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THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SALES TAX LAWS AMENDMENT BILL 1988

SALES TAX ASSESSMENT BILL (NO.12) 1988

SALES TAX BILL (NO.12) 1988

SALES TAX BILL (NO.1A) 1988

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EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer,
the Hon. P.J. Keating, M.P.)

GENERAL OUTLINE

Under the present sales tax law, computer programs - whether developed for a single user or a number of users - are subject to sales tax where the programs are embodied in goods and are imported into, or sold in, Australia. The broad purpose of this package of 4 Bills is -

- . to remove sales tax on computer programs developed for a single user, except to the extent that the programs contain programs or parts of programs for multiple users; and
- . to extend sales tax beyond multiple user computer programs embodied in goods to multiple user programs delivered by electronic transfer.

Sales Tax Laws Amendment Bill 1988

This Bill will amend the Sales Tax Act (No.1) 1930, the Sales Tax Assessment Acts (Nos. 1-3 and 5-7) 1930, the Sales Tax (Exemptions and Classifications) Act 1935 and the Sales Tax Procedure Act 1934 -

- . to extend sales tax to computer programs transferred within Australia otherwise than when embodied in goods;
- . to remove sales tax liability on certain transfers of computer programs developed for the sole use of a particular person, except to the extent that the programs contain significant multiple user material;
- . to ensure that sales tax applies to parts of computer programs as well as to complete programs;
- . to ensure that any exemptions from sales tax available for computer programs embodied in goods or transferred within Australia otherwise than when so embodied are also available for programs transferred into Australia from outside Australia; and
- . to require returns to be furnished for computer programs transferred into Australia from outside Australia.

Sales Tax Assessment Bill (No.12) 1988

This Bill will -

extend sales tax to computer programs transferred, otherwise than when embodied in goods, from outside Australia to an unregistered person in Australia; and

provide the machinery for the collection and recovery of the tax on such programs.

Sales Tax Bill (No. 12) 1988

This Bill will -

formally impose the sales tax payable under the Sales Tax Assessment Bill (No. 12) 1988 on the sale value of the computer programs concerned; and

declare the rates of tax applicable to those programs.

Sales Tax Bill (No. 1A) 1988

This Bill will -

formally impose the sales tax payable under the Sales Tax Assessment Act (No. 1) 1930 on the sale value of computer programs transferred within Australia otherwise than when embodied in goods; and

declare the rates of tax applicable to those programs.

FINANCIAL IMPACT

The proposed package of legislation will produce a revenue gain of \$30 million in 1988-89, \$50 million in 1989-90 and \$50 million in 1990-91.

BROAD FRAMEWORK OF THE SALES TAX LAW

The following broad framework of the sales tax law is provided to assist in an understanding of the changes being made by this package of 4 Bills.

Sales tax is a single stage tax levied on, or in relation to, goods. In general, it is designed to fall at the wholesale level, but is payable by manufacturers and importers, as well as by wholesalers. The tax in each case is based on a sale value equivalent to the wholesale value of the goods. The overall intention is that goods that are produced in, or imported into, Australia for use or consumption here will bear the tax unless they are

specifically exempted from it. Second-hand goods that have been used in Australia are not ordinarily taxable, but imported goods that have been used overseas are normally taxable on a basis corresponding with that applicable to new goods.

The levy is not limited to sales. Where goods have not already borne tax, it could, for example, fall on leases of those goods or on the application of those goods to a taxpayer's own use. It may also fall on the entry for home consumption of imported goods where they are not entered for sale by a wholesaler, for example, where they are entered by a retailer or consumer. Where a royalty is payable in relation to goods but is not part of the sale value of the goods, tax is payable by the person paying the royalty at the rate applicable to the goods.

Tax is also levied on certain Australian manufactured goods sold by inwards duty free shops to persons who, if they had imported those goods as passengers or crew of aircraft arriving in Australia, would have been liable to tax.

Manufacturers and wholesalers are required to register with the Taxation Office unless they deal only in exempt goods. By quoting their registration certificate number when purchasing goods or entering imported goods for home consumption, they can acquire the goods free of tax. The system of quoting certificates is designed to defer payment of the tax until the last wholesale sale.

Registered manufacturers and wholesale merchants are required to furnish monthly returns of their transactions to the Taxation Office. The tax is basically self-assessed, with persons furnishing returns required to calculate the tax payable on transactions for the month and to forward payment of that tax with each return. Importers are required to pay tax when clearing goods through Customs unless they are registered persons who quote their certificates for the goods.

When selling goods, sales taxpayers are restricted to passing on to the retailer or customer an amount equal to the tax that they are liable to remit to the Taxation Office.

The sales tax legislation is contained in a number of separate Acts. In addition, there is a series of Regulations that are complementary to those Acts. The Acts and Regulations must be regarded as a whole to properly understand the wholesale sales tax.

There are 11 basic Sales Tax Acts (Rating Acts) that specify the rates at which tax is payable. Where royalties are payable in respect of goods, and the royalties are not subject to tax under the Rating Acts,

three further Sales Tax Acts impose tax on the royalty payments but at the rates that are applicable in relation to the particular goods under the basic Rating Acts. Each of the basic Rating Acts has a complementary Sales Tax Assessment Act providing the machinery for assessment, collection and administration of the tax imposed by the related Sales Tax Act. There is also a Sales Tax Assessment Act for the three Sales Tax Acts relating to royalty payments. The subjects of taxation and the various Assessment Acts and Sales Tax Acts are set out in the following table :

<u>Assessment Acts and Sales Tax Acts</u>	<u>Subjects of Taxation</u>
Sales Tax Assessment Act (No. 1) and Sales Tax 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) and Sales Tax Act (No. 2)	Goods manufactured in Australia and sold by a purchaser from the manufacturer.
Sales Tax Assessment Act (No. 3) and Sales Tax Act (No. 3)	Goods manufactured in Australia and sold by a person other than the manufacturer or a purchaser from the manufacturer.
Sales Tax Assessment Act (No. 4) and Sales Tax Act (No. 4)	Goods manufactured in Australia and applied to own use by a purchaser who quoted a sales tax certificate number when purchasing the goods.
Sales Tax Assessment Act (No. 5) and Sales Tax Act (No. 5)	Imported goods entered for home consumption in Australia.
Sales Tax Assessment Act (No. 6) and Sales Tax Act (No. 6)	Goods imported into Australia and sold by the importer or applied to own use by the importer.

