


TD 93/D199 - Income tax: Offshore Banking Units (OBU) - does trading in, or entering into commodity derivatives such as commodity futures, forwards, options, swaps and gold loans constitute offshore banking (OB) activity for the purposes of section 121D?

 This cover sheet is provided for information only. It does not form part of *TD 93/D199 - Income tax: Offshore Banking Units (OBU) - does trading in, or entering into commodity derivatives such as commodity futures, forwards, options, swaps and gold loans constitute offshore banking (OB) activity for the purposes of section 121D?*

This document has been finalised by TD 93/205.

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.

Draft Taxation Determination

Income tax: Offshore Banking Units (OBU) - does trading in, or entering into commodity derivatives such as commodity futures, forwards, options, swaps and gold loans constitute offshore banking (OB) activity for the purposes of section 121D?

1. Each of the commodity derivatives mentioned above is an '**eligible contract**', a term which is defined in section 121C of the *Income Tax Assessment Act 1936*. The definition has been drafted widely and there is nothing to suggest that only interest rate derivative products and loans of foreign currencies should fall within the definition.

2. Although trading with an offshore person in any eligible contract is an OB activity under subsection 121D(4) (as long as any amounts payable by non-residents are in non-Australian dollars), it should be noted that, under subsection 121D(5), if the OBU enters into an eligible contract (as distinct from trading in it), an eligible contract does not include a loan contract.

3. Accordingly, entering into a gold loan does not constitute OB activity for the purposes of section 121D.

Commissioner of Taxation

19/8/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: Trading activity; Offshore Banking; OBUs; eligible contracts

Legislative Ref: ITAA 121D(4) 121C.

Case Ref:

ATO Ref: 93/3707-5

ISSN 1038 - 8982