) 1985. ("Assessment Act (No. 11)") Sales Tax Act (No. 11A) 1985. ("Act (No. 11A)") Sales Tax Act (No. 11B) 1985. ("Act (No. 11B)")</p>	<p>Australian manufactured airport shop goods purchased in excess of tax-free limits by passengers or crew arriving in Australia on international flights, sold to persons other than those passengers or crew or applied to own</p>

use by the proprietor of
an inwards duty free
shop.

Assessment Act (No. 1) contains in full all the necessary provisions to provide for the imposition and collection of tax. Section 12 of each of Assessment Acts (Nos. 2-10) and section 16 of Assessment Act (No. 11) incorporate specified provisions of Assessment Act (No. 1) into those Acts.

Classification

3.5 This category consists of the Sales Tax (Exemptions and Classifications) Act 1935 ("S.T.(E&C) Act") and the Sales Tax (Exemptions and Classifications) Regulations ("S.T.(E&C) Regulations").

3.6 The S.T.(E&C) Act contains provisions for the exemption of certain goods, the classification of other specified goods and also provides the link between the Rating Acts (which impose sales tax at the applicable rates) and the schedules which specify the goods covered. There are currently six schedules to the Act. The First Schedule is divided into fifteen separate divisions with headings and lists classes of goods which are exempt from sales tax and specifies circumstances in which particular exemptions apply. The other Schedules specify goods which are subject to sales tax at rates of tax specified in a Sales Tax Act. Goods not listed in any of the Schedules are taxable at what is commonly termed the "general rate", which is currently 20%.

3.7 The S.T.(E&C) Regulations relate to the S.T.(E&C) Act and set out the conditions governing certain exemptions relating to motor vehicles or goods for use by members of overseas military forces.

Administration

3.8 This category consists of the Sales Tax Procedure Act 1934-1973 ("Procedure Act"), Sales Tax Procedure Regulations ("Procedure Regulations"), Sales Tax Regulations ("Regulations") and the Taxation (Interest on Overpayments) Act 1983.

3.9 The most important provisions of the Procedure Act relate to refunds and remissions of tax, collection and recovery of tax and taxation officers' right of access to premises and records.

3.10 The Procedure Regulations relate to the Procedure Act and amongst other things, deal with the furnishing of sales tax returns and the recovery of sales tax and penalties.

3.11 The Regulations relate to the Sales Tax Acts and Assessment Acts and indicate the procedures to be adopted to satisfy certain requirements of the sales tax legislation e.g. when and in what form a taxpayer should quote a certificate of registration.

3.12 The Taxation (Interest on Overpayments) Act 1983 provides for the payment of interest on amounts of tax refunded to a taxpayer by virtue of a successful objection, appeal or review arising from the issue of an assessment.

Enforcement

3.13 This category contains the Taxation Administration Act 1953 and the Taxation Administration Regulations, the Crimes (Taxation Offences) Act 1980 and the Crimes Act 1914.

3.14 The Taxation Administration Act 1953 contains provisions relating to offences against the various taxation laws including the sales tax law.

3.15 The Crimes (Taxation Offences) Act 1980 contains provisions relating to criminal offences against various taxation laws including the sales tax law.

3.16 The Crimes Act 1914 deals with offences against the Commonwealth and includes matters such as defrauding the Commonwealth and preventing or defeating the execution or enforcement of a law of the Commonwealth.

Customs Legislation

3.17 Customs legislation plays an important part in areas of sales tax legislation dealing with imported goods. For example, the concept of entry for home consumption and a number of definitions are incorporated into Assessment Act (No. 5) from the Customs Act 1901. The Comptroller-General of Customs and the Collectors of Customs have functions relating to the administration and collection of sales tax under both Assessment Acts (Nos. 5 and 11). Assessment Act (No. 11) relies on the Customs Act for definitions of "inwards duty free shop", "relevant traveller" and "proprietor". In addition, sales tax exemption for certain imported goods is tied to and dependent upon the classification for customs duty purposes under the customs tariff: see for example item 145, First Schedule to the S.T.(E&C) Act.

WHEN SALES TAX IS PAYABLE

4.1 As previously stated, in most cases sales tax will be levied on the last wholesale sale of goods, that is, upon the sale to the retailer by the last wholesale merchant or by the manufacturer. However, liability may also arise when taxable goods which have not already borne tax are:-

- (i) sold by retail (including goods used in repairs);
- (ii) treated as stock for sale by retail by a manufacturer. Liability arises at the time that the goods are designated as stock for sale by retail, not when the retail sale actually occurs;
- (iii) applied by a registered person to his own use. Where goods are manufactured or acquired free of sales tax in the course of carrying on a business by a registered person and used by the registered person himself, whether for the purpose of the business or for any other purpose, he is liable for sales tax on those goods;
- (iv) leased by a manufacturer or wholesale merchant to a

lessee who is unregistered or does not quote his certificate. This includes hire purchase transactions;

- (v) sold by retail by a person (who is not the manufacturer) under an indirect marketing arrangement;
- (vi) imported by a retailer for retail sale; or
- (vii) imported by a consumer for his own use.

Note that if taxable goods are imported for sale by wholesale, they will not bear tax until the last wholesale sale. With regard to royalties that relate to taxable goods which are likely to become subject to sales tax, sales tax may be imposed where a royalty is paid independently of a sale of the goods in respect of which the royalty is paid.

WHO PAYS SALES TAX?

5.1 Generally, manufacturers, wholesale merchants and importers of taxable goods are liable to pay sales tax. However, in certain circumstances other persons may also be liable to pay sales tax: see paragraphs 5.23 - 5.29.

Manufacturer

5.2 A manufacturer of taxable goods is liable to pay sales tax when he sells or leases the goods to an unregistered person or to a registered person who does not quote his certificate, when he treats goods as stock for sale by retail, or when he applies goods to his own use.

5.3 The term "Manufacturer" is defined in subsection 3(1) of Assessment Act (No. 1). For sales tax purposes, a manufacturer is a person who engages in the manufacture of goods, whether exclusively or not, and includes a printer, publisher, lithographer or engraver, and a person (not being an employee) who manufactures goods, whether or not the materials out of which the goods are manufactured are owned by him.

5.4 The definition however further provides that, for sales tax purposes, the person who actually does the manufacturing is not the manufacturer if that person makes up the goods wholly or in part out of materials supplied by another person, and that other person requires the manufactured goods for sale. In this case, the person who actually manufactures the goods is deemed not to be the manufacturer and the person who supplies the materials is deemed to be the manufacturer of the goods, whether the materials are his own property or have been delivered to him by an end-user for the purpose of having goods manufactured therefrom. In the latter case, the person who supplied the materials to the maker-up is deemed to sell the manufactured goods to the end-user.

5.5 Where the person who actually manufactures goods is deemed not to be the manufacturer of those goods, he is deemed to be a wholesale merchant for sales tax purposes (see paragraph 5.15 for the definition of "Wholesale Merchant"). Registration as a wholesale merchant makes available to such a person a ready means of obtaining free of sales tax, by quotation of

certificate, goods for use by him as raw materials, or as "aids to manufacture" in the course of processing materials for the person who is deemed to be the manufacturer of the goods so produced.

