

Queensland



OFFSHORE BANKING UNITS AND REGIONAL HEADQUARTERS ACT 1993

**Reprinted as in force on 2 September 1994
(includes amendments up to Act No. 31 of 1994)**

Reprint No. 1

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the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 2 September 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

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

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use standard punctuation consistent with current legislative drafting practice (s 27)
- use expressions consistent with current legislative drafting practice (s 29)
- make all necessary consequential amendments (s 7(1)(k)).

Also see Endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint.**

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**OFFSHORE BANKING UNITS AND
REGIONAL HEADQUARTERS ACT 1993**

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*Offshore Banking Units and Regional
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**OFFSHORE BANKING UNITS AND
REGIONAL HEADQUARTERS ACT 1993**

[as amended by all amendments that commenced on or before 2 September 1994²]

**An Act to provide taxation concessions for certain activities to
Offshore Banking Units and Regional Headquarters that
establish in Queensland, and for related purposes**

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Offshore Banking Units and Regional Headquarters Act 1993*²⁻⁴.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Definitions

3. In this Act—

“**applicant**” means an entity who has applied for a licence.

“**associate**” has the meaning given under section 318 of the *Income Tax Assessment Act 1936* (Cwlth).

“**licence**” includes a QOBU and a QRHQ licence.

“**OBU**” means an offshore banking unit within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936* (Cwlth).

“**OBU activity**” means OB activity, within the meaning of section 121D of

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the *Income Tax Assessment Act 1936* (Cwlth), that is performed by a QOBU.

“**QOBU**” means an OBU that holds a QOBU licence.

“**QOBU licence**” means a licence in force under section 8(4)(a).

“**QRHQ**” means an RHQ that holds a QRHQ licence.

“**QRHQ licence**” means a licence in force under section 8(4)(b).

“**qualifying factors**” has the meaning given under section 12 (Notice of change of circumstances).

“**revenue law**” means—

- (a) the *Debits Tax Act 1990*; or
- (b) the *Land Tax Act 1915*; or
- (c) the *Pay-roll Tax Act 1971*; or
- (d) the *Stamp Act 1894*.

“**RHQ**” means an entity that is part of a multinational corporate group and provides services to other parts of the group.

“**RHQ activity**” has the meaning given by section 3A.

“**tax**” includes duty payable under a revenue law.

“**transaction**” includes—

- (a) an instrument relating to a transaction or arrangement; or
- (b) a transaction or arrangement for which there is no instrument.

Meaning of “**RHQ activity**”

3A.(1) An “**RHQ activity**” is an activity prescribed by regulation and performed by a QRHQ that is part of a multinational corporate group to supply services to parts of the group outside Australia.

(2) To remove doubt, an “**RHQ activity**” does not include an activity performed by a QRHQ to supply services, directly or indirectly, to parts of the group in Australia.

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Words and phrases used in Pt 3 that have meaning in revenue law

4. A word or phrase in Part 3 that is not defined in this Act has the meaning given under the revenue law concerned.

PART 2—ADMINISTRATION

Who may apply for licence

5. An OBU or RHQ that satisfies the criteria prescribed by regulation may apply for a QOBU or QRHQ licence.

Application for licence

6. An application for a licence must—
- (a) be made to the Minister; and
 - (b) include, or be accompanied by, the particulars prescribed by regulation.

Basic criteria for licence

7.(1) In deciding an application, the Minister must have regard to the following matters—

- (a) if the applicant is an individual—whether the applicant is of good repute, having regard to character, honesty and integrity;
- (b) if the applicant is not an individual—whether the applicant's officers who will be involved in its management or will perform functions for the holding of the licence are of good repute, having regard to character, honesty and integrity;
- (c) whether the applicant has a sound and stable financial background;
- (d) whether the applicant has, or if the applicant is not an individual, the applicant's officers who will be involved in its management

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or will perform functions for the holding of the licence have, association with—

- (i) an individual who is not of good repute having regard to character, honesty and integrity; or
 - (ii) an entity that, in the Minister's opinion, has undesirable or unsatisfactory financial sources;
- (e) whether each person associated with the ownership, administration or management of the applicant's business is a person who is suitable to be associated in that way.

