

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2014 (No.1)

Radiocommunications (Transmitter Licence Tax) Act 1983

Purpose

The *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2014 (No. 1)* (the **Amendment Determination**) amends the *Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2)* (the **Tax Determination**) to provide for a tax payable by licensees of Public Mobile Telecommunications Service (PMTS) Class B apparatus licences operating in the frequency ranges 703 MHz-733 MHz and 758 MHz-788 MHz (the sub-set of the 700 MHz band sold at the Digital Dividend auction held by the ACMA in April 2013).

Legislative Provisions

The Tax Determination is made under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (the **Act**) which provides that the Australian Communications and Media Authority (the **ACMA**) may determine the amount of tax in respect of:

- the issue of a transmitter licence;
- the anniversary of a transmitter licence coming into force; and
- the holding of a transmitter licence.

Under subsection 33(3) of the *Acts Interpretation Act 1901* a power to make an instrument shall be construed as including a power exercisable in the like manner and subject to like conditions (if any) to repeal, rescind, revoke, amend or vary the instrument. The Amendment Determination is made under subsection 7(1) of the Act, and amends the Tax Determination.

The Amendment Determination is a legislative instrument under the *Legislative Instruments Act 2003* (the **LI Act**).

Background

As part of the transition from analog to digital television, analog television broadcasting services within the frequency band 694 MHz to 820 MHz (the **700 MHz band**), have been switched-off and the 700 MHz band spectrum is being progressively cleared of broadcasting services. This clearance process and subsequent 'restack' of the spectrum will occur progressively with an expected end date of 31 December 2014. Upon completion, the 700 MHz band will be available for use for other purposes. The newly available spectrum (following restack and clearance) is referred to as the 'digital dividend' spectrum.

The ACMA has reallocated the digital dividend spectrum through an auction conducted in April 2013 (the **digital dividend auction**). Optus and Telstra (the **successful bidders**) were successful in securing lots in the 700 MHz band after the first round of the auction.¹ The 15-year spectrum licences to be issued in the 700 MHz band will commence on 1 January 2015.

Given the clearance and restack process is progressive, it is possible that some parts of the 700 MHz band sold at auction will be effectively unencumbered in some areas of Australia prior to 1 January 2015. Areas where clearance and restack have not occurred will be designated as "exclusion zones" for the protection of incumbent national and commercial broadcasting services and will not be available for use before 1 January 2015 (the **early access period**).

¹ Telstra bought 4 lots of 2 X 5 MHz spectrum and Optus bought 2 lots of 2 X 5 MHz spectrum in the digital dividend auction.

The successful bidders have expressed interest in obtaining ‘early access’ to the digital dividend spectrum prior to the commencement of the spectrum licences. To facilitate this, the ACMA has made the *Radiocommunications (Early Access to 700 MHz Band) Determination 2014* which allows the ACMA to issue PMTS Class B apparatus licences to the successful bidders to allow them to use the parts of the 700 MHz band spectrum they were allocated through the auction, prior to the commencement of their spectrum licences. Early access will only be available to the successful bidders in their respective lots purchased, that is, in the radiofrequency ranges 703 MHz-733 MHz and 758 MHz-788 MHz. The Amendment Determination amends the Tax Determination to specify the tax payable by those successful bidders for a PMTS Class B licence in the relevant parts of the 700 MHz band (**700 MHz PMTS Class B licence**) during the early access period.

Pricing methodology

The ACMA has developed a methodology to calculate the tax for 700 MHz PMTS Class B licences, using the digital dividend reserve price of \$1.36/MHz/population which was used in the first round of the auction as a starting point², and taking into consideration a number of factors unique to the early access period, including:

- a diseconomy resulting from the progressive nature of the clearance and restack process as the successful bidders will not be able to provide services within the exclusion zones; and
- possible interference mitigation arrangements associated with class-licensed wireless microphones also operating in the same frequency bands.³

These factors mean the market value for the spectrum in the 700 MHz band, derived from the digital dividend auction, does not translate consistently to the circumstances that will face the apparatus licensees in the early access period. The approach developed by the ACMA accounts for the impacts on value of the above factors relative to a starting-point valuation based on the auction price outcome, and is designed to reflect the unique circumstances of early access.

Using this approach, the ACMA has decided to set a conservative unit tax amount of \$0.07/MHz (paired)/population. The amount reflects the population in relevant areas at an early stage of the clearance process (December 2013), enabling a conservative adjustment for the diseconomy identified above. The ACMA estimates that approximately 1 million persons were in ‘cleared areas’ across Australia at the end of 2013.⁴ Through further analysis the ACMA determined that the value of a 15-year spectrum licence with an addressable population similar to the population estimates for cleared areas at December 2013 of around 1 million is approximately \$0.29 to \$0.30/MHz (paired)/population. This figure was derived using the price of \$1.36/MHz/population as a starting point and reducing the value of the spectrum by \$1.06 or \$1.07 to reflect the reduced value in the early access period. The reduction in value of over \$1.00/MHz/population is consistent with the conservative approach taken in estimating the impact on value of the circumstances faced by licensees during the early access period.

