

TD 93/D207 - Income tax: Offshore Banking Units (OBU) - are salaries and other operating expenses that are paid from non-OB money taken into account for purposes of the 'purity test' in section 121EH where the expenses are incurred in undertaking OB activities?

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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) - are salaries and other operating expenses that are paid from non-OB money taken into account for purposes of the 'purity test' in section 121EH where the expenses are incurred in undertaking OB activities?

1. No. The purity test which provides for the loss of the concessional tax treatment where more than 10% of an OBU's assessable OB income is derived from the use of non-OB money is only applicable where the use of non-OB money is in respect of OB activities of the OBU as set out in section 121D of the *Income Tax Assessment Act 1936*.
2. It is clear that the words 'money lent, invested or otherwise used in carrying on the activities ...' in subsection 121EE(2) and the words 'lending, investing or other use ...' in section 121EH both refer to OB activities undertaken with the purpose of deriving assessable income.
3. The expenses incurred in undertaking OB activities, would of course, be 'allowable OB deductions' and be subject to possible apportionment in terms of section 121EF.

Example

An OBU which has just been established has derived fee income of \$100 000 for advisory activities in terms of subsection 121D(7). The OBU did not receive a capital injection and it has not borrowed any funds from an offshore person. Accordingly all of its working capital is non-OB money.

The OBU incurred operating expenses of \$20 000 which exclusively related to the OB activity.

The whole of the \$100 000 is assessable OB income in terms of subsection 121EE(2) and none of the money that has been expended has been lent, invested or otherwise used in carrying on the activities of the OBU. The OBU must treat the expenses, however, as an exclusive OB deduction of \$20 000 from its assessable OB income.

Assuming no other activities have taken place at this point of time the OBU has what is, essentially OB money of \$80 000 - that is, none of this money is non-OB money.

Commissioner of Taxation

19/8/93

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Related Determinations:

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