

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**FINANCIAL INSTITUTIONS DUTY (AMENDMENT)  
BILL 1998**

**EXPLANATORY MEMORANDUM**

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# FINANCIAL INSTITUTIONS DUTY (AMENDMENT) BILL 1998

## EXPLANATORY MEMORANDUM

### Summary

This is an amending Bill. It amends the *Financial Institutions Duty Act 1987* referred to in the amending Bill as the Principal Act. This amending Bill introduces new measures in respect of dutiable receipts.

Many ACT businesses have avoided the payment of duty in the ACT, by banking their business takings in other jurisdictions. New anti-avoidance and extra-territorial provisions will ensure that all receipts derived from economic activity conducted in the ACT are dutiable, irrespective of where such receipts are deposited.

New agency provisions for interstate financial institutions conducting business in the ACT will ensure that their ACT receipts are also subject to duty.

Changing the dutiable base for short-term dealing in the ACT will reduce restrictions for the development of the ACT short-term money market.

The Bill provides for

- a) the inclusion of credit providers whose sole or principal business in the Territory is not the provision of finance into the definition of 'financial institution',
- b) a territorial nexus provision to ensure that persons both within and outside the Territory who receive a dutiable receipt with respect to business, or a transaction, in relation to the economic activity of the ACT, are covered by this Act,
- c) a requirement imposed on persons who receive large receipts of \$100,000 or more during a month, to submit monthly returns, where such receipts are not deposited with an ACT registered financial institution,
- d) removing the current exemption from duty, for receipts in respect of the 'supply of goods' and replacing this with an exemption from duty, for receipts in respect of the 'sale of goods'. This is to ensure that receipts from commercial leasing arrangements and credit contracts are subject to duty,
- e) changing the dutiable base for short term dealings from 100% of ACT dealings to 5% of Australia-wide dealings by short term dealers in the ACT.

### Finance/cost implications

This measure is revenue neutral. Additional regulatory implications will ensure that duty on receipts derived from ACT economic activity will be paid to the ACT.

Details of the Bill are attached.

# Details of the Financial Institutions Duty (Amendment) Bill 1998

## PART 1 - PRELIMINARY

### Clause 1.

This cites the short title of the Act

### Clause 2.

This sets out the date of commencement of the Act. Since the definition of financial institution has been broadened to include 'credit providers', a 3 months grace period is provided so that these additional financial institutions together with new agents of interstate financial institutions have sufficient time to register under the Act. Furthermore, as a consequence of this 3 month grace period, the requirement to lodge returns by these new credit providers and agents of interstate institutions will also have a 3 month grace period.

### Clause 3.

This Bill amends the *Financial Institutions Duty Act 1987* which is referred to as the 'Principal Act'.

### Clause 4.

A person who by virtue of amendments to the Principal Act is to be registered under the Act and is given a 3 month grace period under Clause 2, may apply for registration as a financial institution under section 12 of the Principal Act before that day.

### Clause 5.

This provides the dictionary of terms for the purposes of the Principal Act. Further clarification is provided to the following terms:  
'agent' is defined to cover persons who either represent an interstate financial institution in the Territory or, manages in whole or in part, the business of the interstate financial institution in the Territory.  
'corresponding law' is a law of another jurisdiction that imposes a financial institutions duty.  
'credit contract' is defined as having the same meaning as that under the *Credit Act 1985*.  
'credit provider' is included to specifically cover persons who provide credit under their own name and where the provision of credit is not the sole or principal business of the person in the Territory.  
'financial institution' now includes a reference to 'credit provider' being persons who provide credit under the terms of the *Credit Act 1985* and where the provision of credit is not their sole or principal business in the Territory.

'interstate financial institution' means those businesses that are defined as financial institutions under a 'corresponding law' This means that if a business is defined as a financial institution in Queensland and is conducting business in the ACT, it will be covered under this Act

'registered' means registered under the Act All financial institutions involved in the economic activity of the ACT must be registered under the Act It also applies to the registration of agents in the ACT who receive receipts on behalf of interstate financial institutions

**Clause 6.**

**Section 4A - Territorial Nexus - Persons**

This provision extends the net for dutiable receipts to include receipts received by persons other than financial institutions since the provision of finance in relation to the economic activity of the Territory may occur beyond the nexus of 'financial institution' Where businesses are no longer defined as a 'financial institution' under a corresponding law but still conducting business in the ACT, receipts will still be dutiable This provision also applies to agents acting for, or on behalf of, interstate financial institutions

**Clause 7.**

Section 5 of the Principal Act defines receipts to which this Act applies

Section 5(1) of the Principal Act is omitted and replaced with a new subsection. This is to clearly define that duty will apply to receipts of money received both within and outside the Territory where it relates to the economic activity of the Territory. No duty will be liable where the institution is exempt from paying duty or in respect of a receipt under a provision of a corresponding law

**Clause 8.**

Section 6 of the Principal Act defines Dutiable and Non-Dutiable Receipts.

