

NORTHERN TERRITORY OF AUSTRALIA
FINANCIAL INSTITUTIONS DUTY ACT 1989

No. 65 of 1989

TABLE OF PROVISIONS

Section

PART I - PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Incorporation
5. Act to bind Crown
6. Receipts to which Act applies
7. Definition of dutiable and non-dutiable receipts
8. Short-term dealing
9. Trustee corporation

PART II - LIABILITY TO DUTY

10. Financial institutions duty: general
11. Financial institutions duty: short-term dealers
12. Financial institution: application for registration
13. Registered financial institution: returns

PART III - SHORT-TERM DEALING

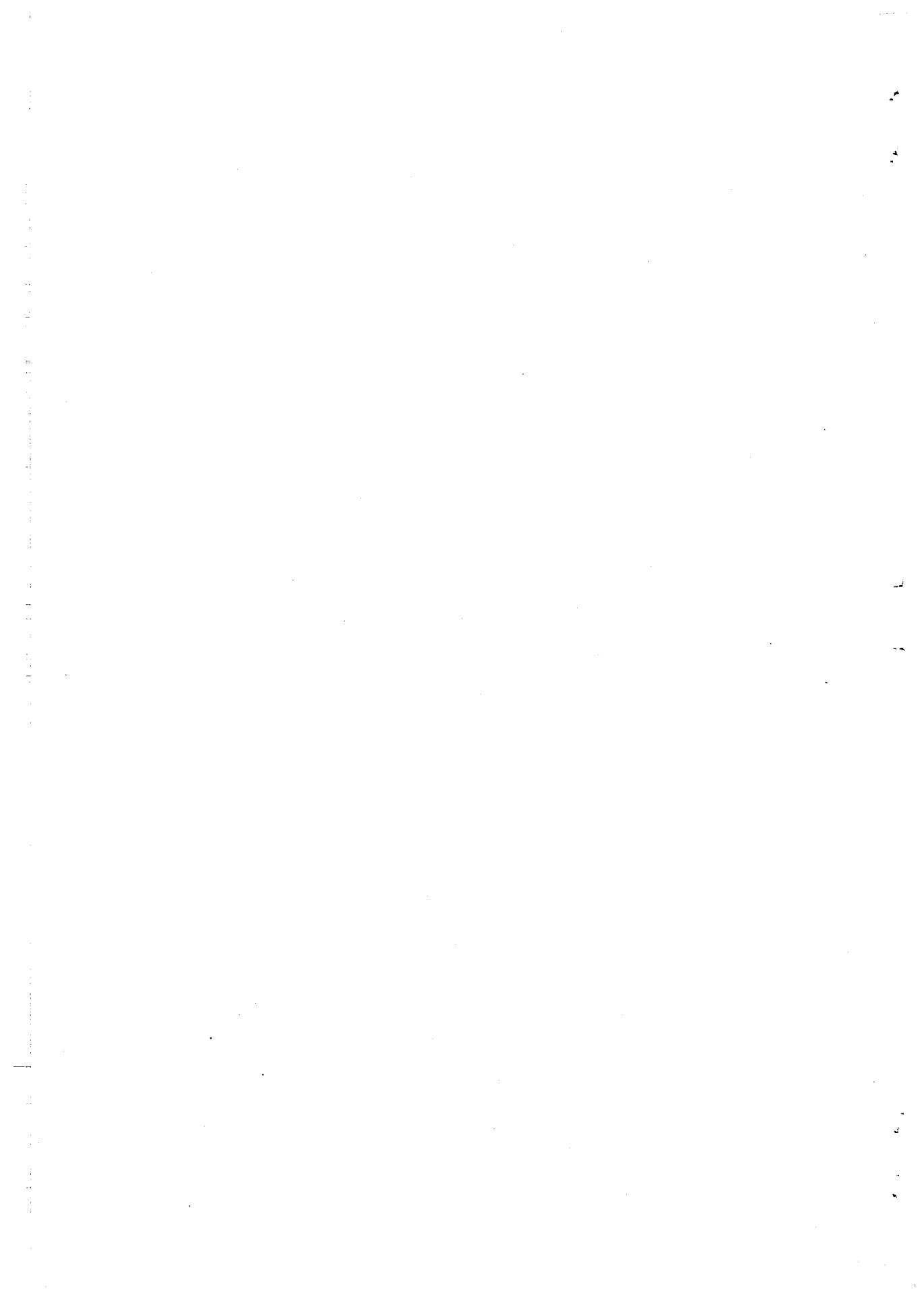
14. Short-term dealers: certification
15. Certified short-term dealers: duty
16. Short-term dealers: exempt accounts
17. Short-term dealers: returns