5.6 The definition of "manufacturer" in subsection 3(1) of Assessment Act (No. 1) extends to a person who manufactures or produces goods even though his business is not such that it would ordinarily be described as that of a "manufacturer": F.C. of T. v. Totalisator Administration Board of Queensland 90 ATC 5041 (QTAB) - Full High Court 22 November 1990.

5.7 In QTAB the issue was whether the TAB of Queensland "the TAB" was liable for sales tax upon various items printed by it for use in connection with the gambling business it conducted or in association with betting shops throughout Queensland. The TAB had a printery in which the items it used were printed. It was beyond dispute that the items were printed by the TAB in the course of carrying on a business and were applied by it to its own use. The primary issue was whether the items were goods manufactured in Australia by a manufacturer.

5.8 The High Court rejected the TAB's submission that a person is a manufacturer only if his business is such as would ordinarily be described as that of a "manufacturer". The High Court held that the definition of "manufacturer" in subsection 3(1) of Assessment Act (No. 1) extends to a person who manufactures or produces goods even though his business is not such that it would ordinarily be described as that of a "manufacturer". Accordingly, the High Court held that the TAB was a manufacturer and was liable for sales tax on the items printed by it and applied to its own use in its gambling business.

5.9 Subsection 3(1A) of Assessment Act (No. 1), read with the definition of "Manufacturer" in subsection 3(1) of that Act, expands the definition of "Manufacturer" to also include, amongst other things, a person who makes available visual images, sounds or computer programs to another person for the purpose of copying or reproducing those visual images, sounds or computer programs and embodying them in goods supplied to the first-mentioned person for sale by him.

5.10 In addition, a person who constructs certain in-ground swimming pools on site is a manufacturer for sales tax purposes.

Manufacture

5.11 Because a manufacturer is a person who engages in the manufacture of goods, it is important to consider the meaning of the term "Manufacture" in the sales tax legislation. "Manufacture" includes, but is not limited to, the ordinary usage meaning.

5.12 Ordinarily "Manufacture" means the making of articles or materials by physical labour or mechanical power - for example, the making of furniture, boats or caravans. In addition, the following activities are, by definition, manufacture:-

- (i) production;

- (ii) the combination of parts or ingredients which result in an article or substance that is commercially distinct from those parts or ingredients, except where the combination is of a kind that is customarily undertaken by persons who use the articles or substances formed;
- (iii) any treatment applied to foodstuffs as a process of preparing foodstuffs for human consumption;
- (iv) the processing or treatment of exposed photographic or cinematographic film to produce a negative, transparency or film strip;
- (v) the copying or reproduction of a computer program so as to embody that program in goods;
- (vi) the copying or reproduction of visual images or sounds so as to embody those visual images or sounds in goods; and
- (vii) the construction of certain swimming pools on site.

However, manufacture is not involved where goods are brought into existence incidentally to the provision of skilled services (e.g. transcripts produced by court reporters). Manufacture is also not involved where a process involves no more than the repair of a product, the original identity of which is maintained throughout the process; nor where the process is no more than the mere assembly of goods from a kit containing complete fully manufactured component parts of the goods and the process of assembly is such that would customarily be undertaken by the users of the kit when assembled.

5.13 A definition of the term "Manufacture" as it relates to the sales tax legislation can be found at subsection 3(1) of Assessment Act (No. 1). In addition, subsection 3(1C) of that Act deems the construction of certain swimming pools in situ to be manufacture.

Wholesale merchant

5.14 A wholesale merchant is liable to pay sales tax if he sells or leases taxable goods to an unregistered person or to a registered person who does not quote his certificate in respect of the purchase. He will also be liable for tax if he applies certain goods to his own use.

5.15 "Wholesale merchant" is defined in subsection 3(1) of Assessment Act (No. 1) to mean either a person who engages, whether exclusively or not, in the sale of goods by wholesale or a person who sells goods under an indirect marketing arrangement. The former term includes:-

- (i) a trustee for a manufacturer or a wholesale merchant who sells goods in the course of carrying on or in the course of winding-up or realizing the business of the manufacturer or wholesale merchant (see paragraph 5.18);
- (ii) a person who makes up goods for another person, for

sale by that other and is, under the definition of "Manufacturer", deemed not to be the manufacturer of the goods; and

- (iii) a person who applies any process or treatment to goods which are:-
 - (a) to be incorporated into goods to be manufactured by a manufacturer;
 - (b) supplied to the person by the manufacturer of those goods to have them brought into the form or condition in which they are to be marketed or used or further processed or treated by the manufacturer; or
 - (c) to be exported from Australia and which are to be incorporated into goods to be manufactured outside Australia.

5.16 In addition, Assessment Act (No. 10) expands the definition of wholesale merchant to include a person who pays a royalty and who is deemed to have sold goods under that Act.

Sale of goods by wholesale

5.17 Apart from persons who sell goods under an indirect marketing arrangement, a wholesale merchant is a person who engages in the sale of goods by wholesale. The expression "sale of goods by wholesale" is not exhaustively defined in the sales tax legislation but does include:-

- (i) the sale of goods to a person who buys the goods for resale or for supply to another person under a contract other than a contract specifically for the sale of goods;
- (ii) the sale of materials to a manufacturer who incorporates those materials into goods which are manufactured; and
- (iii) the sale of goods or materials to a repairer who incorporates them into the goods or materials which are being repaired.

Under the law a number of transactions are deemed not to be sales of goods by wholesale. They are:-

- (i) sales by one retailer to another retailer or manufacturer to accommodate a temporary shortage of stock;
- (ii) cash order sales by retailers;
- (iii) sales of building materials except sales to persons who buy those building materials for the purpose of resale;
- (iv) sales by retailers of materials to people principally engaged in the manufacture of clothing to the order of individual customers;

- (v) the supply of goods other than under a contract specifically for the sale of goods;
- (vi) the sale of school requisites or sporting equipment by a retailer to school authorities or school teachers for resale to students; and
- (vii) the sale of sporting equipment by a retailer to sporting clubs for resale to members of those clubs.

These transactions are retail sales of goods.

Trustees

5.18 The definition of "wholesale merchant" in subsection 3(1) of Assessment Act (No 1) includes certain trustees. The relevant part of that definition states:-

"...a trustee in whom the ownership of the business of any wholesale merchant or manufacturer becomes vested, or who becomes entitled to the possession, management or control of that business or of the goods of that business, and who sells those goods, whether in the course of carrying on or in the course of winding-up or realizing that business;..." (Emphasis added).

5.19 "Trustee" is defined in subsection 3(1) of Assessment Act (No. 1) as follows:-

"Trustee" in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law, includes -

- (a) an executor or administrator, guardian, committee, receiver or liquidator; and
- (b) every person having or taking upon himself the administration or control of goods affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the goods of a person under any legal or other disability;"

5.20 A trustee of the type referred to in paragraph 5.18 is a person required to be registered, whether or not the sales made by him are sales by wholesale. Sales of goods by a trustee are subject to the same sales tax liabilities as those which would have existed if the sales made by the trustee had been made by the manufacturer or wholesale merchant of whose business or goods the trustee has the possession, management or control.

