

TD 93/D203 - Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in subsection 121D(7) encompass the provision of financial knowledge and information to an offshore person?

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This document has been finalised by TD 93/208.

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 the definition of advisory activity in subsection 121D(7) encompass the provision of financial knowledge and information to an offshore person?

1. It would depend on the individual circumstances of each case.
2. The definition of advisory activity in subsection 121D(7) of the *Income Tax Assessment Act 1936* has been drafted widely, and as stated in the supplementary explanatory to *Taxation Laws Amendment Bill (No. 4) 1992*, 'the advice is not to be restricted as long as it does not involve any property or transactions in Australia. It may, for example, take the form of advice on financial structures, corporate strategic planning, defending takeovers etc as well as relevant investments.'
3. The explanatory memorandum also states that advisory activities are only to apply to 'fee income from advisory services for an offshore person'. It is clear that the concession does not extend to activities for which royalties could be expected to be paid, such as the provision of financial know-how and information. Nor would it extend to financial products, technology and systems or the provision of training in the use of the technology.

Example 1

An OBU has developed computer software to assist corporate treasuries to identify currency risks. It markets this software and system to an offshore person.

This would not qualify as an advisory activity for purposes of subsection 121D(7).

Example 2

An OBU provides an offshore person with advice about leading and lagging to take advantage of expected exchange rate movements.

This would qualify as an advisory activity for the purposes of subsection 121D(7).

Commissioner of Taxation

19/8/93

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Related Rulings:

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