

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Spectrum Licence Tax) Amendment Determination 2012 (No.1)

Radiocommunications (Spectrum Licence Tax) Act 1997

Purpose

The purpose of the *Radiocommunications (Spectrum Licence Tax) Amendment Determination 2012 (No.1)* (the **Amendment Determination**) is to amend the *Radiocommunications (Spectrum Licence Tax) Determination 1999* (the **Determination**) in order to:

- update the base amount of spectrum licence tax for each of the listed frequency bands,
- remove the tax on licences in the 500 MHz band, and
- update the references to the Australian census to the 2011 census.

Legislative Provisions

The Amendment Determination is made under subsection 7 (1) of the *Radiocommunications (Spectrum Licence Tax) Act 1997* (the **Act**) which provides for the Australian Communications and Media Authority (the **ACMA**) to specify in a written determination the basis for calculating the amount of spectrum licence tax payable by spectrum licensees.

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.

The Amendment Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Background

What is spectrum licence tax?

The spectrum licence tax is an annual tax paid by spectrum licensees imposed under the Act on spectrum licence holders. The Act provides that the amount of tax payable is ascertained in accordance with a written determination made by the ACMA under the Act.

The tax allows the ACMA to recover from spectrum licensees the indirect costs of spectrum management activities such as international coordination, domestic planning, interference investigation and policy development. The ACMA determines the amount of tax to be paid for each spectrum-licensed band. For each band, a base amount is specified and applied to individual spectrum licences in the band on a per population, per MHz basis. The formula for calculating the tax applicable to each spectrum licence is also set out in the Determination.

Method of calculating base amounts

The method applied to determine the base amount first involves the calculation of the spectrum maintenance component (SMC). This is the component of an apparatus licence fee that is designed to recover the indirect costs of spectrum management. The SMC is the total indirect cost of spectrum management expressed as a percentage of total apparatus licence tax revenue.

The objective of applying the SMC as part of the calculation for the base amounts for spectrum licence tax is to create parity between the recovery of indirect costs for the two types of licensing (apparatus and spectrum). Consequently, even though the ACMA no longer calculates an annual SMC to be included in the breakdown of apparatus licence tax, an SMC percentage was calculated using 2010–11 cost and revenue figures for the purpose of updating the base amounts for spectrum licence tax. This current SMC percentage is 20.6 per cent.

The method used to calculate the base amounts for each band is as follows: using a general assigned apparatus licence type, an amount equivalent to the licence fee of an Australia-wide apparatus licence is calculated for the spectrum licensed band. That fee amount is then multiplied by the SMC percentage to produce a base amount of the total spectrum licence tax that applies to the whole band. The amount of spectrum licence tax paid on an individual spectrum licence is calculated as a share of that base amount on a per population, per MHz basis.

Review of spectrum licence tax

One of the outcomes of the ACMA review of regulatory arrangements for spectrum licensing was identification of the need to update, prior to 11 October 2012 - the next date on which spectrum licence tax will be charged – the amount of spectrum licence tax imposed. This required amendment to three elements of the Determination:

- the base amounts in the Determination, which have not been updated since 2001;
- the base amount for the 500 MHz band, which needed to be removed after that band reverted to apparatus licensing on 31 May 2012; and
- the references to census data, which have not been updated since 2004.

As a result, the ACMA has recalculated each of the base amounts in the Determination. These differences between the old and new amounts are due to changes to the basis on which apparatus licences fees are calculated. Prior to 2003, the relevant transmitter licence tax determination provided a number of ranges of bandwidth amount. The amount charged for a general apparatus licence depended on which bandwidth range the amount of bandwidth in the licence fell into. This meant, for example, that a licence for 250 MHz of spectrum attracted the same annual fee as a licence for 1000 MHz of spectrum. The *Radiocommunications (Transmitter Licence Tax) Determination 2003* instead provides a \$ per kHz amount which is then multiplied by the actual amount of bandwidth of the spectrum licence.

Stages of application

As described above, the ACMA has recalculated the base amounts set out in the Determination. The Amendment Determination will update the base amounts for six bands (as set out in Part 1 of Schedule 1 in the Amendment Determination) and the base amount for the 500 MHz band will be removed. It is intended that a future amendment will update the base amount for the 28 and 31 GHz band once consultation with spectrum licensees in that band is completed. (See Consultation below for more information.)

Operation

The Amendment Determination amends the Determination in order to update the base amounts of spectrum licence tax for each of the listed frequency ranges.

The Determination sets out the amounts of tax to be charged for each specified spectrum-licensed band. The base amount for each band is divided amongst spectrum licensees in that band on a per MHz/per population basis.

The base amounts will next be applied on 11 October 2012, the anniversary date for charging spectrum licence tax as provided for in the Determination and the Act. At that time, the new 2011 Australian census data (updated as a result of the amendment) will be applied to the calculation of spectrum licence tax for each specified band.

