



TD 93/202 - Income tax: Offshore Banking Units (OBU) - can an OBU use offshore banking (OB) money (ie money that is not non-OB money) for purposes other than OB activities and replace those funds at a later date?

 This cover sheet is provided for information only. It does not form part of *TD 93/202 - Income tax: Offshore Banking Units (OBU) - can an OBU use offshore banking (OB) money (ie money that is not non-OB money) for purposes other than OB activities and replace those funds at a later date?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *13 October 2021*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

[*Note: This is a consolidated version of this document. Refer to the Legal Database (www.ato.gov.au/Law) to check its currency and to view the details of all changes.*]

Taxation Determination

Income tax: Offshore Banking Units (OBU) – can an OBU use offshore banking (OB) money (ie money that is not non-OB money) for purposes other than OB activities and replace those funds at a later date?

1. No. Although an OBU¹ can use OB money in any way it likes, for example, to pay expenses, dividends etc, it cannot 'loan' or transfer those funds to the domestic part of the bank, and have the domestic part, at a later date, repay the funds and then claim that the repayment constitutes OB money.

2. A financial institution that is registered as an OBU may need funding to meet operating expenses, tax payments, and the like. The OBU is free to use any part of its OB money, say retained OB profits, to meet these expenses. However, once those funds have been expended they can only be replaced by funds which are OB money, that is:

- money received by the OBU in carrying on OB activities;
- OBU resident-owner money; or
- money paid to the OBU by a non-resident by way of subscription for, or a call on, shares in the OBU.

Commissioner of Taxation

28/10/93

FOI INDEX DETAIL: Reference No. I 1216366

Previously issued as Draft TD 93/D196

Related Determinations:

Related Rulings:

Legislative Ref: ITAA 121C

Case Ref:

ATO Ref: NAT 93/3707-5

ISSN 1038 - 8982

¹ The OBU regime is closed to new entrants from 14 September 2021. The concessional tax treatment for existing OBUs in respect of offshore activities will be removed effective from the 2023-24 income year. Interest payments paid on or after 1 January 2024 on offshore borrowings by OBUs will no longer be exempt from withholding tax.