

Queensland



Subordinate Legislation 1994 No. 307

Offshore Banking Units and Regional Headquarters Act 1993

OFFSHORE BANKING UNITS AND REGIONAL HEADQUARTERS REGULATION 1994

TABLE OF PROVISIONS

Section	Page
1 Short title	2
2 Commencement	2
3 Definitions	2
4 Prescribed activities for RHQs	3
5 Prescribed criteria for a QOBU licence	3
6 Prescribed criteria for a QRHQ licence	4
7 Prescribed particulars to accompany application for QOBU licence	5
8 Prescribed particulars to accompany application for QRHQ licence	5
9 Land tax concessions	6
10 Pay-roll tax concessions	7
11 Stamp duty concessions	8
12 Conditions precedent and subsequent—Stamp duty	9
13 Prescribed transactions	9
14 Records to be kept	11
15 Who can sign a statutory declaration	12
16 Regulation does not affect other regulations	12

Short title

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

Commencement

2. This regulation commences on 1 September 1994.

Definitions

3. 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
- (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*.

Prescribed activities for RHQs

4. 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.

Prescribed criteria for a QOBU licence

5.(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 one 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 one 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.

Prescribed criteria for a QRHQ licence

6.(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 one 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 one 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
 - (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.

Prescribed particulars to accompany application for QOBU licence

7. 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.

Prescribed particulars to accompany application for QRHQ licence

8. 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;
- (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.

Land tax concessions

9.(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

- (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.

Pay-roll tax concessions

10.(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—

NAT x 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.

“**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.

Stamp duty concessions

11.(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 tax 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—

$$\frac{\text{NT} \times \text{PEI} \times \text{TAE O}}{\text{GFA.}}$$

(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.

“**NT**” (normal tax) is the tax 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 QOBUs or QRHQ employees were or will be performing OBU or RHQ activities in the building.

“TAEQ” (total area employees occupy) is the total number of square metres of the area occupied by all QOBUs 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.

Conditions precedent and subsequent—Stamp duty

12.(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 QOBUs or QRHQ must give to the Commissioner of Stamp Duties a statutory declaration stating that the concessional land will be used for the QOBUs 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 QOBUs or QRHQ must use the concessional land for the QOBUs or QRHQ’s place of business for a minimum of 3 years.

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

Prescribed transactions

13.(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 currency; 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 stamp duty cost of the transaction; and
- (b) a hiring transaction, other than a hiring transaction under which the property hired is to be used in qualifying circumstances; and
- (c) a lending transaction, other than—
 - (i) a lending transaction under which money borrowed is not secured on property and the money is to be used in qualifying circumstances; or
 - (ii) 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
 - (iii) an associated lending transaction; and
- (d) an insurance transaction for—
 - (i) a risk in Queensland, other than a risk for the property of a QOBU or QRHQ in Queensland used for OBU or RHQ activities; or
 - (ii) the life of a person resident in Queensland; or
 - (iii) property in Queensland.

(2) Subsection (1) does not apply to a transaction that would not be taxable if it were executed or effected outside Queensland.

(3) 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 that attracts duty at a rate prescribed under the heading “**INSTALMENT PURCHASE AGREEMENT**” or “**HIRING AGREEMENT**” in Schedule 1 to the

Stamp Act 1894.

“insurance transaction” means a transaction that attracts duty at a rate prescribed under the heading “POLICIES OF LIFE INSURANCE”, “POLICIES OF INSURANCE” OR “POLICIES OF ACCIDENT INSURANCE” in Schedule 1 to the *Stamp Act 1894*.

“lending transaction” means a transaction that attracts duty at a rate prescribed under the heading “MORTGAGE, BOND, DEBENTURE AND COVENANT”, in Schedule 1 to the *Stamp Act 1894*.

“qualifying circumstances” means used—

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

“risk in Queensland” has the meaning given under section 2 of the *Stamp Act 1894*.

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

“transaction that attracts duty” includes a transaction that gives rise to an obligation to make up a statement or prohibits the recording of the transaction unless duty is paid on an instrument for the transaction.

“transfer transaction” means a transaction that attracts duty at a rate prescribed under the heading “CONVEYANCE OR TRANSFER” in Schedule 1 to the *Stamp Act 1894*.

Records to be kept

14.(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 stamp duty—the Commissioner of Stamp Duties.

Who can sign a statutory declaration

15. 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.

Regulation does not affect other regulations

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

ENDNOTES

1. Made by the Governor in Council on 18 August 1994.
2. Notified in the Gazette on 19 August 1994.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Treasury Department.