Consultation

The ACMA has consulted widely about its plans to update the spectrum licence framework. In March 2012, the ACMA released a consultation paper, *Proposed updates to the spectrum licence framework*. This paper was the culmination of a comprehensive series of reviews of various components of the spectrum licensing technical and regulatory frameworks. The reviews were conducted in anticipation of forthcoming major spectrum allocations and processes to re-allocate or re-issue expiring spectrum licences. The paper included a discussion of the proposed changes to the Determination.

Stakeholders were generally in favour of the updates to the base amounts of spectrum licence tax proposed in the consultation paper. However, they expressed concern about the application of the tax to the different bands. Queries were raised about the ACMA's policy of not applying the tax to licences in the 2.3 GHz band until existing licences are re-issued or re-allocated, not imposing tax in the 20GHz and 30GHz bands and the large increase in the 28 GHz band. There was also a request for further information about the methodology for the calculation of the spectrum maintenance component and the Australia-wide apparatus licence charge.

All written submissions from this consultation process are available on the ACMA's website at www.acma.gov.au.

The ACMA had regard to all of the comments made in these submissions when finalising the Amendment Determination. As a result of comments received, the ACMA has provided additional information in its response paper to the submissions (available on the ACMA website) about how the provisions operate and about the calculation of the spectrum maintenance component and the value of apparatus licence charges. The ACMA also provided further information about its policy regarding the application of spectrum licence tax to the 2.3 GHz, 20 GHz and 30 GHz bands in the response paper. In addition, the ACMA will consult further with affected stakeholders in the 28 GHz and 31 GHz bands about tax rates and future planning, before any changes are introduced in relation to those bands.

Statement of compatibility with human rights

Subsection 9 (1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislative Instruments Act 2003* applies, to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is in **Attachment B**.

Regulatory Impact

Prior to releasing the draft Amendment Determination, the ACMA consulted with the Office of Best Practice Regulation (the **OBPR**) on the requirement for a Regulation Impact Statement (**RIS**) for this legislative instrument. The OBPR advised that this Determination did not warrant the preparation of a RIS as the amendments are machinery in nature. [OBPR ID 2012/13483]

Documents incorporated by reference

None

Detailed Description of the Amendment Determination

Details of the Amendment Determination are set out in **Attachment A**.

ATTACHMENT A

**DETAILS OF THE RADIOCOMMUNICATIONS (SPECTRUM LICENCE TAX)
AMENDMENT DETERMINATION 2012 (NO.1)**

Section 1 – Name of Determination

This section provides that the title of the Amendment Determination is the *Radiocommunications (Spectrum Licence Tax) Amendment Determination 2012 (No.1)*.

Section 2 - Commencement

This section states that the Amendment Determination will commence on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Amendment

This section explains that the amendments being made to the *Radiocommunications (Spectrum Licence Tax) Determination 1999* are set out in Schedule 1 of the Amendment Determination.

Schedule 1 - Amendments

Item [1] of Schedule 1 substitutes Table 1 of Part 1 of Schedule 1 of the Determination with a new Table 1, which sets out the new base amounts of spectrum licence tax for each of the listed frequency ranges. The base amounts for the 800 MHz, 2 GHz, and 27 GHz bands have increased by 4.1%, 29% and 115.9% respectively. The base amounts for the 1800 MHz and 3.4 GHz bands have decreased. The base amount for the 500 MHz band has been removed (the band is now apparatus licensed) and the base amount for the 28 GHz and 31 GHz bands remains the same.

Items [2] and [3] of Schedule 1 update the definitions of '*area population*' and '*Australian population*' in Part 3 of Schedule 1 of the Determination by omitting references to the 2001 census and inserting references to the 2011 census, which is the most recent Australian census.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Radiocommunications (Spectrum Licence Tax) Amendment Determination 2012 (No.1)

This legislative instrument is 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*.

Overview of the Legislative Instrument

Spectrum licensing is administered under the *Radiocommunications Act 1992*. Spectrum licence tax is an annual tax paid by spectrum licensees and is imposed under the *Radiocommunications (Spectrum Licence Tax) Act 1997* (the **Act**). Subsection 7(1) of the Act provides that the amount of tax to be paid is the amount ascertained in accordance with a written determination made by the Australian Communications and Media Authority (the **ACMA**).

The *Radiocommunications (Spectrum Licence Tax) Amendment Determination 2012 (No.1.)* (the **Amendment Determination**) is made under subsection 7 (1) of the Act. The Amendment Determination amends the *Radiocommunications (Spectrum Licence Tax) Determination 1999* (the **Determination**) in order to:

- update the base amounts for six specified frequency bands (in Part 1 of Schedule 1 of the Determination);
- remove the base amount for the 500 MHz band, which is no longer spectrum-licensed; and
- replace two references to the 2001 census with references to the 2011 census, which is the most recent Australian census.

The recalculated base amounts incorporate updated cost and revenue figures, as well as updated apparatus licence fees (all of which are used in the calculation of base amounts for each spectrum licensed band).

Subsection 9 (1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislative Instruments Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The Amendment Determination is a legislative instrument that is subject to disallowance under section 42 of the *Legislative Instruments Act 2003*.

Human Rights Implications

The Amendment Determination does not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Determination is compatible with human rights as it does not raise any human rights issues.