PART IV - MISCELLANEOUS

18. Payments to unregistered financial institutions
19. Recovery of duty
20. Offence
21. Penalty where none otherwise provided
22. Public officer of financial institution
23. Regulations

PART V - TRANSITIONAL

24. Effect of certain existing contracts
25. Provision for extension and payment of estimated amounts of duty
26. Transitional provision for determination of amount of short-term dealings
27. Transitional provision for depositors
28. Transitional arrangements - exempt accounts





NORTHERN TERRITORY OF AUSTRALIA

No. 65 of 1989

AN ACT

to impose a duty on receipts by financial institutions and for related purposes

[Assented to 10 November 1989]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Financial Institutions Duty Act 1989*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"account" includes a term deposit and an interest bearing deposit, whether or not a financial institution in receipt of such a deposit classifies the deposit as an account;

"cheque" includes a payment order;

"dealer" has the same meaning as in the *Securities Industry Act*;

"dealing", in relation to securities, has the same meaning as in the *Securities Industry Act*;

Financial Institutions Duty

"exempt account" means an account in respect of which there is in force a certificate issued under section 16 or a prescribed government account;

"financial institution" means -

- (a) a bank;
- (b) a dealer;
- (c) a trustee corporation;
- (d) a person whose sole or principal business in the Territory is the provision of finance; and
- (e) a management company,

other than,

- (f) a person whose sole or principal business in the Territory is the operation of a scheme of superannuation, retirement benefit or pension created and operated under a law of the Territory, the Commonwealth or a State or another Territory of the Commonwealth or a prescribed scheme;
- (g) a corporation that is registered under the *Life Insurance Act 1945* of the Commonwealth;
- (h) a corporation the sole or principal business of which is insurance business within the meaning of the *Insurance Act 1973* of the Commonwealth;
- (j) a corporation that is a medical benefits organization or a hospital benefits organization registered under the *National Health Act 1953* of the Commonwealth;
- (k) a dealer who is not a person referred to in paragraph (a), (c), (d) or (e) and who does not carry on a business of dealing in securities except in his or her capacity as -
 - (i) an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* of the Commonwealth or any Act of the Commonwealth in substitution for that Act; or
 - (ii) a receiver, as a receiver and manager or as a person appointed by a court to carry on the business concerned;

Financial Institutions Duty

(m) a dealer, being a corporation, other than a corporation referred to in paragraph (a), (c), (d) or (e), that carries on, or holds itself out as carrying on, a business of dealing in its debentures but does not carry on a business of dealing in any other securities; or

(n) a pastoral finance company,

and includes a person or body corporate (including a person or body corporate referred to in paragraphs (f) to (n), inclusive, of this definition) declared by the Minister to be a financial institution for the purposes of this Act;

"money" includes a bill of exchange, cheque and a promissory note;

"pastoral finance company" means a person whose sole or principal business is that of -

(a) financing pastoral pursuits; or

(b) a stock and station agent in respect of whom an order under section 11 of the *Banking Act 1959* of the Commonwealth is in force;

"receipt" includes -

(a) a payment, repayment, deposit or subscription;

(b) the crediting of an account (whether as a result of money received in the Territory or transferred from outside the Territory);

(c) money received in the Territory (but not credited to an account) for transmission out of the Territory;

(d) money received outside the Territory as a consequence of any act, matter or thing done by a person in the Territory or by a prescribed person; and

(e) a receipt relating to (and 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, any matter or thing done or to be done in the Territory or such contracts, arrangements or transactions as are prescribed;

Financial Institutions Duty

"registered financial institution" means a financial institution that is registered under this Act;

"short-term dealer" means a person who engages in short-term dealing;

"short-term dealing" means a dealing of the kind described in section 8;

"term deposit" does not include a short-term dealing;

"trustee corporation" means -

- (a) the Public Trustee;
- (b) a corporation, constituted under the law of a State or another Territory of the Commonwealth, in respect of which there is in force a certificate of approval under section 9 by the Commissioner;
- (c) a trustee company within the meaning of the *Companies (Trustees and Personal Representatives) Act*; and
- (d) a corporation prescribed for the purposes of this definition.

