



TD 93/207 - Income tax: Offshore Banking Units (OBU) - if an OBU acts as funds manager for a trust with offshore investors and an Australian trustee, does the funds management role fall within the definition of an investment activity under subsection 121D(6)?

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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*

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) – if an OBU acts as funds manager for a trust with offshore investors and an Australian trustee, does the funds management role fall within the definition of an investment activity under subsection 121D(6)?

1. Yes. Subsection 121D(6) of the *Income Tax Assessment Act 1936* defines an investment activity as 'making, as broker or agent for, or trustee for the benefit of, an offshore person ... an investment with an offshore person ... or so making and managing such an investment ...'
2. The supplementary explanatory memorandum to *Taxation Laws Amendment Bill (No.) 4 1992* stated that the proposed investment activity provision as introduced to Parliament was to be amended 'to make it clear that an OBU¹ is acting in the capacity of a broker, agent or trustee in making or managing an investment for the benefit of an offshore person and not on its own behalf.'
3. It is, therefore, immaterial whether the trust has an Australian trustee, as long as the other requirements of the subsection are complied with.

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.