

SOUTH AUSTRALIA



RevenueSA

Financial Institutions Duty

Circular No. 177

**SHORT-TERM DEALINGS
MEANING OF “WITHIN OR OUTSIDE SOUTH AUSTRALIA”
TRANSACTIONS OCCURRING OUTSIDE AUSTRALIA**

INTRODUCTION

The purpose of this Circular is to inform registered short-term money market operators who are also registered financial institutions (“short-term dealers”) of the types of amounts that should be included in the sum of the daily closing balances for the calculation of average daily liability on returns lodged pursuant to section 27 of the *Financial Institutions Duty Act 1983* (“the Act”).

LEGISLATION

Section 30 of the Act provides:

“Subject to this Act, a registered short-term money market operator is liable to pay financial institutions duty in respect of the operator's average daily liability during a month in respect of short-term dealings at the rate of 0.005 per cent of that average daily liability.”

Short-term dealings are defined by section 8(1) of the Act as follows:

“For the purposes of this Act, an amount is received by a person in the course of short-term dealings where—

- (a) the amount is an amount of cash of not less than \$50 000 received by that person by way of loan, advance or deposit repayable by him or her—
 - (i) at call; or
 - (ii) within 185 days; or
 - (iii) at call after a term of not more than 185 days,

not being an amount received by a bank by way of deposit repayable on demand or for the credit of a current account kept by it for another person; or

- (b) the amount is a repayment of a loan, advance or deposit of not less than \$50 000 made by that person within 185 days before the amount is repaid; or
- (c) the amount is an amount (not including a fee or commission) in respect of the issue of securities, bills of exchange (other than cheques), promissory notes or certificates of deposit, the term of which is not more than 185 days; or
- (d) the amount is an amount (not including a fee or commission) in respect of a sale or purchase of securities, the term of which is not more than 185 days, being a sale or purchase that is not liable to duty under Part 3A of the *Stamp Duties Act 1923*; or
- (e) the amount is the proceeds of the sale by that person of a bill of exchange or a promissory note before maturity and not later than 185 days after its acquisition by that person, not being a bill of exchange or a promissory note issued by that person; or
- (f) the amount is the proceeds of the sale by that person of securities or certificates of deposit before maturity and not later than 185 days after their acquisition by that person; or
- (g) the amount is the amount received by that person on maturity of securities, bills of exchange, promissory notes or certificates of deposit acquired by him or her within 185 days before the amount was received.”

A short-term dealer’s calculation of average daily liability is detailed in section 8(3)(a)(i) as follows:

“For the purposes of this Act, the average daily liability of a person during a month in respect of short-term dealings is—

- (a) where the person is a registered financial institution (not being a person entitled to make application under section 32 for approval of an account as a short-term dealing account)—the amount calculated in accordance with the formula

A

12B

where—

- (i) A is the sum of the daily closing balances of the liability of the financial institution to each person (not being a charitable organisation) in respect of amounts received whether within or outside South Australia (other than amounts included in a return by the financial institution under section 22) from that person in the course of short-term dealings, other than balances that are less than \$50 000; and
- (ii) B is the number of days in the month; ...”

DISCUSSION

Financial institutions duty at the concessional rate is payable by short-term dealers on liabilities in respect of amounts received whether within or outside South Australia from persons in the course of short-term dealings.

This Office has identified some concern amongst short-term dealers regarding the types of amounts that should be included in their sum of daily closing balances. The main area of concern is in relation to short-term dealings received by short-term dealers outside Australia. This Circular delineates the circumstances in which the closing balances of money received should be included in the calculation of average daily liability.