(2) A reference in this Act to the provision of finance includes a reference to -

- (a) the borrowing of money or the obtaining of other financial accommodation, including the issue of share capital by a building society or credit union;
- (b) the dealing in -
 - (i) securities;
 - (ii) bills of exchange;
 - (iii) promissory notes;
 - (iv) certificates of deposit; or
 - (v) any matter or thing prescribed for the purposes of this paragraph;
- (c) the lending of money, with or without security; and
- (d) the purchase, acquisition, discounting or factoring of debts due to another person.

(3) In this Act, a reference to carrying on business of a particular kind includes a reference to carrying on that business in the course of, as part of, incidentally

Financial Institutions Duty

to, or in connection with, the carrying on of another business.

(4) For the purposes of this Act, the value of a bill of exchange or a promissory note shall be taken to be its nominal or face value.

(5) Where money is received or a liability incurred in a currency other than the currency of Australia, the amount of that receipt or liability for the purposes of this Act is the equivalent amount in the currency of Australia calculated at a rate of exchange that was the rate of exchange used to calculate that equivalent amount when the receipt or liability was incurred.

(6) The Minister may, by notice in the *Gazette*, declare a person or body corporate to be a financial institution, in respect of all or a part only of the person's or body corporate's business, for the purposes of this Act.

(7) The Minister may, by notice in the *Gazette*, prescribe as a government account for the purposes of the definition of "exempt account" in subsection (1) such accounts kept by a registered financial institution on behalf of the Territory, the Commonwealth or a State or another Territory of the Commonwealth or a statutory authority of the Territory, the Commonwealth or a State or another Territory of the Commonwealth, and on such conditions, as the Minister thinks fit.

(8) The Minister may, by notice in the *Gazette*, prescribe a person or a contract, arrangement or transaction for the purposes of the definition of "receipt" in subsection (1).

4. INCORPORATION

This Act shall be incorporated and read as one with the *Taxation (Administration) Act*.

5. ACT TO BIND CROWN

This Act binds the Crown not only in right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, in all its other capacities.

6. RECEIPTS TO WHICH ACT APPLIES

(1) Except as otherwise provided, this Act applies to a receipt of money on or after 1 December 1989.

(2) Where a person receives a consideration, other than money (whether or not in consideration of the person having given credit to any person), in or towards the settlement, satisfaction or discharge of a debt or obligation owing to that first-mentioned person, the person shall, when he or she receives the consideration,

Financial Institutions Duty

be deemed to have received an amount of money equal to the value of that consideration.

(3) For the purposes of this Act, the crediting of an account of a person, including the crediting of an account effected by means of an entry or record made by use of a machine or device, shall be deemed to constitute a receipt of money by the person by whom the account is kept.

(4) A reference to the crediting of an account includes -

- (a) the depositing of money to the credit of the account by the person in whose name the account is kept or by another person;
- (b) without limiting the generality of paragraph (a), the transferring of money to the credit of the account from another account of the person in whose name the account is kept or from an account of another person;
- (c) the depositing of money in the Territory for transmission to another jurisdiction; and
- (d) the transferring of money between ledgers or divisions in an account where different terms and conditions apply in respect of those ledgers or divisions.

(5) Where a receipt arises by virtue of the crediting of an account, the receipt shall be regarded as a receipt of money in the Territory if the account was established at an office or branch of a financial institution situated -

- (a) in the Territory; or
- (b) outside the Territory but has been transferred (and was last transferred) to an office or branch situated in the Territory.

(6) Where -

- (a) an account kept by a financial institution is debited by the financial institution with an amount that is to be invested, on the instructions of the person on whose behalf the account is kept, with the financial institution; and
- (b) there is no corresponding credit to an account that constitutes a dutiable receipt for the purposes of this Act,

the amount so debited shall be regarded as a receipt of money by the financial institution.

Financial Institutions Duty

(7) Where a financial institution provides cash to a person in exchange for a cheque, the financial institution shall not be regarded as having received money, except to the extent that the value of the cheque exceeds the amount of cash given in exchange.

(8) Where a financial institution provides a cheque to a person in exchange for cash, the financial institution shall not be regarded as having received money, except to the extent that the amount of cash exceeds the value of the cheque given in exchange.

