

TD 93/D36 - Income tax: Offshore Banking Units - if a loan entered into by a foreign branch of an Australian resident bank is assigned to the Australian OBU head office, does this constitute an OB activity?

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This document has been finalised by TD 93/136.

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 - if a loan entered into by a foreign branch of an Australian resident bank is assigned to the Australian OBU head office, does this constitute an OB activity?

1. Yes, provided the loan contract is traded in accordance with subsection 121D(4) and not merely transferred.
2. Section 121EB of the *Income Tax Assessment Act 1936* treats the overseas permanent establishment as a separate person from the Australian part of the bank conducting offshore banking. Therefore, a loan contract may be traded in accordance with subsection 121D(4) provided any amounts payable under the loan contract are payable by non-residents and are not payable in Australian currency.
3. Accordingly, all or part of a portfolio of offshore loans can be transferred provided the transfer takes the form of a sale. The sale could entail an assignment or novation of the loan for tax purposes.

Example

An Australian OBU buys a portfolio of loans from its Singapore branch which is an ACU (an Asian Currency Unit which is essentially a Singaporean OBU). The sale entails an assignment for tax purposes of non-resident parties to the loan contracts and any amounts payable are not denominated in Australian dollars. The transaction would be an OB activity in terms of section 121D.

Commissioner of Taxation

18/3/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

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