

Queensland



Offshore Banking Units and Regional Headquarters Act 1993

OFFSHORE BANKING UNITS AND REGIONAL HEADQUARTERS REGULATION 1994

**Reprinted as in force on 22 November 2002
(includes amendments up to SL No. 304 of 2002)**

Reprint No. 1A

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Information about this reprint

This regulation is reprinted as at 22 November 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about when provisions commenced.

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

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OFFSHORE BANKING UNITS AND REGIONAL HEADQUARTERS REGULATION 1994

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OFFSHORE BANKING UNITS AND REGIONAL HEADQUARTERS REGULATION 1994

[as amended by all amendments that commenced on or before 22 November 2002]

1 Short title

This regulation may be cited as the *Offshore Banking Units and Regional Headquarters Regulation 1994*.

2 Commencement

This regulation commences on 1 September 1994.

3 Definitions

In this regulation—

“concessional land” means—

- (a) strata concessional land; and
- (b) non-strata concessional land.

“concessional wages” means the wages paid or payable to persons based in Queensland, employed by a QOBU or QRHQ and engaged in the performance of its OBU or RHQ activities.

“equity” has the meaning given under International Accounting Standard—Framework for the Preparation and Presentation of Financial Statements.

“executive officer”, for an entity, means a person who is—

- (a) a member of the governing body of the entity; or
- (b) concerned with, or takes part in, the entity’s management.

“non-strata concessional land” means land—

- (a) that is not a lot within the meaning of the *Building Units and Group Titles Act 1980*; and

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- (b) that is owned by a QOBU or QRHQ; and
- (c) on which there is a substantial building wholly or partly used for OBU or RHQ activities.

“previous year” means the financial year immediately before the financial year under assessment.

“revenue” has the meaning given under International Accounting Standard 18—Revenue Recognition.

“strata concessional land” means a lot within the meaning of the *Building Units and Group Titles Act 1980* that is—

- (a) owned by a QOBU or QRHQ; and
- (b) part of a substantial building; and
- (c) wholly or partly used for OBU or RHQ activities.

“ultimate holding company” has the meaning given under section 9 of the Corporations Law.

4 Prescribed activities for RHQs

The following activities are prescribed for section 3A of the Act—

- (a) accounting;
- (b) strategic management;
- (c) centralised data processing;
- (d) research and development;
- (e) human resource management;
- (f) marketing;
- (g) public relations;
- (h) purchasing;
- (i) sales or service support;
- (j) treasury services.

5 Prescribed criteria for a QOBU licence

(1) The following criteria are prescribed for an OBU for section 5 of the Act—

- (a) if the OBU does not have a place of business in Queensland—it must undertake to establish a place of business in Queensland within 1 year of its QOBU licence becoming effective;
- (b) if the OBU has a place of business in Queensland, or establishes a place of business in Queensland within 1 year of its QOBU licence becoming effective, it must undertake to keep the place as a place of business;
- (c) the OBU must undertake to have its OBU activities performed by its employees from the place of business.

(2) If the undertaking is not complied with, it is taken never to have been given.

6 Prescribed criteria for a QRHQ licence

(1) The following criteria are prescribed for an RHQ for section 5 of the Act—

- (a) if the RHQ does not have a place of business in Queensland—it must undertake to establish a place of business in Queensland within 1 year of its QRHQ licence becoming effective;
- (b) if the RHQ has a place of business in Queensland, or establishes a place of business in Queensland within 1 year of its QRHQ licence becoming effective, it must undertake to keep the place as a place of business;
- (c) the RHQ must undertake to have its RHQ activities performed by its employees based at the place of business;
- (d) the RHQ must undertake to spend in Queensland a total of at least A\$1 million each year in establishing the place of business or conducting its RHQ activities, or both;
- (e) the multinational corporate group, of which the RHQ is part, must—
 - (i) have yearly revenue of at least A\$100 million; and
 - (ii) have equity of at least A\$15 million; and

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- (iii) realise at least 20% of its revenue from at least 2 countries other than the country in which the ultimate holding company of the RHQ is resident and other than Australia.

