


***TD 93/D202 - Income tax: Offshore Banking Units (OBU) - if an OBU acts as funds manager for a trust with offshore investors and an Australian trustee, does the funds management role fall within the definition of an investment activity under subsection 121D(6)?***

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This document has been finalised by TD 93/207.



Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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### **Income tax: Offshore Banking Units (OBU) - if an OBU acts as funds manager for a trust with offshore investors and an Australian trustee, does the funds management role fall within the definition of an investment activity under subsection 121D(6)?**

1. Yes. Subsection 121D(6) of the *Income Tax Assessment Act 1936* defines an investment activity as 'making, as broker or agent for, or trustee for the benefit of, an offshore person ... an investment with an offshore person ... or so making and managing such an investment ...'
2. The supplementary explanatory memorandum to *Taxation Laws Amendment Bill (No.) 4 1992* stated that the proposed investment activity provision as introduced to Parliament was to be amended 'to make it clear that an OBU is acting in the capacity of a broker, agent or trustee in making or managing an investment for the benefit of an offshore person and not on its own behalf.'
3. It is, therefore, immaterial whether the trust has an Australian trustee, as long as the other requirements of the subsection are complied with.

**Commissioner of Taxation**

19/8/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: Offshore banking; OBUs; investment activity

Legislative Ref: ITAA 121D(6)

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