EXPLANATORY STATEMENT

Commercial Broadcasting (Tax) Act 2017

Commercial Broadcasting (Tax) (Individual Transmitter Amounts) Determination 2017

Issued by the Authority of the Minister for Communications

In the 2017-18 Budget, the Government announced a comprehensive package of reforms that will improve the sustainability of Australia's free-to-air broadcasting sector. The *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017* (the Broadcasting Reform Act) and the *Commercial Broadcasting (Tax) Act 2017* (the Tax Act) are the key pieces of primary legislation to give effect to these reforms.

To assist broadcasters to compete in the modern media environment, the Government abolished broadcasting licence fees and datacasting charges and introduced a transmitter licence tax for broadcast spectrum that more accurately reflects its use. Spectrum is essential to a digitally networked economy and a major contributor to Australia's economic and social wellbeing. It is critical infrastructure enabling production for industrial, commercial, educational and social services. The Tax Act establishes similar tax arrangements for commercial broadcasters as currently apply to other spectrum users.

The Tax Act introduced a tax for transmitter licences issued under section 102 of the *Radiocommunications Act 1992* (the Radcomms Act) that are associated with commercial broadcasting licences issued under Part 4 of the *Broadcasting Services Act 1992* (the BSA). It also introduced a tax for a small number of licences issued under section 100 of the Radcomms Act, in particular, for those licences issued to commercial broadcasters while the Australian Communications and Media Authority (the ACMA) continues to prepare licence area plans under section 26 of the BSA, while transitioning these licence holders onto a section 102 licence.

The tax is to be applied to each individual transmitter associated with the transmitter licence. The Tax Act provides that the Minister for Communications may determine the amount of tax for each individual transmitter in a legislative instrument. Any amount determined by the Minister must not exceed the cap amounts specified in the Tax Act. If no determination is in effect, the capped amounts in the Tax Act will apply. The tax applies to transmitter licences in force on 1 July 2017 and new ones issued on or after 1 July 2017. The tax is imposed on the holding (for those in force on 1 July 2017), the issue, anniversary, and cessation of a transmitter licence.

The Government has committed to broader spectrum reform (such as rewriting the *Radiocommunications Act 1992*). These tax arrangements are intended to provide certainty for the broadcasting industry while the reforms are finalised and implemented. Outcomes of these reforms will be considered in the five year statutory review by the Australian Communications and Media Authority on broadcast spectrum (as required by Schedule 7 to the Broadcasting Reform Act). These two processes will inform the Minister on how to transition broadcast spectrum tax arrangements into the broader spectrum management framework as at July 2022. As such, the Minister may determine a date of termination for the new tax imposed by the Tax Act.

Purpose and operation of the instrument

Subsection 8(2) of the Tax Act provides that the Minister may, by legislative instrument, make a determination for the purposes of determining the individual transmitter amount of tax imposed by the Tax Act. If no determination is in effect, the caps in subsection 9(1) of the Tax Act will be the individual transmitter amount of tax imposed on transmitter licence holders.

The *Commercial Broadcasting (Tax) (Individual Transmitter Amounts) Determination 2017* (the Determination) is the Minister's determination setting the individual transmitter amount for the licences on which the tax is imposed. The Determination provides a formula for determining the individual transmitter amount based on three components: a dollar rate per kHz of spectrum bandwidth; the spectrum bandwidth used; and the maximum power factor for the transmitter. The Determination also provides a method statement to allow for adjustments to the individual transmitter amount if there has been a variation to the licence since the last anniversary.

The determination will take effect retrospectively on 1 July 2017 as provided by subsection 13(3) of the Tax Act. The retrospective commencement is to ensure that the amounts of tax provided for by this determination commence at the same time the Tax Act commences.

The Determination is a legislative instrument for the purposes of section 8 of the *Legislation Act 2003* (the Legislation Act). However, section 42 of the Legislation Act does not apply to the determination. Instead, section 13 of the Tax Act provides for a special disallowance period, which reflects the periods in section 42 of the Legislation Act, in relation to the Determination.

REGULATION IMPACT STATEMENT

Summary of the measures:

The scheme established by the Tax Act and the Determination will impose a new transmitter licence tax for commercial broadcasters using spectrum in the broadcasting spectrum bands leading to revenues of around $40 million per annum in total. In addition, the Broadcasting Reform Act has:

- Abolished the broadcasting licence fees paid by commercial broadcasters under both the *Television Licence Fees Act 1964* and the *Radio Licence Fees Act 1964*, from 2017-18 onwards, currently recovering around $125.7 million per year.