7. DEFINITION OF DUTIABLE AND NON-DUTIABLE RECEIPTS

(1) Subject to this section, a receipt to which this Act applies is a dutiable receipt.

(2) The following are non-dutiable receipts:

(a) a receipt of money for the credit of an exempt account;

(b) a receipt of money in the course of short-term dealings during a month by a registered financial institution that is a certified short-term dealer, being a receipt taken into consideration in ascertaining the average daily liability of the financial institution during that month;

(c) a receipt of money by a registered financial institution, being the repayment of moneys that have been invested in the course of short-term dealings by, or on behalf of, the financial institution;

(d) a receipt of money by a registered financial institution for the credit of an account held by another registered financial institution;

(e) a receipt of money by a registered financial institution where -

(i) the receipt results from the drawing of a commercial bill to replace an expired bill;

(ii) the commercial bill is for the same amount, the same term and in the same name as the expired bill; and

(iii) duty has been paid by the financial institution on the receipt by the financial institution of the amount for which the bill was first drawn;

(f) a receipt by a registered financial institution of so much money as does not represent interest paid on the investment, resulting from the closing of an account with the financial insti-

Financial Institutions Duty

tution, where the money is credited to another account with the financial institution having the same terms and conditions as the closed account;

- (g) a receipt of money by -
 - (i) a management company from a person who is the trustee or representative for the purposes of a deed relating to the managing company in accordance with Division 6 of Part IV of the *Companies (Northern Territory) Code* or a corresponding law in force in a State or another Territory of the Commonwealth; or
 - (ii) such a trustee or representative from such a management company;
- (h) a receipt of money by a trustee corporation from the estate of a deceased person committed to the management of the trustee company or the Public Trustee;
- (j) a receipt of money by a registered financial institution, being the crediting to an account of the financial institution of an amount of interest on a loan made by that financial institution to a person who is not a financial institution;
- (k) a receipt of money by a registered financial institution solely by reason of the making of an entry in an account kept by the financial institution in error, to correct an error or by reason of the dishonour of a cheque;
- (m) a receipt of money by a registered financial institution, being a credit to an account that is subsequently offset by a debit of the same amount made solely by reason of the dishonour of a cheque;
- (n) a receipt of money by a registered financial institution in consideration of the supply of goods by the financial institution;
- (p) a receipt of money by a registered financial institution from, or on behalf of, a person for whose benefit the financial institution has drawn, accepted or endorsed a bill of exchange, being a bill of exchange the term of which is not more than 185 days and value is not less than \$50,000 being a receipt to satisfy the amount of the financial institution's engagement on the bill of exchange;

Financial Institutions Duty

(q) where a registered financial institution is a financial institution by virtue of being so declared under section 3(6) in respect of a part only of its business - a receipt of money in any other part of that registered financial institution's business;

(r) such other receipts or receipts of a class of receipt as may be prescribed.

(3) Notwithstanding subsection (2)(a), a receipt to the credit of an exempt account shall, unless the receipt has been credited to an account in the books of the person in whose name the exempt account is kept, be regarded as a dutiable receipt by that person.

(4) Where money is received in the Territory by a registered financial institution (otherwise than by the crediting of an account) for the credit of an account kept by the financial institution and the crediting of that account will constitute a dutiable receipt for the purposes of this Act, the initial receipt is non-dutiable.

(5) Where money is received in the Territory by a registered financial institution (otherwise than by the crediting of an account) for the credit of an account kept by another registered financial institution and the crediting of that account will constitute a dutiable receipt for the purposes of this Act, the receipt by the first-mentioned financial institution is non-dutiable.

(6) Where a registered financial institution satisfies the Commissioner that an entry made in an account of the financial institution, including an account kept by it on behalf of another person, is made by it -

(a) solely in accordance with its internal accounting practices; or

(b) by reason of a change in its accounting practice,

that entry does not constitute a dutiable receipt.

(7) Where a credit of an amount equal to a bad debt is made to an account held by a registered financial institution for the purpose of cancelling the bad debt and closing the account, the crediting of the account does not constitute a dutiable receipt.

8. SHORT-TERM DEALING

(1) For the purposes of this Act, an amount is received by a person in the course of short-term dealing where the amount is -

(a) an amount of not less than \$50,000 received by that person by way of loan, advance or deposit repayable by him or her:

Financial Institutions Duty

- (i) at call;
- (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;

- (b) 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;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) 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 the person; or
- (g) 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.

