

1995—No. 358

STAMP DUTIES ACT 1920—REGULATION

(Relating to mortgage-backed securities and financial institutions duty)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Stamp Duties Act 1920, has been pleased to make the Regulation set forth hereunder.

MICHAEL EGAN, M.L.C.,
Treasurer.

Commencement

1. This Regulation commences on 1 September 1995.

Amendments

2. The Stamp Duties Regulation 1991 is amended:
 - (a) by inserting before clause 1 the following heading:

PART 1—PRELIMINARY

- (b) by inserting in clause 3, in alphabetical order, the following definitions:

“**building society**” means a body that is registered as a society, and authorised to operate as a building society, under the Financial Institutions (NSW) Code;

“**statutory body**” does not include a company within the meaning of the Corporations Law;

- (c) by inserting before clause 4 the following heading:

**PART 2—PROVISIONS RELATING TO MATTERS
OTHER INSTITUTIONS FINANCIAL INSTITUTIONS DUTY**

(d) by inserting after clause 5 the following clause:

Mortgage-backed securities

6. (1) For the purposes of the definition of “mortgage-backed security” in section 84FA (1) of the Act, the following instruments and property are prescribed to be mortgage-backed securities:

- (a) an instrument or property creating, conferring or comprising a right or interest (whether described as a unit, bond or otherwise) of or on a beneficiary in a scheme under which any profit or income in which the beneficiaries participate arises from the acquisition, holding, management or disposal of prescribed property, or any instrument that evidences such a right or interest;
- (b) a corporate debt security or other debt security the payments under which by the corporation (including a corporate trustee), company or society that issues or makes the instrument are derived substantially from the income or receipts of prescribed property.

(2) For the purposes of paragraph (b) (iv) of the definition of “pool of mortgages” in section 84FA (1) of the Act, the following assets are prescribed:

- (a) notes or other securities of the Commonwealth of Australia or the Government of New South Wales or the Government or Administration of any other State or any Territory of the Commonwealth;
- (b) deposits with, or the acquisition of certificates of deposits or any other security issued by, a bank or a building society (whether expressed in Australian currency or otherwise);
- (c) bills of exchange, promissory notes or other negotiable instruments accepted, drawn or endorsed by a bank (whether expressed in Australian currency or otherwise);
- (d) a guaranteed investment contract (expressed in Australian currency) of a type approved by the Chief Commissioner;
- (e) mortgage-backed securities, mortgage-backed certificates within the meaning of Part 1B of the Trustee Act 1958 of Victoria and marketable securities that are secondary mortgage market securities under section 29 (1) of the Mortgages (Secondary Market) Act 1984 of Queensland.

(3) In this clause:

“bank” means a bank within the meaning of the Banking Act 1959 of the Commonwealth or a bank constituted by a law of a State or of the Commonwealth;

“prescribed property” means:

(a) assets of the type specified in paragraph (b) (i), (ii) or (iii) of the definition of “pool of mortgages” in section 84FA (1) of the Act; or

(b) assets of the type specified in subclause (2).

(e) by omitting clause 12;

(f) by inserting after clause 11 the following Part:

PART 3—PROVISIONS RELATING TO FINANCIAL INSTITUTIONS DUTY

Division 1—Preliminary

Definitions

12. (1) Words and expressions used in this Part have the same meanings as in Division 29 of Part 3 of the Act.

(2) In this Part:

“mortgage” and **“mortgage-backed security”** have the same meanings as they have in section 84FA (1) of the Act;

“registered bank” means a bank that is a registered person.

Mortgage-backed securities

13. For the purposes of section 98 (2) (b) (vi) of the Act, a mortgage-backed security is prescribed.

Division 2—Receipts to which Division 29 of Part 3 of the Act does not apply: sec. 98A

General

14. (1) For the purposes of section 98A of the Act, the following receipts are prescribed:

(a) a receipt by or to the credit of an account kept on behalf of a person with respect to the person’s business of being a clearing house for, or of enabling or effecting settlements between, 2 or more persons, being:

