EXPLANATORY STATEMENT
Issued by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2011 (No. 2)
Radiocommunications Act 1992

Purpose
The Radiocommunications (Transmitter Licence Tax) Amendment Determination 2011 (No. 2) (the Amendment Determination) amends the Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2) (the Tax Determination).

Legislative Provisions
The Tax Determination and Amendment Determination are both made under subsection 7(1) of the Radiocommunications (Transmitter Licence Tax) Act 1983 (the Act) which provides that the Australian Communications and Media Authority (ACMA) may determine the amount of tax in respect of:
- The issue of a transmitter licence;
- The anniversary of a transmitter licence coming into force; and
- The holding of a transmitter licence.

Subsection 33(3) of the Acts Interpretation Act 1901 provides that when 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
Under the Radiocommunications Act 1992, the ACMA is responsible for maintaining an efficient, equitable and transparent system of charging for the use of spectrum. The annual tax levied on apparatus licences allows the ACMA to create economic incentives for efficient use of the spectrum. It encourages licensees to use the minimum amount of bandwidth for their needs, move to less congested bands, and surrender licences that are no longer needed.

Where frequencies are in very limited supply, the ACMA seeks to ensure efficient use of spectrum by allocating channels to licensees with the greatest willingness to pay. If a tax is too low, licensees with more economically efficient uses may be excluded, while those with low-value uses are occupying channels.

The Tax Determination sets out the different amounts of transmitter licence tax that the ACMA has determined is payable by licensees of particular apparatus licences.

Operation
The Amendment Determination amends the taxation regime for certain radiocommunications transmitter licences to provide the incentives described below. These incentives are designed to encourage the early adoption by licensees of the new arrangements for the 400 MHz band, as set out in the ACMA’s Rali MS 22: 400 MHz Plan (400 MHz Plan), and to assist in the transition to these new arrangements.

Licensees in the following segments, who relocate by 31 December 2011, will be eligible for a 50 percent reduction in the apparatus licence tax component of their annual licence fee, as part of the implementation of the 10 MHz duplex frequency split in 450-470 MHz, as set out in the 400 MHz Plan:
- Segment Y (469.4875-469.9875 MHz);
- 452.5-453 MHz; and
The following licensees, who relocate by 31 December 2013, will be eligible for a 50 percent reduction in the apparatus licence tax component of their annual licence fee, as part of the transition to the 10 MHz frequency duplex split, as set out in the 400 MHz Plan:
- Government users in 453-457.5 MHz;
- Government users in 462.5-467.50625 MHz;
- Non-government users in 457.50625-459.9875 MHz; and
- Non-government users in 467.50625-469.4875 MHz.

The following licensees, who relocate by 31 December 2014, will be eligible for a 50 percent reduction in the apparatus licence tax component of their annual licence fee, as part of the implementation of the harmonised government band, as set out in the 400 MHz Plan:
- Non-government users currently operating in segments identified for the harmonised government band (other than in the frequency ranges 457.50625-459.9875 MHz or 467.50625-469.4875 MHz); and
- Government users currently operating in segments outside those identified for harmonised government band that will be required to relocate into the government band.

The harmonised government band comprises the following frequency ranges:
- 403-403.9875 MHz;
- 405.0125-406 MHz;
- 409.0375-410.5375 MHz;
- 412.4625-413.4375 MHz;
- 414.4625-415.5625 MHz;
- 418.4875-430 MHz;
- 457.50625-459.9875 MHz; and
- 467.50625-469.9875 MHz.

In all cases, the 50 percent discount remains effective for the duration of the affected licence or until 31 December 2015, whichever comes first.

Consultation
The ACMA considers that adequate consultation has been undertaken in relation to the financial assistance measures embodied in the Amendment Determination. These measures were outlined in the public consultation papers The way ahead - decisions and implementation options for the 400 MHz band (released April 2010) and The way ahead: Timeframes and implementation plans for the 400 MHz band (released December 2010).

The release of these papers followed a review on the future of the 400 MHz band that formally commenced in April 2008, with four papers in total being publicly released. Feedback from stakeholders in regards to the financial assistance measures was specifically requested on page 58 of The way ahead - decisions and implementation options for the 400 MHz band.

The ACMA received 28 non-confidential submissions to this consultation paper. None of the submissions opposed the financial assistance measures.

Regulatory Impact
The Office of Best Practice Regulation (OBPR) has considered the matter and formed the opinion that no regulatory impact analysis is required for the Amendment Determination. The OBPR reference number is ID12601.
Amendment Determination Details

Details of the Amendment Determination are provided at the Attachment.
NOTES ON SECTIONS

Section 1  Name of Determination
Section 1 provides the name of the Amendment Determination.

Section 2  Commencement
Section 2 provides that the Amendment Determination commences on the day after it is registered.

