TD 93/133 - Income tax: Offshore Banking Units - is an OBU entitled to concessional tax treatment for income from OB activities which were entered into prior to the entity being registered as an OBU?

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

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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 - is an OBU entitled to concessional tax treatment for income from OB activities which were entered into prior to the entity being registered as an OBU?

1. No, because the activities are not offshore banking (OB) activities.

2. Division 9A of the *Income Tax Assessment Act 1936* concessionally taxes OB income of an OBU[1] at an effective rate of 10%. OB income is derived from 'OB activities' which are listed in section 121D.

3. To be an 'OB activity', the transaction must be made by an OBU. Section 128AE states that trading and savings banks, State banks, other financial institutions and wholly owned subsidiaries of banks which are OBUs may be registered as OBUs. Therefore, where the transaction is entered into before registration as an OBU, the activity is not an OB activity and income from that activity does not get the concessional rate of tax. It also follows that transactions entered into before registration cannot subsequently become OB activities when the entity is registered as an OBU.

Commissioner of Taxation
8/7/93

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Related Rulings:

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[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.