- Abolished the datacasting charges paid by commercial broadcasters under the *Datacasting Charge (Imposition) Act 1998*, from 2017-18 onwards, currently recovering around $1.1 million per year.

- Abolished the apparatus licence fees currently paid by commercial broadcasters under the *Radiocommunications (Transmitter Licence Tax) Act 1983*, currently recovering around $75,000 per year.

- Created a transitional support package of $4.6 million per year for the first five years to ensure that individual broadcasters are no worse off as a consequence of the Act and Determination.

- Established a requirement for the ACMA to undertake and finalise a review of broadcasting pricing arrangements before 30 June 2022.

What are the regulatory impacts associated with these measures?

These measures are expected to have only minor regulatory impacts on businesses. They are not expected to have any impacts on individuals or community organisations.

The measures would simplify reporting requirements from broadcasters to the ACMA. Broadcasters will no longer need to report yearly data to the ACMA as the commercial television and radio licence fees (determined yearly based on revenue) have been abolished.

What are the regulatory costs/savings associated with these measures?

Reporting requirements are reduced for broadcasters. This reduces the time for businesses to complete reporting requests by an estimated 1,710 hours a year, which represents a reduction in annual average compliance costs of $57,225. This is based on assumptions that:

1. 327 returns are provided every year.
2. Each return requires an estimated five hours to produce.
3. The average hourly wage for an individual in administrative and support services is $35[1].

[1] Weekly earnings for an individual in administrative and support services is 1,304.7: http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6302.0Main%20Features4Nov%202016?opendocument&tabname=Summary&prodno=6302.0&issue=Nov%202016&num=&view

Regulatory burden estimate (RBE) table

Average annual regulatory costs (from business as usual):

Change in costs	Business ($)	Community organisations ($)	Individuals ($)	Total change in cost ($)
Commercial broadcasters	-57,225	0	0	-57,225

Statement of compatibility with human rights
A Statement of Compatibility with Human Rights is not required for the Determination.

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires a Statement of Compatibility with Human Rights for all legislative instruments subject to disallowance under section 42 of the Legislation Act. While the Determination is subject to disallowance under section 13 of the Tax Act, subsection 13(5) provides that section 42 of the Legislation Act does not apply to a determination made under subsection 8(2) of the Tax Act.

Consultation
The ACMA and commercial broadcasters (facilitated by Free TV and Commercial Radio Australia) were consulted on the drafting of this instrument.

Attachment A

NOTES ON CLAUSES

Part 1 – Preliminary

Section 1 – Name

Section 1 provides that the name of the instrument is the *Commercial Broadcasting (Tax) (Individual Transmitter Amounts) Determination 2017* (the Determination).

Section 2 – Commencement

Section 2 is a commencement provision and sets out when the Determination is to, or is taken to, have commenced. It provides that the whole of the Determination is to commence on 1 July 2017.

The commencement date of 1 July 2017 is expressly provided for in subsection 13(3) the *Commercial Broadcasting (Tax) Act 2017* (the Act) which provides that the first determination made under subsection 8(2) of that Act is to take effect on 1 July 2017.

The Act also expressly provides that the restrictions on retrospective application in subsection 12(2) of the *Legislation Act 2003* do not apply to the first Determination.

Section 3 – Authority

Section 3 sets out the authority for the making of the Determination, which is subsection 8(2) of the Act.

Section 4 – Definitions

Section 4 defines various words that are used in the Determination. There is a note at the top of the section identifying that a number of expressions used in the instrument are defined in the Act, including the following terms:

- Indexation factor;
- Individual transmitter amount cap;
- Tax;
- Transmitter;
- Transmitter licence.

The section provides that the term ***Act*** means the *Commercial Broadcasting (Tax) Act 2017.*

The term ***alternative transmitter*** means a transmitter that is covered by a transmitter licence, and under the licence is authorised to operate only when another transmitter that is authorised under the licence to operate in a specified location is not in operation. Alternative transmitters are used when the primary transmitter is not in use, for example, when the primary transmitter is not transmitting or undergoing maintenance. An alternative transmitter will not be prevented from meeting the definition of alternative transmitter if both transmitters at the specified location are in operation simultaneously for a temporary period when transmission is changed from one transmitter to the other.