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

Schedule 1  Amendments

Items 1 – 8
Items 1 – 8 amend the following items in Parts 2, 3 and 4 of Schedule 2 to the Tax Determination to insert a reference to new Part 4A:

- Item 202;
- Item 204;
- Item 205;
- Item 302;
- Item 303;
- Item 304;
- Item 402;
- Item 403.

Item 9
Item 9 inserts a new Part 4A into Schedule 2 of the Tax Determination.

Item 401A(1) – This item has the effect that the holder of a licence referred to in Parts 2, 3 and 4 of Schedule 2 which authorises the operation of a radiocommunications transmitter in the frequency ranges 452.5-453 MHz or 462-462.5 MHz will be eligible to obtain the 50 percent licence tax discount until no later than 31 December 2015, subject to meeting the conditions specified in item 401A(1).

In order to be eligible for the 50 percent licence tax discount, the holder of the licence must, by 31 December 2011, surrender the licence and:

- apply to the ACMA to exchange the licence (the current licence) for a new licence which authorises the operation of a radiocommunications transmitter on the same frequency as applying under the current licence for a period of 6 months after the date the new licence is issued, and on a different frequency in the frequency ranges 440-450 MHz or 469.9875-520 MHz for a period ending no later than 31 December 2015; or
- apply to the ACMA to exchange the current licence for a new licence which authorises the operation of a radiocommunications transmitter on a different frequency in the frequency ranges 440-450 MHz or 469.9875-520 MHz for a period ending no later than 31 December 2015.
The availability of the discount is also subject to the ACMA accepting the surrendered licence and issuing a new licence in exchange for the surrendered licence in accordance with the holder’s application. The new licence must otherwise be in the same, or substantially the same terms, as the surrendered licence.

If all of the above conditions are met, the amount of tax in respect of the spectrum access under the new licence is the amount of tax worked out under item 202, item 302 or item 402 (as the case may be) divided by 2 – that is, a 50 percent discount applies to the spectrum access under the new licence.

*Item 401A(2)* – This item has the effect that the holder of a licence referred to in Parts 2, 3 and 4 of Schedule 2 which authorises the operation of a radiocommunications transmitter in the frequency range 469.4875 MHz to 469.9875 MHz will be eligible to obtain the 50 percent licence tax discount until no later than 31 December 2015, subject to meeting the conditions specified in item 401A(2).

In order to be eligible for the 50 percent licence tax discount, the holder of the licence must, by 31 December 2011, surrender the licence and:

- apply to the ACMA to exchange the licence (the *current licence*) for a new licence which authorises the operation of a radiocommunications transmitter on the same frequency as applying under the current licence for a period of 6 months after the date the new licence is issued, and on a different frequency in the frequency ranges 462-462.5 MHz or 469.9875-520 MHz for a period ending no later than 31 December 2015; or
- apply to the ACMA to exchange the current licence for a new licence which authorises the operation of a radiocommunications transmitter on a different frequency in the frequency ranges 462-462.5 MHz or 469.9875-520 MHz for a period ending no later than 31 December 2015.

The availability of the discount is also subject to the ACMA accepting the surrendered licence and issuing a new licence in exchange for the surrendered licence in accordance with the holder’s application. The new licence must otherwise be in the same, or substantially the same terms, as the surrendered licence.

If all of the above conditions are met, the amount of tax in respect of the spectrum access under the new licence is the amount of tax worked out under item 202, item 302 or item 402 (as the case may be) divided by 2 – that is, a 50 percent discount applies to the spectrum access under the new licence.

*Item 401A(3)* – This item has the effect that the holder of a licence referred to in Parts 2, 3 and 4 of Schedule 2 which authorises the operation of a radiocommunications transmitter in the frequency ranges 453-457.5 MHz or 462.5-467.50625 MHz for government purposes will be eligible to obtain the 50 percent licence tax discount until no later than 31 December 2015, subject to meeting the conditions specified in item 401A(3).

In order to be eligible for the 50 percent licence tax discount, the holder of the licence must, by 31 December 2013, surrender the licence and:

- apply to the ACMA to exchange the licence (the *current licence*) for a new licence which authorises the operation of a radiocommunications transmitter on the same frequency as applying under the current licence for a period of 6 months after the date the new licence is issued or no later 30 June 2014, whichever is the sooner, and on a different frequency in the harmonised government band for a period ending no later than 31 December 2015; or
- apply to the ACMA to exchange the current licence for a new licence which authorises the operation of a radiocommunications transmitter on a different frequency in the harmonised government band for a period ending no later than 31 December 2015.
The availability of the discount is also subject to the ACMA accepting the surrendered licence and issuing a new licence in exchange for the surrendered licence in accordance with the holder’s application. The new licence must otherwise be in the same, or substantially the same terms, as the surrendered licence.

If all of the above conditions are met, the amount of tax in respect of the spectrum access under the new licence is the amount of tax worked out under item 202, item 302 or item 402 (as the case may be) divided by 2 – that is, a 50 percent discount applies to the spectrum access under the new licence.

