

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

FINANCIAL INSTITUTIONS DUTY ORDINANCE 1987

No. 43 of 1987

The Financial Institutions Duty Ordinance 1987 ("the Ordinance") makes provision for the imposition of a duty on receipts by financial institutions in the Australian Capital Territory. Financial institutions duty was announced as part of the 1986 Budget.

The Ordinance provides that a duty is imposed on the receipts of financial institutions payable by those financial institutions which register under the Ordinance, and by depositors with those financial institutions which do not register. A credit to an account kept with a financial institution is defined to be a receipt by that financial institution. Certain receipts are not subject to duty, including credits to the accounts of other registered financial institutions held with registered financial institutions. The Ordinance also provides that receipts in respect of short-term dealings are dutiable at a different rate on the basis of the average daily liability of the short-term dealer.

The Commissioner for Australian Capital Territory Revenue Collections ("the Commissioner") appointed under the Taxation (Administration) Ordinance 1987 has the general administration of the Ordinance.

Details of the Ordinance are as follows:

PART I - PRELIMINARY

Short Title

Section 1 provides that the Ordinance may be cited as the Financial Institutions Duty Ordinance 1987.

Commencement

Section 2 provides for the commencement of the Ordinance.

Interpretation

Section 3 deals with interpretation.

Administration

Section 4 provides that the Commissioner for Australian Capital Territory Revenue Collections, appointed under the Taxation (Administration) Ordinance 1987, will have the general administration of the Ordinance.

Receipts to which Ordinance applies

Subsection 5(1) provides that unless otherwise provided, the Ordinance applies to a receipt of money in the Australian Capital Territory.

Subsection 5(2) provides that the receipt of a consideration in or towards settlement of a debt or obligation will be deemed a receipt of an equivalent amount of money.

Subsection 5(3) provides that the crediting of an account, including the crediting by means of a machine or device, shall be deemed a receipt of money by the person by whom the account is kept.

Subsection 5(4) provides that a reference to crediting an account includes the following:

- . depositing money to the credit of an account;
- . transferring money from one account to the credit of another account; and
- . the transfer between ledgers or divisions in an account where different terms and conditions apply.

Subsection 5(5) provides that a receipt constituted by the crediting of an account is a receipt of money in the Territory if the account is with an office or branch of a financial institution situated in the Territory, having been either established there or transferred there from a branch or office outside the Territory.

Subsection 5(6) provides that if a person gives instructions for an amount to be debited to his or her account, by the financial institution keeping the account, for investment with that financial institution, then that amount is a receipt of money by the financial institution if there is no corresponding credit to an account which constitutes a dutiable receipt.

Subsections 5(7) and (8) provide that where a financial institution provides cash to a person in exchange for a cheque, or a cheque in exchange for cash, the financial institution is taken not to have received money except to the extent that the value of the cash or cheque received exceeds the value of the cash or cheque given.

Definition of dutiable and non-dutiable receipts

Subsections 6(1) and (2) make all receipts to which the Ordinance applies dutiable receipts unless they are exempt. Non-dutiable receipts are:

- . credits to exempt accounts;
- . receipts which are taxable under the short-term dealing provisions;
- . repayment of moneys which have been invested in the course of short-term dealings;

- receipts by a registered financial institution for the credit of an account held by another registered financial institution;
- direct entry credits by computer of most pensions benefits or allowances payable under the Social Security Act 1947 and the Veterans' Entitlements Act 1986;
- receipts for crediting to an account in a State or another Territory where there is a corresponding financial institutions duty law;
- the proceeds of closing an account with a registered financial institution where those proceeds are credited to another account, which has the same terms and conditions as the closed account, with the same financial institution;
- receipts of money by a management company from a person who is a trustee under the deed relating to the management company and receipts by that trustee from that company;
- receipts of money by a trustee company or the Public Trustee from the estate of a deceased person being managed by that company or the Public Trustee;
- receipts into the internal accounts of a registered financial institution of amounts of interest earned on making loans to customers;
- receipts resulting from the dishonour of cheques;
- receipts arising from the supply of goods;
- receipts by financial institutions for the purpose of investing on behalf of a charitable organisation;
- receipts on the roll-over of term deposits or commercial bills.

Subsections 6(4), (5), (6) and (7) are designed to prevent double taxation. They provide that credits to an internal account of a registered financial institution made solely for internal accounting purposes or by reason of a change in the accounting practices of the institution do not constitute dutiable receipts. Further, credits made to an account of a registered financial institution for the purpose of cancelling a bad debt do not constitute dutiable receipts.

Section 7 provides that an amount is received in the course of short-term dealing where the amount is \$50,000 or more, and is deposited for 185 days or less or at call. The section also provides a formula for calculating the average daily liability of a person during a month in respect of short-term dealing. The average daily liability is used in the Ordinance as the basis for calculating duty payable by short-term dealers.

Pastoral finance company

Section 8 provides that a person, a substantial part of whose business is that of financing pastoral pursuits or that of a stock and station agent may apply to the Commissioner for approval to be treated as a pastoral finance company for the purposes of the Ordinance. The Commissioner is to give approval in writing and may revoke it where he or she is satisfied that the holder of an approval no longer satisfies the criterion.

Trustee corporation

Section 9 provides that the Commissioner may approve a corporation constituted under a law of a State or another Territory as a corporation which corresponds to the Public Trustee in the Australian Capital Territory. The Commissioner may cancel the certification where he or she is satisfied that the corporation no longer corresponds to the Public Trustee.

