



Taxation Administration (Defence Related International Obligations — Indirect Tax Refunds) Determination 2005

I, ROBERT HILL, Minister for Defence, make this Determination under section 62B of the *Taxation Administration Act 1953*.

Dated 22 March 2005

ROBERT HILL
Minister for Defence

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Part 1 Preliminary

1 Name of Determination

This Determination is the *Taxation Administration (Defence Related International Obligations — Indirect Tax Refunds) Determination 2005*.

2 Commencement

This Determination is taken to have commenced on 1 July 2000.

Background to Determination

Section 62B of the *Taxation Administration Act 1953* provides for the Commissioner of Taxation to refund an amount equal to the amount of indirect tax (if any) paid in respect of certain acquisitions made by visiting forces or other persons to whom Australia is under an international obligation to grant indirect tax concessions.

For the refund to be payable, the kind of acquisition, the kind of person, and the kind of use of the acquisition, must be covered by a determination of the Defence Minister.

Under subsection 62B (4) of the Act, the refund is payable in accordance with the conditions and limitations, and within the period and manner, determined by the Defence Minister.

3 Definitions

In this Determination, unless the contrary intention appears:

Act means the *Taxation Administration Act 1953*.

refund means the payment of an amount covered by subsection 62B (1) of the Act.

Note 1 **Indirect tax** is defined in subsection 20 (1) of the Act as meaning GST, wine tax or luxury car tax.

Note 2 **Member of a visiting force** and **visiting force** are defined in subsection 62B (6) of the Act as having the meaning given by section 5 of the *Defence (Visiting Forces) Act 1963*.

Note 3 **Tax invoice** is defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

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Part 2 Obligations to Papua New Guinea**4 Acquisitions and payment of refund**

- (1) This section covers an acquisition of vehicles, equipment, weapons, armaments, provisions, or any other goods, that:
 - (a) is made by a visiting force of Papua New Guinea or a member of a visiting force of Papua New Guinea; and
 - (b) at the time of acquisition, was intended for the official use of the visiting force of Papua New Guinea.
- (2) Unless otherwise approved by the Defence Minister, a refund (if any) in respect of the acquisition is payable subject to the condition that the state of Papua New Guinea retains title in the goods acquired.
- (3) The Commissioner must pay the refund to the Australian Department of Defence.

Note The amount of indirect tax (if any) in respect of an acquisition covered by subsection (1) is to be borne by the Australian Department of Defence on behalf of the Government of Papua New Guinea.

Part 3 Obligations to the United States of America

Division 3.1 General obligations

5 Acquisitions and payment of refund — motor vehicles

- (1) This section covers an acquisition of a motor vehicle (whether by purchase or lease) that:
 - (a) is made by a member of a visiting force of the United States of America; and
 - (b) at the time of acquisition, was intended for the use (other than commercial use) of the member.
- (2) A refund (if any) in respect of the acquisition is payable subject to the following conditions:
 - (a) if the member who acquired the motor vehicle (the *second motor vehicle*):
 - (i) has acquired another motor vehicle in respect of which no sales tax was paid before 1 July 2000, or in respect of which a refund under section 62B of the Act is payable; or
 - (ii) has imported a motor vehicle into Australia in respect of which no duty of Customs was payable under the *Customs Tariff Act 1995* —
the military authorities of the United States of America have certified that the domestic circumstances of the member required the acquisition of the second motor vehicle;
 - (b) the motor vehicle was manufactured or assembled in Australia;
 - (c) the motor vehicle is:
 - (i) to remain in the ownership and possession of, and be used by, the member who acquired it for the period of 2 years after the date when it was purchased; or
 - (ii) to be exported within that 2 year period;
 - (d) the motor vehicle is not to be transferred to another person without the approval of the Defence Minister;
 - (e) the claim for the refund is:
 - (i) signed by, or on behalf of, the Defence Attaché of the United States of America; and
 - (ii) given to the Department of Defence with the tax invoice that relates to the acquisition.

Section 6

- (3) The Commissioner must pay the refund to the Australian Department of Defence.

Note The Australian Department of Defence will receive the refund in respect of an acquisition covered by subsection (1) on behalf of the Defence Attaché of the United States of America and, after receipt, will pay the amount of the refund to the member who made the acquisition.