The ACMA applied a ‘tilted annuity based approach’⁵ to annualise the adjusted value of a 15 year licence of \$0.29 to \$0.30/MHz/population into an equivalent annual charge for application in the early access period⁶. This approach produced a range of results from \$0.07 to \$0.08 MHz (paired)/population. Given the approach is based on broad estimates, the ACMA has set the apparatus licence tax for a 700 MHz PMTS Class B licence at \$0.07/ MHz (paired)/population for the duration of the early access period. As

² The ACMA considers the use of the reserve price as a starting point for determining the tax for 700 MHz PMTS Class B licences as reasonable given the similarity between the intended use of the 700 MHz Class B licence and the use of the spectrum licences allocated at the auction.

³ Item 22A of the *Radiocommunications (Low Interference Potential Devices) Class Licence 2000* authorises the operation of wireless audio devices in the frequency range 520-820 MHz. These devices may continue to operate until the end of the re-allocation period for the 700 MHz band on 31 December 2014.

⁴ The population figures are based on population data in the 2011 Census, and taking into account the restack progress timetable that is published on the Department of Communications web site

http://www.dbcde.gov.au/television/achieving_the_digital_dividend_-_restack.

⁵ A tilted annuity is a standard approach for converting a capital amount (e.g. the value of a 15-year spectrum licence) into an economically equivalent annual amount (e.g. an annual apparatus licence tax).

⁶ Note that any part-year apparatus licensing in the early access period is treated in the normal manner involving pro rating the part-year to the annual charge specified in the Tax Determination.

areas are cleared, the tax will remain unchanged. This method also provides certainty for licensees regarding the tax imposed over the whole early access period.

Operation

The Amendment Determination amends Part 7 of Schedule 2 to the Tax Determination to insert Item 703, which specifies the annual transmitter licence tax for 700 MHz PMTS Class B licences at \$0.07 for each paired MHz of spectrum in which the licence authorises operation, multiplied by the total population of the Hierarchical Cell Identification Scheme (HCIS) area, which is defined as the sum of the population of each Australian Spectrum Map Grid (ASMG) cell and ASMG block specified in the licence. The population of each ASMG cell and ASMG block is listed in the: *The Hierarchical Cell Identification Scheme (HCIS) – List of Population Data* (the **Population Document**). The Population Document lists all HCIS identifiers for ASMG cells and blocks and corresponding population figures, and is published on the ACMA website. The population data is based on the 2011 Census of Population and Housing published by the Australian Bureau of Statistics. Item 703 includes a cessation clause which provides that the item ceases to operate at the end of 31 December 2014.

Consultation

On 24 January 2013 (prior to the digital dividend auction) the ACMA released a consultation paper detailing a pricing methodology for setting annual taxes for 700 MHz PMTS Class B licences based on the reserve price used for the digital dividend auction and derived using a tilted annuity approach to convert the reserve price for a 15-year licence into an annualised amount.⁷ An annual tax of \$0.375/MHz (paired)/population was proposed. The population metric to be applied was based on the Census 2011 data for the local government area (LGA) where the relevant radiocommunications transmitter (base station) was located. The paper sought comment from interested stakeholders by 22 February 2013. Submissions were received from Optus, Vodafone Hutchison Australia Pty Ltd and Free TV Australia. The proposal to allow early access to the 700 MHz band using PMTS Class B licences was broadly supported; however, a number of issues were raised about the pricing methodology.

Following the digital dividend auction, the ACMA undertook extensive analysis of taxation arrangements to facilitate early access (including consideration of feedback arising from the consultation in early 2013). In October 2013, the ACMA conducted further targeted consultation with the successful bidders that proposed a revised apparatus licence tax of \$0.07/MHz (paired)/population for a 700 MHz PMTS Class B licence and proposed the use of the ASMG system for determining the population of a licence area instead of the population of the LGA specified in the Census. In response, the successful bidders supported the proposed licence tax rate and the use of the ASMG cells (as described by HCIS identifiers) for identifying the licence area for the purpose of calculating the population.

Further public consultation was deemed unnecessary because the successful bidders are the only persons eligible to be issued with a 700 MHz PMTS Class B licence in the early access period. The amendments proposed to the Tax Determination will cease to operate on 31 December 2014.

