



***TD 93/209 - Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in subsection 121D(7) encompass: advising offshore parties on offshore infrastructure financing; and advising lessors or lessees on leasing transactions, where both lessor and lessee are offshore persons and the leased asset is not located in Australia?***

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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](http://www.ato.gov.au/Law)) to check its currency and to view the details of all changes.]

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## Taxation Determination

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**Income tax: Offshore Banking Units - does the definition of advisory activity in subsection 121D(7) encompass:**

- **advising offshore parties on offshore infrastructure financing; and**
- **advising lessors or lessees on leasing transactions, where both lessor and lessee are offshore persons and the leased asset is not located in Australia?**

1. Yes. The definition of advisory activity in subsection 121D(7) of the *Income Tax Assessment Act 1936* has been drafted widely, and the supplementary explanatory memorandum to *Taxation Laws Amendment Bill (No.4)* makes it clear that the definition is intended to apply to fee income in relation to financial advice generally, provided there is no connection with Australia.

2. Rendering advice on leasing transactions or infrastructure financing to an offshore person, where all of the parties to the transaction are offshore persons, and none of the property that is subject to the transaction is located in Australia, quite clearly falls within the definition.

**Note:** 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.

**Commissioner of Taxation**

28/10/93

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Related Determinations:

Related Rulings:

Legislative Ref: ITAA 121D(7)

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