



Radiocommunications Taxes Collection (Unpaid Tax Penalty) Determination 2024

The Australian Communications and Media Authority makes the following determination under section 7A of the *Radiocommunications Taxes Collection Act 1983*.

Dated: 12 December 2024

Adam Suckling
[signed]
Member

Helen Owens
[signed]
General Manager

Australian Communications and Media Authority

1 Name

This instrument is the *Radiocommunications Taxes Collection (Unpaid Tax Penalty) Determination 2024*.

2 Commencement

This instrument commences at the start of the day after the day it is registered on the Federal Register of Legislation.

Note: The Federal Register of Legislation is available, free of charge, at www.legislation.gov.au.

3 Authority

This instrument is made under section 7A of the Act.

4 Repeal of the *Radiocommunications Taxes Collection (Penalties on Unpaid Tax) Determination 2015*

The *Radiocommunications Taxes Collection (Penalties on Unpaid Tax) Determination 2015* (F2015L00179) is repealed.

5 Interpretation

- (1) In this instrument:

Act means the *Radiocommunications Taxes Collection Act 1983*.

Note: Section 3 of the Act provides that the *Radiocommunications Act 1992* is incorporated and shall be read as one with the Act.

all the penalty payable: see paragraph 13(g).

commencement day means the day on which this instrument commences.

due day, in relation to the imposition of tax, means the day on which the tax is payable.

Note 1: For the day tax is payable, see section 7 of the Act.

Note 2: The definition of **due day** may be affected by paragraph 13(f).

general interest charge rate has the meaning given by subsection 8AAD(1) of the *Taxation Administration Act 1953*.

Note: A number of other expressions used in this instrument are defined in the Act, including:

- (a) instrument;
- (b) tax.

- (2) Unless the contrary intention appears, terms used in this instrument that are defined in the *Radiocommunications Act 1992* have the same meaning as in that Act.

Note: A number of expressions used in this instrument are defined in the *Radiocommunications Act 1992*, including:

- (a) apparatus licence tax;
- (b) licensee;
- (c) spectrum licence;
- (d) spectrum licence tax.

6 References to other instruments

In this instrument, unless the contrary intention appears:

- (a) a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- (b) a reference to any other kind of instrument is a reference to that other instrument as existing at the time the reference was included in this instrument.

Note 1: For references to Commonwealth Acts, see section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation. The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

7 Penalty in relation to unpaid tax

- (1) For subsections 7A(1) and (1A) of the Act, this section determines the penalty payable by:
 - (a) the holder of an instrument in relation to apparatus licence tax that remains unpaid after the due day; and
 - (b) the licensee for a spectrum licence in relation to spectrum licence tax that remains unpaid after the due day.
- (2) For each day that tax remains unpaid after the due day, the penalty is:
 - (a) the general interest charge rate; multiplied by
 - (b) the amount of tax that remained unpaid at the start of the day; divided by
 - (c) the number of days in the year in which the day falls.

Example: A person fails to pay apparatus licence tax of \$365,000 for 10 days after the due day, at a time when the general interest charge rate is 12 percent. Each of those 10 days occurs during a year that is not a leap year. For each of those 10 days, the penalty is:

$$12\% \times \$365,000 \div 365 = \$120$$

If, after those 10 days, the person pays the tax, no further penalty is payable. All the penalty payable by the person in relation to the unpaid tax is:

$$10 \text{ days} \times \$120 \text{ per day} = \$1,200.$$

- (3) Penalty determined by this section:
 - (a) is payable to the ACMA on behalf of the Commonwealth; and
 - (b) may be recovered as a debt due to the Commonwealth.
- (4) Subsection (2) is subject to sections 10 to 13.

8 When penalty is payable

For each day that tax remains unpaid after the due day, the penalty is payable on the following day.

9 Payments of unattributed amounts – penalty is paid first

- (1) This section applies if:
 - (a) tax is payable by a person; and
 - (b) the person did not pay the tax on the due day; and
 - (c) penalty is payable by the person; and
 - (d) the person pays an amount to the ACMA, on behalf of the Commonwealth; and

- (e) at the time the person paid the amount, the person did not specify whether the amount was attributable, in whole or in part, to the tax, the penalty, or both the tax and the penalty.
- (2) If, at the time the person pays the amount:
- (a) the amount is less than or equal to all the penalty payable in relation to the tax at that time – the payment is taken to be of the proportion of all that penalty equal to the amount;
 - (b) if the amount is greater than all the penalty payable in relation to the tax at that time – the payment is taken to be of all that penalty and, to the extent the amount is greater than all that penalty, payment of the tax.

Note 1: Even if paragraph (b) applies, penalty may continue to become payable for each subsequent day that the whole of the tax remains unpaid.

Note 2: For overpayments of tax, see section 10B of the Act. For overpayments of penalty, see subsection 7A(1B) of the Act.

10 Interest on judgment for payment of tax only – effect on penalty

- (1) This section applies if:
- (a) judgment is given by, or entered in, a court for the payment by a person of tax only; and
 - (b) the judgment carries interest (*judgment interest*).
- (2) Subject to subsection (3), the judgment does not affect the application of section 7 in relation to the tax.
- (3) Subject to subsection (4), all the penalty payable by the person in relation to the tax (whether or not the penalty was payable before the judgment was given) is reduced by the judgment interest.
- (4) All the penalty payable by the person in relation to the tax cannot be reduced below zero.

11 Interest on judgment for payment of tax and other amounts – effect on penalty

- (1) This section applies if:
- (a) judgment is given by, or entered in, a court for the payment by a person of an amount (the *total judgment amount*) that includes tax; and
 - (b) the judgment carries interest (*judgment interest*).
- (2) Subject to subsection (3), the judgment does not affect the application of section 7 in relation to the tax.
- (3) Subject to subsection (4), all the penalty payable by the person in relation to the tax (whether or not the penalty was payable before the judgment was given) is reduced by an amount worked out as follows:
- (a) first, work out the proportion of tax to the total judgment amount (the *tax proportion*);
 - (b) second, work out the proportion of judgment interest that is the same as the tax proportion.
- (4) All the penalty payable by the person in relation to the tax cannot be reduced below zero.

12 Penalty – rounding of amounts

If penalty includes part of a whole cent:

- (a) if the part of the cent is less than half a cent – the penalty is reduced to the nearest whole cent;
- (b) otherwise – the penalty is increased to the nearest whole cent.

13 Transition

If:

- (a) tax is payable by a person; and
- (b) the person did not pay the tax on the due day; and
- (c) the due day occurred before the commencement day; and
- (d) the tax was not paid before the commencement day; and
- (e) immediately before the commencement day, the person was liable to pay penalty interest mentioned in subsection 6(2) of the *Radiocommunications Taxes Collection (Penalties on Unpaid Tax) Determination 2015*, as in force at that time;

then:

- (f) for the commencement day, and each day that tax remains unpaid after the commencement day, penalty is worked out in accordance with this instrument (other than this section), as if the due day for the tax were the day before the commencement day; and
- (g) in sections 9 to 11, **all the penalty payable**, by a person in relation to the tax, includes that penalty interest.

Note: In accordance with section 7 of the *Acts Interpretation Act 1901*, the repeal of the *Radiocommunications Taxes Collection (Penalties on Unpaid Tax) Determination 2015* does not affect any obligation or liability accrued or incurred under that instrument. Accordingly, any penalty interest that was payable under that instrument remains payable.