



TD 95/2 - Income tax: Offshore Banking Units (OBU): can foreign currency denominated assets and receivables generated from offshore banking (OB) activities be hedged into Australian dollars (AUD) and if so, would the AUD received from the forward sale constitute non-OB money?

 This cover sheet is provided for information only. It does not form part of *TD 95/2 - Income tax: Offshore Banking Units (OBU): can foreign currency denominated assets and receivables generated from offshore banking (OB) activities be hedged into Australian dollars (AUD) and if so, would the AUD received from the forward sale constitute non-OB money?*

 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): can foreign currency denominated assets and receivables generated from offshore banking (OB) activities be hedged into Australian dollars (AUD) and if so, would the AUD received from the forward sale constitute non-OB money?

1. Subsection 121D(8) of the *Income Tax Assessment Act 1936* (the Act) allows an OBU¹ to hedge interest rates and currency with non-residents (excluding Australian branches of non-residents), foreign branches of Australian residents and OBUs in order to manage exposure to risk from **borrowing or lending activities**. However, for the requirements of subsection 121D(8) to be satisfied, when the hedging contract is in AUD it must not be with a related person.
2. Any profits derived by the OBU from the hedging contract mentioned above would be assessable OB income in accordance with subsection 121EE(2) of the Act.
3. The actual receipt by the OBU of AUD under the forward sale would not constitute non-OBU money under section 121C because it is merely an exchange of currencies after the income has been derived from OB activities.
4. However, if an OBU hedges foreign currency denominated assets and receivables in respect of OB activities other than borrowing or lending, the hedge will not qualify as a hedging activity under subsection 121D(8). Nor will it qualify as a trading activity under subsection 121D(4) that would attract concessional tax treatment since the transaction would involve AUD.
5. Any profit derived from a hedge in respect of activities other than OB borrowing or lending would be assessable at normal company rates of tax (and any losses deductible at the full company rate).
6. Where a hedge is at arm's length and timing differences do not influence the result, the hedge should not yield an assessable or deductible amount (see Example).

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

As a result of trading activities, an OBU has a receivable of USD 1,000,000 and a payable of USD 900,000, both amounts due in 90 days time. Assuming the due and receivables/due and payable basis is used by the OBU for taxation purposes, the OBU will realise a net assessable amount of USD 100,000 in 90 days.

The OBU wishes to hedge the net exposure of USD 100,000 and sells forward for AUD, at an agreed rate with delivery in 90 days.

In 90 days time, the OBU receives a net amount of USD 100,000 in AUD, at the agreed rate. Given the matched position of the net exposure and the hedge, there will be no profit or loss consequences for taxation purposes. However, if there is a mis-match in the timing of the receivables/payables and the hedge payment, it may be that the different timing results in recognising the income or losses for taxation purposes.

Commissioner of Taxation

27/1/95

FOI INDEX DETAIL: Reference No. I 1218084

Previously issued as Draft TD 93/D212

Related Determinations:

Related Rulings:

Legislative Ref: ITAA 121C; ITAA 121D(4); ITAA 121D(8); ITAA 121EE(2)

Case Ref:

ATO Ref: NAT 93/3707-5; 95/461-6

ISSN 1038 - 8982