

TD 93/135 - Income tax: Offshore Banking Units - what is the effect of a transaction which falls within the definition of offshore banking activity, which is entered into by the part of an OBU which handles the domestic (as opposed to offshore) activities of the bank and which is accounted for in the domestic books?

 This cover sheet is provided for information only. It does not form part of *TD 93/135 - Income tax: Offshore Banking Units - what is the effect of a transaction which falls within the definition of offshore banking activity, which is entered into by the part of an OBU which handles the domestic (as opposed to offshore) activities of the bank and which is accounted for in the domestic books?*

 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 - what is the effect of a transaction which falls within the definition of offshore banking activity, which is entered into by the part of an OBU which handles the domestic (as opposed to offshore) activities of the bank and which is accounted for in the domestic books?

1. The transaction will be treated as a domestic transaction as long as it is recorded in the domestic book (DB) at the time it was entered into.
2. In this case any income from the activity in question will not be taxed at the concessional rate since it arises in carrying on the business of the domestic part.
3. Where this is done, the income will not be considered as attributable to non-offshore banking (OB) activities for purposes of the 10% of gross income test for the OBU¹ (the 'purity test'). Under that test where more than 10% of the assessable income from OB activities was derived by using non-OB money, the tax concession will not be available.
4. If the transaction is entered in the OB books and later transferred to the DB books, the 'purity test' will still apply. The fact that the transaction is ultimately recorded in the DB books is not relevant. To avoid the application of the 'purity test', the transaction must be entered in the DB books at the time of making the transaction. This does not mean, however, that where details of a transaction are entered into the wrong set of books by mistake that the error cannot be rectified.

Example 1:

An OBU borrows money offshore. Although, on the face of it, this constitutes an OB activity the OBU enters the transaction in the domestic book at the time of the borrowing as it intends to on-lend the funds to Australian residents.

Example 2:

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.

An OBU borrows money offshore which it enters into its OB books. It later decides to transfer it to its domestic books. Any income from this activity will be taxed at the normal rate of tax and the income will be taken into account for purposes of the 10% 'purity test'.

Commissioner of Taxation

8/7/93

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