

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence Tax) Act 1983

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2016 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2016 (No. 1)* (**the Amendment Determination**) under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 7(1) of the Act stipulates that the amount of tax in respect of the issue of a transmitter licence, the anniversary of a transmitter licence coming into force or the holding of a transmitter licence is the amount determined by the ACMA.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose and operation of the instrument

The Amendment Determination amends the *Radiocommunications (Transmitter Licence Tax) Determination 2015* (**the Determination**) to:

- adjust taxes for inflation;
- adjust some of the transmitter licence taxes for satellite licensees to encourage more efficient use of the spectrum between 17.3 GHz and 51.4 GHz; and
- set taxes to allow holders of spectrum licences in the 700 MHz band to access the spectrum before their spectrum licences begin in April 2018.

Adjustments for inflation

Taxes are adjusted for inflation annually to keep licence taxes constant in real terms. In the Amendment Determination the ACMA has increased the tax amount for transmitter licences (except for assigned fixed point to point and point to multipoint licences operating in spectrum below 960 MHz in remote density areas) by 1.0 per cent, based on the increase in the consumer price index (CPI).

Tax reform for satellite apparatus licences

The ACMA conducted a review of apparatus licences taxes for satellites services in response to industry concerns that taxes were high compared with international standards, and high given the large bandwidth requirements for satellite service deployment in the Ka band.¹ The review was based on opportunity cost pricing principles as the basis for setting efficient price signals for scarce resources, and is one of a suite of tools that the ACMA uses to achieve the efficiency objects of the *Radiocommunications Act 1992*. Efficient use of spectrum is encouraged when spectrum is priced at

¹ There are a number of definitions of the Ka band but for the purposes of the ACMA review of satellite taxes conducted in 2016 the ACMA defined it as the frequency range 17.3 GHz to 51.4 GHz.

opportunity cost, reflecting the value of the next-best opportunity foregone caused by current spectrum use.

In October 2015 the ACMA engaged economic and engineering consultants, Plum Consulting, to review taxes for the band using opportunity cost pricing principles, and to investigate how taxation arrangements could be improved to better reflect the peculiar spectrum denial properties of satellite systems. In April 2016 Plum delivered its final report to the ACMA. The ACMA formulated a raft of tax reform proposals based on the Plum report, and released both the proposals and the Plum report for public consultation in August 2016.

- As a result of this review the ACMA has decided to implement the following tax reforms for satellite licences:
 - reducing taxes between 17.3 GHz and 51.4 GHz to better reflect excess supply conditions. These tax reductions are expected to encourage more satellite investment in Australia that will better utilise spectrum between 17.3 GHz and 51.4 GHz, and generate economic benefits for Australia.
 - removing the fixed annual tax of \$279/MHz for non-geostationary orbit (NGSO) space and space receive licences operating in frequencies greater than 8.5 GHz. No licences currently attract this \$279/MHz tax and abolishing it will simplify the tax regime and make treatment of NGSO systems consistent with geostationary orbit (GSO) systems.
 - introducing a tax incentive for earth stations that are co-located (i.e. located within the specific radial distances specified in the Determination) and co-frequency (i.e. share the same or overlapping frequencies). The ACMA intends for this incentive to encourage earth stations to co-locate and use the same or similar frequencies which the ACMA expects will free up spectrum for other terrestrial services.

Set taxes for early access arrangements in the 700 MHz band

On 7 October 2016, the Minister for Communications, Senator the Hon. Mitch Fifield, issued a media release announcing that the spectrum in the 700 MHz band (733–748 MHz paired with 788–803 MHz) will be auctioned by the ACMA. The Minister also wrote² to the ACMA Acting Chairman setting out his intention to direct the ACMA on some of the auction parameters.

As part of the consultation about the auction of spectrum the ACMA proposed to allow winning bidders to apply for “early access” apparatus licences to access the spectrum before their spectrum licences commence.

The taxes for early access arrangements in the 700 MHz band allow the ACMA to grant apparatus licences to this band at the specified taxes, prior to spectrum licences coming into effect. The taxes specified in the Amendment Determination apply an annual licence tax rate of \$0.07/MHz (paired)/pop for operation of a transmitter in the frequency range 788–803 MHz.

A provision-by-provision description of the Amendment Determination is set out in the notes at **Attachment A**.

The Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003 (the LA)*.

² Available on the ACMA website.

Documents incorporated by reference

This instrument does not incorporate a document by reference.

Consultation

An explanation of the consultation which the ACMA undertook in relation to the making of the Amendment Determination is set out below.

Adjustments for inflation

The ACMA considered that it was unnecessary in this instance to consult on the changes in the Amendment Determination to increase taxes by the CPI, as CPI increases are routine and machinery in nature. Industry is aware of adjustments to apparatus fees to account for annual CPI increases. Such adjustments have been made by the Spectrum Management Agency, Australian Communications Authority and the ACMA since 1995. Information is available from the ACMA website (acma.gov.au) about apparatus licence fees including the statement that “All apparatus licence taxes are adjusted annually for changes in the CPI, to compensate for the effects of inflation.”

The formula the ACMA uses for calculating apparatus licence taxes has been in place since 1995 (it was updated in 2005) and the Amendment Determination applies the same formula. Information about the CPI is freely available to the general public from the Australian Bureau of Statistics.

In the special case of the unchanged taxes for point to point and point to multi-point licences operating below 960 MHz in remote density areas, the ACMA considered it unnecessary to consult with relevant stakeholders as there were no changes made affecting their licences.

Tax reform for satellite apparatus licences

In August 2016, the ACMA published a consultation paper proposing a number of potential tax reforms intended to enhance the efficiency of satellite spectrum. The ACMA received 8 submissions and took them into consideration. In October 2015 the ACMA also engaged economic and engineering consultants, Plum Consulting, to review taxes for the band using opportunity cost pricing principles, and to investigate how taxation arrangements could be improved to better reflect the peculiar spectrum denial properties of satellite systems. In April 2016 Plum delivered its final report to the ACMA.

Set taxes for early access arrangements in the 700 MHz band

In October 2016, the ACMA published a consultation paper seeking comments on the arrangements for a potential auction of spectrum in the 700 MHz band for spectrum licences that are proposed to commence on 1 April 2018. In anticipation that the auction will commence in April 2017, the ACMA also proposed to provide the successful bidders with the option of seeking “early access” to the spectrum, prior to the commencement of the spectrum licences. It is proposed that this access could be provided via apparatus licensing arrangements. As part of the consultation process for the auction, the ACMA also sought comment on the early access arrangements and a proposed tax of \$0.07/MHz (paired)/Pop. The ACMA received 9 submissions from this consultation process and took those submissions into account when making the Amendment Determination.

Regulatory impact assessment

Adjustments for inflation

The Office of Best Practice Regulation (**OBPR**) has considered the routine annual increase in licence tax rates by CPI, and formed the opinion that no regulatory impact analysis is required. (OBPR reference ID 12297).

Tax reform for satellite apparatus licences

A preliminary assessment of the proposal to make the Amendment Determination was conducted by OBPR, based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the Amendment Determination is not likely to have a regulatory impact on business, community organisations or individuals. (OBPR reference ID 20909).

700 MHz early access

The OBPR has determined that the proposed regulatory changes regarding apparatus licence tax arrangements for early access arrangements in this submission are minor or machinery in nature and has therefore verified that no further regulatory impact analysis is required – (OBPR reference ID 20916).

Statement of compatibility with human rights

Overview of the instrument

The *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2016 (No. 1)* (**the Amendment Determination**) amends the *Radiocommunications (Transmitter Licence Tax) Determination 2015* (**the Determination**) to:

- adjust taxes for inflation;
- adjust some of the transmitter licence taxes for satellite licensees to encourage more efficient use of the spectrum between 17.3 GHz and 51.4 GHz; and
- set taxes to allow holders of spectrum licences in the 700 MHz band to access the spectrum before their spectrum licences begin in April 2018.

Human rights implications

The ACMA has assessed whether the Amendment Determination is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the Amendment Determination and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

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

Notes to the Radiocommunications (Transmitter Licence Tax) Amendment Determination 2016 (No. 1)

Section 1 Name

This section provides that the instrument may be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2016 (No. 1)*.

Section 2 Commencement

This section provides that the instrument commences at the start of the day after it is registered on the Federal Register of Legislation, except for subsection 4(2) and Schedule 2 which commence on 5 April 2017.