(2) A reference in subsection (1) to a bill of exchange, promissory note or certificate of deposit is a reference to a bill of exchange, promissory note or certificate of deposit the value of which is not less than \$50,000.

(3) 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 16 for approval of an account as an exempt account) - the amount calculated in accordance with the formula -

Financial Institutions Duty

$$\frac{B}{D}$$

where:

B is the sum of the daily closing balances of the liability of the financial institution to each person in respect of amounts received (other than amounts included in a return under section 14 by the financial institution) from that person in the course of short-term dealings, other than balances that are less than \$50,000; and

D is the number of days in the month; and

- (b) where the person is a person in whose name a short-term dealing account is kept by a registered financial institution - the amount calculated in accordance with the formula -

$$\frac{B}{D}$$

where:

B is the sum of the median daily liability of the financial institution to that person under that account; and

D is the number of days in the month.

9. TRUSTEE CORPORATION

(1) Where the Commissioner is satisfied that a corporation constituted under a law of a State or another Territory of the Commonwealth is a corporation that corresponds to the Public Trustee, the Commissioner may issue a certificate of approval in respect of the corporation.

(2) Where -

(a) a certificate of approval is in force in respect of a corporation; and

(b) the Commissioner is satisfied that the corporation no longer corresponds to the Public Trustee,

the Commissioner shall cancel the certificate.

Financial Institutions Duty

PART II - LIABILITY TO DUTY

10. FINANCIAL INSTITUTIONS DUTY: GENERAL

(1) Subject to this Act, a registered financial institution that receives money during a month is liable to pay financial institutions duty at the rate of 0.025% in respect of each such receipt to which this Act applies.

(2) Subsection (1) does not apply to a non-dutiable receipt.

(3) A financial institution is not liable to pay financial institutions duty on receipts which are received in the Territory only because of there being a central processing computer of the institution located in the Territory which is used to process receipts from other jurisdictions.

11. FINANCIAL INSTITUTIONS DUTY: SHORT-TERM DEALERS

Subject to this Act, a short-term dealer is liable to pay financial institutions duty at the rate of 0.005% in respect of the dealer's average daily liability during a month in respect of short-term dealings.

12. FINANCIAL INSTITUTION: APPLICATION FOR REGISTRATION

(1) A financial institution may apply to the Commissioner for registration as a financial institution.

(2) An application shall -

(a) be in writing, signed by the applicant; and

(b) specify:

(i) the name and address of the applicant;

(ii) the place or places of business of the applicant in the Territory;

(iii) the kind of business conducted by the applicant in the Territory;

(iv) the grounds on which the applicant claims to be a financial institution; and

(v) such other information relating to its activities as the Commissioner may require.

(3) Where the Commissioner is satisfied that the applicant is a financial institution, the Commissioner shall register the financial institution and issue a certificate of registration to the applicant.

(4) Where the Commissioner is satisfied that a registered financial institution is no longer a financial

Financial Institutions Duty

institution, the Commissioner may cancel the registration of the institution.

13. REGISTERED FINANCIAL INSTITUTION: RETURNS

- (1) A registered financial institution that -
 - (a) is not a certified short-term dealer; or
 - (b) is a certified short-term dealer but also carries on the business of a financial institution other than short-term dealing,

shall, within 21 days after the end of each month, furnish to the Commissioner a return relating to that month.

(2) A return shall be in writing, in an approved form, and include the following information:

- (a) in the case of a financial institution that is not a certified short-term dealer - specify the number and total of the dutiable receipts that were received by the financial institution during the month to which the return relates; and
- (b) in the case of a financial institution of the kind referred to in subsection (1)(b) - specify the number and total of the dutiable receipts that were received by the financial institution during the month to which the return relates, not being dutiable receipts received by the financial institution in its capacity as a certified short-term dealer.

PART III - SHORT-TERM DEALING

14. SHORT-TERM DEALERS: CERTIFICATION

(1) A registered financial institution that is a short-term dealer may apply to the Commissioner for certification as a certified short-term dealer.

