


TD 93/205 - Income tax: Offshore Banking Units (OBU) - does trading in, or entering into commodity derivatives such as commodity futures, forwards, options and swaps constitute offshore banking (OB) activity for the purposes of section 121D?

 This cover sheet is provided for information only. It does not form part of *TD 93/205 - Income tax: Offshore Banking Units (OBU) - does trading in, or entering into commodity derivatives such as commodity futures, forwards, options and swaps constitute offshore banking (OB) activity for the purposes of section 121D?*

 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 trading in, or entering into commodity derivatives such as commodity futures, forwards, options and swaps constitute offshore banking (OB) activity for the purposes of section 121D?

1. Each of the commodity derivatives mentioned above is an '**eligible contract**', a term which is defined in section 121C of the *Income Tax Assessment Act 1936*. The definition has been drafted widely and there is nothing to suggest that only interest rate derivative products and loans of foreign currencies should fall within the definition.

2. Although trading with an offshore person in any eligible contract is an OB activity under subsection 121D(4) (as long as any amounts payable by non-residents are in non-Australian dollars), it should be noted that, under subsection 121D(5), if the OBU¹ enters into an eligible contract (as distinct from trading in it), an eligible contract does not include a loan contract.

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.