Sales Tax Assessment Act (No. 7) and Sales Tax Act (No. 7)	Goods imported into Australia and sold by a person other than the importer.
Sales Tax Assessment Act (No. 8) and Sales Tax Act (No. 8)	Goods imported into Australia and applied to own use by a purchaser who quoted a sales tax certificate number when purchasing the goods.
Sales Tax Assessment Act (No. 9) and Sales Tax Act (No. 9)	Goods in Australia dealt with by lease.
Sales Tax Assessment Act (No. 10) and Sales Tax Act (No. 10A), Sales Tax Act (No. 10B) and Sales Tax Act (No. 10C)	Certain royalties payable in respect of goods.
Sales Tax Assessment Act (No. 11) and Sales Tax Act (No. 11A) (No. 11B)	Australian manufactured airport shop goods purchased by relevant travellers, sold to persons other than relevant travellers or applied to own use by the proprietor of an inwards duty free shop.

Another Act, the Sales Tax (Exemptions and Classifications) Act 1935, contains a First Schedule that lists classes of goods that are exempt from tax and specifies circumstances in which particular exemptions apply. Further Schedules list the classes of goods that are taxable at specified rates. Goods not listed in any of the Schedules to that Act are taxable at what is called the "general rate" - currently 20%. Exemptions from tax set out in this Act extend to otherwise taxable goods that are for use by specified organisations or are dealt with in a particular manner.

A further Act, the Sales Tax Procedure Act 1934, provides the machinery for the collection and recovery of sales tax but obviates the necessity to establish under which of the various Assessment Acts a particular transaction falls.

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

MAIN FEATURESSales Tax Laws Amendment Bill 1988Sales Tax Bill (No. 1A) 1988

These Bills will bring into the sales tax base computer programs transferred within Australia otherwise than by transferring goods in which the programs are embodied where valuable consideration is given for the programs.

Liability for payment of the sales tax will rest with the transferor. The sales tax will be imposed, by Sales Tax Bill (No. 1A) 1988, on the sale value of those computer programs that are transferred on or after 4 November 1988. The methods for determining the sale value, the requirements for giving returns and paying sales tax, and the assessment and collection procedures in relation to programs transferred within Australia will be those already contained in the Sales Tax Assessment Act (No. 1) 1930.

The Sales Tax Laws Amendment Bill 1988 will also remove, in certain circumstances, sales tax liability on transfers of computer programs developed for use only by one person to that person. Those circumstances are where -

the program contains no material that was not developed by the programmer for the sole use of that person as part of that program; or

the program contains such material but no more than 20 per cent of the sale value of the program is attributable to that material.

Where the value of such material is more than 20 per cent of the value of the program, the sale value of the goods concerned will be reduced by the value of the program other than the value of the multiple user material in that program. This reduction in sale value will apply not only to transfers within Australia but also to transfers from outside Australia - but only for taxable transactions that occur on or after 4 November 1988.

Another change proposed by the Sales Tax Laws Amendment Bill 1988 is the replacement of the current definition of "computer program" in the sales tax legislation in order to extend that definition to parts of computer programs.

Consequential on the proposed enactment of Sales Tax Assessment Bill (No. 12) 1988, the Sales Tax Laws Amendment Bill 1988 will ensure that exemptions from sales

tax under the Sales Tax (Exemptions and Classifications) Act 1935 that currently apply to computer programs embodied in goods, or that will automatically apply to computer programs transferred within Australia otherwise than when embodied in goods on the enactment of the latter Bill, will also apply to programs transferred from outside Australia otherwise than when embodied in goods.

Lastly, requirements for returns to be furnished for computer programs transferred into Australia from outside Australia are also proposed by Sales Tax Laws Amendment Bill 1988.

Sales Tax Assessment Bill (No. 12) 1988
Sales Tax Bill (No. 12) 1988

The effect of these Bills will be to cause sales tax to be payable on the sale value of a computer program transferred into Australia from outside Australia when -

- . the transfer is other than a transfer of goods in which the program is embodied;
- . the transferee is not a registered person for sales tax purposes; and
- . valuable consideration is given for the program.

The Bills will not apply where the transferee is a registered person, as sales tax is levied by Sales Tax Assessment Act (No. 1) 1930 when that registered person subsequently embodies the program in goods and sells those goods. Similarly, amendments to that Act proposed by the Sales Tax Laws Amendment Bill 1988 included in this package will ensure that that Act will levy sales tax if a registered person who receives a program transferred from overseas otherwise than when embodied in goods subsequently, for valuable consideration, transfers that program within Australia otherwise than when embodied in goods.

The sales tax imposed by Sales Tax Bill (No. 12) 1988 will be payable by the transferee on the sale value of computer programs transferred on or after 4 November 1988. The sale value of a program will be 120 per cent of the amount or value of the consideration given for the program. This is similar to the sale value of a computer program embodied in goods that, when so embodied, is imported into Australia by an unregistered person.

Consistent with the time specified for payment of tax in the existing Sales Tax Assessment Acts that require returns to be furnished, sales tax payable under Sales Tax

Assessment Bill (No. 12) 1988 will be due within 21 days after the end of the month in which the program concerned is received.

The Assessment Bill also contains machinery provisions for the assessment, collection and administration of the proposed new tax, where necessary by reference to the existing provisions of the sales tax law contained in the Sales Tax Assessment Act (No. 1).

Detailed explanations of the clauses of the Bills are contained in the following notes.

SALES TAX LAWS AMENDMENT BILL 1988PART I - PRELIMINARYClause 1 : Short title

This clause allows the amending Act to be cited as the Sales Tax Laws Amendment Act 1988.

Clause 2 : Commencement

By reason of subsection 5(1A) of the Acts Interpretation Act 1901, an Act comes into operation on the twenty-eighth day after Royal Assent unless the Act specifies otherwise. Clause 2 provides for the Bill, once enacted, to be taken to have commenced on 4 November 1988.

PART II - AMENDMENT OF THE SALES TAX
ASSESSMENT ACT (NO. 1) 1930

Clause 3 : Principal Act

This clause facilitates references to the Sales Tax Assessment Act (No. 1) 1930, which, in this Part, is referred to as the "Principal Act".

