



TD 93/204 - Income tax: Offshore Banking Units (OBU) - where a non-resident has an Australian branch and an Australian subsidiary, and the subsidiary is registered as an OBU, does any share capital subscribed in the subsidiary by the parent fall within the definition of 'non-OB money'?

 This cover sheet is provided for information only. It does not form part of *TD 93/204 - Income tax: Offshore Banking Units (OBU) - where a non-resident has an Australian branch and an Australian subsidiary, and the subsidiary is registered as an OBU, does any share capital subscribed in the subsidiary by the parent fall within the definition of 'non-OB 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) – where a non-resident has an Australian branch and an Australian subsidiary, and the subsidiary is registered as an OBU, does any share capital subscribed in the subsidiary by the parent fall within the definition of 'non-OB money'?

1. No, unless the share capital is subscribed by the Australian branch.
2. The definition of '**non-OB money**' in section 121C of the *Income Tax Assessment Act 1936* excludes share capital subscribed in the OBU¹ by a non-resident, unless the payment of the subscription moneys occurred in the carrying on of a business in Australia by the non-resident, at or through a permanent establishment (eg a branch) of the non-resident.
3. It is quite clear from the wording of the definition that the only circumstances where share capital subscribed by a non-resident could constitute non-OB money would be where the funds flow directly from the Australian branch.

Commissioner of Taxation

28/10/93

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Related Determinations:

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.