


***TD 93/D210 - Income tax: Offshore Banking Units (OBU) - where an institution that is registered as an OBU lends money to another institution that is registered as an OBU, how do the counterparties know whether the loan qualifies as an offshore banking (OB) activity?***

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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.

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## Draft Taxation Determination

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**Income tax: Offshore Banking Units (OBU) - where an institution that is registered as an OBU lends money to another institution that is registered as an OBU, how do the counterparties know whether the loan qualifies as an offshore banking (OB) activity?**

1. To qualify as an OB activity the OBU making the loan must provide a written statement to the OBU that borrows the funds that the money is, in effect, OB money - that is, that none of the money is non-OB money as defined in section 121C of the *Income Tax Assessment Act 1936*.
2. There is no requirement for the OBU that borrows the funds to inform the lending OBU whether it intends to use those funds in OB activities.
3. The transaction between the two OBUs would constitute an OB activity. Whether or not the borrowing OBU uses the funds in OB activities does not affect the situation. The subsequent use of the funds by the borrowing OBU will, of course, determine whether that activity will constitute OB activity.
4. This determination also applies to other transactions between OBUs that involve the payment of any money.

***Example 1***

*OBU 1 borrows money from OBU 2. OBU 2 provides written confirmation that none of the money is non-OB money. OBU 1 uses the money to earn OB income. The transaction between the two OBUs is an OB activity.*

***Example 2***

*OBU 1 borrows money from OBU 2. OBU 2 provides written confirmation that none of the money is non-OB money. OBU 1 uses the money to earn non-OB income. The transaction between the two OBUs is still an OB activity. However, the income earned by OBU 1 will be taxed at normal company tax rates.*

**Commissioner of Taxation**

19/8/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

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Legislative Ref: ITAA 121E

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