
FOI Status: may be released

Page 1 of 1

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 - if an OBU sells down or disposes of its interest in a loan which originally qualified as an OB activity, does any fee receivable constitute assessable OB income?

1. Yes. Subsection 121EE(2) of the ITAA defines assessable OB income as:

- (a) income derived from OB activities, or
- (b) income which is included in assessable income because of such activities.

Fee income received from selling down a security will be included in assessable OB income under paragraph (b); that is, it is income derived because of OB activities.

However, the restrictions relating to the OB activity continue to apply and therefore the selling down or disposal of the interest in the loan must be to an offshore person.

Example:

An OBU makes a loan to a New Zealand resident in US dollars. This activity satisfies the definition of borrowing or lending activity in subsection 121D(2). The OBU decides to sell down the loan to an offshore person. The fee income derived from this sale is assessable OB income because it is assessable income as a result of an OB activity.

Commissioner of Taxation

16/12/93

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Related Determinations: TD 93/136

Related Rulings:

Subject Ref: Offshore Banking Units; assessable OB income; security

Legislative Ref: ITAA 121EE(2)

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