5.21 Under section 69 of Assessment Act (No. 1) a trustee is answerable as the taxpayer would be for the doing of all things required by the sales tax legislation in respect of any transaction, act or operation which may take place in relation to goods subject to sales tax.

Indirect Marketing

5.22 A person who sells goods under an indirect marketing

arrangement is deemed to be a wholesale merchant. An indirect marketing arrangement exists where a person who is not the manufacturer of the goods arranges for the sale of goods either:-

- (i) through another person, who is not an employee of the vendor, acting on behalf of the vendor, whether or not in the vendor's name or in any other name; or
- (ii) from premises that are principally used for the sale of goods by retail by another person and are held out to be the premises of the other person.

Other taxpayers

5.23 The other categories of persons who may become liable to pay sales tax and the circumstances in which this will happen are set out below.

Agents

5.24 The term "Agent" is defined in subsection 3(1) of Assessment Act (No. 1) as follows:-

"Agent" includes every person who in Australia, for or on behalf of any person out of Australia (in this section called the "principal"), holds or has the management or control of the business of his principal, and every person declared by the Commissioner to be an agent or the sole agent for any person for the purposes of this Act;"

5.25 An agent for an ex-Australian principal is required to register under the Sales Tax Assessment Acts only in those cases where the principal, acting through his agent, is engaged in Australia in the manufacture of goods or in the sale of goods by wholesale. Only one registration is necessary in any case, even if the agent is also required to register in respect of his own activities. He will be responsible for the payment of any sales tax that may become owing in the conduct of the business of the principal.

Auctioneers

5.26 An auctioneer who, at public auctions, sells goods on behalf of manufacturers or wholesale merchants is not regarded as a wholesale merchant because of that activity alone. The auctioneer is the vendor's agent and not the actual vendor of the goods. However, the auctioneer would be a wholesale merchant if he made wholesale sales of goods which are his own property.

5.27 In certain circumstances an auctioneer who is not a manufacturer or wholesale merchant may be liable to lodge sales tax returns. When goods, upon the sale value of which tax is payable, are sold by the auctioneer by auction on behalf of a registered person and that person has not notified the auctioneer and the Commissioner in writing of the registered person's intention to furnish a return and pay the tax, the auctioneer is required to lodge a return and pay tax, within seven days of the date of the sale (see subsection 69(2) of Assessment Act (No. 1) and regulation 8 of the Procedure Regulations).

Retailers

5.28 Usually a retailer will satisfy his sales tax liability by payment of the amount of tax stated on the invoice to be payable to the supplier of goods as part of the purchase price of those goods or by payment of the tax to the Collector of Customs at the time of entry for home consumption of taxable goods. However, a retailer may be liable for tax if he is also a manufacturer or wholesale merchant or is deemed to be a wholesale merchant because he sells goods through an indirect marketing arrangement or pays royalties which are not included in the taxable sale value of goods.

Importers

5.29 A person whose activities are confined to the importation of goods for sale by retail or for his own use is required to pay sales tax to the Australian Customs Service on any taxable goods when those goods are entered for home consumption. A registered importer who imports goods for sale by wholesale will be liable for sales tax if he sells the goods to an unregistered person or to a registered person who does not quote his certificate in respect of the purchase.

SALES

6.1 The sales tax legislation does not define "sale" or "sale of goods". Normally, a sale involves the transfer of ownership of goods from one person to another in return for a money consideration. The sale does not take place until the conditions are fulfilled subject to which title is transferred from the vendor to the purchaser. Also a sale is deemed to have occurred if property in goods passes under a contract not being a contract for the sale of goods under which a person supplies goods and receives valuable consideration (see subsection 3(4) of Assessment Act (No. 1)).

GOODS

7.1 Subsection 3(1) of Assessment Act (No. 1) defines "goods" as including commodities but excluding certain goods. The excluded goods are those that have gone into use or consumption in Australia or goods which are sold as second-hand goods and are manufactured exclusively or principally from goods which have, whether alone or as parts of other goods, gone into use or consumption and retained their character as goods or parts of goods which have gone into use or consumption in Australia.

LIABILITIES AND OBLIGATIONS

8.1 Manufacturers and wholesale merchants have a number of obligations under the sales tax law. The main obligations are:-

- (i) to apply for sales tax registration within the time prescribed in the sales tax legislation. This is generally within 28 days of a person becoming a manufacturer or a wholesale merchant (section 11 of Assessment Act (No. 1));
- (ii) to lodge sales tax returns within 21 days after the

close of each month in which they have sold goods, treated goods manufactured by them as stock for sale by retail, applied goods to their own use or have leased goods (section 21 of Assessment Act (No. 1) and where relevant its counterpart in other Assessment Acts);

(iii) to remit the correct amount of tax due and payable within 21 days after the close of the month to which that tax relates (section 24 of Assessment Act (No. 1) and where relevant its counterpart in other Assessment Acts); and

(iv) to keep proper books or accounts (see section 70E of Assessment Act (No. 1) and subsection 11(6) of Assessment Act (No. 1)).

Note, returns will not be required to be furnished by manufacturers and wholesale merchants who are not required to effect registration (because the Commissioner has dispensed, in their case, with their requirement to register). Basically this dispensation relates to persons whose manufacturing and/or wholesale activities are confined to exempt goods. Returns may also be dispensed with, but entirely at the Commissioner's discretion, where it is clear that the lodgment of monthly returns by a registered person will not result in the payment of sales tax by that person. The approval not to lodge returns is given on the understanding that in the event that sales, or other transactions, are made in taxable circumstances, a return will be lodged.

REGISTRATION AND QUOTATION

Who must register

9.1 Manufacturers and wholesale merchants are required to be registered for sales tax with the Australian Taxation Office (but see paragraphs 9.8 and 9.10 for circumstances in which registration will be dispensed with).

9.2 A person who imports goods for sale by wholesale is required to be registered as a wholesale merchant. A person who only imports goods for sale by retail or for his own use does not have to be registered unless he sells goods under an indirect marketing arrangement or pays royalties.

9.3 A retailer is not required to be registered unless he is also a manufacturer or is deemed to be a wholesale merchant because he sells goods under an indirect marketing arrangement or pays a royalty which is not included in the taxable sale value of goods. A person who pays a royalty in such circumstances may be required to register as a wholesale merchant. Also, as previously noted, in some circumstances agents and trustees may be required to be registered.

9.4 Liability for sales tax is imposed on registered persons and persons required to be registered. A person who is required to be registered cannot escape liability by failing to register when and as required.

