

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 142

Issued by the Authority of the Minister for Communications, Information Technology
and the Arts

Radiocommunications Taxes Collection Act 1983

Radiocommunications Taxes Collection Amendment Regulations 2007 (No. 1)

The *Radiocommunications Taxes Collection Act 1983* ('the Act') provides for certain matters relating to the payment and collection of taxes imposed in relation to apparatus and spectrum licences issued under the *Radiocommunications Act 1992*. Apparatus licences (which include transmitter and receiver apparatus licences) and spectrum licences are issued by the Australian Communications and Media Authority ('ACMA').

Section 11 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The matters that the regulations may make provision for include the manner of payment of tax and the remission or refund of tax in specified circumstances.

Section 8 of the Act allows the regulations to exempt specified classes of persons from the payment of apparatus licence or spectrum licence tax. Regulation 5 of the Radiocommunications Taxes Collection Regulations ('the Principal Regulations') provides an exemption from tax imposed on holders of an apparatus licence where, among other things, the income of the person or body is exempt from taxation under the *Income Tax Assessment Act 1936* ('ITAA 1936') or where the relevant person or body is operating a radiocommunications transmitter or a receiver solely or principally for assisting another body whose income is tax exempt under the ITAA 1936.

The primary purpose of the Regulations is to correct an anomaly in the operation of the exemptions in the Principal Regulations arising from outdated references to the ITAA 1936 in the Principal Regulations. As a result of the commencement of the *Income Tax Assessment Act 1997* ('ITAA 1997') on 1 July 1997, the income tax exemption provisions of the ITAA 1936 referred to in subregulation 5(7) of the Principal Regulations became obsolete.

Until now, the Principal Regulations had not been amended to take into account the effect of the commencement of the ITAA 1997 and this has resulted in the unintended consequence that certain licensees (or bodies whom they are assisting) created on or after 1 July 1997 which are income tax exempt bodies under the ITAA 1997, have been ineligible for the licence tax exemption provided for by the Principal Regulations. The Regulations rectify this anomaly and will enable all eligible bodies to be exempt from the payment of the tax and where applicable, seek a refund from ACMA of tax paid with interest since 1 July 1997.

The opportunity was also taken to make some minor amendments to the Principal Regulations to update the title, and to update terminology in subparagraph 4A(1)(b)(iii) to reflect the amendments that were previously made to the Principal Regulations in 1993.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003* ('LIA').

Details of the accompanying Regulations are set out in the Attachment.

The ACMA (being the body that issues licences under the Radiocommunications Act and collects the tax imposed on those licences) was consulted about the Regulations. Wider consultation was considered unnecessary due to the minor and machinery nature of the Regulations.

Schedule 2 to the Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments. Schedule 1 to the Regulations is deemed to have commenced on 1 July 1997 in order to enable licensees who have been affected by the anomaly in the Principal Regulations to seek a refund for tax paid since 1 July 1997.

ATTACHMENT

Details of the Radiocommunications Taxes Collection Amendment Regulations 2007 (No. 1)**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is *Radiocommunications Taxes Collection Amendment Regulations 2007 (No. 1)*.

Regulation 2 – Commencement

Regulation 2 provides that regulations 1 to 3 and Schedule 1 to the Regulations are taken to have commenced on 1 July 1997. Retrospective operation of regulations 1 to 3 and Schedule 1 will correct the anomaly that has existed in the Principal Regulations since 1 July 1997 (explained in further detail below) and will enable holders of an apparatus licence (or the bodies whom they are assisting) who are income tax exempt under the relevant provisions of the *Income Tax Assessment Act 1997* ('ITAA 1997') and who meet all other criteria under subregulation 5(7) of the Regulations to seek a refund from ACMA of any licence tax they may have paid since 1 July 1997. Such holders of apparatus licences were intended to be exempt from the payment of tax imposed on their licences, however, as result of the obsolete references to the *Income Tax Assessment Act 1936* ('ITAA 1936'), they had been ineligible for the exemption.

Regulation 2 also provides that Schedule 2 to the Regulations commences on the day after they are registered in the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of Radio Communications Taxes Collection Regulations

This regulation provides that the Principal Regulations are amended as set out in Schedules 1 and 2.

Schedule 1 – Amendments taken to have commenced on 1 July 1997**Item 1 - Paragraph 5(7)(b)**

This item removes obsolete references to the ITAA 1936 in paragraph 5(7)(b) and substitutes references to the equivalent provisions in the ITAA 1997. The purpose of these amendments is to correct an anomaly in the operation of the Principal Regulations that has existed since 1 July 1997.

