

SOUTH AUSTRALIA

FINANCIAL INSTITUTIONS DUTY REGULATIONS 1998

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APPENDIX LEGISLATIVE HISTORY

REGULATIONS UNDER THE FINANCIAL INSTITUTIONS DUTY ACT 1983

Financial Institutions Duty Regulations 1998

being

No. 168 of 1998: *Gaz.* 13 August 1998, p. 412¹

as varied by

No. 15 of 1999: *Gaz.* 11 March 1999, p. 1395²

No. 41 of 1999: *Gaz.* 27 May 1999, p. 2776³

No. 168 of 1999: *Gaz.* 19 August 1999, p. 932⁴

- ¹ Came into operation 13 August 1998: reg. 2.
- ² Came into operation 11 March 1999: reg. 2.
- ³ Came into operation 27 May 1999: reg. 2.
- ⁴ Came into operation (except reg. 3(c)) 1 December 1998: reg. 2(1); reg. 3(c) came into operation 19 August 1999: reg. 2(2)

Citation

1. These regulations may be cited as the *Financial Institutions Duty Regulations 1998*.

Commencement

2. These regulations come into operation on the day on which they are made.

Revocation

3. The *Financial Institutions Duty Act Regulations 1984* (see *Gazette* 5 April 1984 p. 851), as varied, are revoked.

Interpretation

4. In these regulations—

"the Act" means the *Financial Institutions Duty Act 1983*.

Non-dutiable receipts

5. (1) For the purposes of section 7(2)(r) of the Act, the following classes of receipt are declared to be non-dutiable:

- (a) a receipt of money by a foreign exchange dealer, being a receipt that forms part of a transaction entered into by the dealer under a general authority granted and issued to the dealer, but not including, where the dealer is an ADI, a receipt by the ADI for the credit of an account of a customer of the ADI with the whole or any part of the proceeds of any such transaction;

* * * * *

- (d) a receipt of money by a financial institution in respect of the repayment of an advance under the *Defence Service Homes Act 1918* of the Commonwealth;

- (e) a receipt of money by a financial institution in relation to any one of, or a combination of, the following transactions (not being a receipt comprising the crediting of an account of a customer of a financial institution with the proceeds of any such transaction or transactions):

- (i) an interest rate, currency or commodity swap;
- (ii) an interest rate, currency or commodity option;
- (iii) a forward exchange rate agreement;
- (iv) a forward interest rate agreement;
- (v) a futures contract traded on a Futures Exchange within the meaning of the *Corporations Law*;

- (f) a receipt of money by a financial institution that is an offshore banking unit (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936* of the Commonwealth) in relation to an offshore banking activity (within the meaning of section 121D of that Act);

3.

- (g) a receipt of money resulting from the direct credit of a prescribed payment to an account kept by a financial institution;
- (h) a receipt of money by a financial institution in the following circumstances:
 - (i) the money is received by the financial institution for the purpose of transfer to an account kept by the financial institution, or another financial institution, in another State or Territory of the Commonwealth in the name of a charitable organisation; and
 - (ii) the charitable organisation would be eligible under section 34(2)(c) of the Act to have the account approved as a special account if it were kept in South Australia;
- (i) a receipt for money transferred from the Income Equalisation Deposit scheme or the Farm Management Bond scheme to the Farm Management Deposit scheme.

(2) In this regulation—

"direct credit" occurs where the authority making the payment pays it directly to the financial institution and the financial institution credits the payment to an account nominated by the person for whom the payment is intended;

"Farm Management Bond scheme"—*see* subregulation (4);

"Farm Management Deposit scheme"—*see* subregulation (5);

"foreign exchange dealer" means a person who is the holder of a general authority that is in force;

"general authority" means a general authority to engage in foreign currency transactions granted and issued under regulation 38A of the *Banking (Foreign Exchange) Regulations* of the Commonwealth to a person named in that authority;

"Income Equalisation Deposit scheme"—*see* subregulation (4);

"prescribed payment" means—

- (a) a pension, benefit, allowance or other payment under the *Social Security Act 1991* of the Commonwealth; or
- (b) a pension, benefit, allowance or other payment under the *Veterans' Entitlements Act 1986* of the Commonwealth; or
- (c) a payment known as a Domiciliary Nursing Care Benefit made by the Commonwealth Government; or
- (d) a payment made by the Commonwealth Government as part of the scheme known as the Farm Household Support Scheme; or

4.

