

Explanatory Statement

Commercial Broadcasting (Tax) Act 2017

Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2022

Issued by the Authority of the Minister for Communications, Urban Infrastructure, Cities and the Arts

Authority

Section 14 of the *Commercial Broadcasting (Tax) Act 2017* (the CBT Act) provides that the Minister may, by legislative instrument, make rules that make provision for rebates of the whole or a part of an amount of tax payable by a person.

Purpose

The purpose of the *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2022* (the Rules) is to provide rebates of the transmitter licence tax for the 2022-2023 and 2023-2024 financial years to holders of commercial television and radio broadcasting licences that were previously eligible to receive transitional support payments.

As part of the 2017 Broadcast and Content Reform Package, the Australian Government abolished the licence fees paid by commercial broadcasters and introduced a price – known as the commercial broadcasting tax (the CBT) – on the radiofrequency spectrum used by commercial broadcasters through the CBT Act.

The package also included transitional support payments for certain broadcasters, payable each financial year for five years from the financial year beginning 1 July 2017, to provide that broadcasters were no worse off as a result of broadcasting licence tax reforms introduced through the *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017* (Broadcasting Reform Act) and CBT Act. The transitional support payments were set out in the Broadcasting Reform Act, and have been completed as of the 2021-2022 financial year.

The Rules will introduce a rebate for those commercial broadcasters that previously received transitional support payments. The rebate will be provided for two financial years while broader media reforms, including potential reforms to CBT following the statutory review of the CBT by the Australian Communications and Media Authority that was finalised in 2021, are considered and progressed. The rebate amounts, as set out in the table at item 7 of this instrument, are fixed at the same amounts that each broadcaster previously received as transitional support payments. As such, the amounts included at item 7 reflect the amounts at item 40 of Schedule 6 of the Broadcasting Reform Act.

Under the Rules, rebates will be provided as a deduction when CBT becomes payable for each broadcaster. For companies that have multiple licences, the rebate will be provided on the earliest transmitter licence tax in the period. Should the value of the first transmitter licence tax be lower than the full rebate amount, the remainder of the rebate will carry onto the second transmitter licence tax and so forth.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation

The Rules continue the arrangements for transitional support payments received during the 2017-18 to 2021-22 financial years, established in the Broadcasting Reform Act. At the time, the Minister for Communications engaged in extensive consultation directly with industry stakeholders, and all stakeholders were invited to make submissions.

The Rules provide a rebate that will effectively extend support for an additional two years while there is further engagement with industry regarding reforms to the CBT, following the statutory review of the tax conducted by the Australian Communications and Media Authority. The Rules have been developed taking into account representations made by the commercial broadcasting industry that called for the continuation of transitional support payments.

The nature of the consultation is considered appropriate in the circumstances. The Australian Communications and Media Authority, which administers the CBT, was consulted in the development of this instrument.

Regulation Impact Statement

The Office of Best Practice Regulation was consulted and advised that the proposal was non-regulatory and had zero regulatory cost (ID 44664).

Notes on Sections

Section 1 – Name

This section provides that the title of the instrument is the *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2022*.

Section 2 – Commencement

This section provides that the whole of the Rules commence on the day after the instrument is registered.

Section 3 – Authority

This section provides that the Rules are made under section 14 of the *Commercial Broadcasting (Tax) Act 2017*.

Section 4 – Definitions

This section sets out a number of definitions for the purposes of the Rules. The section also notes that some terms, such as ‘associated with a commercial broadcasting licence’ and ‘tax’, are defined in the *Commercial Broadcasting (Tax) Act 2017*.

The term ‘Act’ is defined to mean the *Commercial Broadcasting (Tax) Act 2017*.

The term ‘rebate period 1’ is defined to mean the period commencing at the start of 9 June 2022 and ending on 8 June 2023.

The term ‘rebate period 2’ is defined to mean the period commencing at the start of 9 June 2023 and ending on 1 June 2024.

The commencement dates for rebate period 1 and rebate period 2 were chosen so that those companies with transmitter licence tax due close to the end of the financial year would receive the financial benefit of the rebate early in the following financial year. This avoids the scenario where some companies would not receive the benefit of a rebate until after the 2023-2024 financial year which could occur if the rebate periods matched the 2022-2023 and 2023-2024 financial years.

