



# **Radiocommunications Taxes Collection (Penalties on Unpaid Tax) Determination 2015**

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The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Determination under subsection 7A (1) of the *Radiocommunications Taxes Collection Act 1983*.

Dated 17<sup>th</sup> February 2015

*Chris Chapman*  
[signed]  
Member

*Richard Bean*  
[signed]  
Member/~~General Manager~~

Australian Communications and Media Authority

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## 1 Name of Determination

This Determination is the *Radiocommunications Taxes Collection (Penalties on Unpaid Tax) Determination 2015*.

## 2 Commencement

This Determination commences on the day after it is registered.

Note All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*.

## 3 Revocation

The *Radiocommunications Taxes Collection (Penalties on Unpaid Tax) Determination 1999* (FRLI No.F2005B00395) is revoked.

## 4 Definitions

In this Determination:

*AAT* means the Administrative Appeals Tribunal.

*ACMA* means the Australian Communications and Media Authority.

*penalty interest* means penalty interest mentioned in subsection 6 (2).

*tax* means tax payable under a Tax Act.

*Tax Act* means either of the following Acts:

- (a) the *Radiocommunications (Receiver Licence Tax) Act 1983*;
- (b) the *Radiocommunications (Transmitter Licence Tax) Act 1983*.

## 5 Application of this Determination

- (1) This Determination applies to amounts of tax that become payable under a Tax Act:
  - (a) on or before the commencement of this Determination; or
  - (b) after the commencement of this Determination.
- (2) For the purposes of paragraph (a), this Determination applies to the amounts of tax from the end of the day before this Determination commences.

## 6 Penalty interest on overdue tax

- (1) This section applies if a person:
  - (a) is required to pay an amount of tax; and
  - (b) does not pay the amount by its due day.

- (2) The person is liable to pay interest (*penalty interest*) on the amount by way of penalty.
- (3) Penalty interest is:
  - (a) payable to the ACMA; and
  - (b) a debt due to the Commonwealth.

## **7 Rate of penalty interest**

The rate at which penalty interest is payable for a day is the same rate as the general interest charge rate worked out under section 8AAD of the *Taxation Administration Act 1953*.

## **8 Payment of penalty interest**

Penalty interest is payable from the first day after the amount of tax becomes payable.

## **9 Attribution of payments made to the ACMA**

- (1) This section applies if a person:
  - (a) is liable to pay an amount of tax; and
  - (b) is liable to pay an amount of penalty interest; and
  - (c) pays an amount of money to the ACMA without any appropriation by the person or the ACMA as to the tax and the penalty interest.
- (2) The person's payment is to be credited to the amount of penalty interest first, and is to be credited to the amount of tax only if all of the amount of penalty tax is paid.

## **10 Remission of penalty interest: general**

- (1) The ACMA may decide:
  - (a) to remit all, or a part, of an amount of penalty interest payable by a person; or
  - (b) not to remit any part of an amount of penalty interest payable by a person.
- (2) The person may apply to the ACMA, in writing or orally, to remit all or part of the amount.
- (3) However:
  - (a) the ACMA may make a decision under subsection (1) whether or not it has received an application for remission; and
  - (b) the ACMA may remit all or part of the amount only for a reason set out in section 11.
- (4) If a person applies to the ACMA to remit all or part of an amount of penalty interest, the ACMA must make a decision under subsection (1):

- (a) within 90 days after receiving the application; or
  - (b) if the ACMA has asked the person in writing, within the 90 days, to give the ACMA further information about the application — within 90 days after receiving the further information.
- (5) If the ACMA does not tell the person about its decision within the appropriate 90 day period under subsection (4), the ACMA is taken to have made a decision under paragraph (1) (b) not to remit any part of the amount of penalty interest.

## **11 Remission of penalty interest: reasons**

- (1) A reason for remission is that the ACMA is satisfied that:
- (a) the circumstances that contributed to the delay in payment of the tax were not due to an act or omission of the person, and were not caused, directly or indirectly, by an act or omission of the person; and
  - (b) the person has taken reasonable action to mitigate the circumstances or their effects.
- (2) A reason for remission is that the ACMA is satisfied that:
- (a) the circumstances that contributed to the delay in payment of the tax were due to an act or omission of the person, or were caused, directly or indirectly, by an act or omission of the person; and
  - (b) the person has taken reasonable action to mitigate the circumstances or their effects; and
  - (c) having regard to the nature of the circumstances, it would be fair and reasonable to remit all or part of the amount.
- (3) A reason for remission is that the ACMA is satisfied that it is not reasonably practicable to attempt to recover penalty interest.
- (4) A reason for remission is that the ACMA is satisfied that payment of all or part of the amount would cause, or has caused, financial hardship to the person.
- (5) A reason for remission is that the ACMA is satisfied that there are other circumstances by reason of which it would be fair and reasonable to remit all or part of the amount.