(2) If the undertaking is not complied with, it is taken never to have been given.

7 Prescribed particulars to accompany application for QOBU licence

The following particulars are prescribed for an OBU for section 6 of the Act—

- (a) name and address of the applicant;
- (b) the capacity in which the applicant is applying;
- (c) the address from which the applicant intends to carry on its OBU activities in Queensland;
- (d) details of any other place in Australia where the applicant will be carrying on OBU activities;
- (e) details of how the applicant's activities, as the holder of a QOBU licence, will give an economic benefit to Queensland;
- (f) details of the executive officers who will manage the applicant's OBU activities in Queensland including information on whether any officer has been declared bankrupt or has been convicted of an indictable offence.

8 Prescribed particulars to accompany application for QRHQ licence

The following particulars are prescribed for an RHQ for section 6 of the Act—

- (a) name and address of the applicant;
- (b) the capacity in which the applicant is applying;
- (c) the address from which the applicant intends to carry on its RHQ activities in Queensland;
- (d) details of the structure of the multinational corporate group, of which the applicant is part;

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- (e) details of the places from which other entities, that are part of the multinational corporate group, carry on business;
- (f) details of the entities that are part of the multinational corporate group the applicant intends to service as a QRHQ;
- (g) details of the RHQ activities the applicant intends to perform;
- (h) financial information, including financial details of the multinational corporate group, of which the applicant is part, adequate for the Minister to decide if the applicant meets the qualifying factors;
- (i) details of how the applicant's activities, as the holder of a QRHQ licence, will give an economic benefit to Queensland;
- (j) details of whether the applicant, or another entity that is part of the multinational corporate group of which the applicant is part, has ever been placed in receivership or liquidation;
- (k) details of the executive officers who will manage the applicant's RHQ activities in Queensland including information on whether any officer has been declared bankrupt or has been convicted of an indictable offence.

9 Land tax concessions

(1) For the purposes of section 18(1) of the Act, the extent to which tax is payable for a year is—

- (a) if no concessional land is owned—100%; and
- (b) if concessional land is owned—calculated by reducing the tax that would be payable by the QOBU or QRHQ, if section 18 of the Act had not been enacted, by the amount calculated, for each parcel of concessional land, using the formula—

$$\frac{\text{NAT} \times \text{PEI} \times \text{TAE0}}{\text{GFA.}}$$

(2) In subsection (1)—

“**GFA**” (gross floor area) is the number of square metres of the gross floor area of—

- (a) if the parcel of concessional land is strata concessional land—the concessional land; or

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- (b) if the parcel of concessional land is non-strata concessional land—the building accommodating the QOBU or QRHQ’s place of business on the parcel.

“**NAT**” (notional attributable tax) is the tax that would be attributable to the parcel of concessional land if section 18 of the Act had not been enacted.

“**PEI**” (percentage of employee involvement) is—

- (a) if the parcel of concessional land is strata concessional land—the percentage of time all QOBU or QRHQ employees were performing OBU or RHQ activities on the concessional land for the previous year or the part of the previous year in which the concessional land was used for performing OBU or RHQ activities; or
- (b) if the parcel of concessional land is non-strata concessional land—the percentage of time all QOBU or QRHQ employees were performing OBU or RHQ activities in the building for the previous year or the part of the previous year in which the building was used for carrying out OBU or RHQ activities.

“**TAE0**” (total area employees occupy) is the total number of square metres of the area occupied by all QOBU or QRHQ employees (to a maximum of 25 m² for each employee) in—

- (a) if the parcel of concessional land is strata concessional land—the concessional land; or
- (b) if the parcel of concessional land is non-strata concessional land—the building.