PART II - LIABILITY TO DUTY

Financial institutions duty: general

Section 10 provides that a registered financial institution which receives money during a month is liable to pay financial institutions duty at the rate determined by the Minister.

Financial institutions duty: short-term dealers

Section 11 provides that short-term dealers are liable to pay financial institutions duty at a rate determined by the Minister on their average daily liability during a month in respect of short-term dealings.

Financial institutions: notification to Commissioner

Section 12 provides that a financial institution may, at any time, apply to the Commissioner for registration as a financial institution. An application is to contain the details specified in subsection 12(2). The Commissioner is to register the institution and issue a certificate of registration which may be cancelled where he or she is satisfied that a registered financial institution is no longer a financial institution.

Registered financial institution: returns

Section 13 provides that a registered financial institution, which is not also a certified short-term dealer, shall lodge a return within 21 days of the end of each month setting out the total of the dutiable receipts which do not exceed \$1,000,000 received during that month and the number of dutiable receipts of \$1,000,000 or more received during that month. It also provides that a registered financial institution which is a certified short-term dealer but which also carries on the business of a financial institution other than short-term dealing is to lodge returns within the same time and containing the same information.

PART III - SHORT-TERM DEALING

Short-term dealers: certification

Section 14 provides that a registered financial institution which is also a short-term dealer may apply to the Commissioner for certification as a certified short-term dealer. An application is to contain the details specified in subsection 14(2). The Commissioner is to issue a certificate of registration and may cancel it where he is satisfied that a registered financial institution is no longer a short-term dealer.

Certified short-term dealers: duty

Section 15 provides that duty is not payable on the receipts of a certified short-term dealer in respect of short-term investments, but it is payable at a rate determined by the Minister on the average daily liability in a month of the certified short-term dealer.

Short-term dealers: exempt accounts

Section 16 provides that a short-term dealer who is not a registered financial institution may apply to the Commissioner for a certificate of exemption in respect of an account which will be used solely for the purpose of short-term dealing. The application is to contain the details specified in subsection 16(2). If the Commissioner is satisfied that the applicant is a short-term dealer, that the account concerned is held with a registered financial institution and that the account is used solely for the purpose of short-term dealing he or she may issue a certificate of approval of that account as an exempt account.

Short-term dealers: returns

Section 17 provides that a short-term dealer shall within 21 days after the end of each month lodge a return with the Commissioner setting out the sum of the daily closing balances of the liability of the dealer and the average daily liability of the dealer calculated in accordance with the formulae provided in section 7 of the Ordinance.

PART IV - EXEMPT ACCOUNTS

Exempt accounts: approval of Government accounts

Section 18 provides that application for exemption may be made in respect of an account kept with a registered financial institution on behalf of the Commonwealth, a State or another Territory and that when such an application is made the Commissioner shall issue a certificate of approval of the account as an exempt account. It also provides that application for exemption may be made in respect of an account kept on behalf of a statutory authority and that if the Commissioner is satisfied that the account is used solely for other than commercial purposes or the statutory authority is a body corporate to which Division 3 of Part XI of the Audit Act 1901 applies, he or she shall issue a certificate of approval of the account as an exempt account.

Exempt accounts: approval generally

Section 19 provides that exemption certificates may be issued by the Commissioner in respect of accounts kept on behalf of charitable organisations, hospitals which are recognised hospitals under the Health Insurance Act 1973, and schools that are registered under the Education Ordinance 1937. The application is to contain the details specified in subsection 19(2). If the Commissioner is satisfied that the application relates to a specified account, he or she shall issue a certificate of approval of the account as an exempt account.

Exempt accounts: designation

Section 20 provides that where an exemption certificate issued under section 16, 18 or 19 in respect of an account is produced to the registered financial institution where the account is kept that institution shall designate that account as an exempt account.

Exempt accounts: cancellation

Section 21 provides that if the Commissioner is satisfied that an exempt account is no longer an account of the kind described in section 16, 18 or 19 the Commissioner shall cancel the certificate relating to that account by forwarding a notice in writing to the person in whose name the account is kept.

Notification of cancellation

Section 22 provides that if the Commissioner, under the provisions of section 21, cancels a certificate of exemption he or she shall forward notice of the cancellation to the registered financial institution where the account is kept.

PART V - MISCELLANEOUS

Payments to unregistered financial institutions

Section 23 provides that where a person pays money to an unregistered financial institution that person will be liable to pay any duty which would have been payable on the receipt, by the financial institution, if it had been a registered financial institution and had been liable to pay duty. A person who is liable to pay that duty is required to lodge a return within 21 days after the end of the month in which the payment was made, specifying the total of the payments made to unregistered financial institutions during that month other than payments of \$1,000,000 or more and the number of payments of \$1,000,000 or more.

Recovery of duty

Section 24 provides that a registered financial institution may recover from the person to whose account a credit constituting a

dutiable receipt was made, the amount of duty paid by the institution on the receipt constituted by the credit.

Offence

Section 25 makes it an offence for a short-term dealer to use a short-term dealer's exempt account for a purpose other than short-term dealing.

Review by Administrative Appeals Tribunal

Section 26 provides that application may be made to the Administrative Appeals Tribunal for a review of adverse decisions of the Commissioner under sections 8, 12, 14, 16, 19 and 21 of the Ordinance.

Notification of decisions

Section 27 provides that where the Commissioner makes a decision of a kind referred in section 26, the taxpayer concerned shall be notified of the decision and advised of his or her right to request a statement of reasons and to appeal to the Administrative Appeals Tribunal. The section provides that the failure to notify appeal rights does not affect the validity of a decision.

Regulations

Section 28 is a regulation making power.