TD 93/D33 - Income tax: Offshore Banking Units - is an OBU entitled to concessional tax treatment for income from OB activities which were entered into prior to the entity being registered as an OBU?

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This document has been finalised by TD 93/133.

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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 - is an OBU entitled to concessional tax treatment for income from OB activities which were entered into prior to the entity being registered as an OBU?

1. No, because the activities are not offshore banking (OB) activities.

2. Division 9A of the *Income Tax Assessment Act 1936* concessionally taxes OB income of an OBU at an effective rate of 10%. OB income is derived from 'OB activities' which are listed in section 121D.

3. To be an 'OB activity', the transaction must be made by an OBU. Section 128AE states that trading and savings banks, State banks, other financial institutions and wholly owned subsidiaries of banks which are OBUs may be registered as OBUs. Therefore, where the transaction is entered into before registration as an OBU, the activity is not an OB activity and income from that activity does not get the concessional rate of tax. It also follows that transactions entered into before registration cannot subsequently become OB activity when the entiy is registered as an OBU.

Commissioner of Taxation
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