


# ***TD 93/D30 - Income tax: Offshore Banking Units - what is the meaning of 'guarantee-type activity' under subsection 121B(3)?***

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This document has been finalised by TD 93/129.

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 - what is the meaning of 'guarantee-type activity' under subsection 121B(3)?

1. 'Guarantee-type activities' are defined in subsection 121B(3) *Income Tax Assessment Act 1936* as activities involving fee income for

- . the provision of guarantees of letters of credit
- . the syndication of loans
- . the issue of performance bonds.

2. The meaning of guarantee-type activities is to be interpreted widely. All of the activities listed guarantee performance of a contract. In Lord Halsbury's Laws of England, 'guarantee' is defined as 'an accessory contract whereby the promisor undertakes to be answerable to the promisee for the debt, default or miscarriage of another person whose primary liability to the promisee must exist or be contemplated'. Activities which fall within this broad definition, but are not listed in subsection 121B(3), are to be treated as 'guarantee-type activities'. For example, as pointed out in the explanatory memorandum bid bonds would be covered by 'guarantee-type activity'.

**Commissioner of Taxation**

18/2/93

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Related Determinations:

Related Rulings:

Subject Ref: Offshore Banking Units

Legislative Ref: ITAA 121B

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