

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence) Tax Act 1983

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2021 (No. 2)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2021 (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 annual tax levied on transmitter 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 ACMA generally seeks to ensure efficient use of spectrum by allocating frequencies to licensees with the greatest willingness to pay. If a tax is too low, licensees with low-value uses can viably occupy frequencies, excluding more economically efficient uses.

According to the Explanatory Memorandum for the *Radiocommunications (Transmitter Licence Tax) Amendment Bill 1992*, the amount of tax is determined with the use of a disallowable instrument because of a need for flexibility in setting the level of the taxes and to ensure that the ACMA itself can set the level which equitably recoups the costs of spectrum management across all apparatus licences which are issued under the *Radiocommunications Act 1992*.

That Explanatory Memorandum also stated that the use of disallowable instruments in the setting of the levels of licence taxes will ensure that there is flexibility to change levels in response to changes in demand for particular parts of the spectrum, and to introduce new tax amounts for new kinds of licences, but will ensure that accountability to the Parliament remains, as the determinations are subject to Parliamentary disallowance.

The Tax Determination sets out the different amounts of transmitter licence tax that the ACMA has determined is payable by licensees of particular transmitter licences. The Amendment Determination amends the Tax Determination to:

- reduce tax amounts for licences that authorise the operation of radiocommunications transmitters above 5 GHz by between 50 percent and 90 percent, depending on the frequency range;

- introduce a ‘systems price’ for earth licences that authorise earth stations with multiple antennas, with prices more commensurate with the ‘spectrum denial’ caused by those licences; and
- introduce an additional price discount to encourage more efficient use of the land-mobile ‘micro’ service model.

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 inserts transitional provisions into the Tax Determination that refer to the Tax Determination as in force at a particular time, namely, immediately before the commencement of the Amendment Determination, as permitted by section 14 of the LA. That version of the Tax Determination is available free of charge from the Federal Register of Legislation (www.legislation.gov.au).

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.

Stakeholders were given from 16 December 2020 to 18 February 2021 to comment on the proposal to amend the Tax Determination to introduce the three proposed reforms described above. The proposed reforms were outlined in a consultation paper, ‘Response to the implementation of the Spectrum Pricing Review – consultation 39/2020’, that was published on the ACMA website www.acma.gov.au.

The ACMA received 16 submissions in response to the consultation paper. All submitters were supportive of the three proposed reforms relevant to the Amendment Determination, with some commenting on further reforms outside the scope of the proposal to amend the Tax Determination.

Regulatory impact assessment

The Office of Best Practice Regulation (OBPR) has considered the implementation of the first tranche of the Spectrum Pricing Review and recommended that a RIS-like process certification path be taken in lieu of a regulatory impact analysis. Subsequently, in compliance with the requirements of a RIS-like process, a certification letter was sent to OBPR. The OBPR reference number is 43326.

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 Amendment Determination amends the Tax Determination, which sets the amount of tax payable by transmitter licensees, imposed by the Tax Act. The annual tax levied on transmitter 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 is made under subsection 7(1) of the Tax Act and amends the Tax Determination to:

- reduce tax amounts for licences that authorise the operation of radiocommunications transmitters above 5 GHz by between 50 percent and 90 percent, depending on the frequency range;
- introduce a ‘systems price’ for earth licences that authorise earth stations with multiple antennas, with prices more commensurate with the ‘spectrum denial’ caused by those licences; and
- introduce an additional price discount to encourage more efficient use of the land-mobile ‘micro’ service model.

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 2021 (No. 2)*

Section 1 Name

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2021 (No. 2)*.

Section 2 Commencement

This section provides for the Amendment Determination to commence at the start of the day after the day it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed free of charge 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 the Tax Determination is amended as set out in Schedule 1 to the Amendment Determination.

Schedule 1 Amendments

Item 1

Item 1 substitutes Part 3 of the Tax Determination to introduce new transitional arrangements relating to the changes made by the Amendment Determination. New section 3.1 of the Tax Determination sets out the relevant definitions. New section 3.2 provides the transitional arrangements so that the new taxes do not take effect in relation to taxes imposed before the ‘implementation day’ (40 days after the commencement of the Amendment Determination). In instances where the tax is imposed after the commencement of the Amendment Determination but before the implementation day, the amount of tax will continue to be based on the Tax Determination as in force immediately before the commencement of the Amendment Determination.

Item 2

Item 2 makes a consequential change to item 202 of Schedule 2 to the Tax Determination, in relation to the additional price discount for micro power spectrum access.

Item 3

Item 3 substitutes part of table 202 of Schedule 2 to the Tax Determination, 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). The amount of tax varies with frequency range and area density of the spectrum access. Tax rates for licences that authorise operation of radiocommunications transmitters between 5 GHz and 8.5 GHz have decreased by 50 percent. Tax rates for licences that authorise operation of radiocommunications transmitters above 8.5 GHz have decreased by 90 percent.