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- (i) building societies; or
 - (ii) dealers within the meaning of section 97A (1) of the Act; or
 - (iii) futures brokers; or
 - (iv) wool buyers or sellers;
- (b) in relation to a dealer:
- (i) a receipt of money by the dealer as a consequence of the transfer of the money from a trust account of the dealer to another account of the dealer, where the receipt of the money to the trust account of the dealer is included in a receipts return made out by the dealer in accordance with section 985 (1) of the Act;
 - (ii) a receipt of money by the dealer as a consequence of the transfer of the money to a trust account of the dealer from another account of the dealer, where the receipt of the money to the other account of the dealer is included in a receipts return made out by the dealer in accordance with section 985 (1) of the Act.
- (2) For the purposes of section 98A of the Act, a receipt by or to the credit of an account that is kept on behalf of, and to which payments are made only in respect of transactions wholly and exclusively in the furtherance of the objects of:
- (a) a religious or public benevolent institution, or a public hospital; or
 - (b) a hospital that is carried on by a society or association otherwise than for the purpose of profit or gain to the individual members of the society or association; or
 - (c) a school or college:
 - (i) that is carried on by a body corporate, society or association otherwise than for the purpose of profit or gain to the individual members of the body corporate, society or association; and
 - (ii) that provides education at or below, but not above, the secondary level of education; or
 - (d) a person or organisation that is the holder of an authority under Part 2 of the Charitable Fundraising Act 1991 (other than a school or college or a statutory body); or
 - (e) a society or institution (other than a school or college or a statutory body):

- (i) that, in the opinion of the Commissioner, is a charitable society or institution; and
 - (ii) that is for the time being approved by the Commissioner for the purposes of this paragraph; or
- (f) a statutory body:
- (i) that, in the opinion of the Minister, is a charitable statutory body; and
 - (ii) that is for the time being approved by the Minister for the purposes of this paragraph,
- is prescribed.

(3) For the purpose of section 98A of the Act, a receipt by a person (other than a bank) for the credit of an account kept on behalf of:

- (a) a Department of the Government of the Commonwealth or of a State or Territory (other than a Department the sole or principal function of which is to carry on an activity in the nature of a business, whether or not for profit); or
- (b) an authority of the Commonwealth or of a State or Territory (other than an authority the sole or principal function of which is to carry on an activity in the nature of a business, whether or not for profit); or
- (c) a local government council (other than a council the sole or principal function of which is to carry on an activity in the nature of a business, whether or not for profit),

not being an account kept in relation to a transaction or transactions entered into by or on behalf of the Department, authority or council in connection with the carrying on of an activity in the nature of a business, whether or not for profit, is prescribed.

Pensions, benefits and allowances

15. (1) In this clause:

“direct credit of a payment of a pension” means a credit to an account kept by a financial institution of a payment of a pension caused to be made to the financial institution by the permanent head of the Department of Social Security or by the Repatriation Commission;

“pension” means:

- (a) a pension, benefit or allowance under the Social Security Act 1991 of the Commonwealth; or

(b) a pension under the Veterans, Entitlements Act 1986 of the Commonwealth.

(2) For the purposes of section 98A of the Act, a receipt by a financial institution comprising a direct credit of a payment of a pension is prescribed.

Customary general clearance by banks

16. For the purposes of section 98A of the Act, a receipt by a registered bank that is the consequence of a customary general clearance:

- (a) of the kind referred to in section 64 of the Banking Act 1959 of the Commonwealth; or
- (b) effected under an agreement between 2 or more banks for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between banks relating to customary general clearance; or
- (c) effected under an agreement between a bank and a registered person (other than a registered bank) for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between banks and registered persons (other than registered banks) relating to customary general clearance,

is prescribed.

Conversion of share capital by building societies

17. (1) For the purposes of section 98A of the Act, a receipt by a building society that is the consequence of

- (a) the conversion of withdrawable share capital of the society to a deposit with the society; or
- (b) the conversion of withdrawable share capital of the society to fixed share capital of the society,

is prescribed.

(2) For the purposes of section 98A of the Act, a receipt by a financial institution that is the consequence of a person becoming the holder of shares in the capital of the financial institution is prescribed if:

- (a) the financial institution is a company that has been formed by the registration of a building society as a company under the Corporations Law; and

- (b) the person has become the holder of the shares by reason only of being the holder of shares in the society immediately before its registration as the company.

Centralised data processing

18. For the purposes of section 98A of the Act, a receipt by a financial institution, being a receipt that comprises the crediting of an account in New South Wales for the purpose only of recording a receipt of money first received by the financial institution outside New South Wales that is not a receipt referred to in section 98 (3) (c) (ii) of the Act, is prescribed.

Duty paid under corresponding Act of another State or Territory

19. (1) For the purposes of section 98A of the Act, if money is received outside New South Wales by a financial institution so as to constitute a receipt referred to in section 98 (3) (c) (ii) of the Act, being a receipt in respect of which a liability to pay duty under a corresponding Act exists, the receipt of the money by the financial institution is prescribed.

