



Taxation Administration (Defence Related International Obligations and Other Matters – Indirect Tax Refunds) Determination 2023

I, Richard Marles, Deputy Prime Minister, make the following instrument.

Dated 14 July 2023

Richard Marles
Deputy Prime Minister
Minister for Defence

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Part 1—Preliminary

1 Name

This instrument is the *Taxation Administration (Defence Related International Obligations and Other Matters – Indirect Tax Refunds) Determination 2023*

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Part 1 to Part 4 (inclusive)	<i>The day after this instrument is registered.</i>	
2. Part 5	<i>The day of entry into force of the Japan RAA.</i>	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 105-120 in Schedule 1 to the *Taxation Administration Act 1953*.

4 Definitions

Note: An expression used in Schedule 1 to the *Taxation Administration Act 1953* has the same meaning as in the *Income Tax Assessment Act 1997* (see subsection 3AA(2) of the *Taxation Administration Act 1953*). The following expressions used in this instrument are defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*:

- (a) Defence Minister;
- (b) indirect tax;
- (c) input tax credit;
- (d) tax invoice;
- (e) visiting force;
- (f) Commissioner.

In this instrument:

Act means the *Taxation Administration Act 1953*.

acquisition has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

Australia Singapore Military Training Initiative means the initiative between Australia and Singapore for unilateral military training activities by Singapore visiting forces in central and northern Queensland, and the acquisition of land and development of facilities and infrastructure to facilitate such training, as governed by the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning Military Training and Training Area Development in Australia*, signed on 23 March 2020 and which entered into force on 10 December 2020.

commissary includes any of the following:

- (a) a military sales facility;
- (b) an exchange facility;
- (c) an officers' club;
- (d) an enlisted person's club;
- (e) any other similar military facility.

Defence Department means the Department administered by the Defence Minister.

development activities means the activities governed by Part III of the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning Military Training and Training Area Development in Australia*, signed on 23 March 2020 and which entered into force on 10 December 2020.

Japan RAA refers to the *Agreement between Japan and Australia concerning the Facilitation of Reciprocal Access and Cooperation between the Self-Defense Forces of Japan and the Australian Defence Force*, as signed on 6 January 2022 by Mr. KISHIDA Fumio, Prime Minister of Japan, and the Hon. Scott Morrison, MP, then Prime Minister of the Commonwealth of Australia. This definition includes any subsequent versions or amendments of that Agreement as agreed between Australia and Japan.

JSF Program means the multi-national project for the development, demonstration, production, and sustainment of the Joint Strike Fighter that is implemented under the *Memorandum of Understanding among the Department of Defence of Australia and the Minister of National Defence of Canada and the Ministry of Defence of Denmark and the Ministry of Defence of the Italian Republic and the Minister of Defence of the Kingdom of the Netherlands and the Ministry of Defence of the Kingdom of Norway and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland and the Secretary of Defence on behalf of the Department of Defence of the United States of America Concerning the Production, Sustainment and Follow-On Development of the Joint Strike Fighter*, which entered into effect on 30 September 2021.

member of a civilian component of a visiting force has the same meaning as in the *Defence (Visiting Forces) Act 1963*.

Note: See subsection 5(3) of the *Defence (Visiting Forces) Act 1963*.

member of a visiting force has the same meaning as in the *Defence (Visiting Forces) Act 1963*.

Note: See subsection 5(2) of the *Defence (Visiting Forces) Act 1963*.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2—Papua New Guinea

6 Acquisitions and payment of refund – vehicles and other goods

- (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 the acquisition, was intended for the official use of the visiting force of Papua New Guinea.
- (2) Subject to the condition in subsection (3), a refund of an amount equal to the amount (if any) of indirect tax borne in respect of the acquisition by or on behalf of the visiting force of Papua New Guinea, or by or on behalf of a member of the visiting force of Papua New Guinea, is payable.
- (3) Unless otherwise approved by the Defence Minister, a refund is only payable if the State of Papua New Guinea retains ownership of the goods acquired.
- (4) The Commissioner must pay the amount (if any) to the Defence Department on behalf of the visiting force of Papua New Guinea, or to the Defence Department on behalf of the member of the visiting force of Papua New Guinea.

Note: The amount (if any) of indirect tax in respect of an acquisition covered by subsection (1) is either paid by the Defence Department on behalf of the visiting force of Papua New Guinea (or member of the visiting force) or reimbursed by the Defence Department to the visiting force of Papua New Guinea (or member of the visiting force).

Part 3—Singapore

7 Acquisitions and payment of refund—fuels, oils and lubricants

- (1) This section covers an acquisition of fuels, oils or lubricants made on or after 1 July 2000, that:
 - (a) is made by the Government of Singapore or a person or body on behalf of that Government; and
 - (b) at the time of the acquisition, was intended for use in official vehicles, aircrafts or vessels of:
 - (i) a member of a visiting force of Singapore; or
 - (ii) a member of a civilian component of a visiting force of Singapore.
- (2) A refund of an amount equal to the amount (if any) of indirect tax borne in respect of the acquisition by or on behalf of the Government of Singapore is payable.
- (3) The Commissioner must pay the amount (if any) to the Defence Department on behalf of the Government of Singapore.

