

EXPLANATORY STATEMENT

Taxation Administration (Defence Related International Obligations and Other Matters – Indirect Tax Refunds) Determination 2025

Issued by the Authority of the Minister for Defence

Taxation Administration Act 1953

Authority for an amendment to the *Taxation Administration (Defence Related International Obligations and Other Matters—Indirect Tax Refunds) Determination 2023 (the Determination)*

The Determination is made by the Minister for Defence under section 105-120 of Schedule 1 to the *Taxation Administration Act 1953* (the Act).

Section 105-120 of the Act provides for the Commissioner of Taxation to refund the amount of Goods and Services Tax, wine tax or luxury car tax (Indirect Tax) paid in respect of certain acquisitions made by or on behalf of visiting forces, by members of visiting forces, or by other persons determined by the Minister for Defence.

A refund of Indirect Tax is payable for certain defence related international obligations if the Minister for Defence has made a determination under section 105-120 of the Act. The Minister for Defence may determine:

- the entities covered by the determination, to which an Indirect Tax refund is payable;
- the acquisitions covered by the determination, and by whom those acquisitions are made;
- the intended uses of the acquisitions;
- any conditions and limitations on refunds made under the determination; and
- the period and manner in which refunds made under the determination will be paid.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power including a power exercisable in a similar manner and subject to similar conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The repeal of earlier determinations made under section 105-120 of the Act is therefore authorised by section 105-120 of the Act.

Purpose of the Determination

The purpose of the Determination is for the Minister for Defence to make the specific decisions as permitted by section 105-120 of the Act in relation to a range of acquisitions by the visiting force of Timor-Leste or the civilian component of a visiting force of Timor-Leste (Timor-Leste), Japan (Japan), the governments of the Independent State of Papua New Guinea (PNG), the Republic of Singapore (Singapore) and the United States of America (United States) engaged in defence-related activities. This will enable a refund of Indirect Tax that is applicable to those activities.

The Defence Department (Defence) either:

- pays amounts of Indirect Tax to suppliers on behalf of the relevant foreign government or its visiting force; or

- reimburses the relevant foreign government or its visiting force for amounts of Indirect Tax paid to suppliers.

Defence subsequently claims refunds from the Commissioner of Taxation, equivalent to the Indirect Tax amounts paid to, or on behalf of, the relevant foreign government or its visiting force. This process reduces compliance costs and payment delays for foreign governments and their visiting forces.

The provisions in the Determination relating to PNG, Singapore (other than section 8), the United States, Japan and Timor-Leste implement Australia's obligations and commitments regarding indirect taxes under the:

- *Agreement between Australia and Papua New Guinea regarding the Status of Forces of each State in the Territory of the other State, and Agreed Minute*, which entered into force on 26 January 1977 (the PNG Status of Forces Agreement 1977);
- *Exchange of Notes constituting a Status of Forces Agreement between the Government of Australia and the Government of the Republic of Singapore*, which entered into force on 10 February 1988 (the Singapore Status of Forces Agreement 1988);
- *Agreement between Australia and the Government of the United States of America concerning the Status of Forces in Australia, and Protocol*, which entered into force on 9 May 1963 (the USA Status of Forces Agreement 1963);
- *Agreement between the Government of Australia and the Government of the United States of America relating to the Establishment of a Joint Defence Facility - Pine Gap*, which came into force on 9 December 1966, together with amendments entering into force on 19 October 1977, 16 November 1988, and 18 August 2000 (the Pine Gap Agreements);
- *Agreement between the Government of Australia and the Government of the United States of America relating to the Operation of and Access to an Australian Naval Communication Station at North West Cape in Western Australia*, which entered into force on 24 November 2011 (the Joint Naval Communication Station Agreement 2011);
- *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 (JSF PSFD MOU)*, which entered into effect on 30 September 2021; and
- *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 (Japan RAA).*
- *Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the field of Defence and the Status of Visiting Forces (AUS-TLS DCA).*

These agreements (other than the JSF PSFD MOU and AUS-TLS DCA) are all publicly available on the Australian Treaties Database <https://www.dfat.gov.au/international-relations/treaties>).

Section 8 of the Determination relating to Singapore and the Australia Singapore Military

Training Initiative (ASMTI) provides for an Indirect Tax refund on the basis that the acquisitions are made by, or on behalf of, a visiting force of Singapore (see section 105-120(1)(c)(i)-(ii) of Schedule 1 to the Act).