6 **Acquisitions and payment of refund — equipment and other property**

- (1) This section covers an acquisition of equipment, materials, supplies or other property (including real property), that:
- (a) is made by the Government of the United States of America or a person or body on behalf of that Government; and
 - (b) at the time of acquisition, was intended for the official use of a visiting force of the United States of America.
- (2) A refund (if any) in respect of the acquisition is payable subject to the following conditions:
- (a) the thing acquired is not for resale;
 - (b) unless otherwise approved by the Defence Minister, the Government of the United States of America retains title in the thing acquired.
- (3) The Commissioner must pay the refund to the Australian Department of Defence.

Note The amount of indirect tax (if any) in respect of an acquisition covered by subsection (1) is to be borne by the Australian Department of Defence on behalf of the Government of the United States of America.

7 **Acquisitions and payment of refund — acquisitions by US commissaries**

- (1) This section covers an acquisition of goods that:
- (a) is made by the Government of the United States of America or a person or body on behalf of that Government; and
 - (b) at the time of acquisition, was intended for use in, or sale by, a commissary of the United States of America.
- (2) A refund (if any) in respect of the acquisition is payable subject to the condition that, if the goods acquired are sold:
- (a) they are sold only to:
 - (i) a member of a visiting force of the United States of America; or
 - (ii) a member of a civilian component of a visiting force of the United States of America; or
 - (iii) a dependant of a member mentioned in subparagraph (i) or (ii); and
 - (b) they are not resold on the local market.

- (3) The Commissioner must pay the refund to the Australian Department of Defence.

Note The amount of indirect tax (if any) in respect of an acquisition covered by subsection (1) is to be borne by the Australian Department of Defence on behalf of the Government of the United States of America.

- (4) In this section:

commissary includes a military sales facility, exchange facility, officers' club, enlisted person's club or similar military facility.

member of a civilian component of a visiting force has the meaning given by subsection 5 (3) of the *Defence (Visiting Forces) Act 1963*.

Division 3.2 Obligations in relation to Pine Gap and the North West Cape

8 Acquisitions and payment of refund — equipment for use in construction, maintenance or operation of Facility at Pine Gap or Harold E Holt Naval Communication Station

- (1) This section covers an acquisition of equipment, materials, supplies or other property (including real property), that:
- (a) is made by the Government of the United States of America or a person or body on behalf of that Government; and
 - (b) at the time of acquisition, was intended for use in the construction, maintenance or operation of:
 - (i) the Joint United States–Australia Defence Facility at Pine Gap in the Northern Territory (the ***Facility***); or
 - (ii) the Harold E Holt Naval Communication Station at North West Cape in Western Australia (the ***Station***).
- (2) A refund (if any) in respect of the acquisition is payable subject to the following conditions:
- (a) the thing acquired is not for resale;
 - (b) the Government of the United States of America has certified that the thing acquired is for use in the construction, maintenance or operation of the Facility or Station;
 - (c) the thing acquired has become the property of the Government of the United States of America before being used.
- (3) The Commissioner must pay the refund to the Australian Department of Defence.

Note The amount of indirect tax (if any) in respect of an acquisition covered by subsection (1) is to be borne by the Australian Department of Defence on behalf of the Government of the United States of America.

Section 9

9 Acquisitions and payment of refund — equipment incorporated or wholly consumed in construction, maintenance or operation of Facility at Pine Gap or Harold E Holt Naval Communication Station

- (1) This section covers an acquisition of equipment, materials, supplies or other property (including real property), that:
- (a) is made by the Government of the United States of America; and
 - (b) at the time of acquisition, was intended to be incorporated into, or wholly consumed in the construction, maintenance or operation of:
 - (i) the Joint United States–Australia Defence Facility at Pine Gap in the Northern Territory; or
 - (ii) the Harold E Holt Naval Communication Station at North West Cape in Western Australia.
- (2) The Commissioner must pay a refund (if any) in respect of the acquisition to the Australian Department of Defence.

Note The amount of indirect tax (if any) in respect of an acquisition covered by subsection (1) is to be borne by the Australian Department of Defence on behalf of the Government of the United States of America.