Certain companies that will receive a rebate on a transmitter licence tax imposed on dates occurring between 9 June and 30 June are likely to pay their transmitter licence tax in the following financial year, due to the effect of section 205AC of the *Broadcasting Services Act 1992*, which provides that CBT becomes due and payable on the 28th day after ACMA issues an assessment of CBT to a commercial broadcaster. Regardless of the date when transmitter licence tax is imposed, all companies will only be entitled to the rebate amount specified in column 3 of the table at item 7 for both rebate periods. That is, a company would not be entitled to an additional rebate for holding anniversary dates in the 2021-2022, 2022-2023 and 2023-2024 financial years.

Rebate period 2 ends on 1 June 2024 rather than extending for a complete year, so that all rebates are provided within the 2023-2024 financial year. Rebate period 2 provides sufficient time for all eligible companies to receive the full amount of the rebate before the end of the financial year.

The term ‘transmitter licence’ is defined to mean a transmitter licence associated with a commercial broadcasting licence.

The term ‘transmitter licence tax’ is defined to mean tax imposed each financial year under section 6 of the CBT Act and calculated in accordance with section 7 of the CBT Act.

Section 5 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 6 – Rebate of transmitter licence tax

This section sets out how the transmitter licence tax rebate provided under the Rules will apply to taxes liable during the relevant rebate periods.

Subsection (1) provides that for the purpose of section 14 of the Act, the 19 commercial broadcasting companies specified in an item in column 2 of the table at item 7 are entitled to a rebate of the amount specified for the item in column 3 of transmitter licence tax imposed during each of rebate period 1 and rebate period 2.

Subsection (2) provides that a rebate under subsection (1) is applied as an offset against transmitter licence tax imposed.

Subsection (3) provides that a rebate under subsection (1) is applied:

- (a) if the company holds only one transmitter licence – at the time that transmitter licence tax is imposed during each of rebate period 1 and rebate period 2; or
- (b) if the company holds more than one transmitter licence:
 - (i) at the time of the first imposition of transmitter licence tax on the transmitter licences held by the company during of rebate period 1 and rebate period 2;
 - (ii) only to the extent the amount of the rebate is equal to or less than the transmitter licence tax imposed; and
 - (iii) if due to subparagraph (ii) a rebate is still payable – on each subsequent occasion that tax is imposed on the other transmitter licences held by the company within each of rebate period 1 and rebate period 2, until the rebate amount in column 3 of the table in item 7 in respect of the company is reached for that period.

Examples are provided to clarify how the arrangements in paragraph 6(3)(b) will operate.

Rebates are to be applied as a deduction on transmitter licence tax as they are paid, so that at no time will a commercial broadcaster receive more in rebates than they have paid in tax. As the rebates are applied at the time tax is imposed, the relevant commercial broadcaster will not be required to pay CBT until their full rebate has been applied.

Section 7 – Table

This section sets out a table listing each eligible company and the corresponding rebate amount. This is the table mentioned in subsection 6(1) which establishes the entitlement to payment. There are 19 companies listed in the table. The sums, in Australian dollars, specified under the ‘Rebate amount’ column are fixed and not indexed whatsoever. They represent the rebate amount that is payable to each respective company in each rebate period. The companies and respective rebate amounts are consistent with the table at item 40 of schedule 6 of the Broadcasting Reform Act.

Schedule 1 – Repeals

Item 1 of the schedule repeals the *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2020*. The rebates provided by these Rules applied between 14 February 2020 and 13 February 2021, so these Rules have served the purpose for which they were made and can be repealed.

Statement of compatibility with Human Rights

This statement of compatibility is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The effect of the Rules is limited to holders of commercial broadcasting licences under the *Broadcasting Services Act 1992*. The Rules have no impact on any natural persons in the capacity of licensee as only qualified companies are eligible to hold such licences.

The Rules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The measure will not affect individuals' ability to enjoy and benefit from culture (Article 15 International Covenant on Economic, Social and Cultural Rights). The measure is strictly related to the taxation and licence fees payable by commercial broadcasters. Individuals will not be prevented from taking part in cultural life via the services offered by the commercial broadcasters.

Article 19 of the International Covenant on Civil and Political Rights sets out the rights to freedom of opinion and expression. The right to freedom of opinion is the right to hold opinions without interference, and the right to freedom of expression includes the right to receive and impart information of all kinds through any medium, including the media and broadcasting.

The Rules engage and promote the right to freedom of opinion and expression by supporting broadcasting platforms, which share diverse views and information with the Australian community. Commercial broadcasters are a valuable source of Australian news, entertainment and culture. The measure is limited to a rebate of transmitter licence tax and will not introduce any restrictions on content.

Conclusion

The Rules are compatible with human rights as they support the right to freedom of opinion and expression and do not limit any other human rights.