Note: The amount (if any) of indirect tax in respect of an acquisition covered by subsection (1) is either paid by the Defence Department on behalf of the Government of Singapore or reimbursed by the Defence Department to the Government of Singapore.

8 Acquisitions and payment of refund—development activities under the Australia Singapore Military Training Initiative

- (1) This section covers an acquisition made on or after 13 October 2016 under the Australia Singapore Military Training Initiative, that:
 - (a) is made by, or on behalf of, a visiting force of Singapore, or by a member of a visiting force of Singapore; and
 - (b) at the time of the acquisition, was intended for use in accordance with the Australia Singapore Military Training Initiative.
- (2) Subject to the limitation in subsection (3), a refund of an amount equal to the amount (if any) of indirect tax borne in respect of the acquisition by or on behalf of a visiting force of Singapore, or by or on behalf of a member of a visiting force of Singapore, is payable.
- (3) A refund is only payable for indirect tax derived from amounts paid by or on behalf of the Government of Singapore to cover the costs of development activities under the Australia Singapore Military Training Initiative.
- (4) The Commissioner must pay the amount (if any) to the Defence Department on behalf of the visiting force of Singapore, or to the Defence Department on behalf of the member of the visiting force of Singapore.

Note: The amount (if any) of indirect tax in respect of an acquisition covered by subsection (1) is paid by the Defence Department on behalf of the visiting force of Singapore (or member of the visiting force) out of the special account established for

the purposes of the Australia Singapore Military Training Initiative. Any amount refunded by the Commissioner will be applied to this special account.

Part 4—United States of America

Division 1—General

9 Acquisitions and payment of refund—motor vehicles for members of visiting force

- (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 the acquisition, was intended for the use (other than commercial use) of the member.
- (2) Subject to the conditions in subsection (3), a refund of an amount equal to the amount (if any) of indirect tax borne in respect of the acquisition by the member of a visiting force of the United States of America is payable.
- (3) A refund is only payable if:
 - (a) the motor vehicle was manufactured or assembled in Australia; and
 - (b) the motor vehicle:
 - (i) remains in the ownership and possession of, and is used by, the member who acquired it for the period of 2 years after the date when it was acquired; or
 - (ii) is exported within that 2 year period; and
 - (c) the motor vehicle is not transferred to another person without the approval of the Defence Minister; and
 - (d) the claim for the refund:
 - (i) is authorised by, or on behalf of, the Defence Attaché of the United States of America; and
 - (ii) is given to the Defence Department with the tax invoice that relates to the acquisition; and
 - (e) if the member who acquired the motor vehicle (the second motor vehicle):
 - (i) had acquired another motor vehicle in Australia (the first motor vehicle) to which subsection (4) applies; or
 - (ii) had imported another motor vehicle (the first motor vehicle) into Australia in respect of which no duty was payable under the *Customs Tariff Act 1995*; andthe 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

- (4) This subsection applies to the first motor vehicle if:
- (a) the motor vehicle was acquired before 1 July 2000 and no sales tax was paid in respect of the acquisition; or
 - (b) the motor vehicle was acquired on or after 1 July 2000 and a refund was paid in respect of the motor vehicle in accordance with:
 - (i) this instrument; or
 - (ii) the *Taxation Administration (Defence Related International Obligations—Indirect Tax Refunds) Determination 2018*; or
 - (iii) the *Taxation Administration (Defence Related International Obligations—Indirect Tax Refunds) Determination 2005*.
- (5) The Commissioner must pay the amount (if any) to the Defence Department on behalf of member of the visiting force of the United States of America.
- Note: The Defence Department pays the refunded amount to the member of the visiting force of the United States of America who made the acquisition.

10 Acquisitions and payment of refund—official use by a visiting force

- (1) This section covers an acquisition, 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 the acquisition, was intended for the official use of a visiting force of the United States of America.
- (2) Subject to the conditions in subsection (3), a refund of an amount equal to the amount (if any) of indirect tax borne in respect of the acquisition by or on behalf of the Government of the United States of America is payable.
- (3) A refund is only payable in respect of equipment, materials, supplies or other property (including real property) if:
- (a) the property acquired is not for resale; and
 - (b) unless otherwise approved by the Defence Minister, the Government of the United States of America retains title in the property acquired.
- (4) The Commissioner must pay the amount (if any) to the Defence Department on behalf of the Government of the United States of America.
- Note: The amount (if any) of indirect tax in respect of an acquisition covered by subsection (1) is either paid by the Defence Department on behalf of the Government of the United States of America or reimbursed by the Defence Department to the Government of the United States of America.

11 Acquisitions and payment of refund—goods for 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 the acquisition, was intended for use in, or sale by, a commissary of the United States of America.

- (2) Subject to the conditions in subsection (3), a refund of an amount equal to the amount (if any) of indirect tax borne in respect of the acquisition by or on behalf of the Government of the United States of America is payable.
- (3) A refund is only payable if, in the event the acquired goods 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.
- (4) The Commissioner must pay the amount (if any) to the Defence Department on behalf of the Government of the United States of America.

