

EXPLANATORY STATEMENT

Radiocommunications Taxes Collection Regulations (Amendment)

Statutory Rule No. 355 of 1989

**Issued by the Authority of the Minister for Transport and
Communications**

By virtue of section 6 of the Radiocommunications (Transmitter Licence Tax) Act 1983, section 6 of the Radiocommunications (Receiver Licence Tax) Act 1983, section 6 of the Radiocommunications (Frequency Reservation Certificate Tax) Act 1983 and section 6 of the Radiocommunications (Temporary Permit Tax) Act 1983, taxes are imposed on the grant of, respectively:

- . a transmitter licence, pursuant to section 24 of the Radiocommunications Act 1983 (the Radcom Act);
- . a receiver licence, pursuant to section 38 of the Radcom Act;
- . a frequency reservation certificate, pursuant to section 21 of the Radcom Act; and
- . a temporary permit, pursuant to section 35 of the Radcom Act.

Section 7 of the Radiocommunications Taxes Collection Act 1983 (the Act) provides that the tax imposed on the grant of an instrument (defined in section 4 of the Act to mean a frequency reservation certificate, a licence, a temporary permit or a test permit) is payable on the grant of the instrument.

Subsection 11(1) of the Act provides that the Governor-General may make regulations not inconsistent with the Act, prescribing all matters required or permitted by the Act, or necessary or convenient, to be prescribed for carrying out or giving effect to the Act.

Subsection 11(2) of the Act provides that the regulations made under subsection 11(1) of the Act may make provision for or in relation to the remission or refund of tax in specified circumstances.

Regulation 3 of the Radiocommunications Taxes Collection Regulations (the Regulations) previously provided that the holder of a frequency reservation certificate was entitled to a pro-rata refund in respect of tax paid on the grant of the certificate where the Minister subsequently grants to the person a transmitter licence permitting the person to operate a transmitter on the previously unallocated frequency reserved by the certificate.

Regulation 4 of the Regulations provides that the holder of a transmitter or receiver licence is entitled to a pro-rata refund in respect of tax paid on the grant of the licence where the licensee surrenders the licence before the day specified in the licence for the expiry of the licence.

The Minister decided that pro-rata refunds should also be paid where a certificate holder surrenders the certificate before the day specified in the certificate for the expiry of the certificate.

The Minister also decided that a pro-rata refund should be paid where the Minister cancels an instrument (other than a test permit) for a reason other than a contravention of the Radcom Act, the regulations made under that Act relating to the instrument, or a condition imposed on the grant of the instrument. This is to cover situations where, for example, the Minister cancels a frequency reservation certificate or a licence as a result of a new frequency band plan which assigns the frequencies involved to different purposes than were contemplated when the certificate or licence was granted.

Details of the amendments to the Regulations are as follows:

Refund on frequency reservation certificate tax

Clause 1. Amends regulation 3 by omitting subregulations (1) and (2) and substituting new subregulations (1) and (2).

New subregulation 3(1) provides that the holder of a frequency reservation certificate is entitled to a refund in respect of the tax paid on the grant of the certificate where:

- . the Minister grants to the holder a transmitter licence permitting the holder to operate a transmitter on an unallocated frequency reserved by the certificate (paragraph (a)); or
- . the holder of the certificate surrenders the certificate before the day specified in the certificate for the expiry of the certificate (paragraph (b)).

The amount of the refund is to be calculated in accordance with subregulation 3(2).

New subregulation 3(2) provides that the amount of the refund payable under subregulation 3(1) is to be calculated on a pro-rata basis comparing the residue period (commencing on the day on which the licence was granted or the certificate surrendered and ending on the day specified for the expiration of the certificate), with that period for which the certificate was granted.

Refund on cancellation of instrument

Clause 2. Inserts new regulation 4A to provide for pro-rata refunds where the Minister cancels an instrument (other than a test permit) for reasons other than a breach of the Radcom Act, regulations under that Act or a condition to which the grant of the instrument was subject (new subregulation 4A(1)). The amount of the refund is to be calculated in accordance with subregulation 4A(2).

New subregulation 4A(2) provides that, subject to subregulation 4A(3), the amount of the refund payable under subregulation 4A(1) is to be calculated on a pro-rata basis, comparing the residue period (commencing on the day on which the instrument was cancelled and ending on the day specified for the expiration of the instrument) with that period for which the instrument was granted.

New subregulation 4A(3) provides that where the amount of refund calculated in accordance with subregulation 4A(2) is greater than \$30, \$10 shall be deducted from the amount of the refund, or where the amount is not greater than \$30, the refund is not payable. The deduction of \$10 is for the administrative costs of processing the refund, and the reason for non-payment of refunds not exceeding \$30 is that it would be uneconomical for the Department to process such refunds.

New subregulation 4A(4) provides that regulation 4A does not apply in relation to persons who are entitled to refunds under regulation 3 or 4. This is to prevent a double payment of a refund where after a refund is paid in accordance with regulation 3 or 4, the instrument the subject of the refund is subsequently inadvertently cancelled.

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