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REVENUE CIRCULAR NO. 66**(Revised December 1998)****Changes to the Financial Institutions Duty Act 1987****INTRODUCTION**

This circular revises Revenue Circular No 66 concerning changes to the *Financial Institutions Duty Act 1987* (the Act) by the *Financial Institutions Duty (Amendment) Act 1998*.

AMENDMENTS

The *Financial Institutions Duty (Amendment) Act 1998*:

1. broadens the definition of financial institution to include 'a credit provider';
2. inserts a new territorial nexus provision for persons extending the application of the Act to receipts received by persons both within and outside the Territory;
3. clarifies section 5(1) concerning receipts to which the Act applies;
4. changes the current exemption from duty under paragraph 6(2)(m) for receipts in respect of the 'supply of goods' to receipts in respect of the 'sale of goods';
5. inserts a new class of non-dutiable receipt prescribed by the regulations as a non-dutiable receipt;
6. changes 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;
7. adds new provisions for interstate financial institutions and their agents in the ACT in respect of receipts received by those agents in the ACT on behalf of an interstate financial institution;
8. changes the threshold for notifiable receipts on returns by registered financial institutions; and,
9. includes new provisions relating to large aggregate receipts of not less than \$100,000 received by persons during a month.

REVISED DATE OF EFFECT

The *Financial Institutions Duty (Amendment) Act 1998* requires that the Minister fix the commencement date on which the provisions commence. This date was fixed on 1 December 1998 and not 1 October 1998 as previously advised. Consequently, those provisions that commence three (3) months after the commencement date, will now come into effect as from 1 March 1999.

THE CHANGES IN DETAIL

1. *Broadening the definition of financial institution to include 'a credit provider'*

The current definition of 'financial institution' does not cover arrangements where credit is provided by a person whose sole or principal business in the Territory is not the provision of finance. A 'credit provider' is now included to specifically cover persons who provide credit under credit contracts in the course of a business carried on by that person in the Territory.

Note: The change to the definition of 'financial institution' to include "a credit provider" is effective from 1 March 1999 to provide sufficient time for these persons to register under the Act.

2. *New section 4A Territorial nexus*

Receipts which have a connection with economic activity carried out in the ACT, are subject to duty in the ACT, even if not deposited with a financial institution in the Territory. The provision operates in tandem with the large aggregate receipts provisions (see No. 9 below) that require a person (other than registered financial institutions) to pay duty in respect of receipts where the total amount of such receipts exceeds the specified threshold in any month.

3. *Clarification of subsection 5(1)*

Subsection 5(1) of the Act is omitted and substituted with two new subsections which specify the receipts of money to which this Act applies, namely:

- a) all receipts of money in the Territory except as otherwise provided;
- b) a receipt of money outside the Territory by a registered financial institution, to the credit of an account held by an ACT resident. This provision addresses the practice of some registered financial institutions centralising the accounts of their ACT customers in another jurisdiction. Electronic transfers into these accounts bypass a FID liability to the ACT. Where a registered financial institution centralises its ACT accounts in another jurisdiction, FID is payable to the ACT in respect of receipts outside the Territory to the credit of those accounts; and
- c) other receipts of money outside the Territory to the extent only that it relates to:-
 - goods supplied or to be supplied in the Territory;
 - services rendered or to be rendered in the Territory;
 - property situated in the Territory;
 - a matter or thing done or to be done in the Territory; or
 - a contract, arrangement or transaction as prescribed by the regulations.

In respect of other receipts of money outside the Territory as indicated above at (c), the Act does not apply to a receipt where a financial institution is liable to financial institutions duty in respect of that receipt in another jurisdiction. This is to avoid double duty in respect of that receipt.

4. *Changing the current exemption from duty under paragraph 6(2)(m)*

Contrary to the intention of the Act, the current legislative provision has been interpreted very broadly, enabling the avoidance of duty on receipts from commercial leasing and credit contracts undertaken by financial institutions and other financial intermediaries. The amendment to this paragraph will limit the general exemption to the 'sale of goods' and thereby tighten the scope of non-dutiable receipts in a manner consistent with other jurisdictions.

5. *Inserting a new class of non-dutiable receipt*

Paragraph 6(2)(s) is inserted to provide an exemption for a receipt of money by a registered financial institution that are prescribed as a non-dutiable receipt by the regulations. This will cater for those occasions where certain receipts by registered financial institutions (humanitarian relief appeals or new treasury products) are not intended to be dutiable.

6. *Changing the dutiable base for short term dealings*

The calculation of the duty base for short term dealings by short term dealers in the ACT is changed from 100% of ACT dealings to 5% of Australia wide dealings. This will bring the ACT into line with the method for calculating duty payable on short term dealings adopted by NSW, VIC, SA and WA.

There is no change to the duty rate of 0.005%.

Additionally, the current definition of short term dealings is omitted and replaced with an expanded definition identical to that which is provided in NSW. This will provide greater consistency for ACT short term dealers in determining the scope of short term dealings under the Act.

7. *Adding new provisions for interstate financial institutions and their agents*

Under the current legislative provisions there is no duty on receipts by an ACT agent on behalf of an interstate financial institution. The new provisions provide for agents of interstate financial institutions to be liable to pay duty on monies received in the ACT on behalf of their principal.

Agents will be required to be registered under the Act and provide monthly returns in respect of their ACT receipts. An interstate institution may apply to furnish returns on behalf of the agent.

Where a registered financial institution acts as an agent for a interstate financial institution, provision is made for registered financial institutions to be deemed as registered agents. When a registered financial institution acts as an agent, the registered financial institution will be required to furnish returns in respect of their agency receipts in addition to furnishing returns in respect of their principal receipts.

Note: The provisions for registration of agents and the requirement for returns by agents and interstate financial institutions are effective from 1 March 1999 to provide sufficient time for these persons to register under the Act.

8. Returns by financial institutions

Subsection 13(2) of the Act is amended so that the threshold above which registered financial institutions are required to notify the number of dutiable receipts in their monthly returns, is raised from \$1,000,000 to \$2,000,000. With the reduction in the financial institutions duty rate on dutiable receipts to 0.06% from 1 July 1997, the cap of \$1,200 now operates from \$2,000,000.

9. Including new provisions for large aggregate receipts

Part VI - Where a person receives receipts to which the Act applies (see No. 2 above), the total amount of which is more than \$100,000 in a month and which is not specifically exempted from duty under this provision, that person is liable to pay financial institutions duty in respect of those receipts.

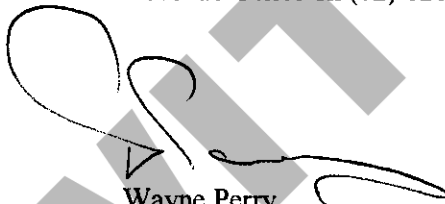
A number of specific exemptions from liability for duty under this provision are also provided to ensure that where such receipts are either already brought to duty or exempt from duty, under another provision of the Act, they are not caught under the large receipts provision.

Note: The large receipt provisions are effective from 1 March 1999.

REFUNDS

Where a registered financial institution has paid financial institutions duty calculated on the basis of a 1 October 1998 commencement date, in its October 1998 and November 1998 returns, then, it may lodge a claim for a refund. This claim must be in writing together with supporting documentation to verify that a refund of revenue amounts by the claimant has been repaid to the person/s on which the duty has been charged.

For further information regarding the changes notified in this circular, please contact the ACT Revenue Office on (02) 620 70079



Wayne Perry
A/g Commissioner for ACT Revenue

\\ December 1998