TD 93/241 - Income tax: Offshore banking units - if an OBU sells down or disposes of its interest in a loan which originally qualified as an OB activity, does any fee receivable constitute assessable OB income?

This cover sheet is provided for information only. It does not form part of *TD 93/241 - Income tax: Offshore banking units - if an OBU sells down or disposes of its interest in a loan which originally qualified as an OB activity, does any fee receivable constitute assessable OB income?*

This document has changed over time. This is a consolidated version of the ruling which was published on *13 October 2021*

Taxation Determination **TD 93/241**

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 - if an OBU sells down or disposes of its interest in a loan which originally qualified as an OB activity, does any fee receivable constitute assessable OB income?

1. Yes. Subsection 121EE(2) of the ITAA defines assessable OB income as:

   (a) income derived from OB activities, or
   (b) income which is included in assessable income because of such activities.

Fee income received from selling down a security will be included in assessable OB income under paragraph (b); that is, it is income derived because of OB activities.

However, the restrictions relating to the OB activity continue to apply and therefore the selling down or disposal of the interest in the loan must be to an offshore person.

Example:

An OBU[1] makes a loan to a New Zealand resident in US dollars. This activity satisfies the definition of borrowing or lending activity in subsection 121D(2). The OBU decides to sell down the loan to an offshore person. The fee income derived from this sale is assessable OB income because it is assessable income as a result of an OB activity.

Commissioner of Taxation
16/12/93

FOI INDEX DETAIL: Reference No.I 1216820 Previously issued as Draft 93/D274
Related Determinations: TD 93/136

[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.

Related Rulings:
Legislative Ref: ITAA 121EE(2)
Case Ref:
ATO Ref: NAT 93/5604-5

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