- (e) a payment from a source outside Australia approved by the Commissioner under this regulation as a prescribed payment.

(3) For the purposes of paragraph (e) of the definition of "prescribed payment", the Commissioner may approve a payment as a prescribed payment if satisfied that—

- (a) the payment corresponds to a payment referred to in another paragraph of that definition; and
- (b) satisfactory arrangements have been made to enable financial institutions to recognise a direct credit of such a payment as a non-dutiable receipt; and
- (c) financial institutions have been given at least one month's notice of the impending approval.

(4) The Farm Management Bond scheme and the Income Equalisation Deposit scheme are farm income equalisation schemes administered by the Commonwealth Department of Agriculture Fisheries and Forestry.

(5) The Farm Management Deposit scheme is a farm income equalisation scheme administered by financial institutions and was established to replace the Farm Management Bond scheme and the Income Equalisation Deposit scheme.

Non-ADI financial institutions

6. (1) For the purposes of section 31(11)(i) of the Act, the following are prescribed as non-ADI financial institutions:

- (a) a person who is a futures broker within the meaning of the *Corporations Law*;
- (b) SA Produce Credit Pty Ltd;
- (c) Thomas Cook Ltd.

(2) For the purposes of section 31(9) of the Act, the following amounts are prescribed:

- (a) in relation to a futures broker—any amount received from a client that is required to be deposited in a clients' segregated account under the *Corporations Law*;
- (b) in relation to SA Produce Credit Pty Ltd—any amount received in the course, or for the purposes, of its business as a credit service;
- (c) in relation to Thomas Cook Ltd—any amount received in the course of the banking business carried on by Thomas Cook Ltd under an order of exemption granted by the Commonwealth Treasurer and published in the *Commonwealth of Australia Gazette*, 23 May 1968.

Prescribed States and Territories

7. For the purposes of section 32(4)(b) of the Act, the following States and Territories are prescribed:

- (a) New South Wales;
- (b) Tasmania;
- (c) Victoria;
- (d) Western Australia;
- (e) the Australian Capital Territory;
- (f) the Northern Territory.

Amounts not to be debited against short-term dealing account

8. (1) Pursuant to section 32(5) of the Act, an amount must not be debited against a short-term dealing account kept by an ADI in the name of a registered short-term money market operator unless the amount—

- (a) is an amount paid by that operator in the course of short-term dealings; or
- (b) is an amount paid from that account to another account kept in the name of that operator in South Australia or in a prescribed State or Territory by that ADI or by another ADI that is a registered financial institution.

(2) In this regulation—

"a prescribed State or Territory" means a State or Territory prescribed for the purposes of section 32(4)(b) of the Act.

APPENDIX

LEGISLATIVE HISTORY

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| Regulation 5(1): | varied by 15, 1999, reg. 3; 41, 1999, reg. 3(a); varied by 168, 1999, reg. 3 |
| Regulation 5(1)(b): | revoked by 168, 1999, reg. 3(c) |
| Regulation 5(1)(c): | revoked by 168, 1999, reg. 3(d) |
| Regulation 5(2): | definitions of "Farm Management Bond scheme" and Farm Management Deposit scheme" inserted by 41, 1999, reg. 3(b) definition of "Income Equalisation Deposit scheme" inserted by 41, 1999, reg. 3(c) |
| Regulation 5(4) and (5): | inserted by 41, 1999, reg. 3(d) |
| Regulation 6(1): | varied by 168, 1999, reg. 4 |
| Regulation 8(1): | varied by 168, 1999, reg. 5 |