Section 6(2)(b) is omitted and substituted by a new paragraph so as to exempt from duty, receipts received by registered financial institutions in the course of their short term dealings which are already subject to an assessment for liability for duty under Section 13 of the Principal Act.

Section 6(2)(m) is omitted and substituted by a new paragraph to give greater specificity to dutiable receipts First the receipt refers to a 'sale of goods' rather than a 'supply of goods' This is to overcome the interpretation given to credit provision being exempted from duty since the supply of credit may be made at arms length from the purchase of goods Now receipts of money for the supply of goods is dutiable Generally, receipts of money for the sale of goods is exempt from duty except in respect of receipts of money repaid under credit contracts and receipts of money in relation to hire and leasing of goods

**Clause 9.**

Section 7 of the Principal Act defines short-term dealing

Section 7 is amended so that the calculation of duty for short term dealings in the ACT is based on 5% of Australia-wide dealings rather than 100% of ACT dealings only This will make the duty payable on short-term dealings consistent with the calculation of duty in other jurisdictions and make short-term dealings in the ACT more competitive with respect to other jurisdictions

## **PART II - REGISTERED FINANCIAL INSTITUTIONS**

### **Clause 10.**

Part II of the Principal Act 'Liability to Duty' is omitted and replaced with a new heading entitled 'Registered Financial Institutions'

### **Clause 11.**

Section 9a is included under Part II to exclude from duty receipts of money by a registered financial institution on which duty has already been paid with respect to monies received by agents of interstate financial institutions under section 13A

### **Clause 12.**

Section 11 of the Principal Act which is concerned with duty payable by short-term dealers is relocated in Part III which deals specifically with short-term dealers and is renumbered as section 13H

### **Clause 13.**

Section 13 of the Principal Act is amended by increasing the threshold value of dutiable receipts, above which financial institutions are required to individually identify in addition to the total of dutiable receipts, as recorded in their monthly returns. The threshold value is increased from \$1 million to \$2 million. This threshold value may also be subject to further determination by the Minister under Section 38.

## **PART IIA - AGENTS OF INTERSTATE FINANCIAL INSTITUTIONS**

### **Clause 14.**

After section 13 of the Principal Act, a new Part is inserted which deals with agents of interstate financial institutions. Agents of interstate financial institutions are not currently provided for in the Principal Act.

**Section 13A -** Where a dutiable receipt is received by an agent, the agent and the financial institution are both liable to pay duty at the determined rate. Where the agent is unregistered, the agent and institution are both liable to pay twice the amount of duty in respect of that receipt.

**Section 13B -** Where the Commissioner has reasonable grounds for believing that a person is acting as an agent and is unregistered, the Commissioner shall issue a notice to that person requiring that person to show cause within 28 days, why they should not be registered. A notice issued under this section shall contain particulars of facts underlying the Commissioner's request for the person to register as an agent. If after 28 days of a notice issued under this section, the Commissioner does not receive a response from the person, a second notice will be issued requiring the person to register as an agent within 14 days after the date of the second notice.

**Section 13C -** Where a person is required to apply for registration, and does not do so in the required time period specified in the second notice issued under section 13B, the person is guilty of an offence under this Act.

