NOTES AND TOPICS

A FINANCIAL INSTITUTIONS DUTY — NEW GROUND IN GOVERNMENT REVENUE RAISING

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December 1982 saw a new form of government revenue raising introduced into the States of New South Wales and Victoria — a financial institutions duty. The duty was imposed in New South Wales by way of amendment to that State's Stamp Duties Act and, in Victoria, by the introduction of new legislation — the Financial Institutions Duty Act 1982. Though the concept in both States is basically the same, it is proposed here to concentrate on the Victorian position.

In broad outline a 0.03 per cent duty is to be levied on *receipts* of financial institutions within Victoria, or in the case of New South Wales, where the receipt and person concerned have a relevant connection with New South Wales.

It is here appropriate to state that this note, by its very nature, does not purport to be a comprehensive discussion of the new duty but rather is intended to raise merely a few of the more interesting aspects of the duty which have, to date, come to light.

The introduction of the new duty was remarkable for several reasons, not the least being that in Victoria, the bill first became generally available only one day before the date from which the legislation took effect. The haste with which the legislation was introduced and initial lack of consultation and explanation led to a bombardment of criticism and the dubbing of the new duty as 'legislation by press release'.[1]

This fact together with the complex nature of the legislation itself made for widespread confusion in commerce and industry — a confusion which persists to the date of the writing of this note. Furthermore it soon became apparent that the confusion also permeated the very authorities whose responsibility it was to be to implement the legislation.

An interesting example in point was the chaos surrounding the dutiability of inter-company loans.

Some brief explanation is here required. 'Financial Institutions' are defined broadly in the Victorian Act as falling within a number of specified categories, the most relevant of these being a bank, a person whose sole or principal business activities in Victoria are the borrowing of money and the provision of finance, a dealer (as defined in the Securities Industry (Victoria) Code), a trustee company and a credit provider.

The last category is itself the subject of a long, involved and somewhat circular definition which, on its face, appears to include all persons who sell goods on credit or make loans, irrespective of how minor a part of their business such transactions constitute or, in a group situation, whether such loans are merely a method for settling inter-company or inter-divisional balances.

When the bill finally became available the mood in the corridors of business alternated between a state of alarm, with the spectre of the 1960's receipts duty vivid

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[1] *The Financial Review* (Melbourne), 20 January 1983.

in the minds of all concerned, and a blissful ignorance of the scope of the proposed legislation. With respect to the definition of 'credit provider', it was generally agreed that the possibility that companies could be categorised as credit providers by virtue merely of receipts from inter-company loan transactions indicated that, at least in this context, the net had been cast too widely.

Indeed, as the path to the offices of the respective Stamp Duties Commissioners became well-worn in the months of December 1982 and January 1983, the advice being given to the stream of inquirers was that the matter was under review and that where registration was only required of a particular institution by virtue of its coming within the definition of a 'credit provider' only through inter-company loan receipts, no penalties would apply for failure to register at that time.

By 8th February, 1983 the position had changed. The official 'communiqué' was that as the legislation at present is broad enough to catch inter-company loan receipts, the Stamps Office would proceed to enforce the legislation in its present form. Inter-company loan receipts would therefore be considered dutiable until such time as the Parliament of the day amended the Act to exclude such receipts.

It should of course be recalled that even if an institution comes within one of the relevant definitions the requirement to register only arises if total dutiable receipts during the preceding 12 months exceed $5,000,000 or during the preceding month exceed $416,666. (Certain receipts are for the purpose of this calculation exempted.)

This threshold requirement initially appeared to limit the scope of the duty. It soon became apparent however that financial institutions charged with the duty would lose no time in passing it on to their customers. Building societies and banks alike were subject to criticism in the press as the public began to realise that charges passed on were not infrequently higher that those being borne by the financial institutions themselves. Undoubtedly it should be acknowledged that these institutions are bearing not only the duty but also the enormous administrative costs involved in monitoring and honouring their obligations in respect of the duty.

However in light of this the importance of organizing one's affairs became obvious to individuals and corporations which, though not subject to the duty as a direct government charge, were to bear it as a charge from the institutions with which they dealt.

On the intensive seminar circuit organized for industry, commerce and the legal profession during the early months of 1983 certain practical approaches to the new duty were canvassed which basically involve restructuring of company procedures:

— Where deposits can be batched into totals in excess of $1,000,000 a benefit can be gained from the fact that the maximum amount of duty on any one deposit is $300. Few institutions however are likely to have a turnover which enables them to take advantage of this option.

— Company groups should aim for consolidation of group accounts and elimination of inter-company transfers.

— The Act allows financial institutions to open exempt bank accounts, so that their receipts, on which duty has already been paid, are not also subject to duty when deposited with a bank.

Effective use of these accounts will minimize liability to pay duty. Similarly short term dealing provisions offer operators in the short term money markets a lower rate of duty calculated at 0.005 per cent of the daily liabilities of the operator. If the operator qualifies to open a short term dealing account duty is calculated on the daily closing balance of the account. There is nothing in either of the States' legislation which prevents a short term dealer from 'zeroing' his account at the end of the day before duty is calculated so that no duty is payable.

The possibility of moving operations into non-duty States has been largely discounted on the basis of the additional costs of administration involved. Circum-

stances may however arise where this is not the case and obviously amounts received outside the 'duty States' should not be brought into those States for banking unless absolutely essential.

In company restructuring however, the possibility that other States may in turn introduce such a duty must be kept in mind.

The introduction of the duty in Victoria brings with it related reductions and even the abolition of certain other duties. Stamp duty on cheques, promissory notices and bills of exchange (not payable on demand) is to be phased out by 1 July 1983. Stamp duty on credit card transactions is being phased out except where the credit card provider is a registered or exempt financial institution. Credit business duty and instalment purchase duty have been abolished where the business or the instalment purchase is carried on or entered into by a registered or exempt financial institution.

A limited exemption from duty has also been introduced in respect of mortgages for certain eligible first home buyers.

Certain corresponding increases in duty have also occurred. For example, duty has been increased on conveyances where the value of the land exceeds $1,000,000 and in respect of promissory notes payable on demand.

The duty, in sum, is significant for its anticipated wide-spread impact. The amounts to be paid will, more often than not, be small but, it is envisaged, considerable stream-lining in business structures will occur — a result which, the writer believes, will be all to the good of the financial system. The final evaluation of the measure must however come when the two State Governments will be able to positively determine how much the duty will net them in return for the immense effort involved.

''TWAS EASIER SAID THAN DONE': BRITAIN AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

BY JOHN KIDD*

It is all very well to pay lip service to human rights treaties, all too easy to accept their provisions at a theoretical or aspirational level, but it is quite a different, infinitely more difficult, matter to actually submit one's laws and procedures to the detailed scrutiny of international tribunals staffed largely by foreign judges. This comment is prompted by the recent experience of the United Kingdom (Britain) as a party to the European Convention on Human Rights 1953 and its Protocols (the Convention).[1]

As is well known to international lawyers, the Convention marks, on a regional level under the auspices of the Council of Europe, what is very probably the most significant step yet taken towards the practical protection of human rights at an international level. This is because it not only defines the rights to be protected — all the various human rights conventions do that — but, at least as importantly, provides a relatively effective machinery for investigating and enforcing those rights. At the

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[1] The full title of the Convention is the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1953. There are four Protocols. The Convention is the subject of a voluminous literature. See *e.g.* Jacobs F. G., *The European Convention on Human Rights* (1975); Fawcett J. E. S., *The Application of the European Convention on Human Rights* (1969); Robertson A. H., *Human Rights in Europe* (1st ed. 1963).