The Federal Register of Legislation may be accessed at www.legislation.gov.au.

Section 3 Authority

This section identifies the Act that authorises the making of the instrument, namely the *Radiocommunications (Transmitter Licence Tax) Act 1983 (the Act)*.

Section 4 Amendments

This section provides that Schedule 1 and Schedule 2 of the Amendment Determination amend the *Radiocommunications (Transmitter Licence Tax) Determination 2015* (Registration No. F2015L00322) (**the Determination**).

Schedule 1 Amendments to the Radiocommunications (Transmitter Licence Tax) Determination 2015 [F2015L00322] (consumer price index increase and satellite tax changes)

Item [1]

This item repeals section 1.4 which revoked the *Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2)* [F2005B00171] which is no longer in force. As section 1.4 is no longer required it has been repealed.

Item [2]

Item [2] repeals Part 3 of the Determination and substitutes a new Part 3 to introduce new transitional arrangements. The new section 3.1 of the Determination sets out the relevant definitions for Part 3 and new section 3.2 provides new transitional arrangements for the implementation of transmitter licence tax changes made by the Amendment Determination.

Under the Act, a tax is imposed on the issue of a licence and, subject to decisions and actions of the licensee, on each anniversary of the day the licence comes into force, or otherwise upon the holding of a licence. Where tax is imposed on issue of a licence, the ACMA intends for the new tax rates, which account for the increase in CPI and for the changes to taxes for satellite services, to apply only to those licences that come into force on or after 5 April 2017 (whether or not the licence was issued before 5 April 2017).

In order for a licensee to know, as early as possible, the amount of tax that will be imposed on the issue of its licence, Schedule 1 of the Amendment Determination will commence the day after the instrument is registered. However, because the ACMA intends for the tax imposed on licences that come into force before 5 April 2017 to be the amount of tax payable before the tax changes in the Amendment Determination are accounted for, transitional provisions are required to ensure that the tax continues to be calculated in accordance with the Determination as in force immediately before the day on which Schedule 1 of the Amendment Determination commences. That is to say, licences issued after the commencement of Schedule 1 of the Amendment Determination that come into force before 5 April 2017 will be taxed on issue of the licence, calculated by reference to tax rates that have not been adjusted for the CPI increase, or for the new satellite taxes.

Item [3]

Item [3] repeals Part 2 of Schedule 2 and substitutes a new Part 2. This change has the effects outlined below:

- The item excludes fixed earth stations, mobile earth stations and space stations from being covered by Part 2 of Schedule 2 to the Determination. Such licences will now be covered in new Part 8A of Schedule 2 of the Determination, as inserted by the Amendment Determination. Further details of these changes are outlined in the description for Item [14] of the Amendment Determination.
- The item repeals and substitutes Table 202 in Schedule 2 with a new table that reflects CPI increases of 1.0 percent.

Item [4]

Item [4] repeals and substitute Table 302 in Schedule 2 and the accompanying note to reflect CPI increases of 1.0 percent.

Item [5]

Item [5] repeals Item 303A of Schedule 2, including the table and the example. The table outlined base amounts for licences in 2016, which are unnecessary from 2017.

Items [6-12]

Items [6-12] repeal and substitute previous tables in Schedule 2 for new tables that reflect CPI increases of 1.0 percent.

Item [6] repeals and substitutes Table 304A and the example; Item [7] repeals and substitutes Table 305A and the example; Item [8] repeals and substitutes Table 402 and the note; Item [9] repeals and substitutes Table 502 and the note; Item [10] repeals and substitutes Table 602 and the note; Item [11] substitutes Table 702; and Item [12] repeals and substitutes Table 802 and the note.

Apparatus licence tax rates for fixed point-to-point and point-to-multipoint licences under 960 MHz and within remote density areas, which are outlined in Table 402 and Table 502, are not subject to CPI increases and therefore remain unchanged.

Item [13]

Item [13] replaces the previous minimum amount of \$937 in subitem 803(2) of Schedule 2 for low power open narrowcasting licences with the new amount of \$946, which reflects a CPI increase of 1.0 percent rounded to the nearest dollar.

Item [14]

Item [14] inserts a new Part 8A in Schedule 2 to specify tax arrangements for space system licences (which includes space licences and earth licences). These tax arrangements were made by the ACMA following a review of satellite services that focussed on services operating in the frequency range between 17.3 GHz to 51.4 GHz.