10 Pay-roll tax concessions

(1) For the purposes of section 19 of the Act, the extent to which tax is payable for a period is calculated by reducing the tax that would be payable, if section 19 of the Act had not been enacted, by the amount calculated using the formula—

$$\text{NAT} \times \text{PEI.}$$

(2) In subsection (1)—

“**NAT**” (notional attributable tax) is the tax that would be attributable to the concessional wages, if section 19 of the Act had not been enacted.

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“**PEI**” (percentage of employee involvement) is the percentage of time all QOBU or QRHQ employees were performing their Queensland-based OBU or RHQ activities for the period.

11 Duty concessions

(1) For the purposes of section 20(1) of the Act, the extent to which a transaction, by which a QOBU or QRHQ obtains an interest in concessional land, is liable for duty is calculated by reducing the duty that would be payable for the transaction, if section 20 of the Act had not been enacted, by the amount calculated for the transaction using the formula—

$$\frac{ND \times PEI \times TAEO}{GFA}.$$

(2) In subsection (1)—

“**GFA**” (gross floor area) is the number of square metres of gross floor area of—

- (a) if the parcel of concessional land is strata concessional land—the concessional land; or
- (b) if the parcel of concessional land is non-strata concessional land—the building accommodating the QOBU or QRHQ’s place of business on the concessional land.

“**ND**” (normal duty) is the duty that would be payable on the transaction if section 20 of the Act had not been enacted.

“**PEI**” (percentage of employee involvement) is—

- (a) if the parcel of concessional land is strata concessional land—the estimated percentage of time all QOBU or QRHQ employees were or will be performing OBU or RHQ activities in the concessional land; or
- (b) if the parcel of concessional land is non-strata concessional land—the estimated percentage of time all QOBU or QRHQ employees were or will be performing OBU or RHQ activities in the building.

“**TAEO**” (total area employees occupy) is the total number of square metres of the area occupied by all QOBU or QRHQ employees (to a maximum of 25 m² for each employee) in—

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- (a) if the parcel of concessional land is strata concessional land—the concessional land; or
- (b) if the parcel of concessional land is non-strata concessional land—the building.

12 Conditions precedent and subsequent—duty

(1) For the purposes of section 20(1) of the Act, the condition precedent for a transaction mentioned in section 11(1) is that the QOBU or QRHQ must give to the Commissioner of State Revenue a statutory declaration stating that the concessional land will be used for the QOBU or QRHQ's place of business for a minimum of 3 years.

(2) For the purposes of section 20(1) of the Act, the condition subsequent for a transaction mentioned in section 11(1) is that the QOBU or QRHQ must use the concessional land for the QOBU or QRHQ's place of business for a minimum of 3 years.

(3) If the QOBU or QRHQ does not comply with subsection (2), the QOBU or QRHQ must, on ceasing to use the land, immediately notify the Commissioner of State Revenue of that fact.

13 Prescribed transactions

(1) The following transactions are prescribed for the purposes of section 20(2)(d) of the Act—

- (a) a transfer transaction, other than a transfer transaction to the extent that it relates to property that is—
 - (i) bullion; or
 - (ii) a debt of a QRHQ or QOBU incurred in its operation for RHQ or OBU activities if the transfer transaction is entered into at the instigation of the QOBU or QRHQ that would normally bear the duty cost of the transaction;
- (b) a hiring transaction, other than a hiring transaction under which the property hired is to be used in qualifying circumstances;
- (c) a lending transaction, other than—

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- (i) a lending transaction under which money borrowed is secured on property and both the property and the money are to be used in qualifying circumstances; or
- (ii) an associated lending transaction;
- (d) an insurance transaction, other than a transaction for a risk relating to property of a QOBU or QRHQ in Queensland used for OBU or RHQ activities.

(2) In this section—

“associated lending transaction” means—

- (a) a lending transaction under which money borrowed or agreed to be lent under one transaction is secured by property under another lending transaction and both the money and the property are to be used in qualifying circumstances; and
- (b) the other lending transaction.