**Section 13D - Registration under the Act will be required for agents of interstate financial institutions in a prescribed form. This registration is to ensure compliance with the Act with respect to receipts of money connected with economic activity in the ACT. Where there is any change to the agency arrangements, the agent is required to notify the Commissioner of such changes forthwith.**

**Section 13E - Agents are required to submit monthly returns showing the total of dutiable receipts and in addition individually identify the number of dutiable receipts at or above \$2 million in value. These returns shall be submitted in the prescribed manner and within 21 days after the end of each month. Where a person ceases to act as an agent, the Commissioner may issue a notice under 13G to the financial institution requiring it to furnish returns on behalf of the agent for any period or periods specified in the notice.**

**Section 13F - Returns by interstate financial institutions may be lodged on behalf of the agents subject to the approval of the Commissioner. An application to lodge returns on behalf of an agent may relate to any period prior to, or after the date of application. Where approval is given, refused or cancelled, the Commissioner shall issue a notice to that effect stating the reasons for the decision and give a copy of the notice to the agent concerned.**

**Section 13G - At times, the Commissioner may deem it necessary or desirable for the purposes of this Act to require the financial institution to furnish a return for any period or periods on behalf of the agent. In such circumstances, the Commissioner shall issue a notice to an interstate financial institution requiring it to furnish a return on behalf of the agent for any period or periods specified in the notice. Where a notice is issued under this section, the financial institution is required to furnish the return within 21 days of the date of notice. In addition, the Commissioner may revoke a notice under this section where the Commissioner considers on reasonable grounds that it is necessary or desirable for the purposes of the administration of the Act.**

### **PART III - SHORT-TERM DEALERS**

#### **Clause 15.**

The heading to Part III of the Principal Act is amended by substituting 'Dealing' with 'Dealers'

#### **Clause 16.**

Short-term dealers who are not registered financial institutions may apply to the Commissioner for an exempt account with a financial institution registered in the ACT. These short-term dealers will be issued with a certificate of approval. The account shall only be used for the specific purposes defined under this section with respect to payments into and out of the short-term dealer's exempt account.

**Clause 17.**

After section 16 of the Principal Act the following sections are inserted

**Section 16A -** Upon production of an exempt account certificate to a registered financial institution, the financial institution shall designate the account as an exempt account

**Section 16B -** Where the short-term dealer has breached the terms of operation of an exempt account, the Commissioner may cancel a certificate of approval and give written notice of the same, to the registered financial institution by which the exempt account is kept. Where a financial institution receives a notice cancelling a certificate of approval, the financial institution shall cancel the designation of that account as an exempt account

**Section 16C -** In addition to this, where a short-term dealer's account is used for a purpose other than that specified under paragraph 16(3)(c), that person shall be guilty of an offence

**Clause 18.**

Returns by short-term dealers shall be specified in a manner that reflects the new method of calculation based on 5% of Australia-wide dealings.

**PART IV - EXEMPT ACCOUNTS: CHARITIES ETC.**

**Clause 19.**

The heading to Part IV of the Principal Act 'Exempt Accounts' is omitted and substituted by 'Exempt Accounts Charities Etc'

**Clause 20.**

Section 20 of the Principal Act is amended by omitting '16 or' to remove reference to short-term dealers from this Part

**Clause 21**

Section 21 of the Principal Act is amended by omitting '16 or' to remove reference to short-term dealers from this Part

**PART V - UNREGISTERED FINANCIAL INSTITUTIONS**

**Clause 22.**

The heading to Part V of the Principal Act is omitted and substituted by 'Unregistered Financial Institutions'

**Clause 23.**

Where a payment is made to an unregistered financial institution duty is payable provided that duty has not already been paid under section 13A or section 24. Section 13A deals with duty payable by agents of an interstate financial institution. Section 24 deals with duty payable in respect of a large receipt

Thus if duty has already been paid with respect to a receipt under sections 13A or 24, then it is not payable under this section

## **PART VI - LARGE RECEIPTS.**

### **Clause 24.**

After section 23 of the Principal Act the following sections are inserted

**Section 24 - a person is liable to pay financial institutions duty in respect of a large receipts received in a month, and where such receipts exceed a threshold amount as stipulated in the Act or such other amount as the Minister determines by instrument. An amount determined by instrument under this section is a disallowable instrument**

**Section 25 - There are some exemptions from duty under this section to prevent double duty being applied on the same receipt**

**Section 24 does not apply to the following receipts:**

- a receipt of money on which duty has already been paid by a financial institution under section 10
- a receipt of money on which duty has already been paid by an agent of an interstate financial institution under section 13A.
- a receipt of money received outside the Territory in relation to goods supplied or to be supplied in the Territory, if the institution could not be reasonably expected to know that this Act applies to such a receipt.
- a receipt of money that is lodged or deposited to the credit of an account established at a office or branch of the institution situated

