


TD 93/203 - Income tax: Offshore Banking Units (OBU) - does share capital subscribed by a resident owner to its subsidiary, before that subsidiary becomes registered as an OBU, constitute "OBU resident-owner money"?

 This cover sheet is provided for information only. It does not form part of *TD 93/203 - Income tax: Offshore Banking Units (OBU) - does share capital subscribed by a resident owner to its subsidiary, before that subsidiary becomes registered as an OBU, constitute "OBU resident-owner money"?*

 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 (OBU) – does share capital subscribed by a resident owner to Its subsidiary, before that subsidiary becomes registered as an OBU, constitute "OBU resident-owner money"?

1. No. Section 121EC of the *Income Tax Assessment Act 1936* sets out the meaning of the term "OBU¹ resident-owner money". It is money 'paid to **the OBU by a resident owner of the OBU** by way of a subscription for, or a call on, shares in **the OBU**...' As the subsidiary is not an OBU at the time of the share subscription, section 121EC can have no application.
2. As share capital subscribed to a subsidiary before it becomes an OBU is not "OBU resident-owner money", section 121EK, which deems interest to apply to 90% of certain OBU resident-owner money has no application to that capital.
3. As the share subscription will constitute "non-OB money" as defined in section 121C, any assessable income derived from the use of that money cannot be "assessable OB income" for the purposes of subsection 121EE(2).

Commissioner of Taxation

28/10/93

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Related Determinations:

Related Rulings:

Legislative Ref: ITAA 121EC; ITAA 121EK; ITAA 121EE; ITAA 121C

Case Ref:

ATO Ref: NAT 93/3707-5

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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.