How to register

9.5 A person who is required to be registered must apply to the Commissioner for sales tax registration. The procedural requirements for lodging an application for sales tax registration are set out in subsection 11(3) of Assessment Act (No. 1). An application for sales tax registration must:-

- (a) be in a form provided by the Commissioner;
- (b) unless the Commissioner otherwise directs, be lodged with a Deputy Commissioner exercising powers or performing functions in relation to:-
 - (i) that part of a State in which the person has his principal place of business as a manufacturer or wholesale merchant; and
 - (ii) each other State in which he carries on business as a manufacturer or wholesale merchant;
- (c) be lodged within the time prescribed in the sales tax legislation. This is generally within twenty eight days of the person becoming a manufacturer or a wholesale merchant; and
- (d) contain such particulars as the form requires and further particulars (if any) that the Commissioner requires.

9.6 Where the Commissioner is satisfied that a person who has made an application as prescribed is a manufacturer or a wholesale merchant, the Commissioner must register that person and issue that person with a written numbered certificate, except in certain exceptional circumstances. One such circumstance is where the application is false or misleading in a material particular, or omits any matter or thing without which the application is misleading in a material particular. Where the Commissioner refuses to register a person, that person does not thereby cease to be required to be registered (section 11 of Assessment Act (No. 1)). See also paragraphs 9.8 and 9.10 for circumstances where registration is not required.

Conditions of Registration

9.7 A certificate of registration is issued subject to a number of conditions. The holder is required to:-

- (i) keep proper books or accounts (subparagraph 11(6)(a)(i) of Assessment Act (No. 1));
- (ii) render true statements of all sales made by him as and when required by the Commissioner (subparagraph 11(6)(a)(ii) of Assessment Act (No. 1));
- (iii) duly pay all sales tax required to be paid by him (subparagraph 11(6)(a)(iii) Assessment Act (No. 1)); and
- (iv) furnish true, complete and accurate returns and statements as and when required by the sales tax legislation (Sales Tax Regulation 8).

Registration dispensed with

9.8 Where a person is a manufacturer or a wholesale merchant and engages only in transactions, acts or operations in respect of which sales tax is not payable by the person (such as where a manufacturer or wholesale merchant sells exclusively unconditionally exempt goods or where a person's goods are covered by the small manufacturer provisions) the Commissioner may, in the Commissioner's discretion, dispense with the registration of the person (subsection 11(3C) of Assessment Act (No. 1)).

9.9 Where the Commissioner dispenses with the registration of such a person but that person subsequently engages in transactions, acts, or operations in respect of which sales tax is payable by the person, the person is from that time, required to be registered (subsection 11(3D) of Assessment Act (No. 1)).

Small manufacturer provisions

9.10 Persons who manufacture goods which qualify for exemption under either items 100 or 103 of the First Schedule of the S.T.(E&C) Act may not be required to be registered by the Commissioner although they should apply in the first instance.

9.11 Item 100 of the First Schedule to the S.T.(E&C) Act provides exemption from sales tax for:-

"Goods manufactured and sold by a person if the Commissioner is of the opinion that the average annual value of that person's sales of all goods is not, or would not be, in excess of \$50,000"

The \$50,000 referred to includes all sales of any goods that are sold by the person, whether or not he manufactured them. The \$50,000 is based on an average of the last five years sales and not the current sales level.

9.12 Similarly item 103 provides sales tax exemption for goods manufactured by a person who satisfies the Commissioner that the amount of sales tax which, but for item 103, would be payable by him is not, or would not be, in excess of \$1,000 per annum.

9.13 The effect of these items is that otherwise taxable goods may be exempted. These items are known as the "small manufacturer provisions". These items do not apply to persons who construct swimming pools in situ (item 103A, First Schedule to the S.T.(E&C) Act).

9.14 Where there is a change in the business activities of a person whose goods are covered by either items 100 or 103 so that the limits set out in those items are exceeded, that person should contact the Australian Taxation Office for further advice.

Quotation of Certificate

9.15 To avoid double taxation and to defer the liability for sales tax until goods reach the point at which they are subject to tax, a registered person is required, in certain prescribed circumstances, to quote his certificate of registration when

purchasing, importing or leasing certain goods. He has no discretion as to whether to quote his certificate or not. As previously stated, no tax is paid on a sale made under quotation. However, in exceptional circumstances a person shall be deemed not to have quoted his certificate (subsection 3(3) of Assessment Act (No. 1) - see paragraph 9.34).

9.16 Section 12 of Assessment Act (No. 1) requires a registered person to quote his certificate of registration in such manner and under such circumstances as are prescribed. The manner and circumstances in which a certificate is required to be quoted are set out in the Regulations. Regulations 12 and 14 set out the circumstances in which a registered person is required to quote his certificate, whereas regulation 13 sets out circumstances in which a registered person is not permitted to quote his certificate.

9.17 Subregulations 12(2), (3), (4), (5) and (6) relate to circumstances in which a registered person is required to quote his certificate in respect of the purchase or entry for home consumption of containers. These subregulations are not examined in this Ruling.

9.18 Broadly (but subject to regulation 13), subregulation 12(1) requires a registered person to quote his certificate:-

- (a) in respect of the purchase or entry for home consumption of goods for sale by him by wholesale;
- (b) if he is a manufacturer - in respect of the purchase or entry for home consumption of raw materials for goods to be manufactured by him for sale, lease or application to his own use;
- (c) in respect of the purchase, lease or entry for home consumption by the registered person of goods for use by him as "aids to manufacture" or "auxiliaries to aids to manufacture" as defined in subregulation 4(1) of the Regulations;
- (d) in respect of the purchase or entry for home consumption by him of:-
 - (i) raw materials for goods to be manufactured and used by him as "aids to manufacture" or "auxiliaries to aids to manufacture" as defined in subregulation 4(1) of the Regulations; and
 - (ii) goods for sale or lease to persons for use by them as "aids to manufacture" or "auxiliaries to aids to manufacture" as defined in subregulation 4(1) of the Regulations;
- (e) if he is a wholesale merchant, or a manufacturer, who sells goods principally by wholesale - in respect of the purchase or importation of goods for sale by him, not being goods on which he is required to quote by virtue of paragraph (a) (above);
- (f) if he is a wholesale merchant, or a manufacturer, who sells goods principally by retail - in respect of the

purchase or importation of all goods intended for resale by him by wholesale;

- (g) in respect of materials or requisites purchased or imported for use in connection with the manufacture by him of taxable goods for sale, if the Commissioner is satisfied that the property in the materials or requisites will pass to the purchaser of the goods so manufactured and that their full cost will be included in the price charged by the registered person to that purchaser for a specific quantity of the goods so manufactured;
- (h) if the registered person is a wholesale merchant who makes-up, processes or treats goods for or on behalf of manufacturers - in respect of the purchase or importation of goods to be used in, wrought into or attached to the goods that he so makes, processes or treats; and
- (i) if, by virtue of the definition of "manufacturer", he is deemed to be the manufacturer of goods made for him by another person in respect of the deemed sale to him of those goods by the maker-up.

9.19 Regulation 13 qualifies regulation 12 by prohibiting certain classes of manufacturers who manufacture goods exempt from sales tax by virtue of items 76, 100 or 103 in the First Schedule to the S.T.(E&C) Act, from quoting their certificates when acquiring raw materials, "aids to manufacture" or "auxiliaries to aids to manufacture". Regulation 13 also prohibits certain manufacturers of biscuits or ice-cream type products from quoting their certificates when acquiring raw materials to be incorporated into the products.