Regulation 5 of the Principal Regulations deals with an exemption from the payment of tax imposed in respect of apparatus licences in a number of circumstances, including where an apparatus licence has been issued to:

- (i) a body who is a body corporate or member of an unincorporated body to which subregulation 5(7) applies (subregulations 5(4) and (5)); or

- (ii) a person or body in respect of a radiocommunications transmitter or receiver that is operated solely or principally for the purposes of assisting a body to which subregulation 5(7) applies (subregulation 5(6)).

Subregulation 5(7) of the Principal Regulations currently sets out four requirements that must be satisfied for the purposes of the tax exemption:

- (a) the body must be staffed principally by volunteers;
- (b) the body must be referred to in paragraphs 23(d) or (e), or subparagraph 23(g)(v) of the ITAA 1936;
- (c) the income of the body must be exempt under the relevant provision of the tax legislation mentioned above; and
- (d) the principal purpose of the body must be to provide emergency services or services for the safeguarding of human life, including rural fire fighting, search and rescue and coastguard services.

As a result of the commencement of the ITAA 1997 on 1 July 1997 (which contained provisions dealing with income tax exemption), the relevant income tax exemption provisions of the ITAA 1936 referred to in paragraph 5(7)(b) above became obsolete. However, as the Principal Regulations were not amended at that time to take into account the commencement of the ITAA 1997, an anomaly arose respect of licensees (or the bodies whom they are assisting) created on or after 1 July 1997.

Since 1 July 1997, the assessment of income of an entity for any year of income from 1997-1998 onwards has been made under the provisions of the ITAA 1997. Entities that had been endorsed as income tax exempt entities under the ITAA 1936 had until 30 June 2000 to apply for endorsement under the ITAA 1997 for income tax exemption. However, in order to obtain the licence tax exemption in accordance with the Principal Regulations, a licensee had to demonstrate that it (or the related body they were assisting) was an income tax exempt body falling under one of the (obsolete) provisions of the ITAA 1936 specified under paragraph 5(7)(b), in addition to satisfying all other remaining criteria under subregulation 5(7). This gave rise to the anomalous result where licensees (or the bodies which whom they were assisting) that had been created on or after 1 July 1997 and that satisfied the criteria under paragraphs 5(7)(a) and (d) and that were income tax exempt under the ITAA 1997, were ineligible for the tax exemption because the Principal regulations had not been updated.

In order to ensure that eligible licensees affected by the anomaly receive the benefit of the tax exemption, as originally intended, this item is taken to have commenced (see regulation 2 of the Regulations) on 1 July 1997. This will enable eligible licensees to seek a refund from ACMA of any licence tax (with interest) they may have paid since 1 July 1997. A note has been inserted into the Regulations to highlight this (see item 3 of Schedule 2, below).

Schedule 2 – Amendments commencing on the day after registration

Item 1 - Regulation 1

From 1 January 1998, the practice of drafting the title of regulations altered to include a reference to the year in which the Regulations were first made. The Principal Regulations were made in 1985 and subsequently amended in 1993, however no further amendments had been made since 1998. Therefore, consistent with the new practice, this item updates the name of the Principal Regulations to include the year they were made.

The effect of this item is that the Principal Regulations are to be cited as the *Radiocommunications Taxes Collection Regulations 1985*.

Item 2 - Subparagraph 4A(1)(b)(iii)

This item makes a minor amendment to subparagraph 4A(1)(b)(iii) to ensure that the terms used throughout the Principal Regulations are consistent.

The Radiocommunications Taxes Collection Regulations (Amendment) 1993 (SR No.178) amended the Principal Regulations to change references to the ‘grant’ of an instrument or licence, or the conditions on which an instrument or licence was ‘granted’, to references to the ‘issue’ of an instrument or licence, or the conditions on which an instrument or licence was ‘issued’. The purpose of those amendments was to ensure that the terms used in the Principal Regulations were consistent with terms used in the *Radiocommunications Act 1992*.

Item 3 replaces a reference to the conditions on which an instrument was ‘granted’ in subparagraph 4A(1)(b)(iii) with a reference to the conditions on which an instrument was ‘issued’ to correct an omission which occurred in 1993.

Item 3 - After subregulation 5 (7)

This item is a consequential amendment relating to item 1 of Schedule 1. Item 3 of inserts a note after subregulation 5(7) stating that eligible entities may be able to seek a refund of an amount of any tax they had paid under the *Radiocommunications Taxes Collection Act 1983* since 1 July 1997. This notation is designed to ensure that licensees who have been affected by the anomaly in the Principal Regulations (which is corrected by these Regulations – see item 1 of Schedule 1) are made aware of the ability to seek a refund of tax, provided that they are eligible for the exemption provided for in regulation 5.