The term ***band*** has the meaning given by subsection 9(3) of the Act, which sets out the band or frequency range in which a transmitter operates, and can be determined using the below table:

Band		
Item	**A transmitter operates in this band …**	**… if the transmitter operates in this frequency range**
1	AM band	526.6 to 1606.5 kHz (inclusive)
2	FM band	87.5 to 108 MHz (inclusive)
3	VHF band	174 to 230 MHz (inclusive)
4	UHF band	520 to 694 MHz (inclusive)

The phrase ***daily amount*** has the meaning given by subsection 7(2) of the Determination.

The phrase ***dollars per kHz of spectrum bandwidth*** has the meaning given by subsections 6(5) and (6) of the Determination.

The phrase ***maximum power*** has the meaning given by subsection 9(4) of the Act, which sets the parameters of the various power levels in which a transmitter can operate. A transmitter licence will specify a maximum power level at which a transmitter can operate. The power level of a transmitter will be determined based on the maximum level at which the transmitter is authorised to operate at under the licence. Subsection 9(4) of the Act provides that the maximum power of a transmitter is worked out using the following table:

Maximum power of transmitter					
Item	**The maximum power of a transmitter is …**	**… if the transmitter operates in the AM band and, under the transmitter licence, the maximum power for the transmitter is …**	**… if the transmitter operates in the FM band and, under the transmitter licence, the maximum power for the transmitter is …**	**… if the transmitter operates in the VHF band and, under the transmitter licence, the maximum power for the transmitter is …**	**… if the transmitter operates in the UHF band and, under the transmitter licence, the maximum power for the transmitter is …**
1	Low	n/a	not more than 150 Watts ERP	not more than 150 Watts ERP	not more than 600 Watts ERP
2	Medium	not more than 220 volts CMF	greater than 150 Watts ERP but not more than 15,000 Watts ERP	greater than 150 Watts ERP but not more than 15,000 Watts ERP	greater than 600 Watts ERP but not more than 60,000 Watts ERP
3	High	greater than 220 volts CMF	greater than 15,000 Watts ERP	greater than 15,000 Watts ERP	greater than 60,000 Watts ERP

The phrase ***maximum power factor*** has the meaning given by subsection 6(8) of the Determination.

The phrase ***minimum uncapped individual transmitter amount*** has the meaning given by subsections 6(3) and (4) of the Determination.

The phrase ***population density*** has the meaning given by section 5 of the Determination.

The term ***remote*** has the meaning given by subsection 5(2) of the Determination.

The term ***spectrum bandwidth*** has the meaning given by subsection 6(7) of the Determination.

The phrase ***uncapped individual transmitter amount*** has the meaning given by subsection 6(2) and section 7 of the Determination.

Section 5 – Population densities

Section 5 defines the population densities of a location and there are four population densities, high, medium, low and remote. The population density of the location is:

- high - if it is in the Sydney area, the Melbourne area or the Brisbane area;
- medium - if it is in the Perth area, the Adelaide area or the Newcastle area;
- low - if it is in the East Australia low density area, the Western Australia low density area, the Tasmania low density area, or the Darwin low density area; and
- remote - if it is not in any of the above locations.

The population densities of a location have the meanings given to these terms by Part 1 of Schedule 1 to the *Radiocommuncations (Transmitter Licence Tax) Determination 2015* (the RTLT Determination) as in force on 1 July 2017. The RTLT Determination is what is used to determine the current transmitter licence tax and the amounts are set by the ACMA.

Similar to the current RTLT Determination, the amount of tax that is payable for a particular licence and transmitter under the Determination will be dependent on the population density of the location in which the transmitter is authorised to operate. For example, the amount of tax payable in relation to a transmitter authorised to operate in a high population density area will be different (typically a larger amount) to that same transmitter operating in a medium population density area. Different population densities generally associated with the various locations allows for tax imposed on the transmitter to reflect the demand for spectrum in that location (the demand of spectrum increases with population density).

Broadcasters are familiar with the population density locations in the RTLT Determination, and the application of those densities as in force on 1 July 2017 will provide certainty for commercial broadcasters as to the population densities applicable for their particular transmitters during all times the Determination is in force.

The RTLT Determination, as in force on 1 July 2017, can be found on the Federal Register of Legislation website at: https://www.legislation.gov.au/Details/F2017C00289.

