

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: Offshore Banking Units - what is the meaning of 'guarantee-type activity' under subsection 121D(3)?

1. 'Guarantee-type activities' are defined in subsection 121D(3) of the *Income Tax Assessment Act 1936* as activities involving fee income for:

- the provision of guarantees or letters of credit
- the syndication of loans
- the underwriting of risk
- the issue of performance bonds.

2. The meaning of guarantee-type activities is to be interpreted widely. The Explanatory Memorandum states that 'activities which fall within the normal meaning of a guarantee ... would also constitute "guarantee-type activities". All of the activities listed guarantee performance of a contract. In Lord Halsbury's Laws of England, 'guarantee' is defined as 'an accessory contract whereby the promisor undertakes to be answerable to the promisee for the debt, default or miscarriage of another person whose primary liability to the promisee must exist or be contemplated'. Activities which fall within this broad definition are to be treated as 'guarantee-type activities'. For example, as pointed out in the Explanatory Memorandum, bid bonds would be covered by 'guarantee-type activity'.

Commissioner of Taxation
8/7/93