

TD 93/D216 - Income tax: Offshore Banking Units (OBU) - what is the effect of funding an offshore banking (OB) activity with both OB and non-OB money?

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This document has been finalised by TD 93/217.

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) - what is the effect of funding an offshore banking (OB) activity with both OB and non-OB money?

1. The profits resulting from funding an OB activity with both OB and non-OB money constitute OB money; that is, none of the money is non-OB money as defined in section 121C of the *Income Tax Assessment Act 1936*. However, any profits must be apportioned between 'assessable OB income' and other assessable income.
2. Assessable OB income is defined in subsection 121EE(2) and is the total of the assessable income derived by the OBU from OB activities, or included in the assessable income because of such activities, other than income derived from the use of non-OB money. It is only this income which is taxed at the concessional rate. Income derived from non-OB money is taxed at the normal company rate. The profits from the OB activity, therefore, must be apportioned according to the proportion of OB and non-OB money used to generate the income. All of the profits, however, do constitute OB-money and may be used to generate concessionally taxed income from a subsequent OB activity.
3. The use of non-OB money, however, will be taken into consideration for purposes of the 'purity test' in section 121EH. Where more than 10% of the assessable income from OB activities is derived from non-OB money, concessional tax treatment will not apply to any of the income.

Example:

An OBU funds an OB activity with \$40 000 of non-OB money and \$60 000 of OB money. The activity generates income of \$10 000 which will be taxed in the following manner:

<u>\$40 000</u>	x	\$10 000	=	\$4 000
\$100 000				
		\$4 000 taxed at 39%		
<u>\$60 000</u>	x	\$10 000	=	\$6 000
\$100 000				
		\$6 000 taxed at 10%		

The income of \$10 000 is OB money and may be used in subsequent OB activities to generate OB income.

In this example, if the above activity represented all of the OBU's assessable income, it would fail the "purity test" and all of the assessable income would be taxable at normal company rates of tax.

Commissioner of Taxation

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