The following amendment is made to the *Taxation Administration (Defence Related International Obligations – Indirect Tax Refunds) Determination 2023* (the 2023 Determination):

- a new provision to address Indirect Tax refunds arising from activities under the AUS-TLS DCA (section 16 of the Determination).

Provisions relating to Timor-Leste are substantively the same as those relating to other government activities that are covered under the 2023 Determination. Aside from the new provisions introduced in this new Determination, the existing provisions in the 2023 Determination remain the same with no change to their effect.

Operation of the Determination

The *Taxation Administration (Defence Related International Obligations and Other Matters – Indirect Tax Refunds) Determination 2025* provides a provision-by-provision description of the operation of the Determination.

Documents incorporated by reference

The Determination includes references to the AUS-TLS DCA. The AUS-TLS DCA governs the facilitation of mutually beneficial defence cooperation between Australia and Timor-Leste by establishing a framework for the conduct of such cooperation, and defining the status of the Visiting Force and Civilian Component (as relevant) of a Party while in the territory of the other Party.

Financial Impact Statement

The provisions of the Determination relating to Timor-Leste apply to acquisitions occurring after the commencement date of the instrument, but do not disadvantage any individuals or entities.

Impact Analysis (to be confirmed)

The Office of Impact Analysis advised that a detailed Impact Analysis (IA, formerly known as a Regulation Impact Statement) is not required.

Legislative instrument

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*. As the primary purpose of the Determination is to give effect to Australia's international obligations, it is not subject to sun setting (item 1, section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Commencement

For the provisions under Part 1 to Part 5 (inclusive) of the Determination, this instrument commences on the day after this instrument is registered. For the provisions under Part 6 of the Determination, the commencement date is at the later of the day after registration of the amending instrument and the day of entry into force of the AUS-TLS DCA.

Consultation

The Treasury, Australian Taxation Office and Department of the Prime Minister and Cabinet were consulted when drafting this instrument.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Taxation Administration (Defence Related International Obligations and Other Matters – Indirect Tax Refunds) Determination 2025

The Determination is compatible with the rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Determination

The Determination provides for the Commissioner of Taxation to refund to Defence certain amounts of Indirect Tax paid by it to, or on behalf of, certain visiting forces or foreign governments.

Human rights implications

Noting the likely impact of the Determination and the nature of the human rights and freedoms, the Determination does not raise any human rights issues requiring further discussion.

Conclusion

The Determination is compatible with human rights because it does not raise any human rights issues requiring further discussion.

Part 1 – Preliminary

Section 1: Name

This section states that the Determination is to be known as the *Taxation Administration (Defence Related International Obligations and Other Matters – Indirect Tax Refunds) Determination 2025*.

Section 2: Commencement

This section states that the Determination commences on the day after it is registered for Parts 1 to 5 (inclusive). For the provisions under Part 6 of the Determination, the commencement date is at the later of the day after registration of the amending instrument and the day of entry into force of the AUS-TLS DCA.

Section 3: Authority

This section provides that the authority for the instrument arises from section 105-120 of Schedule 1 to the *Taxation Administration Act 1953*.

Section 4: Definitions

This section sets out a number of definitions used in the Determination. The defined terms include:

- **Australia Singapore Military Training Initiative (ASMTI)** refers to the initiative 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 that training, as set out in the ASMTI Agreement.
- **AUS-TLS DCA** refers to the Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces, signed on 7 September 2022 by Brig, Gen, (rtd) Filomeno da Paixao de Jesus, Minister for Defence of Timor-Leste, and the Hon. Richard Donald Marles, MP, Deputy Prime Minister and Minister for Defence of Australia, but not yet in force. This definition includes any subsequent versions or amendments of that Agreement as agreed between Australia and Timor-Leste.
- **Commissary** includes military sales facilities, exchange facilities, officers' clubs, enlisted person's clubs and other similar military facilities. The term commissary is used in the section 11, which provides for the refund of Indirect Taxes paid in respect of acquisitions by or on behalf of the United States for goods to be sold in commissaries.
- **Development activities** refers to the activities described in Part III of the ASMTI Agreement. These activities relate to the acquisition of land and construction of facilities and infrastructure in relation to training areas at Shoalwater Bay and in the Townsville region in Queensland. Facilities and infrastructure will include roads, debriefing facilities, field toilets and waste management facilities, camp accommodation, vehicle storage and maintenance facilities, live fire facilities, air weapons target areas, information and communications technology infrastructure and beach landing points.