Generally the following is an indication of the types of amounts that should be included in the sum of the daily closing balances for the calculation of average daily liability by short-term dealers on returns lodged pursuant to section 27 of the Act:

- Short-term dealings arising from amounts received by a short-term dealer within Australia;
- Short-term dealings arising from amounts received by a short-term dealer outside Australia that are utilised in the Australian based operations of the short-term dealer; and
- Short-term dealings arising from amounts received outside Australia which are credited to an account (including a term deposit account) located within Australia.¹

EXAMPLES

The following examples indicate the types of amounts received that should be included in the sum of the daily closing balances for the calculation of average daily liability by short-term dealers on returns lodged pursuant to section 27 of the Act:

1. A short-term dealer (located within Australia) is contacted by a client with whom the dealer has an ongoing relationship and is requested to provide an interest rate with respect to a set amount of foreign currency for a fixed term. If the short-term dealer and the client reach an agreement with respect to the deposit, the client deposits the agreed amount of foreign currency to an offshore branch of the short-term dealer. On maturity the amount deposited will be paid to the client or dealt with as directed by the client.

If the amount initially received by the short-term dealer is within the definition of short-term dealings it should be included in the sum of the daily closing balances for the calculation of average daily liability by the short-term dealer.

However, if a client of the offshore branch deals directly with that offshore branch and deposits an amount in the course of short-term dealings, including to the credit of an at call account or to a term deposit, such balances should not be included in the calculation of average daily liability.

¹ Please note, when determining the location of an account, RevenueSA will have regard to a number of factors including where the relationship between the account holder and short-term dealer is centred.

2. A short-term dealer raises funding for any aspect of its Australian based operations via an issue of commercial paper offshore. The commercial paper is issued in Australian currency or foreign currency by the short-term dealer and is offered to overseas residents by the short-term dealer or other dealers. The commercial paper is maintained offshore and on maturity paid offshore.

If the issue of commercial paper is within the definition of short-term dealings it should be included in the sum of the daily closing balances for the calculation of average daily liability by the short-term dealer. This is also applicable to funds brought onshore via a currency swap.

Where an issue of commercial paper is offered by an offshore branch of the short-term dealer, it should still be included in the calculation of average daily liability unless it can be demonstrated to the satisfaction of this Office that the issue was made solely to finance the operations of offshore branches. In the absence of evidence to the contrary it will be assumed that global fund raising activities will be used predominantly in the Australian based operations of the short-term dealer.

Please note, the above examples are not exhaustive of the types of amounts received outside Australia that should be included in the calculation of average daily liability.

PENALTY AND INTEREST AMNESTY

Where short-term dealers have not included any of the above in the sum of the daily closing balances for the calculation of average daily liability on returns lodged pursuant to section 27 of the Act, a schedule of the amounts not included and the financial institutions duty payable for the period 1 November 1993 to 30 November 1998 should be prepared in the following format and lodged with this Office by 28 February 1999.

Month	Calculation of Average Daily Liability (A/12B)	Rate	FID Payable

If the schedule and payment is forwarded to this Office by 28 February 1999, all additional tax pursuant to the *Transitional Provisions* of the *Taxation Administration Act 1996* and the *Financial Institutions Duty Act 1983* and/or interest and penalty tax pursuant to the *Taxation Administration Act 1996* will be remitted in full. After 28 February 1999, compliance activities will commence to ensure amounts received by short-term dealers are dealt with correctly in the calculation of average daily liability. Any underpayment detected during the audit program will be subject to additional tax and/or interest and penalty tax where applicable.

SUMMARY

All future returns of short-term dealers should include the sum of the daily closing balances of:

- Short-term dealings arising from amounts received by a short-term dealer within Australia;
- Short-term dealings arising from amounts received by a short-term dealer outside Australia that are utilised in the Australian based operations of the short-term dealer; and
- Short-term dealings arising from amounts received outside Australia which are credited to accounts (including “internal” ledger accounts) located within Australia, other than amounts such as deposits to call accounts and term deposits that relate to operations based at the location of the offshore branch,

for the calculation of average daily liability on returns lodged pursuant to section 27 of the Act.

FURTHER INFORMATION

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A/COMMISSIONER OF STATE TAXATION

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