TD 93/131 - Income tax: Offshore Banking Units - does the OBU concessional tax regime apply to assessable income derived after 30 June 1992 where the OB activities were entered into by an OBU prior to 1 July 1992?

This cover sheet is provided for information only. It does not form part of *TD 93/131 - Income tax: Offshore Banking Units - does the OBU concessional tax regime apply to assessable income derived after 30 June 1992 where the OB activities were entered into by an OBU prior to 1 July 1992?*

This document has changed over time. This is a consolidated version of the ruling which was published on *13 October 2021*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

*[**Note:** This is a consolidated version of this document. Refer to the Legal Database (www.ato.gov.au/Law) to check its currency and to view the details of all changes.]*

Taxation Determination

Income tax: Offshore Banking Units - does the OBU concessional tax regime apply to assessable income derived after 30 June 1992 where the OB activities were entered into by an OBU prior to 1 July 1992?

1. Yes, provided other requirements of Division 9A of the *Income Tax Assessment Act 1936* are complied with and the offshore banking (OB) activities were entered into by an entity registered as an offshore banking unit (OBU)[1] at the time the activities were entered into.

2. Division 9A provides for concessional taxation of OB income of an OBU at an effective rate of 10%. OB income is derived from 'OB activities' which are defined in section 121D; for example, where an OBU borrows from non-residents and lends to non-residents. Subsection 121D(1) states that these activities must be **done by an OBU**. (See Taxation Determination TD 93/133 for an explanation of entitlement to concessional tax treatment before being registered as an OBU.)

3. The tax concessions for OB activities apply to assessable income derived and allowable deductions incurred after 30 June 1992. Section 121EG effectively provides that only 10/39ths of the OB income is included in assessable income and only 10/39ths of the OB deduction is an allowable deduction (10/33rds from 1 July 1993). Even if the activity is entered into by an OBU prior to 1 July 1992, the concessional tax regime applies where the income is derived and the deduction is incurred after 30 June 1992.

Example

A registered OBU borrowed funds offshore on 15 June 1992. The funds were subsequently on-lent to a non-resident. The transaction was correctly entered in the OBU's separate records which were maintained for OB borrowing and lending. Any assessable income derived after 30 June 1992 would qualify for concessional tax treatment.

Commissioner of Taxation

[1] The OBU regime is closed to new entrants from 14 September 2021. The concessional tax treatment for existing OBUs in respect of offshore activities will be removed effective from the 2023-24 income year. Interest payments paid on or after 1 January 2024 on offshore borrowings by OBUs will no longer be exempt from withholding tax.

8/7/93

FOI INDEX DETAIL: Reference No. I 1215519 Previously issued as

Draft TD 93/D31

Related Determinations: TD 93/133

Related Rulings:

Legislative Ref: ITAA Pt III Div 9A

Case Ref:

ATO Ref: NO 92/9494-5

ISSN 1038 - 8982