9.20 Regulation 14 sets out additional circumstances where a certificate is required to be quoted.

Quotation of certificates by wholesale merchants

9.21 Wholesale merchants broadly fall into 3 categories, namely:-

- (a) those who sell exclusively by wholesale;
- (b) those who sell principally by wholesale (commonly referred to as "wholesaler/retailers"); and
- (c) those who sell principally by retail ("retailer/wholesalers").

Note, for the purposes of the regulations relating to quotation of certificates, the term "sale of goods by wholesale", in addition to referring to goods sold by wholesale, includes a reference to a sale of goods by retail under an indirect marketing arrangement. Accordingly, a person who sells goods under an indirect marketing arrangement may be categorised as a wholesale merchant who sells goods either exclusively or principally by wholesale or principally by retail depending on the extent of the sales made under indirect marketing arrangements.

Wholesale merchants who sell exclusively by wholesale

9.22 A wholesale merchant who sells exclusively by wholesale should quote his certificate in respect of the purchase of all goods or the entry for home consumption of all imported goods for sale by him.

Wholesaler/Retailer

9.23 A person who sells principally by wholesale is one whose total average yearly sales by wholesale is, or would be, in the opinion of the Commissioner, not less than 50 per cent of the total value of his average yearly sales, whether by wholesale or otherwise.

9.24 Paragraph 12(1)(e) of the Regulations requires a wholesaler/retailer to quote his certificate in respect of the purchase of goods, or the entry for home consumption of imported goods, for sale by him for the purposes of that business.

9.25 The combined effect of paragraphs 12(1)(a) and 12(1)(e) of the Regulations is to require a wholesaler/retailer to quote his sales tax certificate in respect of all goods purchased or imported by him for sale, whether by wholesale or specifically by retail. All goods are therefore held by a wholesaler/retailer in a tax free stock.

9.26 The circumstances outlined in paragraphs 9.23 - 9.25 above apply where there are two aspects of the one business and not where there are two separate businesses, one wholesale and one retail.

9.27 This issue was considered by the High Court in *Brayson Motors Pty Ltd v. Federal Commissioner of Taxation* 85 ATC 4125 ("Brayson"). Brayson was a retailer of motor vehicles. It also sold a different class of goods by wholesale, namely motor vehicle spare parts. In respect of the sale of goods by wholesale the company was required to be and was registered. The retail business was by far the greater proportion with wholesale sales of spare parts representing only a small proportion of gross turnover. Brayson was not required to nor did it quote its certificate for the motor vehicles sold only by retail. After taking into account all the particulars before it, the High Court was able to draw a clear distinction between Brayson's business as a wholesaler of motor vehicle spare parts and its business as a retailer of motor vehicles. Brayson therefore was required to be registered only for its activities in relation to the sale of motor vehicle spare parts: the sale of motor vehicles was a separate business activity which did not require the company to be registered for sales tax purposes.

9.28 Whether a person is carrying on separate business activities is a matter to be decided in the light of all the circumstances of each case. Goods which are sold solely by retail would need to be of a different class of goods to those sold by both wholesale and retail. It would need to be established that the particular goods were only ever sold by retail and were not associated in any way with wholesale activities. Hence, if certain goods are sold solely by retail and are a different class of goods to the other goods dealt

with, they can be acquired without quoting a sales tax certificate and can be acquired inclusive of sales tax.

Retailer/wholesaler

9.29 A manufacturer or wholesale merchant who sells goods principally by retail is one whose total average yearly sales by retail are, or would be, in the opinion of the Commissioner, more than fifty per cent of the total value of his average yearly sales, whether by retail or otherwise.

9.30 Paragraph 12(1)(a) of the Regulations requires a registered retailer/wholesaler to quote his sales tax certificate in respect of the purchase of goods, or the entry for home consumption of imported goods, by him specifically for sale by him by wholesale. However, a retailer/wholesaler is not authorised to quote his certificate in respect of goods placed in a common stock.

9.31 Where a retailer/wholesaler sells taxable goods from a common stock by wholesale to an unregistered person or to a registered person who has not quoted his certificate in respect of the purchases of those goods, the retailer/wholesaler is required to account for tax on those goods sold by wholesale on the amount for which the goods were sold. However, the retailer/wholesaler is entitled to claim a rebate for the tax he has paid when he purchased or entered the goods for home consumption.

9.32 A retailer/wholesaler who sells taxable goods by retail from a common stock has satisfied his sales tax liability by payment of tax to his supplier (or Customs in respect of imported goods) when the goods were purchased or entered for home consumption as the case may be.

9.33 Special permission under subregulation 14(2) to quote his certificate of registration can be granted to a registered person who acquires particular ranges of goods for sale in wholesale or in exempt circumstances. Therefore, even though a registered person may be a retailer/wholesaler acquiring goods for a common stock and therefore is normally required to buy all goods for that common stock inclusive of sales tax, nevertheless, if those particular ranges are sold principally in the above circumstances, (for example a retailer/wholesaler who sells a large proportion of his products to exempt bodies such as schools) the Commissioner may grant permission to that person to acquire those particular ranges of goods under quotation of his certificate. The taxpayer must apply for subregulation 14(2) approval, and if permission is granted the Commissioner will notify the registered person in writing.

Accepting Quotations

9.34 When accepting quotations of certificates, vendors are required to take reasonable steps to ensure that the customer making the quotation is in fact entitled to quote the certificate on the purchase. Accordingly, a vendor should not accept a quotation of a certificate if he has reasonable grounds to believe that:-

- (a) the customer -

- (i) is not a registered person;
 - (ii) is quoting the certificate otherwise than in accordance with the requirements of the law; or
 - (iii) is prohibited by virtue of a notice issued by the Commissioner from quoting his certificate;
- (b) the quotation -
- (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the quotation is misleading in a material particular; or
- (c) the Commissioner has published or provided information relating to the revocation of the certificate or the issue of a notice prohibiting quotation.

Form of Quotation

9.35 Subregulation 16(1) of the Regulations requires a certificate to be quoted, in writing, in the following form.

I hereby certify that (a)
 (b) am/is/are the holder/holders of (c)
 Sales Tax Certificate No. (d)

Signature of certificate holder(s)

- (a) Insert name of registered person.
- (b) Strike out words inapplicable.
- (c) Name of State in which certificate issued to be inserted if being quoted in another State.
- (d) Insert certificate number.

9.36 A quotation of certificate should be made in the above form even if the quotation is by way of a telex or facsimile (fax) machine. The exception is where a certificate is quoted by way of a telegram. In this instance subregulation 16(2) of the Regulations provides that where goods are ordered by telegram, a certificate may be quoted in respect of the purchase of those goods by including in the telegram the words "Certificate quoted".

