


IT 2567 - Income tax: offshore banking units : separate accounting requirements

 This cover sheet is provided for information only. It does not form part of *IT 2567 - Income tax: offshore banking units : separate accounting requirements*

This document is no longer current as has been Archived.

There is an Archival notice for this document.

This document has been Withdrawn.

There is a Withdrawal notice for this document.

TAXATION RULING NO. IT 2567

INCOME TAX: OFFSHORE BANKING UNITS : SEPARATE
ACCOUNTING REQUIREMENTS.

F.O.I. EMBARGO: May be released

REF

N.O. REF: L89/6330-4

DATE OF EFFECT: Immediate

B.O. REF:

DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011675	OFFSHORE BANKING UNITS - KEEPING OF ACCOUNTS AND RECORDS	79D, 80(8), 128AE, 128GB, 128NB, 160AF, 160AFAA, 160AFD, 160AFE, 262A(1A). TAXATION ADMINISTRATION ACT 1953, SEC 8L, 8Q, 8T.

PREAMBLE The purpose of this Ruling is to clarify that where an eligible financial institution is declared by the Treasurer to be an offshore banking unit (OBU), any OBU transactions undertaken by that institution have to be recorded and maintained in accounts and records separate from the accounts and records for other business activities conducted by the institution.

2. By way of general background, the Taxation Laws Amendment Act (No 5) 1987 (the amending Act) amended the Income Tax Assessment Act 1936 (the Assessment Act) to provide a legislative framework governing the operation of an interest withholding tax exemption for interest paid to non-residents by OBUs. The main operative provisions are sections 128AE, 128GB and 128NB of the Assessment Act.

3. The broad scheme underlining that legislative framework is to allow OBUs to borrow or accept deposits of foreign currency funds either overseas or on the domestic market (or of Australian currency from non-residents) and to deal with these funds only in three ways : by on-lending them to non-residents, depositing them with another OBU or in purchasing foreign securities.

4. To facilitate those activities, a general interest withholding tax exemption is provided in relation to interest payments by an OBU to non-residents. However, to preserve Australia's withholding tax base, and in recognition of the practicalities of tracing and monitoring the application of particular borrowings, an OBU may be liable for special income tax at a penal rate where funds that are subject to the withholding tax exemption are dealt with by the OBU in an unintended manner, e.g., where lent directly or indirectly to an Australian resident or used for general banking activities or

other purposes by the financial institution of which the OBU is a part.

RULING 5. Although the relevant legislative provisions do not make specific reference to the necessity for an OBU to maintain separate accounts and records for its operations, the restrictions effectively imposed under sections 128AE, 128GB and 128NB in relation to an OBU's activities require, as a practical matter, that it maintain separate accounts and records for income tax purposes. Otherwise the applicability of the withholding tax exemption accorded by section 128GB (when read with section 128AE) for interest payments in respect of "offshore borrowings" by an OBU may not be capable of being clearly established, and the OBU may become liable for the special tax payable under section 128NB in respect of certain dealings by current and former OBUs. The separate reporting requirement for OBUs was emphasised in the report of the Commonwealth/State Working Party on Offshore Banking, August 1985, subsequent announcements by the Government foreshadowing the introduction of the amending Act and the Explanatory Memorandum to the Bill for that Act.

6. It is relevant that subsection 128AE(2) provides for the Treasurer to declare a person to be an OBU. Such a declaration may be made for a separate department of a bank or other eligible financial institution, or for a separately incorporated eligible body. However, under relevant administrative procedures outlined in the aforementioned Explanatory Memorandum, it is necessary that an application to be declared an OBU be made to the Commissioner of Taxation and for the applicant to provide the Commissioner with details of arrangements being made for the separate operation of the proposed OBU's activities.

7. Although the need for separate record keeping by an OBU arises primarily by reason of the practical operation of the withholding tax exemption provisions, it is also a consequence of the separate treatment under the foreign loss quarantining provisions of the Assessment Act of losses incurred by OBUs and of the separate quarantining of offshore banking income for foreign tax credit purposes.

8. In those respects, section 79D and subsection 160AFD(6) provide that interest income, offshore banking income and all other income constitute separate classes of income for foreign loss quarantining purposes. Consequently, section 79D effectively provides that any excess of allowable deductions in a year of income over offshore banking income cannot be offset against other assessable income derived by the taxpayer in that year. By virtue of subsection 80(8) and section 160AFD, such a loss may only be carried forward and offset against offshore banking income derived in a later year.

9. Subsection 160AF(7) similarly divides foreign income into three classes for foreign tax credit purposes, namely, interest income, offshore banking income and all other income. Each class of income is quarantined for those purposes, with separate

foreign tax credit limits applicable to each.

10. The quarantining by subsection 160AF(7) of offshore banking income for foreign tax credit purposes is complemented by section 160AFAA which, broadly speaking, ensures that the identity of offshore banking income is not artificially changed into dividend income by avoidance arrangements, and by the preclusion under section 160AFE of the transfer by an OBU of any excess (unutilised) foreign tax credits in respect of offshore banking income to another resident company in the same group.

11. Given the abovementioned provisions relating specifically to OBUs and offshore banking income, it is considered that, apart from practical considerations, the general record keeping obligation imposed on a taxpayer by subsection 262A(1A) of the Assessment Act, and the related penalty provisions of sections 8L, 8Q, and 8T of the Taxation Administration Act 1953, require the keeping of separate accounts and records of transactions undertaken by an OBU.

COMMISSIONER OF TAXATION
16 November 1989