


***TD 93/D197 - Income tax: Offshore Banking Units (OBU) - does share capital subscribed by a resident owner to its subsidiary, before that subsidiary becomes registered as an OBU, constitute "OBU resident-owner money"?***

 This cover sheet is provided for information only. It does not form part of *TD 93/D197 - Income tax: Offshore Banking Units (OBU) - does share capital subscribed by a resident owner to its subsidiary, before that subsidiary becomes registered as an OBU, constitute "OBU resident-owner money"?*

This document has been finalised by TD 93/203.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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### **Income tax: Offshore Banking Units (OBU) - does share capital subscribed by a resident owner to its subsidiary, before that subsidiary becomes registered as an OBU, constitute "OBU resident-owner money"?**

1. No. Section 121EC of the *Income Tax Assessment Act 1936* sets out the meaning of the term "OBU resident-owner money". It is money 'paid to **the OBU by a resident owner of the OBU** by way of a subscription for, or a call on, shares in **the OBU**...' As the subsidiary is not an OBU at the time of the share subscription, section 121EC can have no application.
2. As share capital subscribed to a subsidiary before it becomes an OBU is not "OBU resident-owner money", section 121EK, which deems interest to apply to 90% of certain OBU resident-owner money has no application to that capital.
3. As the share subscription will constitute "non-OB money" as defined in section 121C, any assessable income derived from the use of that money cannot be "assessable OB income" for the purposes of subsection 121EE(2).

**Commissioner of Taxation**  
19/8/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: Offshore banking; OBUs; OBU resident-owner money; deemed interest; non-OB money; assessable OB income

Legislative Ref: ITAA 121EC; ITAA 121EK; ITAA 121EE; ITAA 121C

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