- (2) An application shall -
 - (a) be in writing, addressed to the Commissioner; and
 - (b) specify:
 - (i) the name and address of the applicant;
 - (ii) the name under which the applicant carries on business;
 - (iii) a general description of the applicant's business, including the proportion of the business that consists of short-term dealing;

Financial Institutions Duty

- (iv) a description of the kind of short-term dealing engaged in by the applicant;
- (v) where the books of accounts are held;
- (vi) the name of the person authorized by the applicant to furnish returns; and
- (vii) such other information relating to its activities as the Commissioner may require.

(3) Where the Commissioner is satisfied that the registered financial institution is a short-term dealer, the Commissioner may issue a certificate to the effect that the institution is a certified short-term dealer.

(4) Where the Commissioner is satisfied that a registered financial institution in respect of which a certificate under this section is in force is no longer a short-term dealer, the Commissioner may cancel the certificate.

15. CERTIFIED SHORT-TERM DEALERS: DUTY

(1) Duty is not payable in respect of receipts of a certified short-term dealer in respect of short-term investments.

(2) Duty at a rate of 0.005% is payable on the average daily liability in a month of a certified short-term dealer, being liability arising from the short-term dealings of that certified short-term dealer.

16. SHORT-TERM DEALERS: EXEMPT ACCOUNTS

(1) A short-term dealer who is not a registered financial institution may apply to the Commissioner for approval as an exempt account of an account with a registered financial institution, being an account that is used solely for the purpose of short-term dealing.

(2) An application shall -

(a) be in writing, addressed to the Commissioner; and

(b) specify -

- (i) the name and address of the applicant;
- (ii) the name and number of the account;
- (iii) the name under which the applicant carries on business;
- (iv) the name of the registered financial institution by whom the account is kept;

Financial Institutions Duty

- (v) the kind of business carried on by the applicant;
 - (vi) the proportion of the applicant's business that consists of short-term dealing;
 - (vii) a description of the kind of short-term dealing engaged in by the applicant;
 - (viii) where the books of account are held; and
 - (ix) such other information relating to the relevant activities of the applicant as the Commissioner may require.
- (3) Where the Commissioner is satisfied that -
- (a) the applicant is a short-term dealer;
 - (b) the account to which the application relates is an account with a registered financial institution; and
 - (c) the account is used solely for the purpose of short-term dealing,

the Commissioner may issue a certificate of approval of the account as an exempt account.

17. SHORT-TERM DEALERS: RETURNS

(1) A short-term dealer shall, within 21 days after the end of each month, furnish to the Commissioner a return relating to that month.

(2) A return shall be in writing, in an approved form, and shall specify such information as the Commissioner may require, including -

- (a) in respect of each day during the month to which the return relates - the sum of the average daily liability of the dealer ascertained for the purposes of symbol B in the formula in section 8(3)(a) or (b), as the case requires; and
- (b) the average daily liability of the dealer, calculated in accordance with section 8(3).

PART IV - MISCELLANEOUS

18. PAYMENTS TO UNREGISTERED FINANCIAL INSTITUTIONS

(1) Where a person pays money to an unregistered financial institution, the person is liable to pay to the Commissioner an amount equal to the amount of duty that would have been payable by the financial institution if it were a registered financial institution and were liable to pay duty in respect of the receipt of that money.

Financial Institutions Duty

(2) A person who is liable under subsection (1) to pay duty shall, within 21 days after the end of the month in which the money was paid to the financial institution, furnish to the Commissioner a return relating to that month specifying the number and total of the payments made to the financial institution during the month.

Penalty: In the case of a natural person - \$5,000 or imprisonment for 12 months.

In the case of a body corporate - \$10,000.

19. RECOVERY OF DUTY

(1) Where a registered financial institution pays or is liable to pay duty in respect of a dutiable receipt, the person or persons to whose account the amount of the receipt is credited is liable, or are jointly and severally liable, to pay to the financial institution an amount equal to that duty.

(2) For the purposes of calculating the amount to be paid under subsection (1) by a person or persons to a financial institution, where the amount of the liability, when expressed in cents or in dollars and cents, leaves a fraction of a cent remaining, that amount may be rounded off as follows:

- (a) if the fraction is 0.5 or less, that fraction shall be disregarded and the amount of the liability shall be taken to be the amount so expressed in cents or in dollars and cents;
- (b) if the fraction exceeds 0.5, the amount of the liability shall be taken to be the amount so expressed in cents, or in dollars and cents, plus one cent.

