

***TD 93/208 - Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in subsection 121D(7) encompass the provision of financial knowledge and information to an offshore person?***

! This cover sheet is provided for information only. It does not form part of *TD 93/208 - Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in subsection 121D(7) encompass the provision of financial knowledge and information to an offshore person?*

! This document has changed over time. This is a consolidated version of the ruling which was published on *28 October 1993*

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).

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## Taxation Determination

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### **Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in subsection 121D(7) encompass the provision of financial knowledge and information to an offshore person?**

1. It would depend on the individual circumstances of each case.
2. The definition of advisory activity in subsection 121D(7) of the *Income Tax Assessment Act 1936* has been drafted widely, and as stated in the supplementary explanatory to *Taxation Laws Amendment Bill (No. 4) 1992*, 'the advice is not to be restricted as long as it does not involve any property or transactions in Australia. It may, for example, take the form of advice on financial structures, corporate strategic planning, defending takeovers etc as well as relevant investments.'
3. The explanatory memorandum also states that advisory activities are only to apply to 'fee income from advisory services for an offshore person'. It is clear that the concession does not extend to activities for which royalties could be expected to be paid, such as the provision of financial know-how and information. Nor would it extend to financial products, technology and systems or the provision of training in the use of the technology.

#### ***Example 1***

*An OBU has developed computer software to assist corporate treasuries to identify currency risks. It markets this software and system to an offshore person.*

*This would not qualify as an advisory activity for purposes of subsection 121D(7).*

#### ***Example 2***

*An OBU provides an offshore person with advice about leading and lagging to take advantage of expected exchange rate movements.*

*This would qualify as an advisory activity for the purposes of subsection 121D(7).*

**Commissioner of Taxation**

28/10/93

Related Determinations:

Related Rulings:

Subject Ref: Offshore banking; OBUs; advisory activity; royalties

Legislative Ref: ITAA 121D(7)

Case Ref:

ATO Ref: NAT 93/3707-5

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