


TD 93/212 - Income tax: Offshore Banking Units (OBU) - are salaries and other operating expenses that are paid from non-OB money taken into account for purposes of the 'purity test' in section 121EH where the expenses are incurred in undertaking OB activities?

 This cover sheet is provided for information only. It does not form part of *TD 93/212 - Income tax: Offshore Banking Units (OBU) - are salaries and other operating expenses that are paid from non-OB money taken into account for purposes of the 'purity test' in section 121EH where the expenses are incurred in undertaking OB activities?*

 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) - are salaries and other operating expenses that are paid from non-OB money taken into account for purposes of the 'purity test' in section 121EH where the expenses are incurred in undertaking OB activities?

1. No. The purity test which provides for the loss of the concessional tax treatment where more than 10% of an OBU's¹ assessable OB income is derived from the use of non-OB money is only applicable where the use of non-OB money is in respect of OB activities of the OBU as set out in section 121D of the *Income Tax Assessment Act 1936*.
2. It is clear that the words 'money lent, invested or otherwise used in carrying on the activities ...' in subsection 121EE(2) and the words 'lending, investing or other use ...' in section 121EH both refer to OB activities undertaken with the purpose of deriving assessable income.
3. The expenses incurred in undertaking OB activities, would of course, be 'allowable OB deductions' and be subject to possible apportionment in terms of section 121EF.

Example

An OBU which has just been established has derived fee income of \$100 000 for advisory activities in terms of subsection 121D(7). The OBU did not receive a capital injection and it has not borrowed any funds from an offshore person. Accordingly all of its working capital is non-OB money.

The OBU incurred operating expenses of \$20 000 which exclusively related to the OB activity.

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.

The whole of the \$100 000 is assessable OB income in terms of subsection 121EE(2) and none of the money that has been expended has been lent, invested or otherwise used in carrying on the activities of the OBU. The OBU must treat the expenses, however, as an exclusive OB deduction of \$20 000 from its assessable OB income.

Assuming no other activities have taken place at this point of time the OBU has what is, essentially OB money of \$100 000 - that is, none of this money is non-OB money.

Commissioner of Taxation

28/10/93

FOI INDEX DETAIL: Reference No. I 1216463

Previously issued as Draft TD 93/D207

Related Determinations:

Related Rulings:

Legislative Ref: ITAA Pt III Div 9A ; ITAA 121EH

Case Ref:

ATO Ref: NAT 93/3707-5

ISSN 1038 - 8982