- **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** refers to the multi-national project for the development, demonstration, production, and sustainment of the Joint Strike Fighter that is implemented under the NEW JSF PSFD MOU.

Expressions used in Schedule 1 to the *Taxation Administration Act 1953* have 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 the Determination are defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*:

- Defence Minister;
- indirect tax;
- input tax credit;
- tax invoice;
- visiting force;
- Commissioner.

Section 5: Schedules

This section provides that instruments specified in a Schedule to the Determination are amended or repealed as set out in the Schedule, and any other item in a Schedule has effect according to its terms.

Part 2 – Papua New Guinea

Section 6: Acquisitions and payment of refund – vehicles and other goods

This section provides for a refund of the Indirect Tax paid or payable on acquisitions of vehicles, equipment, weapons, armaments, provisions, or other goods by a visiting force of PNG or a member of a PNG visiting force where the acquisition is intended to be for the official use of that visiting force or its member. In general, entitlement to the refund arises only when PNG remains the owner of the goods acquired, although the Minister for Defence does have discretion to waive this requirement.

As Defence pays the Indirect Tax in respect of the acquisition on behalf of PNG, or reimburses PNG for its payment of the Indirect Tax, the Commissioner of Taxation should pay the refund amount to Defence, on behalf of:

- the visiting force of PNG; or
- the member of the visiting force of PNG.

The system according to which the refund of taxation will work is demonstrated using the following example:

A PNG visiting force in Australia wishes to acquire a vehicle for the official use of the PNG visiting force. A member of the visiting force goes to a dealership to acquire the vehicle. The member will obtain a tax invoice which details the amount of Indirect Tax

payable on the vehicle. The visiting force will pay (through the member) the Indirect Tax owed. The visiting force will forward the invoice to Defence, which will reimburse the visiting force the amount of that tax liability. Defence will then claim a refund from the Commissioner of Taxation on behalf of PNG.

Section 6 implements Australia's obligations to PNG regarding indirect taxes under the PNG Status of Forces Agreement 1977.

There are no amendments to Section 6.

Part 3 – Singapore

Section 7: Acquisitions and payment of refund – fuels, oils and lubricants

This section provides for a refund of Indirect Tax paid or payable for the acquisition of fuel, oil and lubricants made by, or on behalf of, a member of a Singapore visiting force or a member of the civilian component of a Singapore visiting force on or after 1 July 2000, for use in official vehicles, aircrafts or vessels.

As Defence pays the Indirect Tax in respect of the acquisition on behalf of Singapore or reimburses Singapore for its payment of the Indirect Tax, the Commissioner of Taxation should pay the refund amount to Defence, on behalf of the Government of Singapore.

Section 7 implements Australia's obligations to Singapore regarding indirect taxes under the Singapore Status of Forces Agreement 1988.

While this section applies to acquisitions made before the commencement of the Determination, it does not disadvantage any individuals or entities.

There are no amendments to Section 7.

Section 8: Acquisitions and payment of refund – development activities under the Australia Singapore Military Training Initiative

This section provides for a refund of Indirect Tax paid or payable in respect of acquisitions made by, or on behalf of, a visiting force of Singapore on or after 13 October 2016 under the ASMTI. Under the ASMTI, visiting forces of Singapore will undertake unilateral military training activities in central and northern Queensland. Australia is undertaking development activities, including the acquisition of land, and the construction of facilities and infrastructure, that will enable such training. The ASMTI is undertaken in accordance with the ASMTI Agreement.

Under the ASMTI Agreement, Singapore pays an amount (capped at \$2.25 billion over the duration of the project) into an Australian account controlled by Defence as part of its acquisitions under the ASMTI. Defence will use the money in the Australian account to acquire the goods, services and real property related to the development activities under the ASMTI.

Upon completion of the development activities, Defence will supply the visiting forces of Singapore with access to the land, facilities and infrastructure to conduct unilateral military training in accordance with ASMTI Agreement. These supplies may be subject to Indirect Taxes.

