

TD 93/D208 - Income tax: Offshore Banking Units (OBU) - if an OBU earns fee income for completing an assignment (say advisory activities) on a success only basis, are expenses incurred on unsuccessful deals exclusive offshore banking (OB) deductions or general OB deductions?

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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) - if an OBU earns fee income for completing an assignment (say advisory activities) on a success only basis, are expenses incurred on unsuccessful deals exclusive offshore banking (OB) deductions or general OB deductions?

1. Expenses incurred on potential OB assignments should be classified as exclusive OB deductions where the expenses relate exclusively to OB activities, whether or not any OB income is derived from those particular activities. Similarly expenses incurred on potential non-OB assignments should be classified as exclusive non-OB deductions where the expenses relate exclusively to non-OB activities, whether or not any assessable income that is not assessable OB income is derived from those activities.
2. It is well established that as a general proposition, deductions are allowed or allowable under subsection 51(1) and other provisions of the *Income Tax Assessment Act 1936* in respect of expenditure incurred for the purposes of producing assessable income although the expenditure in question does not produce assessable income in that year.
3. When read in that context, it is clear that the legislature intended section 121EF to operate in respect of allowable OB deductions notwithstanding that no amount of assessable OB income was derived by an OBU in a year of income.

Example

An OBU incurs salary, travel and other expenses on developing the following projects:

Project 1 *tendering for an advisory role to the Malaysian government. Costs incurred \$100 000*

Project 2 *researching the viability of advising Japanese institutions on investment in a Chinese infrastructure project. Costs involved \$150 000.*

The OBU is only successful with project 2 with a fee of \$500 000 being derived.

The OBU is entitled to claim an exclusive OB deduction of \$250 000.

Commissioner of Taxation
19/8/93

Related Determinations:

Related Rulings:

Subject Ref: offshore banking, advisory activity, OBUs; exclusive OB deductions; general OB deductions

Legislative Ref: ITAA 121EF

Case Ref:

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