Part 2 – Individual transmitter amounts

Section 6 – Individual transmitter amounts

Section 6 provides the formula for working out the ***individual transmitter amounts***, being the amount of tax payable in relation to a licence at a particular time in the financial year.

Subsection 6(1) provides that for the purposes of paragraph 8(1)(a) of the Act, the individual transmitter amount for a transmitter covered by a transmitter licence at a particular time in a financial year is the lesser of:

- the individual transmitter amount cap for the transmitter for the financial year; and
- the uncapped individual transmitter amount for the transmitter at that particular time.

This subsection ensures that the amount of tax worked out using the Determination does not exceed the applicable caps that are set out in subsection 9(1) of the Act, which, for the financial year beginning 1 July 2017, are worked out using the following table:

Individual transmitter amount cap—financial year beginning on 1 July 2017

Item	Maximum power of the transmitter	Cap if transmitter operates in the AM band	Cap if transmitter operates in the FM band	Cap if transmitter operates in the VHF band	Cap if transmitter operates in the UHF band
1	Low	$40	$405	$18,661	$18,661
2	Medium	$365	$4,053	$186,611	$186,611
3	High	$3,648	$40,533	$1,866,114	$1,866,114

For example, if the uncapped individual transmitter amount for a transmitter at a particular time worked out using the Determination exceeds the cap in subsection 9(1) of the Act (or the indexed cap for financial years from 1 July 2018), the individual transmitter amount will be the cap for that financial year.

Uncapped individual transmitter amount

Subsection 6(2) provides the formula for working out the ***uncapped individual transmitter amount*** for a transmitter at a particular time in the financial year. The amount worked out using the formula in this subsection is called the 'uncapped' amount to differentiate it from the 'capped' amounts that are set out in the Act.

The uncapped individual transmitter amount determined using the formula is subject to section 7 of the Determination, as section 7 makes adjustments to the uncapped individual transmitter amount for a particular transmitter if there has been a variation to the licence that would have impacted on the tax liability for that particular transmitter. Section 7 could result in an increase or a decrease of the uncapped individual transmitter amount.

Paragraph 6(2)(a) sets the minimum uncapped individual transmitter amount for the financial year for a transmitter that is authorised to operate at a remote location, or is an alternative

transmitter. This reflects the policy that these classes of transmitters are to be charged the minimum amount of tax per transmitter, which for the financial year beginning on 1 July 2017 will be $39.57 (see subsection 6(3)).

Paragraph 6(2)(b) provides that if the transmitters are not within the above classes, the uncapped individual transmitter amount is the greater of the:

- minimum uncapped individual transmitter amount for the financial year; and
- the amount worked out using the following formula:

$$\begin{array}{c}\text{Dollars per kHz}\\ \text{of spectrum bandwidth}\\ \text{for the transmitter}\\ \text{for the financial year}\end{array} \times \begin{array}{c}\text{Spectrum bandwidth}\\ \text{of the transmitter}\end{array} \times \begin{array}{c}\text{Maximum power factor}\\ \text{for the transmitter}\end{array}$$

If the amount of tax worked out using the formula is less than the minimum uncapped individual transmitter amount for the financial year, then the minimum amount will apply. This reflects the intention that there is to be a minimum amount of tax imposed per transmitter.

The first component of the formula, dollars per kHz of spectrum bandwidth for the transmitter for the financial year, is worked out using the table in subsection 6(5). The second component, spectrum bandwidth of the transmitter, is worked out using the table in subsection 6(7). The final component of the formula, maximum power factor, is worked out using the table in subsection 6(8).

An example of using the formula to determine the uncapped individual transmitter amount for a UHF transmitter that is permitted under the licence to operate in the high power range in a medium population density location is as follows:

- the dollars per kHz of spectrum bandwidth for a UHF transmitter in a medium population density is $13.1579 (see subsection 6(5));
- the spectrum bandwidth of the transmitter is 7,000 kHz (see subsection 6(7)); and
- the power factor is 10 (see subsection 6(8)).

Entering these components into the formula results in the uncapped individual transmitter amount of $921,053.00 ($13.1579 x 7000 x 10 = $921,053.00). The individual transmitter amount cap for a high powered UHF transmitter is $1,866,114.00 (see subsection 9(1) of the Act). As the uncapped individual transmitter amount for the transmitter is less than the individual transmitter amount cap, $921,053.00 will be individual transmitter amount for that particular transmitter under subsection 6(1).