9.37 The certificate should be quoted on a document which itself contains definite identification of the goods and the transaction which are the subjects of the quotation. The quotation must be in writing and must be signed. It should be on the order for the goods or the written confirmation of a

verbal order. If there is no written order or confirmation, the quotation should be made on a delivery slip, receipt, acknowledgement of receipt, duplicate invoice or other document relating to the transaction that the supplier will keep.

AIDS TO MANUFACTURE

10.1 A manufacturer, wholesale merchant or certain sub-contractors are entitled to exemption from sales tax on certain equipment used in processing or treating raw materials or producing manufactured goods. The exemption covers goods defined as "aids to manufacture" and "auxiliaries to aids to manufacture" in the sales tax legislation. These terms are defined separately for registered and unregistered persons. For the complete definition the registered person should refer to subregulation 4(1) of the Regulations and an unregistered person should refer to subclause 1(1) of the First Schedule to the Sales Tax (E&C) Act.

10.2 Aids to manufacture and auxiliaries to aids to manufacture, used exclusively or primarily and principally by unregistered manufacturers of goods exempt from sales tax by virtue of any item in the First Schedule to the S.T.(E&C) Act (other than manufacturers of goods that are exempt from sales tax solely by virtue of items 100 or 103) are exempt from sales tax by virtue of either item 113A or 113B, in the First Schedule to that Act. These items are quoted below:-

113A "(1) Goods, being aids to manufacture, sold or leased to, or imported by, an unregistered manufacturer for use by him exclusively, or primarily and principally, in, or in connection with, the manufacture of goods covered by any item or sub-item in this Schedule other than item 100 or 103

(2) Goods, being auxiliaries to aids to manufacture, sold or leased to, or imported by, an unregistered manufacturer for use by him in, or in connection with, the processing, treatment or use of aids to manufacture for use by him as specified in sub-item (1)"

113B "Goods (other than lubricants) manufactured by any person and applied by him to his own use as aids to manufacture or as auxiliaries to aids to manufacture"

10.3 Manufacturers who are not required to be registered because their manufactured goods are exempt under item 100 or 103, First Schedule to the S.T.(E&C) Act are not entitled to exemption in respect of "aids to manufacture" or "auxiliaries to aids to manufacture" used in making those goods. It should be noted, however, that if such a manufacturer also manufactures goods which are exempt under and item other than item 100 or 103, he may obtain free of tax any goods which qualify as "aids to manufacture" or "auxiliaries to aids to manufacture" in respect of the production of the goods which are exempt under those items.

10.4 Registered persons obtain exemption for their aids to manufacture and auxiliaries to aids to manufacture by virtue of item 113C in the First Schedule to the S.T.(E&C) Act. This item

is quoted below:-

113C "Goods (other than lubricants) applied by a registered person to his own use as aids to manufacture (as defined by regulations made under the Sales Tax Assessment Acts) or as auxiliaries to aids to manufacture (as so defined)"

10.5 In addition, item 113F of the First Schedule exempts goods for use by a sub-contractor exclusively in carrying out contracted activities on behalf of one or more other persons, such as wholesale merchants or manufacturers. The exemption only applies if the person for whom the activities are being performed could have obtained exemption for the relevant goods under the general aids to manufacture provisions, if that other person had acquired and used the goods to perform the activities in question, instead of having those activities performed by a sub-contractor.

RAW MATERIALS

11.1 Manufacturers of goods are entitled to obtain raw materials free of sales tax. Raw materials are goods to be wrought into, or attached to so as to form part of, the goods manufactured.

11.2 Unregistered manufacturers of exempt goods (other than goods exempted solely by the small manufacturers' provisions) may obtain raw materials free of sales tax under item 113 in the First Schedule to the S.T.(E&C) Act.

Item 113 in the First Schedule exempts:-

"Materials sold to or imported by an unregistered manufacturer to be used in, wrought into, or attached to, so as to form part of, goods to be manufactured by him, being goods covered by any item or sub-item in this Schedule except goods covered by item 100 or 103."

11.3 A registered manufacturer of taxable goods is entitled to obtain raw materials free of sales tax by providing his supplier with a written quotation of his sales tax certificate of registration.

PROCEDURE FOR PURCHASING RAW MATERIALS, AIDS TO MANUFACTURE OR AUXILIARIES TO AIDS TO MANUFACTURE.

12.1 An unregistered manufacturer of exempt goods may claim exemption for his raw materials, aids to manufacture or auxiliaries to aids to manufacture by providing his supplier with a written certificate of conditional exemption in the following form:

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT

To the Commissioner of Taxation and
the Commonwealth of Australia;

I hereby certify that the (description of goods)
..... purchased from (name of vendor)
..... on (date) are for use

..... (*)

*(a) as raw materials

*(b) exclusively or primarily and principally as aids to manufacture or auxiliaries to aids to manufacture,

in the manufacture of exempt goods, namely (state type of goods manufactured) and exemption is accordingly claimed under

*(a) item 113

*(b) item 113A

*(c) item 113B

in the First Schedule to the Sales Tax (Exemptions and Classifications) Act.

Name
Signature
Address
Date

* omit whichever is inapplicable.

SALE VALUE

Overview

13.1 This part of the Ruling is intended to provide manufacturers and wholesale merchants with a guide to the main provisions of the sales tax legislation that determine the sale values applicable to the goods manufactured and/or sold by wholesale. It is not intended to be an exhaustive statement of the circumstances in which a particular sale value provision applies as this is a question of fact. If a person is unsure of his sales tax liability he should contact his local branch of the Australian Taxation Office for advice.

13.2 Sale value means the value on which the amount of sales tax payable is calculated. The sale value is determined at the taxing point which is the stage where liability for tax is incurred.

13.3 The Sales Tax Assessment Acts contain a number of provisions which set out the sale value of goods in special circumstances. Examples of these special circumstances include:-

- . where the manufacturer and the supplier of materials are not dealing with each other at arm's length;
- . where a manufacturer sells to an associated wholesaler at less than an arm's length price; or
- . where the goods are sold in connection with collateral agreements which provide for a reduction in sale value.

13.4 These provisions are complex as they have often been

framed to counter an avoidance of sales tax and are not dealt with here.

13.5 As a general principle the sale value provisions attempt to have the sales tax calculated at the point where the goods are sold by wholesale for the last time and to impose the tax on a value equal to the value of that last wholesale sale. However, there are circumstances where goods are not sold by wholesale but are nevertheless treated in a manner which incurs sales tax e.g. goods manufactured and sold by the manufacturer by retail or applied by the manufacturer to his own use. In such circumstances the sale value provisions are so structured as to attempt to determine a sale value that is equal to the value for which those goods would be sold by wholesale.

13.6 Examples of the sale values applicable to particular circumstances are set out below.

Sales under quotation

13.7 Where a manufacturer or wholesale merchant sells goods to a registered person under a valid quotation there is no liability to tax on that transaction.

Sale by wholesale

13.8 Where a manufacturer or wholesale merchant sells goods by wholesale (other than under quotation) the sale value is the amount for which the goods were sold. Delivery charges will form part of the amount for which goods are sold where the contract is for "delivered" goods, irrespective of whether the delivery charge is separated on the invoice. However, where property in the goods passes prior to delivery (e.g. the goods are sold on an ex factory basis), such charges will not form part of the taxable sale value.