(2) Subsection (1) does not require the Minister to investigate an applicant.

Minister must consider and decide application

8.(1) The Minister must consider each application for a licence and may grant or refuse the application.

(2) The Minister must—

- (a) give the applicant written notice of the decision; and
- (b) if the Minister refuses an application—give the applicant written reasons for the decision.

(3) The Minister may issue a licence only if the Minister is satisfied that the issuing of the licence is likely to give an economic benefit to Queensland.

(4) If the Minister grants an application, the Minister must issue to the applicant a—

- (a) QOBU licence; or
- (b) QRHQ licence.

(5) The licence must be in a form approved by the Minister.

Notice of issuing of licence

9.(1) The Minister must notify the issue of the licence by Gazette notice.

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(2) The licence becomes effective only when the notice is notified.

Register of licences

10.(1) The chief executive of the department must keep a register of licences.

(2) The register must be available in the department in Brisbane for inspection by the public during normal office hours.

(3) A person may inspect the register without fee.

Duration of licence

11. A licence remains in force until it is cancelled or surrendered.

Notice of change of circumstances

12.(1) If a licensee ceases to satisfy the criteria or matters mentioned in section 5 or 7(1) (the “**qualifying factors**”), the licensee must give the Minister written notice within 14 days of ceasing to satisfy the qualifying factors.

(2) The notice must give full details of the way in which the licensee has ceased to satisfy the qualifying factors.

Maximum penalty—5 penalty units and twice the tax that was not paid by the licensee by claiming a concession under this Act after the licensee ceased to satisfy the qualifying factors.

Surrender of licence

13.(1) A licensee may surrender a licence by returning it to the Minister.

(2) The surrender takes effect when the Minister notifies the surrender by Gazette notice.

Cancellation of licence

14.(1) The Minister may cancel a licence by Gazette notice if—

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- (a) the licensee ceases to satisfy the qualifying factors; or
- (b) the Minister is satisfied that Queensland has not received, or is not likely to receive, an economic benefit as a result of the licensee holding the licence; or
- (c) the licensee contravenes any of the following sections—
 - (i) section 12 (Notice of change of circumstances);
 - (ii) section 15 (Returns);
 - (iii) section 16 (Information may be required about entries).

(2) If a QOBUE ceases to be an OBU, its QOBUE licence is taken to be cancelled on the day notice of the cancellation of its OBU status is given in the Commonwealth Gazette.

Returns

15.(1) Each licensee must file a return with the Minister for each financial year.

(2) A return for a financial year must be filed before 31 July in the next financial year.

(3) The Minister may, by written notice given to a licensee, require the licensee to file additional returns with the Minister.

(4) The notice must specify the time by which the additional returns must be filed.

(5) The time specified must be a reasonable time.

(6) The licensee must comply with the notice.

(7) Returns under this section must contain the information and be in the form required by the Minister.

Information may be required about entries

16.(1) The Minister may, by written notice given to a licensee, require the licensee to give to the Minister information about an entry in a return.

(2) The notice must specify the time by which the information must be

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given.

- (3) The time specified must be a reasonable time.
- (4) The licensee must comply with the notice.

PART 3—TAX CONCESSIONS

Debits tax concession

17.(1) A QOBU or QRHQ does not have to pay tax under the *Debits Tax Act 1990* for debits made to an account if the debits are made, and the account is used, wholly for its OBU or RHQ activities and on the conditions prescribed by regulation.

(2) The account must be kept with a financial institution in the name of the QOBU or QRHQ.

Land tax concession

18.(1) If a QOBU or QRHQ owns land and uses it for carrying out its OBU or RHQ activities, it only has to pay tax under the *Land Tax Act 1915* to the extent, and on the conditions, prescribed by regulation.

(2) Subsection (1) does not apply if the QOBU or QRHQ holds the land in a name other than the name in which its licence was issued.

