

Revenue | Rulings

Non-Bank Financial Institutions Cheque Facilities

Revenue Ruling DT.003

Preamble

The *Debits Tax Act 1990* (the Act) imposes tax on all taxable and eligible debits to accounts that may provide a cheque facility.

Many non-bank financial institutions (NBFI) provide payment orders or other cheque type facilities for the use of their customers. Typically, an agreement exists between a bank and NBFI under which:

- the members of the NBFI are authorised to draw cheques on the NBFI's settlement account with the bank. The settlement account is bulk debited by the bank with an amount equal to the aggregate value of cheques presented on a daily basis;
- the bank supplies the NBFI with details of the individual cheques presented, to allow it to debit individual members' accounts to the value of the cheques written;
- the NBFI deposits funds into the settlement account on a daily basis with an amount representing the current day's presented cheques drawn by members, and any adjustments.

This ruling considers the imposition of Debits Tax on the debiting of:

- the NBFI's customers' own accounts, and
- the NBFI's settlement account with the bank.

Ruling

This ruling replaces the Australian Taxation Office Debits Tax Ruling MT2039, with effect from 1 January 1995.

Under sections 3 & 5 of the Act, tax will be imposed on a debit to an account which has a cheque facility. For an instrument to be considered a 'cheque' it must be drawn by, or on behalf of, the account holder or holders.

The debiting of the customer's own account with a NBFI does not give rise to a taxable debit as the

cheque is not directly drawn on the customer's own account with the NBFI (it is drawn on the NBFI's settlement account).

In regard to the settlement account, it has been argued that the instruments provided by the cheque type facility do not constitute a 'cheque' for the purposes of the Act, as the instruments are not signed by the account holder (the NBFI). It has, however, been upheld by the courts that in these circumstances an agency relationship exists between a NBFI and its members (see *Federal Commissioner of Taxation v Commonwealth Bank of Australia* 23 ATR 121). The cheques are therefore drawn by the NBFI's members on behalf of the account holder (the NBFI).

As the settlement account makes provision for a cheque facility, all debits to this account are subject to debits tax. Under the provisions of section 4 of the Act, tax is payable and calculated for each individual account transaction in respect of that single debit. Therefore, even though the bank may debit the settlement account only once each day for the total of all cheques presented for that day, debits tax is payable on each cheque covered by the single debit.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.01.

Denzil Griffiths

Commissioner of State Revenue

31 October 1995

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