Sale by retail, stock for sale by retail and goods applied to own use.

13.9 The sale value of goods manufactured and sold by retail is the amount for which the manufacturer could reasonably be expected to have sold the goods by wholesale. As the fundamental purpose of the sales tax legislation is to collect tax on a fair and reasonable wholesale value, the sale value is not the price at which the goods are actually sold by retail but an actual or notional "wholesale" sale value of the relevant goods.

13.10 The sale value of goods treated by a manufacturer of the goods as stock for sale by retail or applied to his own use is the amount for which those goods could reasonably be expected to be sold by the manufacturer by wholesale. Where the manufacturer or wholesale merchant also sells similar goods by wholesale, the sale value in respect of the goods sold by retail, treated as stock for sale by retail or applied to own use should be equal to the sale value of the goods sold by wholesale in similar quantities and under similar conditions.

13.11 Where a manufacturer sells goods exclusively by retail, the sale value must be based on the manufacturer's own costs and profit, not the costs and profit of another manufacturer of

identical goods sold by wholesale. Notwithstanding this, the sale value in these circumstances is still based on what the manufacturer could reasonably expect to sell those goods for by wholesale.

Sale value of imported goods

13.12 The sale value of imported goods that are entered for home consumption by an unregistered person or a registered person who does not quote his certificate is an amount equal to 120% of the sum of:-

- (i) the customs value of the goods; and
- (ii) the amount of any customs duty (if any) that is, or may become, payable in respect of the goods; and
- (iii) any royalty payable in connection with the importation or entry for home consumption of goods to the extent that it is not included in the customs value of the goods (see subsections 4(1) and 4(4) of Assessment Act (No. 5)).

The sale value of imported goods that are entered for home consumption by a registered person who quotes his certificate to the Collector of Customs will, of course, be determined when the goods are sold by wholesale for the last time or otherwise dealt with in a taxable manner.

CLASSIFICATION OF GOODS

Overview

14.1 To determine the rate of sales tax applicable, reference must be made to the various Schedules to the S.T.(E&C) Act. The present rates of tax are:-

(a) Goods covered by the First Schedule	Exempt
(b) Goods covered by the Second Schedule	30%
(c) Goods covered by the Third Schedule	10%
(d) Goods covered by the Fourth Schedule	20%
(e) Goods covered by the Fifth Schedule	20%
(f) Goods covered by the Sixth Schedule	30-50%
(g) Goods not covered by any Schedule	20%

Exempt goods

14.2 The First Schedule to the S.T.(E&C) Act lists the goods or classes of goods exempt from sales tax and, where appropriate, specifies the circumstances in which exemption applies. Goods listed in the First Schedule are either unconditionally or conditionally exempt from sales tax.

14.3 The First Schedule contains, amongst other things, two columns. The first column lists the items specifying particular

goods while the second column, headed "Acts to which Exemption Applies" lists the Assessment Acts under which the goods mentioned in the first column are exempt. For example subitem 47(2) exempts Australian manufactured charcoal but not imported charcoal because the second column applicable to subitem 47(2) lists only Assessment Acts (Nos. 1-4 and No. 9).

Unconditionally exempt goods

14.4 Exemption applies to unconditionally exempt goods irrespective of the use to which the goods are put or who purchases the goods. Therefore, unconditionally exempt goods may be sold, imported, leased or applied to a person's own use without the payment of sales tax.

14.5 There are a number of unconditionally exempt items listed in the First Schedule. Some examples are listed below:-

Sales Tax Exemption Items		Assessment Acts to which Exemption Applies
Subitem 83(1)	Plaster	(Nos. 1 - 9)
Subitem 89(1)	Concrete	(Nos. 1 - 9)
Subitem 89(2)	Cement	(Nos. 1 - 9)
Subitem 89(3)	Lime	(Nos. 1 - 9)

Conditionally Exempt Goods

14.6 Conditionally exempt goods are goods that may otherwise be taxable but are exempt where:-

- (a) they are for use in circumstances specified in relevant items in the First Schedule, e.g. tractors normally attract sales tax at the general rate, currently 20%. However, where a tractor is for use in the timber-getting industry in the hauling of log timber (subitem 10B(1), First Schedule) it will be exempt from sales tax as it has satisfied the use criterion; or
- (b) they are for use and not for sale by designated types of organizations or institutions e.g. goods for use (whether as goods or in some other form), and not for sale, by a public benevolent institution (paragraph 81(1)(c)), First Schedule.

Conditional exemption certificates

14.7 To give effect to the conditional exemptions contained in the First Schedule, the conditional exemption certificate system was introduced.

14.8 A conditional exemption certificate is a declaratory statement, addressed to the Commissioner of Taxation. The certificate specifies the goods purchased, the name of the vendor, the date of purchase, a description of the use to which it is intended the goods shall be put, the name of the relevant

user and the relevant item of the First Schedule that authorises the exemption.

14.9 The use of certificates of conditional exemption and the obligations on both the purchaser and the vendor in the tendering and acceptance of the certificates are dealt with in detail in Sales Tax Ruling ST 2442 SALES TAX: USE OF CERTIFICATES CLAIMING EXEMPTION dated 6 October 1988.

14.10 Although addressed to the Commissioner of Taxation the certificates should be given to the supplier of the goods in question and retained in the supplier's records.

14.11 Examples of conditional exemption certificates based on the two examples set out in paragraph 14.6 appear below:-

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT

To the Commissioner of Taxation
and the Commonwealth of Australia

I hereby certify that the tractor purchased from
(name of vendor) on (date) is
for use in the timber-getting industry in the hauling of log
timber and exemption is accordingly claimed under Subitem 10B(1)
in the First Schedule to the Sales Tax (Exemptions and
Classifications) Act.

Name
Address
Date
Signature

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT

To the Commissioner of Taxation
and the Commonwealth of Australia

I hereby certify that the (description of goods)
purchased from (name of vendor)
..... on (date)
are for use and not for sale by (name of
organization) which is an organisation
exempt from sales tax under Paragraph 81(1)(c) in the First
Schedule to the Sales Tax (Exemptions and Classifications) Act.

Name
Address
Date
Signature

SALES TAX RETURNS AND PAYMENTS

15.1 A registered person is required (unless specifically exempted by the Commissioner) to lodge a monthly sales tax return in a form approved by the Commissioner containing such information as is required.

15.2 Generally, the form requires details of certain transactions that took place during the month in question and the amount of sales tax payable by the taxpayer in respect of

those transactions. The return also requires the taxpayer to detail how this amount of tax payable was determined. Sales tax is primarily a self-assessing tax.

Due date for lodgment

15.3 A return is required to be lodged with the Commissioner within 21 days following the end of the month to which the return relates e.g. the return relating to transactions conducted during May has to be lodged by the close of business on the 21st day of June.