Item 801A of the new Part 8A specifies the licences to which Part 8A applies. That is, the Part applies to a licence that relates to a fixed earth station, a mobile earth station or a space station.

Item 802A and Table 802A of the new Part 8A specify the new taxes for satellites services. Table 802A specifies a new tax delineation point at 17.3 GHz to better delineate taxes for Ku band³ and Ka band services.⁴ The table also provides for tax reductions in the frequency range between 17.3 GHz to 51.4 GHz.

Table 802A specifies new taxes for satellite services. These new taxes result from applying the following tax reductions on the following licences in the 17.3 GHz – 51.4 GHz frequency range:

- 30 per cent tax reductions for Australia-wide and high density area licences;
- 50 per cent tax reductions for medium density area and low density area licences; and
- \$0 tax for remote density area licences (subject to cost recovery fees and the minimum tax of \$39.57).

Item 803A of the new Part 8A of Schedule 2 specifies the tax payable for certain spectrum licences under space licences. In cases where a spectrum access under a space licence involves the use of spectrum in the frequency range from 2483.5 MHz up to and including 2500 MHz; and is not a low power spectrum access; and CDMA technology is used to transmit on a frequency within that frequency range, the tax payable for the spectrum access is one quarter of the amount that would have otherwise been worked out under item 802A.

Item 804A of the new Part 8A of Schedule 2 specifies details for a tax incentive for earth stations that are co-located (i.e. located within the specific radial distances specified in the determination) and co-frequency (i.e. share the same or overlapping frequencies). The ACMA intends for this incentive to encourage earth stations to co-locate and use the same or similar frequencies, which the ACMA expects will free up spectrum for other terrestrial services.

Item 805A of the new Part 8A of Schedule 2 states that if the amount of tax worked out in respect of a spectrum access using Part 8A is less than the minimum annual amount, the amount of tax is taken to be the minimum annual amount.

³ There are a number of definitions of the Ku band but for the purposes of the ACMA review of satellite taxes conducted in 2016 the ACMA considers it as the satellite band sitting under the Ka band.

⁴ The delineation point was previously set at 14.5 GHz.

These new tax arrangements for satellite services effectively replace the fixed annual tax of \$279/MHz for non-geostationary orbit (**NGSO**) space and space receive licences operating in frequencies greater than 8.5 GHz.⁵ The abolition of this tax will simplify the tax regime and make treatment of NGSO systems consistent with geostationary orbit (**GSO**) systems.

Item [15]

Item [15] substitutes Table 902 in Schedule 2 with a new table that reflects CPI increases of 1.0 percent.

Item [16]

Item [16] substitutes the previous minimum amount of \$39.18 with the new amount of \$39.57, which reflects a CPI increase of 1.0 percent.

Item [17]

Item [17] inserts into the Note at the end of the Dictionary two extra terms from the *Radiocommunications (Interpretation) Determination 2015* which will be applicable to the Determination as amended.

Schedule 2 Amendments to the Radiocommunications (Transmitter Licence Tax) Determination 2015 [F2015L00322] (700 MHz band changes)

Item [1]

Item [1] has the effect of amending item 701A to add the 700 MHz band to the list in that item. Part 7A applies to a PMTS Class B licence that authorises operation of a transmitter in specified frequency bands one of which is now the 700 MHz band. The 700 MHz band is being added to Part 7A to set an amount of tax for the use of spectrum in that band. This means that there will be an applicable tax to be paid by successful bidders at the proposed 700 MHz residual lots auction should they be granted early access to the unencumbered spectrum (i.e. prior to their spectrum licence commencement dates) through apparatus licensing arrangements.

Item [2-4]

Item [2] provides a definition for the 700 MHz band (i.e. from 788 MHz up to and including 803 MHz). Items [3] and [4] add the 700 MHz band to the relevant parts of item 703A, which describes the process for calculating annual amounts of tax for population-based licences.

Items [5]

Item [5] adds a new subitem 704A(3A), which outlines the base rate of tax for PMTS Class B licences in the 700 MHz band of \$0.07/MHz (paired) /pop.

⁵ This amount of tax was previously specified under item 702 of Schedule 2 of the Determination.