**Section 26 - A person may apply to the Commissioner for a certificate of approval in relation to an exemption from section 24. This application shall include all details as specified under this section. Once the Commissioner is satisfied that the applicant is to carry on business in accordance with the purposes of this Act, then an exemption approval certificate shall be issued. Where there is any change in the circumstances which give rise to the consideration or issue of an exemption certificate, the applicant shall notify the Commissioner forthwith.**

**Section 27 - Where the Commissioner is reasonably satisfied that a receipt or receipts received under a certificate of approval for exemption issue under section 26, is liable for duty, and such receipts have not been included in a return, and where the failure to notify such receipts is for the purpose of avoiding duty, the Commissioner may suspend or disqualify the certificate of approval for exemption**

**Section 28 - A person shall furnish a return in the prescribed form with respect to duty payable under section 24**

### **Clause 25.**

**Section 24 of the Principal Act is relocated after Section 10 of that Act and is renumbered as section 11**



## **PART VII - ADMINISTRATIVE REVIEW**

### **Clause 26.**

Sections 25, 26 and 27 of the Principal Act are repealed

Section 25 of the Principal Act which deals with penalties associated with the improper use of short-term dealer's account is repealed and replaced with a similar provision under section 16 in PART III - SHORT-TERM DEALERS

Sections 26 and 27 of the Principal Act which deal with reviewable decisions and notification of decisions are repealed and are replaced with new provisions provided under PART VII - ADMINISTRATIVE REVIEW

The following sections 29 - 38 are now substituted

**Section 29 - This sets out the decisions under the Act which are subject to both internal and external review Internal review is provided where a person other than the Commissioner is to make the initial decision**

**Section 30 - When a decision is made under this Part, the Commissioner shall provide written notice of the decision to the applicant or the person whose registration is under consideration When such a decision is made by a delegate of the Commissioner, the notice shall include further information to enable the applicant to lodge an objection in the prescribed manner and within the prescribed time period However, where the decision is made personally by the Commissioner and that decision is appealable to the Administrative Appeals Tribunal, the notice of the decision shall include further information to enable the applicant to lodge an objection in the prescribed manner and within the prescribed time period**

**Section 31 - Upon receipt of a written notice of a decision under section 30, a person lodge an objection to that decision within 60 days of the date of the notice, or such further time as the Commissioner allows**

**The objection must be in writing setting out reasons for the objection**

**When an objection is received, the Commissioner may after consideration of the objection either uphold the objection and substitute a new decision for the original (in whole or in part), or dismiss the objection**

**Any person involved in the original decision shall not take part in the consideration of an objection to the original decision**

**Section 32 - Where an objection is not lodged within time, the person making the objection may apply in writing and give reasons as to why the Commissioner should process the objection as if it was lodged on time**

**Section 33 - There are only three types of decisions under this Act which are appealable to the Administrative Appeals Tribunal These are**

- a decision made personally by the Commissioner,
- a decision under paragraph 31(4)(b) to disallow an objection, and
- a decision under paragraph 32(2)(b) to refuse to consider a late objection

**Section 34 - Where a decision is under review or appeal, the effect of the original decision remains unaffected. Thus an action to recover an amount payable as a consequence of the original decision can proceed whilst the decision is under review or appeal**

**Section 35 - Where an objection, review or appeal reduces the amount payable under this Act, any amount already paid in excess of that amount is to be refunded**

**Section 36 - Following a decision of the Administrative Appeals Tribunal, where no appeal to a court is instituted within 30 days of the decision of the Tribunal, that decision is to be taken as final**

## **PART VIII - MISCELLANEOUS**

**Section 37 - Any person engaging in conduct on behalf of a body corporate and within the scope of that person's delegated authority, and knowing that such conduct is an offence against this Act, will be personally liable as is the body corporate. However such persons are not liable to be punished by imprisonment for that offence. Where it can be shown that a corporation commits an offence against this Act, any person who is concerned in, or takes part in, the management of the corporation shall be taken to have committed the offence and is punishable accordingly. However, the onus is on such persons to show that that did not knowingly participate in any way that contributed to the offence.**

**Section 38 - Determinations for the purposes of return requirements may be made with respect to.**

- the threshold value of dutiable receipts received by registered financial institutions and which are required to be notified in returns under section 13E (2)(b), and
- the threshold value of large aggregate receipts received by a person and which are liable to duty under section 28 (2)(b).

### **Clause 27.**

**Section 28 of the Principal Act is renumbered as section 39**