Item 4

Item 4 inserts new item 203A in Schedule 2 to the Tax Determination, to introduce the additional price discount for ‘micro power spectrum accesses’ (see below).

Item 5

Item 5 makes a consequential change to item 204 of Schedule 2 to the Tax Determination, in relation to the additional price discount for micro power spectrum access.

Item 6

Item 6 substitutes part of table 206 in Schedule 2 to the Tax Determination, 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). The amount of tax varies with frequency range and area density of the spectrum access. Tax rates for licences that authorise operation of radiocommunications transmitters between 5 GHz and 8.5 GHz have decreased by 50 percent. Tax rates for licences that authorise operation of radiocommunications transmitters above 8.5 GHz have decreased by 90 percent.

Item 7

Item 7 makes a consequential change to item 302 of Schedule 2 to the Tax Determination, in relation to the additional price discount for micro power spectrum access.

Item 8

Item 8 substitutes part of table 302 in Schedule 2 to the Tax Determination, 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). The amount of tax varies with frequency range and area density of the spectrum access. Tax rates for licences that authorise operation of radiocommunications transmitters between 5 GHz and 8.5 GHz have decreased by 50 percent. Tax rates for licences that authorise operation of radiocommunications transmitters above 8.5 GHz have decreased by 90 percent.

Item 9

Item 9 inserts new item 303A in Schedule 2 to the Tax Determination, to introduce the additional price discount for micro power spectrum accesses (see below).

Item 10

Item 10 makes a consequential change to item 304 in Schedule 2 to the Tax Determination, in relation to the additional price discount for micro power spectrum access.

Item 11

Item 11 substitutes part of table 402 in Schedule 2 to the Tax Determination, 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). The amount of tax varies with frequency range and area density of the spectrum access. Tax rates for licences that authorise operation of radiocommunications transmitters between 5 GHz and 8.5 GHz have decreased by 50 percent. Tax rates for licences that authorise operation of radiocommunications transmitters above 8.5 GHz have decreased by 90 percent.

Item 12

Item 12 substitutes part of table 502 in Schedule 2 to the Tax Determination, 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). The amount of tax varies with frequency range and area density of the spectrum access. Tax rates for licences that authorise operation of radiocommunications transmitters between 5 GHz and 8.5 GHz have decreased by 50 percent. Tax rates for licences that authorise operation of radiocommunications transmitters above 8.5 GHz have decreased by 90 percent.

Item 13

Item 13 substitutes part of table 602 in Schedule 2 to the Tax Determination, 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). The amount of tax varies with frequency range and area density of the spectrum access. Tax rates for licences that authorise operation of radiocommunications transmitters between 5 GHz and 8.5 GHz have decreased by 50 percent. Tax rates for licences that authorise operation of radiocommunications transmitters above 8.5 GHz have decreased by 90 percent.

Item 14

Item 14 makes a consequential change to item 802A in Schedule 2 to the Tax Determination, in relation to the changes for earth licences mentioned below.

Item 15

Item 15 substitutes part of table 802A in Schedule 2 to the Tax Determination, which sets out the amount of tax for the licensing options specified in Part 8A of Schedule 2 (space system licences). The amount of tax varies with the frequency range and area density of the spectrum access. Tax rates for licences that authorise operation of radiocommunications transmitters between 5 GHz and 8.5 GHz have decreased by 50 percent. Tax rates for licences that authorise the operation of radiocommunications transmitters above 8.5 GHz have decreased by 90 percent.

Item 16

Item 16 inserts new item 804AA in Schedule 2 to the Tax Determination. This item has the effect of adjusting the tax rates applicable to co-located and co-frequency earth stations authorised by a single earth licence, to account for efficient spectrum use associated with co-located and co-frequency earth stations. Whether two or more earth stations are ‘co-located’ will depend on the distance between them; in higher density areas, the stations will need to be closer together to be ‘co-located’ for the purposes of new item 804AA.

New item 804AA essentially provides that the tax amount assessed in relation to only one spectrum access is used for co-located and co-frequency earth stations authorised by the licence, regardless of how many such earth stations are authorised by the licence. If the licence authorises additional earth stations, which are not co-located and co-frequency earth stations, the tax in relation to each spectrum access represented by those additional stations is assessed in the normal way.

The effect of this item can be combined with the existing co-location and co-frequency discount under existing item 804A of Schedule 2.

Items 17 and 18

These items replace part of the definition of ‘low power spectrum access’ and insert a new definition of ‘micro power spectrum access’ in the Dictionary. The Tax Determination already provided for a discount on tax where a licence authorised operation of radiocommunications transmitter at a low power (up to 8.3 watts EIRP), where there was not likely to be interference caused by the transmitter more than 2 kilometres from where it was operated. The Amendment Determination introduces a new discount for licences that authorise operation of radiocommunications transmitters at even lower power (up to 1.7 watts EIRP), where there is not likely to be interference caused by the transmitter more than 200 metres from where it is operated.

The two discounts cannot be combined.