TD 93/215 - Income tax: Offshore Banking Units (OBU) - where an institution that is registered as an OBU lends money to another institution that is registered as an OBU, how do the counterparties know whether the loan qualifies as an offshore banking (OB) activity?

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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) - where an institution that is registered as an OBU lends money to another institution that is registered as an OBU, how do the counterparties know whether the loan qualifies as an offshore banking (OB) activity?

1.   To qualify as an OB activity the OBU[1] making the loan must provide a written statement to the OBU borrowing the funds that the money is, in effect, OB money - that is, that none of the money is non-OB money as defined in section 121C of the *Income Tax Assessment Act 1936*.

2.   There is no requirement for the OBU borrowing the funds to inform the lending OBU whether it intends to use those funds in OB activities. The lending OBU can assume that once it has given the appropriate notice to the borrowing OBU that it has completed an OB activity.

3.   Where an OBU lends money to another OBU, the transaction between the two OBUs would constitute an OB activity. Whether or not the borrowing OBU uses the funds in OB activities does not affect the situation. The subsequent use of the funds by the borrowing OBU will, of course, determine whether that activity will constitute OB activity.

4.   This determination also applies to other transactions between OBUs that involve the payment of any money.

Example 1

OBU 1 borrows money from OBU 2. OBU 2 provides written confirmation that none of the money is non-OB money. OBU 1 uses the money to earn OB income. The transaction between the two OBUs is an OB activity.

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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.

Example 2

OBU 1 borrows money from OBU 2. OBU 2 provides written confirmation that none of the money is non-OB money. OBU 1 uses the money to earn non-OB income. The transaction between the two OBUs is still an OB activity. However, the income earned by OBU 1 will be taxed at normal company tax rates.

Commissioner of Taxation
28/10/93