Clause 4 : Interpretation

This clause will amend section 3 of the Principal Act. Section 3 is an interpretative provision that gives particular meanings to words and expressions used in the Principal Act.

Paragraph (a) of clause 4 will add to the present definition of "computer program" in subsection 3(1) of the Principal Act by specifying that the term - which has the same meaning as it has in the Copyright Act 1968 - also includes part of a computer program. By reason of clause 9 of this Bill, the amendment will apply to transactions, acts or operations effected or done on or after the day the Bill comes into operation - that is, on or after 4 November 1988.

This change, among other things, will extend the scope of existing section 18B of the Principal Act. Section 18B sets out the method for determining the sale value of goods in which a computer program has been embodied where the consideration given for the program is not included in the sale value of the goods under other provisions of the Principal Act. The addition to the definition of "computer program" proposed by paragraph (a) will mean that section 18B will also operate where only part of a computer program is embodied in goods - no matter how big or small that part is - and the consideration for that part is not otherwise included in the sale value of the goods.

The altered definition of "computer program" will also ensure that the extension of the sales tax law proposed by this package of 4 Bills to computer programs transferred otherwise than by transferring goods in which the programs are embodied will also apply when only part of a program is transferred.

Paragraph (b) of clause 4 will insert a definition of "domestic program goods" in subsection 3(1) of the Principal Act. The term "domestic program goods" will mean goods to which proposed new section 3D of the Principal Act applies. A detailed explanation of that section, and the goods to which it applies, is given in the notes on clause 5.

Clause 5 : Transfer of computer program not embodied in goods

By clause 5 a new section 3D is to be inserted in Part I of the Principal Act. The proposed section will apply where all of the following conditions are met:

- . a computer program is transferred from one person to another and the transfer is not of goods embodying the program (paragraph 3D(a));
- . valuable consideration is given by someone (not necessarily the transferee) to someone else (not necessarily the transferor) in connection with, or as consideration for, the supply of, or the right to use, the program (paragraph 3D(b)); and
- . the transfer starts and finishes in Australia (paragraph 3D(c)).

The section will not apply if only 1 or 2 of the conditions are met. For example, if a person is given access to a program but the program is not transferred to that person, the first condition specified in section 3D would not be satisfied.

The second condition would not be met if the transferor supplied or proposed to supply to the transferee other goods or services in addition to the program and the payment made could be said, objectively, to have been for those other goods or services and not for the program transferred. This could occur, for example, where the transferor also supplies to the transferee, as part of the same arrangement, the same program on a floppy disk : it may be reasonable to conclude that any charge made relates to the floppy disk and the program contained on the disk, with the electronically-transferred program being supplied free of charge. (Alternatively, if the charge is for the electronically-transferred program, with a floppy disk on which the transferor has embodied the program being supplied free of charge, the disk with the program on it would be free from sales tax by reason of the exemption from sales tax given by the Principal Act for goods in

which a program is embodied where the person who embodied the program in the goods applies those goods to her or his own use.)

Another example is where the transferor, for a charge, transfers a program otherwise than by transferring goods in which the program is embodied and there proves to have been errors in the transmission. The second condition would not be met in relation to any subsequent transmissions of the same program if no consideration is given for those subsequent transmissions.

Section 3D specifies a number of consequences for the purposes of the Principal Act where the 3 conditions are satisfied. First, the program concerned is deemed to be goods (paragraph 3D(d)). This means that references to 'goods' throughout the Principal Act are to be taken to include computer programs to which section 3D applies.

A second consequence is that the transfer of the program is deemed to be both the manufacture of the goods in Australia by the transferor (subparagraph 3D(e)(i)) and the sale of the goods by the transferor to the transferee (subparagraph 3D(e)(ii)). Among other things, the effect of this, together with deeming the program to be goods, is that the references in existing subsection 17(1) of the Principal Act to 'goods', to goods 'manufactured in Australia by a taxpayer' and to such goods being 'sold' by the taxpayer will extend to the computer programs and transfers described in section 3D. A further effect of deeming the transfer to be manufacture by the transferor is that the transferor then becomes a "manufacturer" as defined in subsection 3(1) of the Principal Act, who accordingly is required by existing subsection 11(2) of the Principal Act to apply to the Commissioner of Taxation for registration for sales tax purposes.

The last consequence of meeting the conditions set out in paragraphs (a) to (c) of section 3D is that, for the purposes of section 18B of the Principal Act, the program concerned is deemed to be embodied in goods. The effect of this deeming provision is that, if the consideration given for the program would not otherwise be taken into account in determining the sale value of the program under the other provisions of the Principal Act that deal with the determination of sale value, then the method for determining sale value specified in section 18B for a program that is embodied in goods will apply.

By reason of clause 9 of this Bill, section 3D will operate in relation to transfers that are completed on or after the day the amending Act commences - that is, on or after 4 November 1988.

Clause 6 : Sales tax

This clause will amend section 17 of the Principal Act, which states that sales tax imposed by the Sales Tax

Act (No. 1) 1930 is levied and payable on the sale value of goods manufactured in Australia by a taxpayer that are sold by the taxpayer, treated by her or him as stock for sale by retail or applied to her or his own use.

The amendment will extend the application of section 17 to the imposition of sales tax by proposed new Sales Tax Act (No. 1A) 1988 - namely, the imposition of sales tax in relation to computer programs to which proposed section 3D of the Principal Act will apply.

Clause 7 : Reduction of sale value for custom computer programs

Clause 7 proposes the insertion of new section 18C in the Principal Act. The purpose of the new section is to reduce, in certain circumstances, the sale value of goods in which a computer program is embodied, or of a computer program on its own when it is not embodied in goods. The circumstances are set out in paragraphs (a) to (c) of proposed subsection 18C(1).

The first circumstance, described in paragraph (a), is where a computer program that has been developed, under a contract, for use only by a particular client is transferred either directly by the programmer to that client or indirectly by the programmer to that client through one or more interposed transfers. (Such a program is called a 'custom program' throughout the section.) Paragraph (b) states that the subsection applies where, disregarding proposed new section 18C, sales tax is payable on the sale value of goods in relation to a transfer described in paragraph (a).

