SOUTH AUSTRALIA

STATE TAXATION OFFICE

Financial Institutions Duty **Circular No. 42**
(formerly FID Circular No. 4)

USE OF A FINANCIAL INSTITUTION FOR TRANSMISSION OF MONEY

It has become evident that there is some uncertainty amongst financial institutions as to the dutiability of money received by a financial institution in South Australia for transmission to a destination within this State or outside this State.

The Financial Institutions Duty Act, 1983 ("the Act") applies to "a receipt of money in the State" of South Australia [**Section 6 (1) (a**)] and a financial institution that receives money in this State during a month is liable to pay financial institutions duty in respect of each such receipt [**Section 29**]. At Section 3 of the Act, a receipt has been defined to include a payment, repayment, deposit or subscription and the crediting of an account. For the liability to crystallise a "receipt" of money as defined is a prerequisite.

The Act does not seek to identify the legal or equitable owners of the funds which flow to a financial institution. The liability to duty is determined exclusively by reference to monetary transactions and a liability could arise whenever a monetary transaction takes place. For example, if a natural person has two accounts with the same financial institution, which have exactly the same terms and conditions but under two different contracts, the flow of funds between these two accounts will attract financial institutions duty even though the ownership of funds has not changed hands.

A person who wishes to use a financial institution to transmit money within this State or outside the State has the following options for the payment of funds to the transmitting financial institution. These are:-

1 By way of a cheque drawn by that person on **that** financial institution.

2 By way of signing a debit voucher or an authority which will enable the financial institution to debit the account of the person kept in **that** financial institution.

3 By the giving of a cheque or a bill of exchange drawn on another financial institution.

4 By the giving of cash.

It has been argued that the receipt of money by a financial institution by way of a cheque drawn by a person on that financial institution (1 above), or the receipt of money by a financial institution through the process of debiting the account of a person kept in that financial institution (2 above), are not receipts of money for the purposes of the Act. This view is not correct.

In relation to 1 and 2 above, although the funds flowed internally between two accounts of a financial institution, the substance behind this transaction is, first, the withdrawal of funds from the institution by the customer, and second, the receipt of such money by the financial institution for transmission. This second stage of the transaction is clearly a "receipt" by the relevant financial institution.

It has been argued that in circumstances described in 1 and 2, money never left the premises of the financial institution and therefore there never was a receipt of money. But the scheme of the Act is that a physical receipt of money from outside the institution is not necessary for the imposition of liability. Sections 6 (4) (c) and 6 (7) of the Act are consistent with this interpretation. Moreover during the infinitesimal time between the debiting of the customer's account and the transmission of funds by the financial institution, the customer not the institution, has the effective custody of money and therefore there is a withdrawal of money by the customer and a subsequent receipt by the financial institution.

However, this Office recognises the fact that for a number of reasons (for example to generate an audit trial of transaction), customers of a financial institution follow options 1 and 2. A person who wishes to transmit money outside this State could however with help of electronic linkage of accounts across Australia have deposited money directly into the account of the recipient without resorting to methods outlined at options 1 and 2.

In recognition of this commercial expediency and in view of harmonising the practice in this State with those adopted by other States, this Office considers that the transactions in relation to 1 and 2 above fall within the internal accounting practice of the bank and as such any credit entries made are not dutiable receipts for the purposes of the Act.

26 May, 1992 **COMMISSIONER OF STAMPS**