EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2010
(No.2)

Radiocommunications (Transmitter Licence Tax) Act 1983

Purpose

The purpose of the Radiocommunications (Transmitter Licence Tax) Amendment Determination 2010 (No. 2) (the Determination) is to include in the Transmitter Licence Tax Determination the transmit segment of the paired 2 GHz band to allow the annual tax for PMTS Class B apparatus licences to be defined.

This amendment also removes the PMTS Class A apparatus licence option from the scope of the Determination as this licence option is no longer issued by the ACMA.

Legislative Provisions

Subsection 7 (1) of the Radiocommunications (Transmitter Licence Tax) Act 1983 provides that the ACMA may determine an amount of tax to be applied at the time of issue or renewal of a transmitter licence.

The Determination is a legislative instrument for the purposes of the Legislative Instruments Act 2003 (the LIA).

Subsection 33 (3) of the Acts Interpretation Act 1901 provides that where an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to amend that instrument.

Background

The Radiocommunications (Transmitter Licence Tax) Determination 2003 (No 2) (the Transmitter Licence Tax Determination) sets out the amount of annual tax payable at the time the apparatus licence is issued, or at the anniversary of a transmitter licence coming in to force or for the holding of a transmitter licence. The number of transmitters authorised by the transmitter licence contribute to calculating the amount of tax to be applied.

The Transmitter Licence Tax Determination specifies the base transmit segment of the paired frequency bands authorised under the PMTS Class B apparatus licence in the Transmitter Licence Tax Determination for the purposes of calculating the applicable annual tax. In this respect, the ACMA proposes to expand the PMTS Class B apparatus licence option set out in the Transmitter Licence Tax Determination to include the base transmit segments of the 2 GHz band. The 2 GHz band is the paired frequency bands 1920-1980 MHz and 2110-2170 MHz. The base transmit segment of the band (2110-2170 MHz) will be included as a new line item in Table 702 of the Transmitter Licence Tax Determination.

The tax amount that will apply to the 2110-2170 MHz segment of the 2 GHz band is $0.06 for each paired MHz of spectrum multiplied by the population of the local government area to which the service relates. The population amount is determined using applicable Census data.

The ACMA also proposes to include provisions in the amendment instrument to grandfather the current annual transmitter licence tax applicable to the four existing PMTS Class A apparatus licences after their conversion to PMTS Class B apparatus licences. The frequency range 870-890 MHz will be specified as a line item in paragraph 201 (1) (q) of the Transmitter Licence Tax Determination. This will ensure that licensees holding this particular licence type will continue to be taxed on a “per spectrum access” basis that is consistent with the current arrangements for the band.

Operation
The Determination will:

- Include a new line item at 17A showing the PMTS Class B licences operating in the 2110-2170 MHz frequency band with a tax of $0.06 for each paired MHz of spectrum multiplied by the population of the area to which the service relates;
- Remove the PMTS Class A apparatus licences, existing licences operated in the 870-890 MHz frequency range will be changed to PMTS Class B apparatus licences;
- Amend the 900 MHz and 1800 MHz PMTS Class B apparatus licences specified in line items 16 and 17 to specify the base transmit segments of the frequency bands. That is, the 900 MHz band will be amended to reflect the base transmit frequency range 935-960 MHz; and the 1800 MHz band will be amended to reflect the base transmit frequency range 1805-1880 MHz.

Consultation

Section 17 of the LIA requires the ACMA to be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken. The proposed amendments to the Transmitter Licence Tax Determination, along with a number of other legislative instruments, were included for consultation in a package of regulatory proposals to facilitate the deployment of public mobile telecommunications services in the 2 GHz band.

The package was released on the ACMA website for consultation for the period 6 October to 23 November 2009 and was accompanied by a media release. Two submissions were received in relation to the package. The respondents to the 2 GHz consultation process were supportive of the proposed amendments to the Transmitter Licence Tax Determination.

Regulatory Impact Statement

The ACMA obtained advice from its SES contact officer for the Government’s regulation impact analysis arrangements that the Transmitter Licence Tax Determination has no or low impact. For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation, the ACMA has determined that there is no need to produce a Business Cost Calculator report or to prepare a Regulation Impact Statement. The ACMA RIS exemption reference number is ACMA 103.

Detailed Description of the Instrument

Details of the Determination are set out in the Attachment.
NOTES ON SECTIONS

Section 1 – Name of Determination
This section provides the name of the Determination.

Section 2 – Commencement
This section provides that the Determination commences on the day after it is registered.

Section 3 – Amendment of Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2)
This section provides that Schedule 1 amends the Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2)

Schedule 1 Amendments

Item [1] Schedule 2, Part 2, paragraph 201 (1) (q)
This section removes reference to the PMTS Class A apparatus licence option and refers instead to the PMTS Class B apparatus licence option. Both licence options fall under the PTS licence type.

Item [2] Schedule 2, Table 702, items 16 and 17
This section updates items 16 and 17 by referring to the transmit segments of the paired frequency bands in the 900 MHz (935-960 MHz) and 1800 MHz (1805-1880 MHz) bands respectively. This section also includes a new item 17A that refers to the transmit segment of the paired 2 GHz band (2110-2170 MHz).

Item [3] Schedule 2, Table 702, at the end
This section adds a note at the end of Table 702 to clarify exactly which population figure (recorded in the 2006 Census) should be used where calculating tax by reference to the population of an area as worked out in the 2006 Census.

Item [4] Dictionary, definition of PMTS Class A
This section removes the definition of PMTS Class A from the Transmitter Licence Tax Determination.