Paragraph (c) requires that all or part of the sale value of the goods concerned be directly attributable to the program described in paragraph (a). It is possible for only part of the sale value of goods to be directly attributable to such a program where such a program is embodied in a storage medium. That storage medium may have other material stored on it, such as data or other computer programs, which add to the sale value of the medium, and the storage medium itself may have a value of its own.

Where paragraphs (a) to (c) are satisfied, subsection 18C(1) then modifies the sale value of the goods concerned as specified in paragraphs (d) and (e). Paragraph (d) deals with cases where

some or all of the value of the custom program is directly attributable to one or more computer programs or parts of computer programs that have been incorporated in the custom program (with or without modification) and which were not developed by the programmer for the sole use of the client as part of the custom program; and

the value directly attributable to the total of the incorporated programs and parts of programs is more than 20% of the value of the custom program.

Where these conditions are met, the sale value of the goods is to be reduced by that part of the value of the custom program that is not directly attributable to the incorporated programs and parts of programs.

Paragraph (e) deals with custom programs that fall outside paragraph (d). For these cases, the sale value of the goods is to be reduced by so much of that value as is directly attributable to the custom program.

New subsection 18C(2) will apply where -

a custom program is embodied in goods and the sale value of those goods is reduced under subsection 18C(1) in relation to a particular transfer of those goods (paragraph (a));

the transferor is not registered for sales tax purposes (paragraph (b)); and

all of the remaining sale value is directly attributable to the goods in which the custom program is embodied (paragraph (c)).

In these situations, the sale value of the goods in which the program is embodied is reduced to nil.

The effect of the new subsection will be that programmers (and wholesalers, where applicable) who only ever deal with custom programs that contain no 'multiple user' material or that contain such material but its value is 20% or less of the value of each custom program will, where the programs are embodied in goods, not be liable for sales tax on the media on which the programs are stored. However, as these programmers would not be registered for sales tax purposes (subsection 11(3C) of the Principal Act allows the Commissioner of Taxation to dispense with, or revoke, a person's registration if that person only engages in transactions, acts or operations in respect of which sales tax is not payable), they will not be able to buy free of tax the storage media in which they will embody the programs. Consequently, manufacturer; and wholesalers of floppy disks and like storage media who at present sell their goods free of sales tax to programmers will, in the case of the programmers (and wholesalers) just described, no longer be able to pass on liability for the tax.

Proposed subsection 18C(3) specifies that the sale value of goods is not to be reduced under the section if the sale value of the goods is determined under existing subsection 18(5B) of the Principal Act. Under subsection 18(5B), the Commissioner of Taxation and a taxpayer can agree on how to determine the sale value of goods dealt with in taxable transactions by the taxpayer. By

subsection 18C(3), any such agreement will override the operation of new section 18C.

PART III - AMENDMENT OF OTHER ACTS

Clause 8 : Amendment of other Acts

Clause 8 proposes various amendments of a number of other Acts, as specified in the Schedule to this Bill. The contents of the Schedule are explained in detail following the notes on clause 11.

PART IV - APPLICATION AND TRANSITIONAL

Clause 9 : Application of amendments

By clause 9, the amendments proposed by this Bill - including those contained in the Schedule to this Bill - apply to transactions, acts and operations effected or done in relation to goods on or after the day the amending Act comes into operation - that is, on or after 4 November 1988.

Clause 10 : Regulations for the purposes of item 113C in the First Schedule to the Sales Tax (Exemptions and Classifications) Act 1935

As explained earlier in this memorandum, a number of Regulations are complementary to the various sales tax Acts. To give full effect to the changes to the sales tax legislation proposed by this package of 4 Bills, amendments need to be made to the Sales Tax Regulations and the Sales Tax Procedure Regulations. Some of the amendments of the Regulations will need to apply from the day of commencement of these Bills - that is, from 4 November 1988.

Clause 7 of this Bill, once enacted, will remove sales tax liability in relation to certain single user programs. Consistent with this amendment, the Sales Tax Regulations are to be amended to limit the current sales tax exemption under item 113C in the First Schedule to the Sales Tax (Exemptions and Classifications) Act 1935 for goods used by registered persons as aids to manufacture. Goods for use as an aid to the manufacture of computer programs that are for use exclusively, or primarily and principally, as an aid to the manufacture of computer programs in respect of which no sales tax will be payable will no longer be exempt. This will be achieved by amending the definition of "aids to manufacture" in subregulation 4(1) of the Sales Tax Regulations.

However, the effect of subsection 48(2) of the Acts Interpretation Act 1901 is that, unless Parliament provides otherwise, regulations cannot take effect from a date before the date on which the making of the regulations is notified in the Commonwealth of Australia Gazette if the regulations would prejudicially affect a person's rights as at the date of notification in the Gazette. Restricting

the 'aids to manufacture' exemption from the day after introduction of this Bill into the Parliament - that is, from 4 November 1988 - would be prejudicial to manufacturers of computer programs. For this reason, clause 10 proposes that the general rule in subsection 48(2) of the Acts Interpretation Act be overridden. The clause proposes that regulations made for the purposes of item 113C in the First Schedule to the Sales Tax (Exemptions and Classifications) Act in relation to computer programs may take effect from before the day on which the making of the regulations are notified in the Gazette, but no earlier than the day after this Bill is introduced into the Parliament.

Clause 11 : Transitional

This clause is a transitional provision that is required because of the retrospective nature of the amending Act (see the notes on clause 9). The clause applies from the commencement of the amending Act up to and including the 27th day after the amending Act receives Royal Assent.

Subclause (1) ensures that, if this Bill would have the effect of making a person liable to a penalty of a kind defined in subclause (3) for doing, or not doing, something before the 28th day after Royal Assent, the person is not liable to the penalty.

Where, however, because of the amending Act a person is required under the sales tax law to do something within a specified period, or before a specified time, and the period ends or the time occurs during the period to which this clause applies, subclause 11(2) will operate to postpone the end of the period or the time for meeting that obligation to the beginning of the 28th day after the amending Act receives the Royal Assent.

Subclause 11(3) explains that references in the clause to a person being liable to a defined penalty refer to the person being guilty of an offence or the person being liable to additional tax by way of penalty.