“hiring transaction” means a transaction for a hire of goods on which hire duty is imposed under the *Duties Act 2001*.

“insurance transaction” means a transaction for accident insurance, or a contract of general or life insurance, on which insurance duty is imposed under the *Duties Act 2001*.

“lending transaction” means a transaction on which mortgage duty is imposed under the *Duties Act 2001*.

“qualifying circumstances” means used—

- (a) for carrying on OBU or RHQ activities; or
- (b) offshore by offshore entities serviced by a QOBU; or
- (c) offshore by offshore parts of the multinational corporate group serviced by a QRHQ.

“transaction” does not include a transaction mentioned in section 20(2)(a), (b) or (c) of the Act.

“transfer transaction” means a dutiable transaction on which transfer duty is imposed, or a relevant acquisition on which corporate trustee duty is imposed, under the *Duties Act 2001*.

14 Records to be kept

(1) A QOBU or QRHQ must keep records that—

- (a) correctly explain the nature of all concessions claimed under the Act and the basis on which each concession is claimed; and
- (b) enable each concession to be accurately calculated; and
- (c) allow its affairs to be properly and conveniently audited.

(2) The QOBU or QRHQ must—

- (a) keep the records in the English language; and
- (b) keep the records for 5 years after the last entry is made in the records or the end of the transactions to which they relate, whichever is the later; and
- (c) safely store the records in a way that allows ready access for inspection by the Commissioner; and
- (d) make the records available to the Commissioner on request.

Maximum penalty for subsections (1) and (2)—100 penalty units.

(3) In this section—

“**Commissioner**” means—

- (a) if the records are for a concession for land tax—the Commissioner of Land Tax; or
- (b) if the records are for a concession for pay-roll tax—the Commissioner of Pay-roll Tax; or
- (c) if the records are for a concession for duty—the Commissioner of State Revenue.

15 Who can sign a statutory declaration

If a provision of this regulation requires a QOBU or QRHQ to give a statutory declaration, the declaration is taken to have been given if it is signed by an executive officer of the QOBU or QRHQ.

16 Regulation does not affect other regulations

This regulation does not remove a requirement under a revenue law to file a return or other document.

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 22 November 2002. Future amendments of the Offshore Banking Units and Regional Headquarters Regulation 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of earlier reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of earlier reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	1 September 1994	2 September 1994

5 List of legislation

Offshore Banking Units and Regional Headquarters Regulation 1994 SL No. 307

made by the Governor in Council on 18 August 1994

notfd gaz 19 August 1994 pp 1829–31

ss 1–2 commenced on date of notification

remaining provisions commenced 1 September 1994 (see s 2)

exp 1 September 2004 (see SIA s 54)

amending legislation—

Revenue and Other Legislation Amendment Regulation (No. 2) 2002 SL No. 304 ss 1, 10 sch

notfd gaz 22 November 2002 pp 1018–21

commenced on date of notification

6 List of annotations

Duty concessions

prov hdg amd 2002 SL No. 304 s 10 sch

s 11 amd 2002 SL No. 304 s 10 sch

def “**ND**” sub 2002 SL No. 304 s 10 sch

Conditions precedent and subsequent—duty

prov hdg amd 2002 SL No. 304 s 10 sch

s 12 amd 2002 SL No. 304 s 10 sch

Prescribed transactions

s 13 amd 2002 SL No. 304 s 10 sch

def “**hiring transaction**” sub 2002 SL No. 304 s 10 sch

def “**insurance transaction**” sub 2002 SL No. 304 s 10 sch

def “**lending transaction**” sub 2002 SL No. 304 s 10 sch

def “**risk in Queensland**” om 2002 SL No. 304 s 10 sch

def “**transaction that attracts duty**” om 2002 SL No. 304 s 10 sch

def “**transfer transaction**” sub 2002 SL No. 304 s 10 sch

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Records to be kept

s 14 def “**Commissioner**” amd 2002 SL No. 304 s 10 sch