TD 93/D206 - Income tax: Offshore Banking Units (OBU) - where an OBU provides the services of its employees to a non-resident subsidiary to assist the subsidiary in advising offshore clients on offshore financial matters, can fees charged by the OBU to the subsidiary qualify as assessable OB income?

This document has been finalised by TD 93/211.

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) - where an OBU provides the services of its employees to a non-resident subsidiary to assist the subsidiary in advising offshore clients on offshore financial matters, can fees charged by the OBU to the subsidiary qualify as assessable OB income?

1. Yes. Fees charged at arm's length can be booked as assessable OB income as they constitute advisory activities in terms of subsection 121D(7) of the *Income Tax Assessment Act 1936*. However, an appropriate adjustment must be made for any deduction claim for employment related expenses. That is, the expenses would either constitute an exclusive OB deduction or a general OB deduction in accordance with section 121EF

Example.
An OBU makes available the services of an employee to an offshore subsidiary to assist in advising offshore clients. The OBU charges the subsidiary a fee of $5 000 based on a rate per hour, plus a success fee of $15 000.

The assessable OB income would include fee income of $20 000.

If the records of the OBU clearly identify the employment related costs of providing the advice, it would be entitled to claim an exclusive OB deduction. However, if the records do not clearly identify the actual costs the OBU must treat the expense as a general OB deduction calculated in accordance with the formula in subsection 121EF(4).

Commissioner of Taxation
19/8/93

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