Subclause 11(4) defines "postponed day", for the purposes of the clause, to mean the 28th day after the amending Act receives the Royal Assent.

Examples of the way in which this clause could apply to requirements arising from the amendments to be made by this Bill are:

a person who, on 4 November 1988, transfers goods as described in proposed new section 3D of Sales Tax Assessment Act (No.1), not being goods to which proposed new subsection 18C(1) would apply (see the notes on clauses 5 and 7), would be required, but for clause 11, to apply to be registered under the sales tax law within 28 days

after the day on which the transfer is completed. This clause will postpone that requirement so that the new manufacturer is required to apply to be registered before the 28th day after the day on which the amending Act receives the Royal Assent; and

but for clause 11, the same manufacturer would be required to furnish the Commissioner of Taxation with a return of goods transferred by 21 December 1988. Clause 11 will postpone that date to the 27th day after the day on which the amending Act receives the Royal Assent.

SCHEDULE

AMENDMENTS OF OTHER ACTS

Sales Tax Act (No. 1) 1930

Section 3 of Sales Tax Act (No. 1) 1930 formally imposes sales tax on the sale value of goods manufactured in Australia by a taxpayer that are sold by the taxpayer, treated by her or him as stock for sale by retail or applied to her or his own use. By reason of the insertion of new section 3D in Sales Tax Assessment Act (No. 1) proposed by clause 30 of this Bill, section 3 of Sales Tax Act (No. 1) would, but for the amendment proposed, apply to computer programs to which proposed new section 3D applies. However, for constitutional reasons, a separate taxing Act is needed for such computer programs. Consequently, this amendment will remove the application of Sales Tax Act (No. 1) to such programs.

Sales Tax Assessment Act (No. 2) 1930

Sales Tax Assessment Act (No. 3) 1930

Sales Tax Assessment Act (No. 5) 1930

Sales Tax Assessment Act (No. 6) 1930

Sales Tax Assessment Act (No. 7) 1930

Section 12 of Sales Tax Assessment Acts (Nos. 2-3) and (Nos. 5-7) 1930 applies by reference a number of provisions of Sales Tax Assessment Act (No. 1) that relate to the imposition, assessment and collection of the tax chargeable under each of the other Acts. The insertion in subsection 12(1) of each of those Acts of a reference to new section 18C of Sales Tax Assessment Act (No. 1) will ensure that the reduction of sale value for certain computer programs allowed by that section (see the notes on clause 40 of this Bill) is also allowed under Sales Tax Assessment Acts (Nos. 2-3) and (Nos. 5-7).

Sales Tax (Exemptions and Classifications) Act 1935

This amendment will insert a new section 6D in the Sales Tax (Exemptions and Classifications) Act 1935. The new section will ensure that, to the extent that the Schedules to that Act will automatically apply to computer

programs transferred within Australia otherwise than when embodied in goods, the Schedules will apply in the same way to computer programs transferred from outside Australia otherwise than when embodied in goods (paragraph (b)). Because some items in the Schedules are dependent on the fact of importation or on the existence of certain conditions at the time of entry for home consumption, section 6D specifies that a program transferred from outside Australia is to be regarded as having been imported and entered for home consumption under Customs law at the time the program was transferred (paragraph (a)).

Sales Tax Procedure Act 1934

Three amendments of the Sales Tax Procedure Act 1934 are proposed, two to section 5 and one to section 10.

Section 5 of the Sales Tax Procedure Act sets out the requirements for furnishing returns, including the form of returns and the details required, where a registered person sells, applies to own use or leases goods or, as a manufacturer, treats goods as stock for sale by retail.

Consequent on the extension of the sales tax base to computer programs transferred into Australia from outside Australia otherwise than by transferring goods in which the programs are embodied, as proposed by Sales Tax Assessment Bill (No.12) 1988 and Sales Tax Bill (No.12) 1988, new subsection 5(1A) is to be inserted in section 5. The subsection requires the transferee of such a program, if sales tax is payable on the program's sale value, to furnish a return to the Commissioner of Taxation within 21 days after the end of the month in which the transferee received the program. The amendment of subsection 5(2) proposed will ensure that the existing requirements in that subsection for the form of a return also apply to computer programs transferred from outside Australia otherwise than when embodied in goods.

Section 10 of the Sales Tax Procedure Act deals with the recovery of unpaid sales tax. The section provides that the Commissioner or a Deputy Commissioner may sue in his or her official name for the recovery of unpaid sales tax in any court of competent jurisdiction. The section also provides for the production of certain documents to be conclusive or prima facie evidence of a refund decision, the making of an assessment or an amount of sales tax due and payable. Subsection 10(5) defines certain terms for the purposes of section 10. "Refund decision" is defined under the subsection to mean a decision made on an application under the refund provisions of the Sales Tax Assessment Acts or the Sales Tax Regulations.

This Schedule will insert a reference to section 13 of the proposed Sales Tax Assessment Act (No. 12) 1988 (see the notes on clause 13 of that Bill) to

ensure that section 10 can be applied to recover unpaid tax arising from or evidenced by a notice of the making of a refund decision on a refund application under that new refund provision in the definition of "refund decision" in subsection 10(5).

SALES TAX ASSESSMENT BILL (NO. 12) 1988

PART I - PRELIMINARY

Clause 1 : Short title

This clause provides for the proposed new Act to be cited as the Sales Tax Assessment Act (No. 12) 1988. As explained in the note on the broad framework of the sales tax law at the beginning of this explanatory memorandum, the existing sales tax law is primarily contained in 11 basic Assessment Acts and their complementary Taxing Acts. This Bill will become the 12th Assessment Act and is so designated in its short title.

Clause 2 : Commencement

Subsection 5(1A) of the Acts Interpretation Act 1901 provides that an Act comes into operation on the 28th day after Royal Assent unless the Act specifies otherwise. By clause 2, this Bill, on enactment, is to be taken to have commenced on 4 November 1988.