(2) For the purposes of section 98A of the Act, if a receipt is received outside New South Wales by a New South Wales broker, being a receipt in respect of which a liability to pay duty under a corresponding Act exists, the receipt by the New South Wales broker is prescribed.

(3) In this clause:

“**corresponding Act**” means any of the following:

- (a) the Financial Institutions Duty Act 1982 of Victoria;
- (b) the Financial Institutions Duty Act 1983 of South Australia;
- (c) the Financial Institutions Duty Act 1983 of Western Australia;
- (d) the Financial Institutions Duty Act 1986 of Tasmania;
- (e) the Financial Institutions Duty Act 1987 of the Australian Capital Territory;
- (f) the Financial Institutions Duty Act 1989 of the Northern Territory.

Credit Union Financial Services (Australia) Limited

20. For the purposes of section 98A of the Act, a receipt by or to the credit of an account kept on behalf of Credit Union Financial Services (Australia) Limited is prescribed.

Clients' segregated accounts of futures brokers

21. (1) For the purposes of section 98A of the Act, a receipt to the credit of a clients' segregated account of a futures broker with a bank is prescribed.

(2) In this clause, "**clients' segregated account**" and "**futures broker**" have the same meanings as in the Corporations Law.

Aboriginal Land Councils

22. For the purposes of section 98A of the Act, a receipt by or to the credit of an account that is kept on behalf of, and to which payments are made only in respect of transactions wholly and exclusively in the furtherance of the objects of

- (a) the New South Wales Aboriginal Land Council;
- (b) a Regional Aboriginal Land Council; or
- (c) a Local Aboriginal Land Council,

within the meaning of the Aboriginal Land Rights Act 1983, is prescribed.

Building society mergers and transfers of engagements

23. (1) For the purposes of section 98A of the Act, a receipt by a building society that is the consequence of

- (a) a redesignation; or
- (b) the transfer between accounts of a society,

in connection with or as a consequence of a transfer of engagements between, or the merger of, 2 or more building societies, is prescribed.

(2) In this clause:

"merger" and **"transfer of engagements"** have the same meanings as in the Financial Institutions (NSW) Code;

"redesignation" means the process by which an account kept by a society on behalf of a person ceases to be kept by that society and is instead kept by another society on behalf of the same person and on the same terms and conditions as the account that ceased to be so kept.

Bill roll-overs

24. For the purposes of section 98A of the Act, a receipt of money by a 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 receipt to satisfy the amount of the financial institution's engagement on the bill of exchange, is prescribed if

- (a) the term of the bill of exchange is not more than 185 days; and

- (b) the face or nominal value of the bill of exchange is not less than \$50,000.

Defence Service Homes Corporation Loans

25. For the purposes of section 98A of the Act, a receipt by a bank that is the consequence of a loan repayment made in respect of a Defence Service Homes Corporation loan is prescribed.

Receipts by a dealer as agent

26. For the purposes of section 98A (d) (ii) of the Act, the prescribed circumstances, in relation to a receipt, are circumstances where the dealer, as a term or condition of acting as agent, has not been satisfied that, or has not received a certificate from the principal in or to the effect that, the receipt has been or will be paid into:

- (a) if the principal is a registered person—an account kept by the principal; or
- (b) whether or not the principal is a registered person—an account kept by a registered bank.

Foreign exchange dealings

27. (1) For the purposes of section 98A of the Act, a receipt of a foreign exchange dealer, being a receipt that forms part of a transaction entered into by the dealer under the general authority granted to the dealer, but not including, if the dealer is a bank, a receipt comprising the crediting of an account by the bank of a customer of the bank with the whole or any part of the proceeds of any such transaction, not being:

- (a) a receipt comprising the crediting of an exempt account; or
- (b) a receipt referred to in clause 14 (2),

is prescribed.

(2) In this clause:

“foreign exchange dealer” means a designated person in respect of whom a general authority is in force;

“general authority” means a general authority to engage in foreign currency transactions granted and issued under Regulation 38A of the Banking (Foreign Exchange) Regulations of the Commonwealth to a person named in the authority.

Mortgage-backed securities

28. For the purposes of section 98A of the Act, the following receipts are prescribed:

- (a) a receipt by a financial institution (not being a fee, brokerage, commission or other charge made by the financial institution) from the initial issue or making of a mortgage-backed security;
- (b) a receipt by a financial institution in respect of a payment to it by another financial institution under a mortgage or a mortgage-backed security if the payment represents a receipt of the other financial institution:
 - (i) that is received under the mortgage or a mortgage in relation to which the mortgage-backed security has been issued; and
 - (ii) in respect of which duty under Division 29 of Part 3 of the Act has been paid or is liable to be paid by the other financial institution.