Note: The amount (if any) of indirect tax in respect of an acquisition covered by subsection (1) is either paid by the Defence Department on behalf of the Government of the United States of America or reimbursed by the Defence Department to the Government of the United States of America.

Division 2—Pine Gap and North West Cape

12 Acquisitions and payment of refund—use in construction, maintenance or operation of Joint Defence Facility Pine Gap or Harold E Holt Naval Communication Station

- (1) This section covers an acquisition 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 the acquisition, was intended for use in the construction, maintenance or operation of:
 - (i) the Joint Defence Facility 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) Subject to the conditions in subsection (3), a refund of an amount equal to the amount (if any) of indirect tax borne in respect of the acquisition by or on behalf of the Government of the United States of America is payable.
- (3) A refund is only payable in respect of equipment, materials, supplies or other property (including real property) if:
 - (a) the property acquired is not for resale;
 - (b) the Government of the United States of America has certified that the property acquired is for the use in the construction, maintenance or operation of the Facility or the Station; and
 - (c) the property acquired has become the property of the Government of the United States of America before being used.
- (4) The Commissioner must pay the amount (if any) to the Defence Department on behalf of the Government of the United States of America.

Note: The amount (if any) of indirect tax in respect of an acquisition covered by subsection (1) is either paid by the Defence Department on behalf of the Government of the United States of America or reimbursed by the Defence Department to the Government of the United States of America.

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

- (1) This section covers an acquisition that:
 - (a) is made by the Government of the United States of America; and
 - (b) at the time of the acquisition, was intended to be incorporated into, or wholly consumed in the construction, maintenance or operation of:
 - (i) the Joint Defence Facility Pine Gap in the Northern Territory; or
 - (ii) the Harold E Holt Naval Communication Station at North West Cape in Western Australia.

- (2) A refund of an amount equal to the amount (if any) of indirect tax borne in respect of the acquisition by the Government of the United States of America is payable.
- (3) The Commissioner must pay the amount (if any) to the Defence Department on behalf of the Government of the United States of America.

Note: The amount (if any) of indirect tax in respect of an acquisition covered by subsection (1) is either paid by the Defence Department on behalf of the Government of the United States of America or reimbursed by the Defence Department to the Government of the United States of America.

Division 3—Joint Strike Fighter Program

14 Acquisitions and payment of refund—JSF Program

- (1) This section covers an acquisition made on or after 1 November 2021 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 the acquisition, was intended for use in the JSF Program.
- (2) A refund of an amount equal to the amount (if any) of indirect tax borne in respect of the acquisition by or on behalf of the Government of the United States of America is payable.
- (3) The Commissioner must pay the amount (if any) to the Defence Department on behalf of the Government of the United States of America.

Note: The amount (if any) of indirect tax in respect of an acquisition covered by subsection (1) is either paid by the Defence Department on behalf of the Government of the United States of America or reimbursed by the Defence Department to the Government of the United States of America.

Part 5—Japan

15 Acquisitions and payment of refund—activities under the Japan RAA

- (1) This section covers an acquisition or use of materials, supplies, equipment (including Motor Vehicles) and services made after entry into force of the Japan RAA that:
 - (a) is made by the Government of Japan or a person or body on behalf of that Government; and
 - (b) at the time of the acquisition, was intended for their own consumption or for exclusive and official use of:
 - (i) a visiting force of Japan; or
 - (ii) the civilian component of a visiting force of Japan.
- (2) Subject to the limitation in subsection (3), a refund of an amount equal to the amount (if any) of indirect tax borne in respect of the acquisition by or on behalf of a visiting force of Japan, or a member of a civilian component of a visiting force, or by or on behalf of that member, is payable.
- (3) A refund is only payable in respect of materials, supplies, equipment (including Motor Vehicles) and services if:
 - (a) unless otherwise approved by the Defence Minister, the Government of Japan retains title in the resulting property acquired (from the acquisition of those materials, supplies, equipment and services); and
 - (b) the acquisition is not a personal acquisition of materials, supplies, equipment, and services by a member of the visiting force of Japan or the civilian component of the visiting force of Japan; and
 - (c) Defence Department would have been entitled to an input tax credit had they made the acquisition under the same circumstances; and
 - (d) a tax invoice is provided to Defence Department in respect of the relevant acquisition.
- (4) For the purposes of this ‘Part 5 – Japan’, ‘civilian component’ excludes those persons falling within sections 5(3)(a)(ii) and 5(3)(b) of the *Defence (Visiting Forces) Act 1963*.
- (5) The Commissioner must pay the amount (if any) to the Defence Department on behalf of the visiting force of Japan, or to the Defence Department on behalf of the member of the visiting force of Japan.

Note: The amount (if any) of indirect tax in respect of an acquisition covered by subsection (1) is either paid by the Defence Department on behalf of the Government of Japan or reimbursed by the Defence Department to the Government of the Japan.

Schedule 1—Repeals

Taxation Administration (Defence Related International Obligations and Other Matters—Indirect Tax Refunds) Determination 2022

1 The whole of the instrument

Repeal the instrument.