Pay-roll tax concession

19. If a QOBU or QRHQ employs people to perform its OBU or RHQ activities, it only has to pay tax under the *Pay-roll Tax Act 1971* to the extent, and on the conditions, prescribed by regulation.

Stamp duty concessions

20.(1) A transaction entered into by a QOBU or QRHQ for its OBU or RHQ activities is only liable for duty under the *Stamp Act 1894* to the

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extent, and on the conditions, prescribed by regulation.

(2) However, the concession under subsection (1) does not apply to the following transactions—

- (a) a conveyance or transfer of real property in Queensland (and moveable chattels taken to be included in the transaction to which the conveyance or transfer relates);
- (b) a relevant acquisition, within the meaning of section 56FM of the *Stamp Act 1894*;
- (c) a conveyance or transfer of shares or a right in respect of shares;
- (d) a transaction prescribed by regulation.

(3) In subsection (2)—

“real property” does not include real property the QOBU or QRHQ will hold in the name in which its licence was issued and will use or occupy for its OBU or RHQ activities.

Operation of concessions and revenue laws

21.(1) A reduction under sections 18 to 20 of the amount of tax payable for a matter mentioned in the sections does not operate to reduce the amount or value on which the tax is calculated.

(2) Sections 18 to 20 operate to reduce the liability for the payment of tax by the percentage that the concessional part bears to the total amount or value.

(3) If, at a particular time, a licensee ceases to satisfy the qualifying factors, the concessions under this Part are taken to have ceased to apply from the particular time.

(4) If a condition subsequent prescribed under section 20 has not been satisfied in relation to a transaction, the concession under section 20 is taken to have never applied to the transaction.

(5) A concession under section 20 does not apply to a transaction if—

- (a) there is no reason, other than to avoid or reduce tax, for a QOBU or QRHQ to enter into the transaction as part of its OBU or RHQ activities; or

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- (b) a substantial reason for the QOBU or QRHQ to enter into the transaction as part of its OBU or RHQ activities is to avoid or reduce tax.

(6) In this section—

“**transaction**” includes a series of transactions of which the transaction is a part.

PART 4—GENERAL

Recovery of unpaid taxes

22.(1) The State may recover under the revenue law concerned, from the licensee only, all or part of the unpaid tax that would have been payable—

- (a) if section 21(3) applies—had the licensee not held the licence from the particular time; or
- (b) if section 21(4) applies—if the concession had never applied.

(2) To remove any doubt, to the extent that the State chooses not to recover unpaid tax under subsection (1), the matter concerned is taken to be exempt from tax under the revenue law concerned.

Review of Act

23.(1) The Minister must review this Act 5 years after it commences.

(2) The review must have regard to—

- (a) the effectiveness of the concessions given to QOBUs and QRHQs; and
- (b) the need for the continuation of the concessions; and
- (c) matters the Minister considers relevant to the operation and effectiveness of the Act.

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Regulations

24.(1) The Governor in Council may make regulations for the purposes of this Act.

(2) A regulation may create offences and prescribe penalties of not more than 100 penalty units for the offences.

Expiry of this Act

25. This Act expires on 31 December 2003.

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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 2 September 1994. Future amendments of the Offshore Banking Units and Regional Headquarters Act 1993 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 List of legislation

Offshore Banking Units and Regional Headquarters Act 1993 No. 78

date of assent 17 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1994 (1994 SL No. 302)

Note—This Act expires 31 December 2003 (see s 25)

as amended by—

Treasury Legislation Amendment Act 1994 No. 31 Pts 1, 4

date of assent 28 June 1994

commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Definitions

s 3 def **“RHQ activity”** sub 1994 No. 31 s 10

Meaning of “RHQ activity”

s 3A ins 1994 No. 31 s 11

Land tax concession

s 18 amd 1994 No. 31 s 12

Pay-roll tax concession

s 19 sub 1994 No. 31 s 13

Operation of concessions and revenue laws

s 21 amd 1994 No. 31 s 14

Regulations

s 24 amd 1994 No. 31 s 15