Clause 3 : Interpretation

Clause 3 contains a number of definitions to assist in interpreting the Bill. The terms defined, and the meanings given, are as follows:

"Australia" is to have the same meaning as it has in Sales Tax Assessment Act (No. 1) 1930. This definition ensures that there will be no double taxation of a transfer of a computer program that is not a transfer of goods embodying the program. Proposed new section 3D of Sales Tax Assessment Act (No. 1) will apply to transfers that both begin and end in Australia (see the notes earlier in this memorandum on clause 5 of Sales Tax Laws Amendment Bill 1988). This Bill will apply to transfers that end in Australia but that begin outside Australia;

"imported program goods" will be the abbreviated way of referring to goods to which proposed section 4 of the new Act will apply. The notes on clause 4 of this Bill give a detailed explanation of that section and the goods to which it applies;

"taxpayer" will mean, in relation to imported program goods, the transferee of the computer program concerned.

Clause 4 : Imported program goods

The note at the beginning of this explanatory memorandum on the broad framework of the sales tax law explained that sales tax is a tax on certain transactions, acts or operations effected or done in relation to goods. The purpose of clause 4 is to describe the goods and the transactions to which the proposed new Act, and the complementary Sales Tax Bill (No. 12) 1988, will apply.

Proposed new section 4 sets out 4 conditions to be satisfied for the new Act to apply. They are that -

- . a computer program must be transferred from one person to another, with the transfer not being of goods embodying the program (paragraph (a));
- . the transferee must be an unregistered person for sales tax purposes (paragraph (b));
- . the transfer must start outside Australia and finish in Australia (paragraph (c)); and
- . valuable consideration must be given, either by the transferee or by someone else to the transferor or someone else, in connection with, or as consideration for, the supply of or the right to use the program concerned (paragraph (d)).

Where all of those conditions are met, paragraph (e) specifies that the program concerned is to be deemed to be goods. By paragraph (f), the transfer concerned is to be deemed to be the sale of the program by the transferor to the transferee.

PART II - LIABILITY TO TAXATION

This Part contains the main provisions for determining liability to sales tax on the sale value of computer programs to which proposed new section 4 will apply and in respect of which sales tax will be imposed by Sales Tax Bill (No. 12) 1988. The provisions relate to -

- . the goods that will be subject to sales tax (clause 5);
- . the sale value of the goods (clause 6);
- . the liability to pay tax in respect of that sale value (clause 7); and
- . the exemptions from liability to pay tax (clause 8).

Clause 5 : Sales Tax

Under clause 5, the sales tax imposed by the proposed Sales Tax Act (No. 12) 1988 will be levied and

payable on the sale value of a computer program to which section 4 applies that is deemed to be sold on or after 4 November 1988.

Clause 6 : Sale value

This clause declares the sale value of a computer program to which new section 4 will apply. The sale value is to be 120% of the amount or value of the consideration mentioned in paragraph (d) of section 4 - that is, the valuable consideration given in connection with, or as consideration for, the supply of, or the right to use, the program. This sale value is commensurate with the Sales Tax Assessment Act (No. 5) 1988 sale value for goods embodying computer programs that are imported and entered for home consumption by an unregistered person.

Valuable consideration for the purposes of paragraph 4(d) of the new Act will be determined on the same principles as apply when determining under existing section 18B of Sales Tax Assessment Act (No. 1) 1930 the sale value of goods embodying a computer program. The description in the 2 provisions of what the consideration is given for is identical in scope.

One respect in which the payment in relation to the transfer of a computer program that is not embodied in goods would differ from that for a program that is embodied in goods is where the payment is in part for charges associated with preparing, executing and checking the transmission of the program. From the transferee's point of view, what he or she is buying is a computer program that is to arrive at his or her doorstep, so to speak, free of any errors that may arise from the method of delivery and free of any programming errors. Consequently, any charges to ensure that the transferee receives the program error-free are part of the consideration sought in connection with, or as consideration for, the supply of the program - akin to the warranty commonly included in the price of new cars.

Clause 7 : Liability for tax

Clause 7 specifies that the person liable to pay sales tax on the sale value of a computer program to which new section 4 will apply is the transferee of the program.

Clause 8 : Exemptions

Section 5 of the Sales Tax (Exemptions and Classifications) Act 1935 exempts from sales tax goods covered by any item in the First Schedule to that Act. The First Schedule lists the goods that are exempt from tax and specifies circumstances in which the exemptions apply. This clause will be complementary to section 5 of the Sales Tax (Exemptions and Classifications) Act and will ensure that sales tax will not be payable under the new Act on the sale value of computer programs that are exempt from tax by

virtue of the Sales Tax (Exemptions and Classifications) Act.

PART III - COLLECTION AND RECOVERY OF TAX

Clause 9 : Time for payment of tax

Under clause 9, sales tax on the sale value of a computer program to which new section 4 will apply becomes due and payable at the end of the 21st day after the end of the month in which the program was transferred.

The complementary requirement for a return to be lodged within 21 days after the end of the same month will be specified by proposed new subsection 5(1A) of the Sales Tax Procedure Act 1934 (see the notes earlier in this memorandum on the Schedule to Sales Tax Laws Amendment Bill 1988). The Commissioner of Taxation will be empowered to seek further returns by section 6 of that Act.

Clause 10 : Further tax

Subclause 10(1) will authorise the Commissioner of Taxation to make an assessment in relation to a person where the Commissioner determines that tax is payable by that person.

Under subclause 10(2), the Commissioner will be able to determine an amount on which sales tax should be paid by a person and issue an assessment to the person in the following circumstances:

- . where a person fails to furnish a return (paragraph (a));
- . notwithstanding that a return may have been furnished, where the return does not fully disclose the correct amount of sales tax payable (paragraph (b)); and
- . where a return has not been furnished by a person and the Commissioner believes that sales tax is payable by that person (paragraph (c)).

Subclause 10(3) provides that, where an assessment has been made, the Commissioner must serve a written assessment notice on the person liable to pay the tax. The assessment notice must be issued as soon as is practicable after the making of the assessment.

Any tax specified in an assessment notice is payable on or before the due date specified in the notice. While the invariable practice is to issue an assessment notice, subclause 10(4) provides that failing to give any such notice does not invalidate the assessment.

Subclause 10(5) is a drafting aid that specifies that a reference to "tax" in clause 10 includes further tax.

Clause 11 : Special assessments

Subclause 11(1) will enable a taxpayer to ask the Commissioner of Taxation to make an assessment in respect of a specified dealing in goods. This paves the way for the taxpayer to dispute the liability for tax in respect of those goods by lodging an objection against the assessment.

