

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence Tax) Act 1983

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No.2)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 2) (the Amendment Determination)* under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983 (the Tax Act)* and subsection 33(3) of the *Acts Interpretation Act 1901 (the AIA)*. Subsection 7(1) of the Tax Act provides that 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.

Subsection 33(3) of the AIA provides that when an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to amend that instrument.

Purpose and operation of the instrument

The Amendment Determination amends the *Radiocommunications (Transmitter Licence Tax) Determination 2015 (the Tax Determination)*, which sets the taxes for transmitter licences. The tax levied on apparatus licences allows the ACMA to create economic incentives for efficient use of the spectrum. It also encourages licensees to use the minimum amount of bandwidth for their needs, to move to less congested bands, and to surrender licences that are no longer needed.

The Amendment Determination amends the Tax Determination to implement the *Australian Communications and Media Authority (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020 (the Direction)*, which directs the ACMA to change the taxation arrangements in relation to revenue collected for the enhanced Electromagnetic Energy (**EME**) Program (**EME Program**). As a result of the Government's changes, the EME Program requires the collection of revenue of \$2.6m p.a. over the next three financial years (2020-21 to 2022-23) and \$1.9m p.a. (indexed for inflation) from 2023-24 onwards.

The Direction instructs the ACMA to:

- a. reduce most apparatus licence taxes (both transmitter licence taxes and receiver licence taxes) by 0.8 per cent (reflecting the amount collected by these taxes which the Government directed toward the EME Program); and
- b. recover the EME Program's costs from the tax imposed on spectrum licences, subject to some exceptions.

The Amendment Determination reduces most transmitter licence taxes by 0.8%. Consistent with the Direction, however, the following transmitter licence taxes are not reduced:

- taxes for transmitter licences covered by item 704A of Schedule 2 to the Tax Determination, as the tax rates for these licences never included any funding for the EME Program);
- taxes for those transmitter licences where the tax rates are so low that they cannot practically be reduced by 0.8%.

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

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

Documents incorporated by reference

The Amendment Determination does not incorporate any documents by reference.

Consultation

Before the Amendment Determination was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

The Department of Industry, Transport, Regional Development and Communications consulted with spectrum licensees on the Direction in March and April 2020 and received responses from the Australian Mobile Telecommunications Association, Australasian Railway Association, Free TV Australia, NBN Co, and Telstra.

Key feedback on the draft Direction included:

- a. Exempted entities seeking to confirm that they would not be liable for the proposed new EME component of the spectrum licence tax.
- b. Some stakeholders expressed a preference for the proposed new EME component of the spectrum licence tax to be paid by a broader group of licence holders.
- c. clarification regarding the expected amount to be collected over the forward estimates period and a request for transparency on how the funding would be spent.

As the Direction was made on 15 May 2020 and required the ACMA to amend the Tax Determination by 1 July 2020, and as the result of the Direction and the Amendment Determination (which conforms to the Direction) is either to reduce the tax rates, or leave them unchanged, the ACMA was satisfied that no further consultation needed to be undertaken in relation to the Amendment Determination.

Regulatory impact assessment

The Office of Best Practice Regulation (**OBPR**) has advised that these amendments would not give rise to a regulatory change and therefore formed the opinion that no regulatory impact analysis is required (OBPR reference: 25404).

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires a rule maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies, to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

This statement has been prepared in accordance with that requirement.

Overview of the instrument

The Tax Determination sets the amount of tax payable by transmitter licensees, imposed by the Tax Act. Most tax rates set out in the Tax Determination have previously included a component that the Government has directed towards funding EME research.

The Amendment Determination is made under subsection 7(1) of the Tax Act and amends the Tax Determination to decrease the tax rates applicable to most transmitter licences by 0.8 per cent, representing the component directed towards funding EME research. The Government has decided that EME research will be funded from other revenue sources.

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 and freedoms as it does not raise any human rights issues.

Notes to the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No.2)*

Section 1 Name

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 2)*.

Section 2 Commencement

This section provides that the Amendment Determination commences at the start of 1 July 2020. The Amendment Determination can be accessed free of charge on the Federal Register of Legislation at www.legislation.gov.au.

Section 3 Authority

Section 3 provides that the Amendment Determination is made under subsection 7(1) of the Tax Act.

Section 4 Amendments

Section 4 provides that Schedule 1 to the Amendment Determination amends the Tax Determination.

Schedule 1 Amendments

Item 1

Item 1 substitutes table 202, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 2 of Schedule 2 (assigned licences) to the Tax Determination. The amount of tax varies with frequency range and area density of the spectrum access. Most amounts have been reduced by 0.8 per cent, removing the historical EME component.

Item 2

Item 2 substitutes table 206, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 2A of Schedule 2 (scientific licences) to the Tax Determination. The amount of tax varies with frequency range and area density of the spectrum access. Most amounts have been reduced by 0.8 per cent, removing the historical EME component.

Item 3

Item 3 substitutes table 302, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 3 of Schedule 2 (assigned licences in high demand frequency bands) to the Tax Determination. All amounts have been reduced by 0.8 per cent, removing the historical EME component.

Item 4

Item 4 substitutes table 305A and the example in Part 3A of Schedule 2 (harmonised government spectrum area licences) to the Tax Determination, which sets out the amount of tax for licences in different States and Territories. All amounts have been reduced by 0.8 per cent, removing the historical EME component

Item 5

Item 5 substitutes Table 402, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 4 of Schedule 2 (assigned fixed point to point licences) to the Tax Determination. Most amounts have been reduced by 0.8 per cent, removing the historical EME component.

Item 6

Item 6 substitutes table 502, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 5 of Schedule 2 (assigned fixed point to multipoint licences) to the Tax Determination. Most amounts have been reduced by 0.8 per cent, removing the historical EME component.

Item 7

Item 7 substitutes table 602, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 6 of Schedule 2 (fixed television outside broadcast station) to the Tax Determination. Most amounts have been reduced by 0.8 per cent, removing the historical EME component.

Item 8

Item 8 substitutes table 702 in Part 7 of Schedule 2 (assigned licences subject to a fixed annual tax) to the Tax Determination. All amounts have been reduced by 0.8 per cent, removing the historical EME component.

Item 9

Item 9 substitutes table 802 in Part 8 of Schedule 2 (high powered open narrowcasting services) to the Tax Determination, which sets out the amount of tax for certain locations. All amounts have been reduced by 0.8 per cent, removing the historical EME component.

Item 10

Item 10 omits “\$1000” wherever it occurs and substitutes “\$992” in Schedule 2, sub-item 803(2).

Item 11

Item 11 substitutes a new table 802A in Part 8A of Schedule 2 (space system licences) of the Tax Determination, which sets out the amount of tax for each kHz of bandwidth. All amounts have been reduced by 0.8 per cent, removing the historical EME component.

Item 12

Item 12 substitutes table 902 in Part 9 of Schedule 2 (non-assigned licence) to the Tax Determination, which sets out the amount of tax for a range of licensing options. All amounts have been reduced by 0.8 per cent, removing the historical EME component.

Item 13

Item 13 amends the definition of the *minimum annual amount* in the Dictionary by omitting \$41.83 and substituting \$41.49. This reduces the minimum annual amount of tax by 0.8 per cent, removing the historical EME component.