Item 401A(4) – This item has the effect that the holder of a licence referred to in Parts 2, 3 and 4 of Schedule 2 which authorises the operation of a radiocommunications transmitter in the frequency ranges 457.50625-459.9875 MHz or 467.50625-469.4875 MHz for purposes other than government purposes will be eligible to obtain the 50 percent licence tax discount until no later than 31 December 2015, subject to meeting the conditions specified in item 401A(4).

In order to be eligible for the 50 percent licence tax discount, the holder of the licence must, by 31 December 2013, surrender the licence and:

- apply to the ACMA to exchange the licence (the current licence) for a new licence which authorises the operation of a radiocommunications transmitter on the same frequency as applying under the current licence for a period of 6 months after the date the new licence is issued or no later 30 June 2014, whichever is the sooner, and on a different frequency not in the harmonised government band for a period ending no later than 31 December 2015; or
- apply to the ACMA to exchange the current licence for a new licence which authorises the operation of a radiocommunications transmitter on a different frequency not in the harmonised government band for a period ending no later than 31 December 2015.

The availability of the discount is also subject to the ACMA accepting the surrendered licence and issuing a new licence in exchange for the surrendered licence in accordance with the holder’s application. The new licence must otherwise be in the same, or substantially the same terms, as the surrendered licence.

If all of the above conditions are met, the amount of tax in respect of the spectrum access under the new licence is the amount of tax worked out under item 202, item 302 or item 402 (as the case may be) divided by 2 – that is, a 50 percent discount applies to the spectrum access under the new licence.

Item 401A(5) – This item has the effect that the holder of a licence referred to in Parts 2, 3 and 4 of Schedule 2 which authorises the operation of a radiocommunications transmitter for government purposes in a frequency range outside the harmonised government will be eligible to obtain the 50 percent licence tax discount until no later than 31 December 2015, subject to meeting the conditions specified in item 401A(5).

In order to be eligible for the 50 percent licence tax discount, the holder of the licence must, by 31 December 2014, surrender the licence and:

- apply to the ACMA to exchange the licence (the current licence) for a new licence which authorises the operation of a radiocommunications transmitter on the same frequency as applying under the current licence for a period of 6 months after the date the new licence is issued or no later 30 June 2015, whichever is the sooner, and on a different frequency in the harmonised government band for a period ending no later than 31 December 2015; or
- apply to the ACMA to exchange the current licence for a new licence which authorises the operation of a radiocommunications transmitter on a different frequency in the harmonised government band for a period ending no later than 31 December 2015.
The availability of the discount is also subject to the ACMA accepting the surrendered licence and issuing a new licence in exchange for the surrendered licence in accordance with the holder’s application. The new licence must otherwise be in the same, or substantially the same terms, as the surrendered licence.

If all of the above conditions are met, the amount of tax in respect of the spectrum access under the new licence is the amount of tax worked out under item 202, item 302 or item 402 (as the case may be) divided by 2 – that is, a 50 percent discount applies to the spectrum access under the new licence.

**Item 401A(6)** – This item has the effect that the holder of a licence referred to in Parts 2, 3 and 4 of Schedule 2 which authorises the operation of a radiocommunications transmitter for purposes other than government purposes in a frequency range in the harmonised government band (other than in the frequency ranges 457.50625-459.9875 MHz or 467.50625-469.4875 MHz) will be eligible to obtain the 50 percent licence tax discount until no later than 31 December 2015, subject to meeting the conditions specified in item 401A(6).

In order to be eligible for the 50 percent licence tax discount, the holder of the licence must, by 31 December 2014, surrender the licence and:

- apply to the ACMA to exchange the licence (the *current licence*) for a new licence which authorises the operation of a radiocommunications transmitter on the same frequency as applying under the current licence for a period of 6 months after the date the new licence is issued or no later 30 June 2015, whichever is the sooner, and on a different frequency not in the harmonised government band for a period ending no later than 31 December 2015; or
- apply to the ACMA to exchange the current licence for a new licence which authorises the operation of a radiocommunications transmitter on a different frequency not in the harmonised government band for a period ending no later than 31 December 2015.

The availability of the discount is also subject to the ACMA accepting the surrendered licence and issuing a new licence in exchange for the surrendered licence in accordance with the holder’s application. The new licence must otherwise be in the same, or substantially the same terms, as the surrendered licence.

If all of the above conditions are met, the amount of tax in respect of the spectrum access under the new licence is the amount of tax worked out under item 202, item 302 or item 402 (as the case may be) divided by 2 – that is, a 50 percent discount applies to the spectrum access under the new licence.

**Items 10, 11 and 12**

These items amend the Dictionary to the Tax Determination to insert definitions of the following terms:

- government purposes;
- harmonised government band; and
- variation day.