20. OFFENCE

A short-term dealer in respect of whose account a certificate of approval under section 16(3) is in force shall not use the account for a purpose other than short-term dealing.

Penalty: In the case of a natural person - \$5,000 or imprisonment for 12 months.

In the case of a body corporate - \$25,000.

21. PENALTY WHERE NONE OTHERWISE PROVIDED

Where for an offence against this Act, or the *Taxation (Administration) Act* in relation to a matter to which this Act applies, no other penalty is provided, a person who commits such an offence is liable on conviction to a penalty of -

Financial Institutions Duty

- (a) in the case of a natural person - \$5,000 or imprisonment for 12 months; and
- (b) in the case of a body corporate - \$10,000.

22. PUBLIC OFFICER OF FINANCIAL INSTITUTION

(1) A financial institution shall, within 21 days after the commencement of this Act or of first receiving receipts in the Territory to which this Act applies, whichever is the later, appoint a public officer of the institution for the purposes of this Act and keep the office of public officer constantly filled.

(2) An appointment of a public officer shall be deemed not to be duly made until after written notice of the appointment, specifying the name of the officer, has been given to the Commissioner.

(3) If a financial institution fails duly to appoint a public officer when and as often as such an appointment becomes necessary under subsection (1), it is guilty of an offence punishable on conviction by a fine not exceeding \$10 for every day during which the failure continues.

(4) Service of a document at the address for service, or on the public officer, of a financial institution is sufficient service on it for the purposes of this Act and, if at any time there is no public officer, then service on any person acting or appearing to act in the business of the financial institution is sufficient.

(5) The public officer is answerable for the doing of all such things as are required to be done by the financial institution under this Act or the *Taxation (Administration) Act* and, in case of default, is liable to the same penalties.

(6) Everything done by the public officer that he or she is required to do in his or her representative capacity shall be deemed to have been done by the financial institution and the absence or non-appointment of a public officer does not excuse the financial institution from the necessity of complying, or from any penalty for failure to comply, with any of the provisions of this Act or the *Taxation (Administration) Act*, but the financial institution is liable to comply with the provisions of this Act and the *Taxation (Administration) Act* as if there were no requirement to appoint a public officer.

(7) A notice given to or requisition made on the public officer shall be deemed to be given to or made on the financial institution.

(8) Any proceedings under this Act or the *Taxation (Administration) Act* taken against the public officer shall be deemed to have been taken against the financial

Financial Institutions Duty

institution, and the financial institution is liable jointly with the public officer for any penalty imposed on the public officer.

(9) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a financial institution, every notice, process or proceeding that, under this Act or the *Taxation (Administration) Act*, may be given to, served on or taken against the financial institution or its public officer may, if the Commissioner thinks fit, be given to, served on or taken against any director, secretary or other officer of the financial institution or any attorney or agent of the financial institution, and that director, secretary, officer, attorney or agent has the same liability in respect of that notice, process or proceeding as the financial institution or public officer would have had if it had been given to, served on or taken against the financial institution or public officer.

23. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act, prescribing matters -

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular,

- (c) prescribing the maximum aggregate amount of duty payable by a person under this Act or in respect of a particular transaction or particular transactions;
- (d) prescribing the place where records of financial institutions required by section 126(1) of the *Taxation (Administration) Act* to be kept for the purposes of this Act shall be kept, and allowing the Commissioner to permit them to be kept at places otherwise than as prescribed subject to such conditions, if any, as the Commissioner thinks fit; and
- (e) allowing the Commissioner to permit records of financial institutions otherwise required by section 126(1) of the *Taxation (Administration) Act* to be kept in the English language to be kept in such other language or form, and subject to such conditions, if any, as the Commissioner thinks fit.

Financial Institutions Duty

PART V - TRANSITIONAL

24. EFFECT OF CERTAIN EXISTING CONTRACTS

Nothing contained in a contract entered into before 1 December 1989 between a financial institution and another person from whom it receives money prevents the financial institution from recovering from that person the amount of duty payable by the financial institution in respect of that receipt.

25. PROVISION FOR EXTENSION AND PAYMENT OF ESTIMATED AMOUNTS OF DUTY

(1) Where a registered financial institution is unable reasonably to comply with the provisions of this Act requiring it to furnish to the Commissioner a return or returns under section 13 relating to one or more of the months of January, February, March, April, May and June 1990 before the date on which, under this Act, a return under that section relating to each month is required to be furnished, the financial institution may, not later than 21 February 1990 make application to the Commissioner for an extension under this section.

