

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Financial Institutions Duty

Circular No. 89

SHORT TERM MONEY MARKET OPERATORS

SHORT TERM DEALING ACCOUNTS

Your attention is drawn to the regulations under the Financial Institutions Duty Act, 1983 (No 98 of 1993) which came into operation on 10 June, 1993. The information set out below is a brief explanation of how these regulations affect Short Term Money Market Operators.

The precise nature and scope of the changes must be taken from the reading of the regulations in conjunction with the Financial Institutions Duty Act, 1983.

General guidelines relating to the use of Short Term Dealing Accounts are also set out in this Circular.

NEW REGULATIONS AFFECTING THE OPERATION OF SHORT TERM DEALING ACCOUNTS

These regulations amended the principal regulations.

Two effects of the amendments are:

- (a) Regulation 4 of the principal regulations is amended by including the Northern Territory and the Australian Capital Territory as Territories prescribed for the purposes of Section 32 (4)(b) of the Financial Institutions Duty Act. The Act now allows a Registered Short Term Money

Market Operator to transfer amounts to its Short Term Dealing Account from accounts kept at a bank in the name of that operator in South Australia or from an account kept in the name of that operator in any of the following States or Territories:

- Australian Capital Territory
- New South Wales
- Northern Territory
- Tasmania
- Victoria
- Western Australia

PLEASE NOTE: Queensland is **not** a prescribed State. Therefore any amounts transferred to a Short Term Dealing Account from an account kept in Queensland will be in contravention of the Act.

- (b) The new regulations also determine the nature of amounts that can be **debited against** Short Term Dealing Accounts.

In effect, the regulations mean that the only amounts that can be paid **from** a Short Term Dealing Account are amounts paid in the course of Short Term Dealing or amounts paid to an account in **the name of the operator** in South Australia or any of the States or Territories listed above. Thus, for example, it is not appropriate to pay sundry debtors from the short term dealing account.

Queensland is **not** a prescribed State and any amounts paid from a Short Term Dealing Account to a Queensland account will be in contravention of the Act.

THE NATURE OF SHORT TERM DEALING ACCOUNTS

Credits to Short Term Dealing Accounts that meet the criteria in Sections 8(1) and 32(4) of the Act, are exempt from the primary Financial Institutions Duty rate (0.065% of dutiable receipts).

Instead the Short Term Money Market Operator is required to furnish a monthly return and pay duty at the concessional rate of 0.005% of the Average Daily Liability. In the case of a Short Term Money Market Operator who is not a financial institution this means the average daily credit balance of its Short Term Dealing Account.

The exemption in respect of duty at the primary rate and the substitution of the concessional rate of 0.005% of average daily liability was included in the Act in recognition of the fact that many persons operating in the Short Term Money Market trade large volumes of money on a rapid turnover and trade on small margins. It was seen that Financial Institutions Duty at the full rate could make such activities unattractive and unduly impede the operations of the Short Term Money Market.

While the concession is available to Short Term Dealers for such dealings it is not available for other purposes. Account holders are advised that the incorrect use of the account may result in the registration being cancelled and prosecutions may follow.

Audits of Short Term Money Market Operators have revealed that some operators have been using their Short Term Dealing Accounts as "de facto" sweeping accounts. Amounts that do not constitute Short Term Dealings have been "swept" to the Short Term Dealing Accounts and normal operating expenses have been paid from that account.

This practice is contrary to the legislation. It was never intended that the Short Term Dealing Account be used as a sweeping account/operating account.

These new regulations restrict the use of the account to genuine Short Term Dealings.

DEBITS TO SHORT TERM DEALING ACCOUNT

The regulations prescribe those amounts that can be paid out of a Short Term Dealing Account. Any other debits to an account that are not prescribed will be in contravention of the Act.

The following **are examples** of the types of debits that are now prohibited but the list should not be taken as being exhaustive.

1. Payment of wages
2. Payments of other operating expenses (rent, electricity, etc.)
3. Purchase of goods and supplies.
4. Payments of dividends.
5. Payments to other corporations or any other entity or person related or otherwise **except** in the course of Short Term Dealings.
6. Payments of bank charges and fees relating to **other** accounts. It will remain acceptable for bank fees/charges relating to the Short Term Dealing Account to be debited against the Short Term Dealing Account.

Although the new regulations are effective from 10 June, 1993 this Office will not take legal action in respect of debits from Short Term Dealing Accounts in contravention of the Act that were made prior to 1 January, 1994.

This additional period of time is provided to allow sufficient time for account holders to amend their practices should they find prior practices which are contrary to the regulations.

CREDITS TO SHORT TERM DEALING ACCOUNTS

The foregoing outlines the effect that the new regulations have on debits to the Short Term Dealing Account.

However, it is apparent that some Short Term Money Market Operators are also crediting accounts in contravention of Section 32(4) of the Act.

Section 32(4) states that the **only** amounts that should be paid **into** the Short Term Dealing Account are amounts received by the Registered Short Term Money Market Operator in **the course of Short Term Dealings** (refer Schedule A) or amounts paid into that account from another account kept in **the name of that operator** in South Australia, or a prescribed State or Territory.

Examples of the types of payments that have been paid into Short Term Dealing Accounts **in contravention of the Act** include:

1. Payment of normal trade or operating receipts
2. Payment of amounts transferred from accounts held by the Short Term Money Market Operator in Queensland.
3. Payment of accounts held in the name of other corporations or entities, **(related or not)**, and other than in the course of Short Term Dealings.
4. Payment of interest earned on Short Term investments.
5. Return of deposits that were not Short Term Dealings (ie. amount of less than \$50,000 and/or period exceeding 185 days - see Schedule A).
6. Receipt of foreign currency draw down.
7. Payments relating to the sale of assets.

Proceeds resulting from any of the above transactions **should not be** paid to the credit of a Short Term Dealing Account.

ANNUAL REPORTING

At the close of each financial year a person who has held a Short Term Dealing Account during that year is required to complete a return setting out details of whether the account has been operated in terms of the legislative provisions. This is required by Section 37 of the Act.

Where an account has been used incorrectly, this must be disclosed in the Section 37 return and additional duty must be paid at the primary rate.

WHAT TO DO IF YOU HAVE OPERATED A SHORT TERM DEALING ACCOUNT CONTRARY TO THE LEGISLATION

If you have operated a Short Term Dealing Account contrary to the legislative provisions you should take immediate action to ensure the account is operated correctly in the future.

This Office will not take action to prosecute any account holder who takes action to remedy the incorrect operation of Short Term Dealing Account that occurs during the period 10 June, 1993 to 1 January, 1994.

WHAT TO DO IF YOU NO LONGER WISH TO MAINTAIN A SHORT TERM DEALING ACCOUNT

If you feel that you no longer wish to hold a Short Term Dealing Account you should advise this office and action will be taken to cancel your registration as a Short Term Dealer. This will eliminate the need for you to complete a monthly return in relation to such account.

WHO TO CONTACT IN RELATION TO SHORT TERM DEALINGS

The State Taxation Office can be contacted on telephone no. 226 3715 in relation to the content of this circular or any voluntary disclosure in relation to accounts that have been operated contrary to the legislative provisions.

October, 1993

COMMISSIONER OF STATE TAXATION