Another example is a VHF transmitter that is permitted under the licence to operate in a high power range in a high population density location. The relevant inputs are:

- the dollars per kHz of spectrum bandwidth for a VHF transmitter in a high population density location is $26.6588 (see subsection 6(5));

- the spectrum bandwidth of the transmitter is 7,000 kHz (see subsection 6(7)); and
- the power factor is 10 (see subsection 6(8)).

Entering the components into the formula results in the uncapped individual transmitter amount of $1,866,116.00 ($26.6588 x 7000 x 10 = $1,866,116.00). The individual transmitter amount cap for a high powered VHF transmitter is $1,866,114.00 (see subsection 9(1) of the Act). As the uncapped individual transmitter amount for the transmitter is greater than the individual transmitter amount cap, it will be the cap which will be the individual transmitter amount for that particular transmitter under subsection 6(1).

Minimum uncapped individual transmitter amount

Subsection 6(3) provides that the ***minimum uncapped individual transmitter amount*** for the financial year beginning on 1 July 2017 is $39.57. This is the minimum amount of tax that can be imposed on a particular transmitter. As noted above, it applies to alternative transmitters and transmitters permitted to operate in remote population density locations. Also noted above, it will apply to transmitters where the formula to work out the uncapped individual transmitter amount is less than $39.57.

Subsection 6(4) provides that the ***minimum uncapped individual transmitter amount*** for the financial year beginning on 1 July 2018, or a later financial year, is worked out using the following formula:

$$\text{Previous minimum uncapped individual transmitter amount} \times \text{Indexation factor}$$

The term ***indexation factor*** means the indexation factor for the financial year, and is found in section 12 of the Act. The term ***previous minimum uncapped individual transmitter amount*** means the minimum uncapped individual transmitter amount for the previous financial year.

This is a simple indexation provision which will provide for the minimum uncapped individual transmitter amount to be indexed according to CPI. It is the same method of indexation that is used to vary the individual transmitter amount caps in the Act.

Subsection 6(5) provides that the term ***dollars per kHz of spectrum bandwidth***, a component of the formula in subsection 6(2), for the financial year beginning on 1 July 2017 is worked out using the following table:

Dollars per kHz of spectrum bandwidth—financial year beginning on 1 July 2017

Item	Column 1 Population density of the location at which, under the transmitter licence, the transmitter is authorised to operate	Column 2 Amount per kHz if transmitter operates in the AM band	Column 3 Amount per kHz if transmitter operates in the FM band	Column 4 Amount per kHz if transmitter operates in the VHF band	Column 5 Amount per kHz if transmitter operates in the UHF band
1	Low	$0.2079	$0.2079	$0.2417	$0.2417
2	Medium	$9.2741	$9.2741	$13.1579	$13.1579

Dollars per kHz of spectrum bandwidth—financial year beginning on 1 July 2017					
Item	**Column 1**	**Column 2**	**Column 3**	**Column 4**	**Column 5**
	Population density of the location at which, under the transmitter licence, the transmitter is authorised to operate	**Amount per kHz if transmitter operates in the AM band**	**Amount per kHz if transmitter operates in the FM band**	**Amount per kHz if transmitter operates in the VHF band**	**Amount per kHz if transmitter operates in the UHF band**
3	High	$20.2667	$20.2667	$26.6588	$26.6588

To identify the correct dollars per kHz of spectrum bandwidth amount, the population density of the location at which the transmitter is permitted to operate needs to be identified (see section 5), and the band in which the transmitter is permitted to operate (see subsection 9(3) of the Act). For example, for a UHF transmitter that is permitted under the licence to operate in a medium population density location, the dollars per kHz of spectrum bandwidth amount is $13.1579.

Subsection 6(6) provides that the dollars per kHz of spectrum bandwidth for a financial year beginning on 1 July 2018, or a later financial year, is worked out using the following formula:

$$\text{Previous dollars per kHz of spectrum bandwidth} \times \text{Indexation factor}$$

The term ***indexation factor*** means the indexation factor for the financial year, and is found in section 12 of the Act. The term ***previous dollars per kHz of spectrum bandwidth*** means the dollars per kHz of spectrum bandwidth for the transmitter for the previous financial year.

This is a simple indexation provision which will provide for the dollars per kHz of spectrum bandwidth to be indexed according to CPI. It is the same method of indexation that is used to vary the individual transmitter amount caps in the Act.

