

TD 93/D205 - Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in section 121D(7) encompass advising an offshore debt investor in an offshore leveraged lease which has an Australian end-user?

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This document has been finalised by TD 93/210.

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.

Draft Taxation Determination

Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in section 121D(7) encompass advising an offshore debt investor in an offshore leveraged lease which has an Australian end-user?

1. No. Where the advice concerns the making of a particular investment such as a leverage lease, the advice must relate to the kinds of investment referred to in subsection 121D(6) of the *Income Tax Assessment Act 1936* - the investment activity provision.
2. If the leveraged lease involves the leasing of equipment, subsection 121D(6) requires the equipment to be located outside Australia if it is to qualify as an investment activity.
3. If the advisory work relating to the raising of offshore debt finance for the offshore lessor is part and parcel of the proposed arrangement, and that arrangement involves an Australian end-user, none of the advice qualifies as advisory activity for the purposes of subsection 121D(7).

Commissioner of Taxation
19/8/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: Offshore banking; OBUs; advisory activity; leveraged lease

Legislative Ref: ITAA 121D(7)

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