Regulation Impact Statement

The ACMA has obtained the advice of the Office of Best Practice Regulation (OBPR) that a Regulation Impact Statement is not required in respect of the amendment to the Tax Determination that will introduce a licence tax for PMTS Class B licences in the specified parts of the 700MHz band. The OBPR reference number is 14298.

⁷ A copy of the consultation paper can be found at: <http://www.acma.gov.au/theACMA/pricing-arrangements-for-early-access-to-the-700-mhz-bandconsultation-paper>.

Documents incorporated by reference

The Amendment Determination incorporates the following documents as in existence at the time the determination commences:

- the *Australian Spectrum Map Grid 2012* published by the ACMA and accessible at www.acma.gov.au; and
- the *Hierarchical Cell Identification Scheme (HCIS) – List of Population Data* published by the ACMA and accessible at www.acma.gov.au.

Detailed description of the Amendment Determination

The provisions of the Amendment Determination are described in Attachment 1.

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 LI Act applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is at **Attachment 2**.

Attachment 1 - Details of the Amendment Determination

Section 1 – Name of Determination

Section 1 provides that the name of the Amendment Determination is the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2014 (No. 1)*.

Section 2 – Commencement

Section 2 states that the Amendment Determination will commence on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Amendment of *Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2)*

Section 3 provides that Schedule 1 of the Amendment Determination amends the *Radiocommunications (Transmitter Licence Tax) Determination 2003 (No.2)* [F2014C00136].

Schedule 1 Amendments

Item [1] amends item 701 of the Tax Determination to specify that Part 7 of Schedule 2 to the Tax Determination applies to both a licence that relates to a service specified in item 702 and the licences specified in new item 703.

Item [2] inserts a new item 703 in Part 7 of Schedule 2 to the Tax Determination. Sub-item 703(1) specifies that item 703 applies to a PMTS Class B licence operating in the frequency ranges 703-733 MHz and 758-788 MHz (a **700 MHz PMTS Class B licence**).

Sub item 703(2) provides that the amount of tax payable for a 700 MHz PMTS Class B licence is \$0.07 for each paired MHz of spectrum in which the licence authorises operation, multiplied by the ‘total population of the HCIS area’ of the licence.

A 700 MHz PMTS Class B licence will include conditions which specify the licence area of the licence by reference to *Australian Spectrum Map Grid 2012 (ASMG)* cells and blocks which constitute the area. The ASMG cells and blocks have Hierarchical Cell Identification Scheme (**HCIS**) identifiers which will be listed in the licence. The licence area may include areas covered by exclusion zones in which the licence cannot operate while the exclusion zone is in place. The tax payable is calculated based on the population of the licence area, including any area that is an exclusion zone. As outlined above, the ACMA has

determined the unit tax amount taking into consideration any diseconomy caused by the existence of exclusion zones.

The HCIS is a naming convention developed by the ACMA that applies unique labels to each five minute of arc square cell (ASMG cell) in the ASMG derived from the cell's position in a hierarchically arranged grouping of cells. The hierarchy has four levels; the smallest level being HCIS Level 1 for the five minute of arc square cells (approximately 9 km x 9 km) and the largest being HCIS Level 4 (approximately 330 km x 330 km)⁸. An ASMG cell is referred to as HCIS Level 1 in the ASMG.

The term 'total population of the HCIS area' is defined at sub-item 703(3) as the sum of the population of each ASMG cell and ASMG block specified in the licence, and listed in the *Hierarchical Cell Identification Scheme (HCIS) - List of Population Data* published by the ACMA and existing at the time item 703 commences. In that document, ASMG cells and blocks are identified by their corresponding HCIS identifiers and the population figures for those cells and blocks are listed. The population figures are based on the population figures published by the Australian Bureau of Statistics in the 2011 Census of Population and Housing.⁹ Sub item 703(4) provides that item 703 ceases to have effect at the end of 31 December 2014, which is the end of the early access period. No 700 MHz PMTS Class B licences will operate after 31 December 2014.

Attachment 2 - Statement of Compatibility with Human Rights

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

The Amendment Determination 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 instrument

Subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* provides for the ACMA to determine the amount of tax payable in respect of the issue, anniversary or holding of a transmitter licence. The Amendment Determination amends the Tax Determination to insert a new item (item 703) to specify the tax payable for PMTS Class B apparatus licences operated in the frequency range 703-733 MHz and 758-788 MHz.

Human rights implications and conclusion

The Amendment Determination does not engage any of the applicable rights or freedoms. The Amendment Determination is compatible with human rights as it does not raise any human rights issues.

⁸ Further information about the ASMG and the HCIS scheme is provided at http://www.acma.gov.au/Industry/Spectrum/Radiocomms-licensing/Spectrum-licences/spectrum_23

⁹ Census population data can be accessed at www.abs.gov.au.