As Defence will pay the Indirect Tax in respect of the relevant acquisition on behalf of Singapore,

the Commissioner of Taxation should pay the refund amount to Defence, on behalf of the Government of Singapore.

Importantly, the determination applies to the acquisition by Singapore's visiting forces from Defence of access to land, facilities and infrastructure in order to conduct unilateral military training. It does not apply to the acquisition by Defence of goods, service and real property to develop the training areas in central and northern Queensland.

While this section applies to acquisitions made before the commencement of the instrument, it does not disadvantage any individuals or entities.

There are no amendments to Section 8.

Part 4 – United States of America

Division 1 – General

This Division implements Australia's obligations to the United States regarding indirect taxes under the *USA Status of Forces Agreement 1963*.

Section 9: Acquisitions and payment of refund – motor vehicles for members of visiting force

This section provides for the refund of the Indirect Tax paid for the acquisition of a motor vehicle by a member of a visiting force of the United States. The vehicle must be for the use of the visiting member and must not be used for commercial purposes. The refund will only be available where:

- the vehicle has been manufactured or assembled in Australia;
- the member remains the owner of the vehicle, retains possession of the vehicle, and continues to use the vehicle for two years after its acquisition (the member could, however, export the vehicle within that two year period);
- the vehicle is not transferred to any other person without the approval of the Minister for Defence; and
- the member has not imported any other vehicle into Australia in respect of which no duty was payable under the *Customs Tariff Act 1995*, or acquired any other vehicle in Australia for which either no sales tax was paid (for acquisitions prior to 1 July 2000) or for which an Indirect Tax refund has already been paid (for acquisitions on or after 1 July 2000).

There is one exception to the final condition. Where a member has previously imported or acquired a motor vehicle in the circumstances mentioned in that condition, the member is entitled to a refund of the Indirect Tax in respect of a second vehicle if the United States military authorities certify that the person's domestic situation is such that it is necessary for the member to acquire the second vehicle. This would cover circumstances where the second vehicle is intended to be retained and used by a family member of the member.

A claim for a refund must be signed by or on behalf of the United States Defence Attaché and given to Defence together with the relevant tax invoice. Defence will then obtain the refund from the Commissioner of Taxation on behalf of the member who acquired the vehicle.

An example of how the system operates in respect of motor vehicles acquired for family use is demonstrated below:

A member of a visiting force from the United States in Australia goes to a dealership to acquire a vehicle for use by their spouse. Six months earlier the member acquired a motor vehicle for their own use free of Indirect Tax. Normally, a member of a visiting force could only acquire one vehicle free of Indirect Tax. However, the United States military authorities have certified to Defence that the member's domestic circumstances are such that they require a second motor vehicle for ongoing use by their family member. In these circumstances, the member will not pay the Indirect Tax owing on the vehicle, but will obtain from the car dealer a tax invoice which details the amount of tax payable. The visiting force (through the member) will pay the amount of tax owing on the vehicle to the dealership. The invoice will be forwarded to Defence, which will reimburse the United States government the amount of the tax so paid. Defence will then claim a refund from the Commissioner of Taxation, on behalf of the member.

There are no amendments to Section 9.

Section 10: Acquisitions and payment of refund – official use by a visiting force

This section provides for a refund of the Indirect Tax paid or payable on acquisitions made by or on behalf of the United States government, where the acquisition is intended for the official use of a United States visiting force.

There are no amendments to Section 10.

Section 11: Acquisitions and payment of refund – goods for commissaries

This section provides for a refund of Indirect Tax paid in respect of the acquisition of goods for commissaries. It provides for a refund of the Indirect Tax paid or payable on goods acquired by or on behalf of a commissary where the goods are intended for use in or sale by a commissary. In order for the refund to be payable, the goods must only be sold to a member from a visiting force associated with the United States in Australia, or a member of a civilian component of a United States visiting force or a dependant of the aforementioned members. The goods acquired must not be resold on the local market.

As Defence pays the Indirect Tax in respect of the acquisition on behalf of the United States government or reimburses the United States government for its payment of the Indirect Tax, the Commissioner of Taxation should pay the refund amount to Defence, on behalf of the United States.

There are no amendments to Section 11.

Division 2 –Pine Gap and North West Cape

This Division implements Australia's obligations to the United States regarding indirect taxes under the Pine Gap Agreements and the Joint Naval Communication Station Agreement 2011.