Division 3—Exempt accounts: sec. 98U

Prescribed persons in relation to clearing or settlement accounts

29. For the purposes of section 98U (1) (d) (vii) of the Act, livestock agents are prescribed persons.

Designated receipts and exempt receipts

30. For the purposes of section 98U (1) (h) of the Act, an account with a registered bank of a registered person (other than a registered bank), being an account in which the registered person deposits only:

- (a) the designated receipts of the registered person; and
- (b) the receipts of the registered person to which Division 29 of Part 3 of the Act does not apply,

is prescribed.

Account of a bank with another bank

31. For the purposes of section 98U (1) (h) of the Act, an account with a registered bank of another registered bank, being an account in which the secondmentioned bank deposits only:

- (a) the designated receipts of that bank; and
- (b) the receipts of that bank to which Division 29 of Part 3 of the Act does not apply,

is prescribed.

Transfer of certain receipts of workers compensation insurers

32. (1) For the purposes of section 98U (1) (h) of the Act, an account with a registered bank of an insurer, being an account in which the insurer deposits only receipts arising directly or

indirectly from the transfer to the insurer of the assets or the proceeds of the assets of another insurer, if the transfer is made under the Workers Compensation Act 1987 and at the direction of the WorkCover Authority, is prescribed.

(2) In this clause, “insurer” includes a licensed insurer and former licensed insurer within the meaning of the Workers Compensation Act 1987.

Deposits with Australian Stock Exchange Limited

33. For the purposes of section 98U (1) (h) of the Act, an account of Australian Stock Exchange Limited with a registered bank is prescribed, being an account in which Australian Stock Exchange Limited deposits only:

- (a) receipts by Australian Stock Exchange Limited of deposits lodged with it by its member organisations out of money in trust accounts of those organisations under Part 7.8 of the Corporations Law; and
- (b) receipts by Australian Stock Exchange Limited of repayments of such deposits invested by it under Part 7.8 of the Corporations Law; and
- (c) receipts by Australian Stock Exchange Limited by way of interest in respect of such deposits invested by it under Part 7.8 of the Corporations Law.

Deposits by Flemington Markets Commercial Services Co-operative Limited

34. (1) For the purposes of section 98U (1) (h) of the Act, an account being:

- (a) an account of Flemington Markets Commercial Services Co-operative Limited with a registered bank; and
- (b) an account to the credit of which there is paid only receipts by the Co-operative of deposits:
 - (i) that are lodged with the Co-operative in respect of farm produce sold at Flemington Markets; and
 - (ii) that are to be paid to farm produce sellers or producers,

is prescribed.

(2) In this clause, “**farm produce**,” “**farm produce seller**” and “**producer**” have the same meanings as in the Farm Produce Act 1983.

Deposits by foreign exchange dealers

35. (1) For the purposes of section 98U (1) (h) of the Act, an account with a registered bank of a foreign exchange dealer who is a registered person, being an account in which the foreign exchange dealer deposits only:

- (a) the designated receipts of the dealer; and
- (b) receipts of the dealer that form part of transactions entered into by the dealer under the general authority granted to the dealer,

is prescribed.

(2) In this clause:

“foreign exchange dealer” means a designated person in respect of whom a general authority is in force;

“general authority” means a general authority to engage in foreign currency transactions granted and issued under Regulation 38A of the Banking (Foreign Exchange) Regulations of the Commonwealth to a person named in the authority.

Repeals

3. (1) The following Regulations are repealed:

- (a) the Stamp Duties (Financial Institutions Duty) Regulation 1982;
- (b) the Stamp Duties (Mortgage-backed Securities) Regulation 1986.

(2) Any act, matter or thing that, immediately before the repeal of a Regulation referred to in subclause (1), had effect under that Regulation continues to have effect under this Regulation.

EXPLANATORY NOTE

The objects of this Regulation are to repeal the Stamp Duties (Financial Institutions Duty) Regulation 1982 and the Stamp Duties (Mortgage-backed Securities) Regulation 1986 and to transfer the provisions of those Regulations to the Stamp Duties Regulation 1991.

This Regulation is made under the Stamp Duties Act 1920, including section 9 (the general regulation making power) and sections 84FA, 98, 98A and 98U.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
