

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Receiver Licence Tax) Act 1983

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

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2016 (No. 1)* (**the Amendment Determination**) under subsection 7(1) of the *Radiocommunications (Receiver 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 receiver licence, the anniversary of a receiver licence coming into force or the holding of a receiver 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 (Receiver Licence Tax) Determination 2015* (**the Determination**) to:

- adjust taxes for inflation; and
- adjust some of the receiver licence taxes for satellite licensees to encourage more efficient use of the spectrum between 17.3 GHz and 51.4 GHz.

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 receiver licences (except for assigned fixed receive 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 opportunity cost, reflecting the value of the next-best opportunity foregone caused by current spectrum use.

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.

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.

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)*.

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 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 CPI increases. Such adjustments have been made by the Spectrum Management Agency, the 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 fixed receive services operating in frequency bands 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.

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).

Statement of compatibility with human rights

Overview of the instrument

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

- adjust taxes for inflation; and
- adjust some of the receiver licence taxes for satellite licensees to encourage more efficient use of the spectrum between 17.3 GHz and 51.4 GHz.

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

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

Section 1 Name

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

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.

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 (Receiver Licence Tax) Act 1983* (**the Act**).

Section 4 Amendments

This section provides that Schedule 1 of the Amendment Determination amends the *Radiocommunications (Receiver Licence Tax) Determination 2015* (Registration No. F2015L00321) (**the Determination**).

Schedule 1 Amendments to the Radiocommunications (Receiver Licence Tax) Determination 2015 [F2015L00321]

Item [1]

Item [1] 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 [2]

This item inserts into Note 1 of section 3 (the section which defines terms used in the Determination) the term “earth receive station” from the *Radiocommunications (Interpretation) Determination 2015*, which will be applicable to the Determination as amended.

Item [3]

This item repeals section 4 which revoked the *Radiocommunications (Receiver Licence Tax) Determination 2003 (No.2)* [F2005B00172] which is no longer in force. As section 4 is no longer required it has been repealed.

Item [4]

Item [4] repeals and substitutes Part 3 of the Determination with a new Part 3 to introduce new transitional arrangements. The new section 7 of the Determination sets out the relevant definitions for

Part 3 and the new section 8 provides new transitional arrangements for the implementation of receiver licence tax changes made by the Amendment Determination.

Under the Act, 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 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, the Amendment Determination will commence the day after it 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 the Amendment Determination commences. That is to say, licences issued after the commencement of the Amendment Determination that come into force before 5 April 2017 will have the tax 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 [5]

Item [5] repeals Part 2 of Schedule 2 of the Determination and substitutes a new Part 2. This change has the effects outlined below:

- The item excludes earth receive licences and space receive licences from being covered by Part 2 of Schedule 2 of the Determination. Such licences will now be covered in Part 4 of Schedule 2 of the Determination. In this regard, item 203 of Schedule 2 of the Determination is also moved to Part 4 of Schedule 2. Further details about these changes are outlined below in relation to Item [7] of the Amendment Determination.
- The item substitutes Table 202 (and the note) in Schedule 2 with a new Table 202 that reflects CPI increases of 1.0 percent.

Item [6]

Item [6] substitutes Table 302 (and the accompanying note) in Schedule 2 with a new Table 302 that reflects CPI increases of 1.0 percent. Apparatus licence tax rates for fixed receive licences under 960 MHz and within remote density areas are not subject to CPI increases and therefore remain unchanged.

Item [7]

Item [7] inserts a new Part 4 in Schedule 2, which has been introduced to specify tax arrangements for space system receive licences (which includes earth receive licences and space receive licences).² 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.

² These licences were previously covered by Part 2 of Schedule 2 of the Determination.

Item 401 of the new Part 4 specifies which licences the Part applies to.

Item 402 and Table 402 of the new Part 4 stipulate the new taxes for satellites services. Table 402 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 402 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 403 of the new Part 4 is a partial replication of item 203 of Part 2 of the Determination in its form prior to the making of the Amendment Determination. Item 403 omits 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 which was a feature of subitem 203(1) of Part 2 of Schedule 2 of the Determination in its form prior to the making of the Amendment Determination. The abolition of this tax simplifies the tax regime and makes treatment of **NGSO** systems consistent with geostationary orbit (**GSO**) systems.

Item 404 of the new Part 4 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 405 of the new Part 4 states that if the amount of tax worked out in respect of a spectrum access using this Part 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.