Spectrum bandwidth

Subsection 6(7) defines the ***spectrum bandwidth*** of a transmitter, which is worked out using the following table:

Spectrum bandwidth		
Item	**Column 1**	**Column 2**
	The spectrum bandwidth of a transmitter is …	**if the transmitter operates in the …**
1	18 kHz	AM band.
2	200 kHz	FM band.
3	7,000 kHz	VHF band.
4	7,000 kHz	UHF band.

For example, if a transmitter is authorised to transmit at the 97.7 MHz frequency range, it will be in the FM band (see the table in subsection 9(3) of the Act), using the above table, the

spectrum bandwidth for that particular transmitter will be 200 kHz and the figure of 200 will be used as the spectrum bandwidth of the transmitter component of the formula in paragraph 6(2)(b) of the Determination.

The different spectrum bandwidths for transmitting in different frequency bands reflects that the different broadcasting technologies used in each band require different bandwidths. An FM broadcast uses more spectrum than an AM broadcast. Similarly, television transmissions use more spectrum than FM or AM broadcasts.

Maximum power factor

Subsection 6(8) defines the ***maximum power factor*** for a transmitter, and it is worked out using the following table:

Maximum power factor		
Item	**Column 1** **The maximum power factor for a transmitter is …**	**Column 2** **if the maximum power of the transmitter is …**
1	0.1	low.
2	1.0	medium.
3	10.0	high.

The maximum power factor is a component of the formula in paragraph 6(2)(b) of the Determination and is used to work out the amount of the uncapped individual transmitter amount for a transmitter. For example, if a transmitter is authorised to operate in the VHF band, and under the transmitter licence is authorised to transmit at a power of up to 20,000 watts ERP, the maximum power of the transmitter high. Using the above table, the maximum power factor for the transmitter is 10.0.

The different maximum power factors reflect the intention that a transmitter authorised to operate at a high power should be taxed more than a transmitter authorised to operate at a medium power. Similarly, a transmitter authorised to operate at a low power is to be taxed at a lower rate than a transmitter authorised to operate at a medium power. The factor of 10 between different power levels was based on a similar factor for low power transmitters in the RTLT Determination. For example, land mobile transmitters which are normally licensed at 83 watts ERP attract a fee of one tenth if the power is under 8.3 watts ERP.

Section 7 – Adjustments for variations during year before anniversary of licence coming into force

Section 7 is a provision that provides for adjustments to the uncapped individual transmitter amount for the transmitter on the current anniversary should there have been variations to the licence since the imposition of the last tax. The adjustments may result in an increase or a decrease to the uncapped individual transmitter amount for the transmitter on the current anniversary. The adjustments are to account for variations to the licence which would have resulted in a different tax amount being calculated if the varied licence had been assessed.

Subsection 7(1) sets out the criteria that must exist before the section is to apply to the uncapped individual transmitter amount for a transmitter covered by a transmitter licence at a

particular time. For section 7 to apply, the criteria in paragraphs 7(1)(a) and 7(1)(b) will need to be met.

Paragraph 7(1)(a) provides that the section will only apply to the uncapped individual transmitter amount for a transmitter covered by a transmitter licence at a particular time if that time occurs on an anniversary (the ***current anniversary***), and that anniversary falls after 1 July 2017. That is, adjustments to the uncapped individual transmitter amount for a transmitter covered by a transmitter licence can only occur in relation to anniversaries that fall after 1 July 2017.

Paragraph 7(1)(b) provides that the licence must have been varied on one or more occasions during the period (the ***previous tax period***) beginning at the latest of:

- the end of the day the licence came into force (applies to licences that are issued after 1 July 2017 and the current anniversary is the first anniversary of the issue of the licence);
- the end of the last anniversary (if any) of the day the licence came into force that occurred before the current anniversary (applies to licences where an anniversary has already occurred after 1 July 2017); and
- the end of the 1 July 2017 (applies to licences that were held on 1 July 2017 but have not had an anniversary after 1 July 2017.

The above three time periods capture the scenarios when the last tax was imposed in relation to the licence. As section 7 is to make adjustments to the uncapped individual transmitter amount as a result of any variations to the licence since the last tax was imposed, the previous tax period will begin at the latest of the above three times. The previous tax period will end at the end of the day before the current anniversary.