Subclause 11(2) states that a request for an assessment under subclause (1) must be in writing and must be lodged with the Commissioner within 21 days after the end of the month in which the particular dealing in goods took place. Subclause (2) also allows the Commissioner to extend the period for lodging the request.

By subclause 11(3) the Commissioner will be obliged to comply with a request to make an assessment and, in accordance with subclause 11(4), to serve written notice of the assessment on the taxpayer as soon as practicable after making the assessment.

Clause 12 : Amended assessments

This clause will provide for an amended assessment to be, except as otherwise provided, an assessment for the purposes of the proposed Act. This will allow a taxpayer to object against the changes made by the amended assessment to the original assessment.

Clause 13 : Refunds of tax

The Sales Tax Assessment Acts (Nos. 1-9) 1930 and the Sales Tax Assessment Acts (Nos. 10-11) 1985 provide that, where the Commissioner of Taxation finds in any case that tax has been overpaid and the Commissioner is satisfied that the tax has not been passed on by the taxpayer to some other person - or, if passed on to another person, has been refunded to that person by the taxpayer - the Commissioner must either refund or offset the amount of tax overpaid.

Subclause 13(1) makes similar provision for refunds of tax overpaid in respect of imported program goods. The Commissioner, instead of refunding the amount of overpaid tax, may apply the amount against any liability of the person to the Commonwealth under any other Act administered by the Commissioner. In other words, if the person owes any other sales tax or income tax, for example, the refund otherwise due may be offset against that debt. Any excess remaining would, in these circumstances, be refunded.

The effect of subclause 13(2) is to make it an essential condition before overpaid tax can be refunded for the Commissioner to be satisfied that the tax -

has not been passed on by the taxpayer to some other person; or

if it has been passed on, has been refunded by the taxpayer to the person to whom it was passed on.

Subclause 13(3) is a technical anti-avoidance measure to ensure that, if the rate of sales tax on imported program goods were to be reduced, a person liable to pay tax on a program would not be entitled to a refund, repayment or reduction because of the reduction in the sales tax rate if the program was deemed to be sold before the enactment of the law reducing the rate.

Subclause 13(4) is an interpretational measure, defining the term "tax" when used in this clause to include (unless the contrary intention appears) both further tax and additional tax. In this context, additional tax includes -

additional tax that is payable at the rate of 20% per annum where tax or further tax is not paid within the time required; and

additional tax, equal to up to double the amount of tax sought to be avoided, that is imposed where a person furnishes a return, or makes a statement in connection with tax payable, that is false or misleading.

PART IV - APPLICATION OF SALES TAX ASSESSMENT ACT
(NO. 1) 1930

Clause 14 : Application of Sales Tax Assessment Act
(No. 1) 1930

Clause 14 will operate to adopt and apply, for the purposes of the sales tax payable on computer programs to which new section 4 will apply, the machinery provisions of the sales tax law contained in the Sales Tax Assessment Act (No. 1) 1930.

Subclause 14(1) applies, with appropriate variations, specified provisions of Assessment Act (No. 1) for the purposes of the imposition, assessment and collection of tax payable under this Bill. The specified provisions relate to definitions (sections 3 and 3A), administration (Part II), certain sale value provisions (subsections 18(5B) and (5C) and new section 18C proposed by Sales Tax Laws Amendment Bill 1988), non-exempt authorities (section 20A), information gathering (section 23), collection and recovery of tax (sections 25A, and 27 to 38 (inclusive)), objections, appeals and reviews (Part VII), penalty tax (Part VIII, other than section 46), and miscellaneous provisions (Part X), and the Schedules.

The application of these provisions to this Assessment Act will mean, for example, that a person will have the same rights of objection and appeal against an assessment of tax payable on imported program goods as are available to a taxpayer who is dissatisfied with any other

sales tax liability. In broad terms, an objection may be lodged against the sale value determined for goods.

Subclause 14(1) contains the qualification that certain references in Assessment Act (No. 1) are to be applied in a particular way, as specified in paragraphs (a) to (d).

Paragraphs 14(1)(a) and (b) relate to the provisions of the sales tax law on the responsibilities of liquidators, which are contained in section 32 of Assessment Act (No. 1). Under section 32 the liquidator of a company must, to the extent possible out of the assets of the company, provide for the company's liability to tax under any of the taxation Acts administered by the Commissioner. Paragraphs (a) and (b) are designed to ensure that tax payable on imported program goods is included in the liabilities of a company that a liquidator is required to provide for in addition to any other sales tax or tax liability.

Under subsection 35(2) of Assessment Act (No. 1), an executor or administrator of a deceased person's estate is required to lodge returns that have not been completed by the deceased person. Paragraph 14(1)(c) ensures that the reference to Part V in subsection 35(2), as applied by this clause, correctly refers to sections 5 and 6 of the Sales Tax Procedure Act 1934. Those sections, among other things, set out the requirements for furnishing sales tax returns of imported program goods (see the notes on clause 9).

Section 39A of Assessment Act (No. 1) defines certain terms for the purposes of the objections, appeals and review provisions of that Act. The term "refund decision" is defined to mean a decision on an application for a refund to be given under that Act or the Sales Tax Regulations or for an exemption from sales tax to be given under the Sales Tax Regulations. Paragraph 14(1)(d) ensures that the term "refund decision" extends to a decision on an application for a refund under section 13 of the new Act.

The Sales Tax Assessment Acts (Nos. 1-9) 1930 and the Sales Tax Assessment Acts (Nos. 10-11) 1985 are supported by the Sales Tax Regulations, which set out in more detail the conditions governing the quoting of certificates by taxpayers and the machinery for registering taxpayers, collecting and refunding sales tax and reviewing objections by taxpayers. Subclause 14(2) specifies that the general regulation-making power contained in section 73 of Sales Tax Assessment Act (No. 1), as adopted by subclause 12(1) for the purposes of the new Act, includes the power to make regulations to allow certificates and securities made, issued or given for the purposes of Assessment Act (No. 1) to be treated as also made, issued or given for the purposes of the new Act (paragraph (a)). In addition, it includes the power generally to make

regulations to treat acts, matters and things done under the provisions of that Act that will apply to the new Act as done under the new Act (paragraph (b)).