Section 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

This section provides for a refund of Indirect Tax paid or payable on acquisitions by or on behalf of the United States government, for use in the construction, maintenance or operation of the Pine Gap Facility or the Harold E. Holt Naval Communication Station.

There are no amendments to Section 12.

Section 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

This section provides for the refund of Indirect Tax paid or payable on acquisitions by the United States government, for incorporation in or which will be used up completely in the construction, maintenance or operation of the Pine Gap Facility or the Harold E. Holt Naval Communication Station.

There are no amendments to Section 13.

Division 3- Joint Strike Fighter Program

This Division implements Defence’s commitments to the United States regarding indirect taxes for activities carried out under the NEW JSF PSFD MOU.

Section 14: Acquisitions and payment of refund – JSF Program

This section provides for a refund of Indirect Tax paid or payable on acquisitions made on or after 1 November 2021 by, or on behalf of, the United States government that are intended for use in the JSF Program.

As Defence pays the Indirect Tax in respect of the relevant acquisition on behalf of the United States government, or reimburses the United States government for its payment of the Indirect Tax, the Commissioner of Taxation should pay the refund amount to Defence, on behalf of the United States.

While this section applies to acquisitions made before the commencement of the instrument, it does not disadvantage any individuals or entities.

There are no amendments to Section 14.

Part 5 – Japan

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

This section provides for a refund of Indirect Tax paid or payable on acquisitions made after entry into force of the Japan RAA by, or on behalf of, the Government of Japan government that are intended for their own consumption or for the exclusive and official use of either a visiting force of Japan or the civilian component of a visiting force of Japan.

As at the time of drafting, the Japan RAA has not entered into force. According to Article XXIX of the Japan RAA, the Japan RAA shall enter into force on the fifth day after the date on which the parties to the RAA exchange diplomatic notes informing each other that their respective internal

procedures necessary to give effect to the Japan RAA have been completed. To allow for certainty on the interpretation of date of entry into force (and commencement of this section), it is noted that the ‘respective internal procedures necessary to give effect’ to this section are deemed to be the date of registration of the instrument. This means that this section can commence on the fifth day after the date of registration, or on the fifth day after the date of the exchange of the diplomatic notes. Due to the requirement of the registration being necessary to make the confirmation noted in the exchange of diplomatic notes, it is implied that the later of the aforementioned dates would apply for commencement of this section.

A refund is only payable in respect of materials, supplies, equipment (including Motor Vehicles) and services if:

- 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
- the acquisition is not an 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 for personal use;
- Defence would have been entitled to an input tax credit had they made the acquisition under the same circumstances; and
- a tax invoice is provided to Defence in respect of the relevant acquisition for which the GST refund is to be paid.

For the purposes of ‘Part 5 – Japan’ and this Section 15 of the Determination, a ‘Civilian Component’ takes its meaning from the *Defence (Visiting Forces) Act 1963* (DVFA) but, excludes those persons falling within sections 5(3)(a)(ii) and 5(3)(b) of the DVFA to be align with the definition of ‘Civilian Component’ in Article 1(a) of the Japan RAA.

As Defence pays the Indirect Tax in respect of the relevant acquisition on behalf of the Japanese government, or reimburses the Japanese government for its payment of the Indirect Tax, the Commissioner of Taxation should pay the refund amount to Defence, on behalf of Japan.

While this section applies to acquisitions made before the commencement of the instrument, it does not disadvantage any individuals or entities.

There are no amendments to Section 15.

Part 6 – Timor-Leste

Section 16: Acquisitions and payment of refund—activities under the AUS-TLS DCA

This section provides for a refund of Indirect Tax paid or payable on acquisitions made by, or on behalf of, the Government of Timor-Leste that are intended for official use in activities under the AUS-TLS DCA.

As Defence pays the Indirect Tax in respect of the relevant acquisition on behalf of the Government of Timor-Leste, or reimburses the Government of Timor-Leste for its payment of the Indirect Tax, the Commissioner of Taxation should pay the refund amount to Defence.

Schedule 1 – Amendment

Schedule 1 amends the *Taxation Administration (Defence Related International Obligations – Indirect Tax Refunds) Determination 2023* by inserting:

Part 6 – Timor-Leste

Note: The name of this instrument was amended on registration as the instrument as lodged did not have a unique name (see subsection 10(2), *Legislation Rule 2016*).