Payment relating to the return

15.4 The return should be accompanied by a payment in full of the amount of sales tax payable on the transactions conducted during the month to which the return relates. A person who is unable to make the full payment of the due amount should lodge the return and at the same time apply in writing for an extension of time to make the payment. The application should detail the special circumstances which apply so as to warrant an extension of time for payment.

Due date for payment

15.5 The due date for payment is the same as the due date for the lodgment of the return, i.e. 21 days following the end of the month to which the return and therefore the payment relates.

Payment under Assessment Act (No. 5)

15.6 Sales tax payable under Assessment Act (No. 5) must be paid to a Collector of Customs at the same time, in the same manner and in the same place as customs duty is, or would be payable, together with any customs duty payable.

PENALTIES

16.1 The sales tax legislation provides for taxpayers and certain other persons to become liable for additional tax by way of penalty in the circumstances summarized below:

- (a) tax remains unpaid after the date on which it was due and payable;
- (b) a taxpayer refuses or fails to provide a return or any other information relating to goods;
- (c) a taxpayer makes a false or misleading statement, or omits something from a statement so that it becomes false or misleading, and tax is underpaid as a result; or
- (d) in relation to Assessment Acts (Nos. 1 to 4) and (Nos. 6 to 8), the Commissioner has made an assessment reflecting an adjustment to sale value under certain anti-avoidance provisions.

These provisions are found in section 29 and Part VIII of Assessment Act (No. 1). Apart from section 46 of that Act (see (d) above), they are incorporated into the other Assessment Acts.

16.2 There are also penal sanctions for certain acts and omissions. Offences relating specifically to sales tax are found in Assessment Act (No. 1), the Regulations and the Procedure Act. These offences, punishable with fines, concern such matters as falsely quoting a certificate or failure to comply with the Regulations. Offences under the Taxation Administration Act such as knowingly or recklessly making a false or misleading statement apply to sales tax as well as to other taxes and can carry heavier penalties. In addition, the Crimes (Taxation Offences) Act creates offences for acting in such a way that liability to sales tax is reduced or avoided.

ASSESSMENTS

17.1 As previously stated, sales tax is primarily a self-assessing tax; however the Commissioner will make assessments in certain circumstances and issue notices of assessment. An assessment is defined as the ascertainment of the sale value of goods and of the sales tax payable on that sale value or the ascertainment of additional tax payable under Part VIII of Assessment Act (No. 1). The situations in which assessments may or will be issued are set out in each Assessment Act.

DISPUTES

18.1 There are a number of ways in which a person can challenge a decision or action of the Commissioner in relation to sales tax. Part VII of Assessment Act (No. 1) describes the procedure for objecting to assessments or decisions of the Commissioner and for seeking review of decisions on objections in either the Administrative Appeals Tribunal or the Federal Court. A taxpayer can commence the objection process by asking the Commissioner to issue a special assessment in relation to the goods in dispute. The particular decisions of the Commissioner against which an objection can be lodged are listed in subsections 40(2) and 40(4) of Assessment Act (No. 1). Briefly, they are refund decisions and reviewable decisions. Reviewable decisions are defined in section 39A of Assessment Act (No. 1). The usual time limit for the lodging of an objection is within sixty days from service of the notice of the assessment or notification of the decision.

18.2 Section 12A of the Procedure Act also has a mechanism for challenging actions of the Commissioner. It allows for payment to be made "under protest", in which case the person making the payment can, within a period of six months, bring an action in the appropriate court to recover the money. This action is only available on the grounds stated in subsection 12A(4), basically that the goods on which the tax was paid are being incorrectly taxed as goods manufactured in Australia, under an Act relating to goods manufactured in Australia.

18.3 Other remedies not specific to sales tax can also be useful. Firstly, a person with sufficient interest in a matter can seek a declaratory writ in a State Supreme Court or in the High Court, which will remit the matter to the Federal Court. This is a procedure frequently used to resolve disputes on classification issues. Secondly, the Administrative Decisions (Judicial Review) Act 1977, the Ombudsman Act 1976 and the

Freedom of Information Act 1982 can all apply to sales tax matters. Under the Administrative Decision (Judicial Review) Act, a person aggrieved by an administrative decision can request a review of that decision on any of the grounds listed in the Act or can ask for a statement of reasons for the decision. The Act does not apply, however, to decisions concerning the calculation of tax, the making of assessments or decisions on objections.

18.4 Further information in relation to rights of objection, reviews and appeals can be obtained from the Australian Taxation Office.

REFUNDS

19.1 Below is a brief overview of the legislation relating to refunds. Persons requiring more information should consult their branch of the Australian Taxation Office and relevant Sales Tax Taxation Rulings.

19.2 Part IX of the Regulations contains the provisions dealing with refunds to prevent double taxation and refunds where tax has been paid in relation to exempt goods. Double taxation occurs when goods pass a taxing point more than once, that is, when goods or their components are subject to more than one transaction, act or operation which gives rise to tax. The paragraphs of regulation 48, the main regulation dealing with refunds, are an important part of the scheme of the sales tax legislation since they illustrate the principle that taxable goods shall only bear tax once in the course of dealings with them. Regulation 48 also ensures that tax is not ultimately paid on goods which are used as raw materials in, or aids to manufacture for, other goods which are then subject to tax. Other regulations in Part IX allow for refunds in other circumstances. An application for a refund under regulation 48 should generally be lodged within three years from the date on which the person became eligible for the refund.

19.3 In addition, each of the Assessment Acts contains provision for the payment of refunds in various cases. The situations in which refunds will be paid are described in section 26 of Assessment Act (No. 1), section 11 of Assessment Acts (Nos. 2 to 4) and (Nos. 6 to 10), section 11B of Assessment Act (No. 5) and section 15 of Assessment Act (No. 11). The situation common to all Assessment Acts is that the Commissioner shall make a refund in any case where he finds that tax has been overpaid and that the overpayment has not been passed on to any other person, or if it was passed on, has been refunded to that other person. An application for a refund for tax overpaid should be made within a period of three years from the date on which the overpayment was made.

19.4 A claim for a refund by a registered person who failed to quote his certificate should also be lodged within three years. There is no time limit on claims for refunds on other grounds, such as where a person pays tax on the sale value of goods but subsequently writes off the amount for which they were sold as a bad debt or where goods on which a person has paid tax are sold tax free to the Commonwealth or a State Government. It should be noted that these examples do not apply to all Assessment Acts.

DOCUMENTS REMOVED FROM THE F.O.I. INDEX

20.1 This Ruling will affect previously issued documents and decisions in the following manner:

- (1) Documents on the Freedom of Information Index:
All the Sales Tax related documents (including ST. Rulings) listed at Appendix B are superseded.
- (2) Australian Sales Tax - A.G.P.S. Canberra, 1984:
All the paragraphs listed at Appendix C are no longer applicable.
- (3) Private Rulings:
All private rulings previously issued in relation to any topic discussed in this Ruling are amended to the extent that they are inconsistent with this Ruling.

COMMISSIONER OF TAXATION
21 February 1991

APPENDIX APPENDIX

FOR DETAILS OF APPENDICES SEE HARD COPY