Clause 15 : Transitional

Clause 15 is a transitional provision that is required because of the retrospective nature of the proposed new Act, in that it applies to imported program goods deemed to be sold on or after the day following the introduction of this Bill into the Parliament. The clause applies from the commencement of the new Act up to and including the 27th day after the Act receives the Royal Assent.

Subclause (1) ensures that, if this Bill would have the effect of making a person liable to a penalty of a kind defined in subclause (3) for doing, or not doing, something before the 28th day after Royal Assent, the person is not liable to the penalty.

Subclause (2) provides, however, that where, because of the new Act, a person is required under the sales tax law to do something within a specified period, or before a specified time, and the period ends or the time occurs during the period to which clause 15 applies, the end of the period or the time for meeting that obligation is postponed to the beginning of the 28th day after the new Act receives the Royal Assent.

Subclause 15(3) explains that a reference in the clause to a person being liable to a defined penalty refers to the person being guilty of an offence or the person being liable to additional tax by way of penalty.

The term "postponed day" is defined in subclause 11(4), for the purposes of the clause, to mean the 28th day after the amending Act receives the Royal Assent.

An example of the way in which this clause could apply to requirements arising from the new Act is where a person receives imported program goods, not being goods to which proposed new subsection 18C(1) of Sales Tax Assessment Act (No. 1) 1930 would apply (see the notes earlier in this memorandum on clause 7 of Sales Tax Laws Amendment Bill 1988), on 4 November 1988. But for clause 15, that person would be liable to pay sales tax in relation to those goods on 21 December 1988. Clause 15 will postpone that date to the 27th day after the day on which the new Act receives the Royal Assent.

SALES TAX BILL (NO.12) 1988

Clause 1 : Short title

Clause 1 provides for the Bill, once enacted, to be cited as the Sales Tax Act (No.12) 1988.

Clause 2 : Commencement

Subsection 5(1A) of the Acts Interpretation Act 1901 states that an Act comes into operation on the 28th day after Royal Assent unless the Act specifies otherwise. By clause 2, the amending Act is to be taken to have commenced on the commencement of the Assessment Act - that is, on 4 November 1988.

Clause 3 : Incorporation of Assessment Act

As has been the practice since Federation, the "Taxing" legislation is contained in a separate Act from the "Assessment" legislation, but is to be read as one with the "Assessment" legislation. By this clause, Sales Tax Assessment Act (No.1) 1930 is to be read as one with this Taxing Bill.

Clause 4 : Interpretation

This clause defines the expression "Assessment Act", when used in this Bill, to mean Sales Tax Assessment Act (No.1). The term is used in clause 3.

Clause 5 : Imposition of tax

Clause 5 formally imposes sales tax on the sale value of imported program goods deemed to be sold on or after the day following the introduction of this Bill into the Parliament. Section 3 of proposed Sales Tax Assessment Act (No.12) 1988 (see the notes on clause 3 of the Sales Tax Assessment Bill (No.12) 1988 earlier in this memorandum), defines the term "imported program goods" as meaning goods to which proposed new section 4 of that Act will apply. A detailed explanation of that section, and the goods to which it applies, is given in the notes on clause 4 of the Sales Tax Laws Assessment Bill (No.12). By virtue of that section, imported program goods will be deemed to have been sold when the goods have been transferred.

Clause 6 : Rates of tax

The rates of sales tax that are to apply to imported program goods in respect of which sales tax is to be imposed are declared by this clause. As with the existing Taxing Acts, the rates are declared to apply by reference to whether or not the taxable goods are listed in a Schedule to the Sales Tax (Exemptions and Classifications) Act 1935 and, if so, in which Schedule they appear.

The rates of tax are to be as follows:

for goods covered by the Fourth or Fifth Schedule - 20%;

for goods covered by the Third Schedule - 10%;

for goods covered by the Second Schedule - 30%; and

for goods that are not covered by any Schedule - 20%.

SALES TAX BILL (NO.1A) 1988

Clause 1 : Short title

This clause allows the proposed new Act to be cited as the Sales Tax Act (No.1A) 1988.

Clause 2 : Commencement

By reason of subsection 5(1A) of the Acts Interpretation Act 1901, an Act comes into operation on the 28th day after Royal Assent unless otherwise specified in the Act. By clause 2, the amending Act is to be taken to have commenced on 4 November 1988.

Clause 3 : Incorporation of Assessment Act

It has been the practice since Federation for "Taxing" legislation to be contained in a separate Act from the "Assessment" legislation, but to be read as one with the "Assessment" legislation. By this clause, this Taxing Bill is to be read as one with the Sales Tax Assessment Act (No.1) 1930.

Clause 4 : Interpretation

This clause defines the expression "Assessment Act", as used in this Bill, to mean Sales Tax Assessment Act (No.1). The term is used in clause 3.

Clause 5 : Imposition of tax

By this clause, sales tax is formally imposed on the sale value of domestic program goods deemed to be sold on or after the day following the date of introduction of this Bill into the Parliament. The term "domestic program goods" is to be defined in subsection 3(1) of Sales Tax Assessment Act (No.1), as proposed by clause 4 of the Sales Tax Laws Amendment Bill 1988 which accompanies this Bill (see the notes on clause 4 of that Bill earlier in this memorandum), as meaning goods to which proposed new section 3D of that Act will apply. A detailed explanation of that section, and the goods to which it applies, is given in the notes on clause 5 of the Sales Tax Laws Amendment Bill. By virtue of that section, domestic program goods are to be deemed to have been sold when the transfer of the goods has been completed.

Clause 6 : Rates of tax

Clause 6 will declare the rates of sales tax which are to apply to domestic program goods in respect of which sales tax is to be imposed by this Bill. As with the

existing Taxing Acts, the rates are declared to apply by reference to whether or not the taxable goods are listed in a Schedule to the Sales Tax (Exemptions and Classifications) Act 1935 and, if so, in which Schedule they appear.

The rates of tax that are to be declared are as follows:

- . for goods covered by the Fourth or Fifth Schedule - 20%;
- . for goods covered by the Third Schedule - 10%;
- . for goods covered by the Second Schedule - 30%; and
- . for goods that are not covered by any Schedule - 20%.