(2) An application under subsection (1) by a registered financial institution shall state -

- (a) the month or months in relation to which the extension is sought; and
- (b) the basis on which the financial institution proposes to estimate the amount of duty it proposes to pay under this Act in relation to each such month.

(3) The Commissioner may grant an extension to a registered financial institution that makes application under this section, as the Commissioner thinks fit.

(4) Where a registered financial institution -

- (a) pays, before the 21st day of the month following each month in relation to which it is given an extension under this section, the estimated amount of duty specified in its application in relation to that month;
- (b) furnishes, not later than the 21st day of the month following the latest month in respect of which it is given the extension, a return in accordance with this Act in respect of each month to which the extension relates; and
- (c) pays to the Commissioner the amount (if any) by which the duty payable in accordance with the returns so furnished exceeds the amount of estimated duty paid by the financial institution under this section,

Financial Institutions Duty

the financial institution shall be deemed to have complied with the provisions of section 13 and such other provisions of Part II as are relevant to that section.

(5) Where the amount by which the duty payable in accordance with returns furnished by a registered financial institution in accordance with subsection (4) is less than the amount of estimated duty paid by the financial institution under this section, the Commissioner shall refund to the financial institution the amount by which the estimated duty exceeds the duty payable.

26. TRANSITIONAL PROVISION FOR DETERMINATION OF AMOUNT OF SHORT-TERM DEALINGS

(1) Where a certified short-term dealer is unable reasonably to comply with the provisions of this Act requiring it to furnish to the Commissioner a return or returns under section 17 relating to one or more of the months of January, February, March, April, May and June 1990 specifying the amounts referred to in that section, the certified short-term dealer may, not later than 21 February 1990, make application to the Commissioner for approval under this section of a method of calculation of the estimated short-term liabilities or short-term investments, as the case may require, during that month in respect of short-term dealings.

(2) An application under subsection (1) by a certified short-term dealer shall state -

- (a) the month or months in relation to which the approval is sought; and
- (b) the method of calculation in respect of which the approval is sought.

(3) The Commissioner may approve the use by a certified short-term dealer who makes application under this section of a method of calculation of the estimated short-term liabilities or short-term investments in respect of short-term dealings by that certified short-term dealer during the month or months to which the application relates as the Commissioner thinks fit.

(4) Where a certified short-term dealer pays before the 21st day of the month following each month in relation to which the certified short-term dealer has been given an approval under this section duty payable under section 15 calculated in accordance with the method of calculation to which the approval relates, the certified short-term dealer shall be deemed to have complied with the provisions of section 17 and such other provisions of Part III as are relevant to that section.

Financial Institutions Duty

27. TRANSITIONAL PROVISION FOR DEPOSITORS

Notwithstanding section 18, in respect of the month of January 1990, a depositor shall furnish the return required by that section not later than 28 February 1990.

28. TRANSITIONAL ARRANGEMENTS - EXEMPT ACCOUNTS

(1) A person to whom the Commissioner, under section 16(3), may issue a certificate of approval in respect of an account as an exempt account may, at any time before 21 February 1990, in respect of an account kept by it with a bank, give notice to the bank where that account is kept of its intention to apply to the Commissioner for the issue of a certificate of approval of the account as an exempt account and may request the bank to designate the account as an interim exempt account.

(2) A person who gives notice to the bank under subsection (1) in respect of an account shall forthwith give a copy of the notice to the Commissioner and make an application under section 16 for approval of the account as an exempt account.

(3) Where a notice is given under subsection (1) to a bank, the bank shall designate the account as an interim exempt account.

(4) Where a certificate of approval of an account to which a notice given under subsection (1) to a bank relates is issued under section 16(3), the account shall be an exempt account and shall be deemed to have become such an account on the date on which the notice was given to the bank.

(5) An interim exempt account shall, for the purposes of this Act, be deemed to be an exempt account until -

- (a) it becomes an exempt account as referred to in subsection (4);
- (b) the Commissioner, by notice of cancellation given to the bank at which the account is kept, directs that the designation of the account as an interim exempt account be cancelled; or
- (c) 1 July 1990,

whichever first occurs.

(6) In this section "bank" includes building society or credit union, as the case may require.