## **12 Remission of penalty interest: statements with decision**

- (1) If the ACMA makes a decision under subsection 10 (1), the ACMA must give the person who is liable to pay penalty interest the written statements mentioned in this section.
- (2) The ACMA must give the person a statement of the decision and the reasons for the decision.
- (3) The ACMA must also give the person a statement to the effect

that the person may apply for reconsideration of the decision if the person is dissatisfied with it.

- (4) The ACMA must also give the person a statement to the effect that, if the person applies for reconsideration and is dissatisfied with the decision on reconsideration, application may be made to the AAT for review of the decision on reconsideration.
- (5) The validity of the decision is not affected by a failure by the ACMA to comply with subsection (2), (3) or (4).

### **13 Reconsideration: general**

- (1) A person may apply to the ACMA for reconsideration of a decision of the ACMA under subsection 10 (1) if the person is affected by the decision and dissatisfied with it.
- (2) The application must:
  - (a) be in a form approved in writing by the ACMA; and
  - (b) set out the reasons for the application.
- (3) The application must be made within 28 days after the decision is made.
- (4) However, if the ACMA extends the period (before or after the end of the 28 days), the application must be made before the end of the extended period.
- (5) An approved form of application may provide for the making of a statutory declaration as part of verifying a statement made in the form.

### **14 Reconsideration: decision**

- (1) If the ACMA receives an application for reconsideration that complies with section 13, the ACMA must:
  - (a) reconsider the original decision; and
  - (b) decide to confirm, vary or revoke the decision.
- (2) The ACMA must make a decision on the application within 90 days after receiving it.
- (3) If the ACMA does not tell the person about its decision within the 90 day period, the ACMA is taken to have made a decision under paragraph (1) (b) to confirm the original decision.

### **15 Reconsideration: statements with decision**

- (1) The ACMA must give the person who applied for reconsideration the written statements mentioned in this section.
- (2) The ACMA must give the person a statement of the decision.

- (3) The ACMA must also give the person a statement to the effect that, if the person is dissatisfied with the decision on reconsideration, application may be made to the AAT for review of the decision.
- (4) The ACMA must also give the person a statement to the effect that the person may request a statement under section 28 of the *Administrative Appeals Tribunal Act 1975* in relation to the decision.
- (5) The validity of the decision is not affected by a failure by the ACMA to comply with subsection (2), (3) or (4).

## **16 Application to AAT**

Application may be made to the AAT for review of a decision made by the ACMA under paragraph 14 (1) (b).

## **17 Judgment for payment of tax and penalty interest only**

- (1) This section applies if:
  - (a) judgment is given by, or entered in, a court for the payment of an amount of tax; and
  - (b) the judgment carries interest.
- (2) However, this section does not apply if section 18 applies.
- (3) Penalty interest is not taken to have ceased to be payable only because of the giving or entering of the judgment.
- (4) The penalty interest that would, but for this subsection, be payable is reduced by the amount of the judgment interest.

## **18 Judgment for payment of tax, penalty interest and other amounts**

- (1) This section applies if:
  - (a) judgment is given by, or entered in, a court for the payment of an amount that includes an amount of tax; and
  - (b) the judgment carries interest.
- (2) Penalty interest is not taken to have ceased to be payable only because of the giving or entering of the judgment.
- (3) The penalty interest that would, but for this subsection, be payable is reduced by an amount that is the same proportion to the amount of the judgment interest as the amount of the tax is to the amount of the judgment debt.

## **19 Rounding of amount of penalty interest**

If an amount of penalty interest ends in a part of a whole cent, the part of the cent is to be dealt with as follows:

- (a) if the part of the cent is at least 0.5 of a cent, it is taken to be rounded up to 1 cent;
- (b) in any other case, the part of the cent is to be disregarded.