Subsection 7(2) is a provision that provides for an adjustment calculator for the uncapped individual transmitter amount for the transmitter on the current anniversary. It provides that the uncapped individual transmitter amount must be increased or decreased in accordance with the method statement.

Step 1 of the method statement is to work out the ***daily amount*** for each day in the previous tax period. This is done by working out the uncapped individual transmitter amount for the transmitter at the start of each day in the previous tax period (disregarding any adjustments under section 7), and dividing that by the number of days in the financial year in which the current anniversary occurs. This step calculates the proportion of tax that would have been imposed in respect of the transmitter for each day in the previous tax period, by reference to the characteristics of the licence for the transmitter on that day.

The note under step 1 makes it clear that any indexation of the minimum uncapped individual transmitter amount and the dollars per kHz of spectrum bandwidth that occurs after the start of the previous tax period is disregarded for the purposes of this step. This reflects the effect of subsection 7(3) which provides that each day of the previous tax period is taken to have occurred in the financial year in which the previous tax period started, meaning that any indexation is to be disregarded.

Step 2 of the method statement is to work out the amount of tax that would have been imposed in respect of the transmitter at the start of the previous tax period. In most cases this will be the uncapped individual transmitter amount that was imposed at the start of the previous tax period. However, if an adjustment was made under this provision at the start of the previous tax period to the uncapped individual transmitter amount, this adjustment is to be disregarded.

Step 3 of the method statement requires working out if there is a difference between the total of the daily amounts worked out under step 1, and the amount worked out under step 2. If the total of the daily amounts worked out under step 1 is greater than that worked out under step 2, the uncapped individual transmitter amount for the transmitter at the current anniversary is to be increased by the difference.

This reflects that for a part of the previous tax period the licence authorised the transmitter to transmit with parameters which would have resulted in a higher amount of tax being imposed on the transmitter. Steps 1 to 3 of the method statement will work out how much tax the licence holder would have been liable for during the part of previous tax period since the licence was varied, and add the additional amount of tax to the amount to be paid on the current anniversary.

Step 4 of the method statement applies if the total of the daily amounts worked out under step 1 is less than the amount worked out under step 2. If this is the situation, the uncapped individual transmitter amount for the transmitter at the current anniversary is reduced by the difference. This step will work out how much tax the licence holder would have been liable to pay during the part of the previous tax period since the licence was varied, and will deduct the amount from the amount to be paid on the current anniversary.

Under the method statement there is an example of how the adjustment calculator will work in practice. The example relates to a licence which authorises the operation of a high powered UHF transmitter at a location with a medium population density.

On 1 January 2018, applying the formula in section 6 of the Determination, tax of $921,053.00 ($13.1579 x 7000 x 10) is imposed on a transmitter licence in relation to the transmitter. On 1 December 2018, the licence is amended to reduce the maximum power at which the transmitter can transmit from high power to medium power. On 1 January 2019, tax is payable on the licence again and as there has been a variation to the licence since the last tax was imposed, section 7 will apply.

The uncapped individual transmitter amount for the transmitter on 1 January 2019 worked out under section 6 of the Determination is $92,105.30 (13.1579 x 7000 x1) assuming there was no indexation on 1 July 2018. This amount is to be decreased using the method statement in section 7 of the Determination as follows:

- step 1 produces 334 daily amounts of $2,523.43 for each day between 1 January and 30 November 2018, and 31 daily amounts of $252.34 for each day between 1 December and 31 December 2018;
- under step 2, the uncapped individual transmitter amount on 1 January 2018 was $921,053.00;

- the total of the step 1 daily amounts is $850,648.16 which is less than the step 2 uncapped individual transmitter amount on 1 January 2018. Therefore, the uncapped individual transmitter amount for 1 January 2019 is to be reduced by the difference of $70,404.84 under step 4 to $21,700.46.

Subsection 7(3) provides that in applying subsection 6(3) to 6(6) for the purposes of step 1 of the method statement in subsection 7(2), each day in the previous tax period is taken to have occurred in the financial year in which the previous tax period started. The effect of this provision is to disregard any indexation that would have occurred during the previous tax period when calculating each of the daily amounts under step 1.

Subsection 7(4) provides that for the purposes of subsection 7(1), the uncapped individual transmitter amount for the transmitter on a day in the previous tax period, before the transmitter licence began to cover the transmitter, is taken to be nil. This is to cover situations where, since the last tax was imposed on the licence, the licence was varied to add a transmitter to the licence.