



TD 93/205 - Income tax: Offshore Banking Units (OBU) - does trading in, or entering into commodity derivatives such as commodity futures, forwards, options and swaps constitute offshore banking (OB) activity for the purposes of section 121D?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *28 October 1993*

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).

Taxation Determination

Income tax: Offshore Banking Units (OBU) - does trading in, or entering into commodity derivatives such as commodity futures, forwards, options and swaps constitute offshore banking (OB) activity for the purposes of section 121D?

1. Each of the commodity derivatives mentioned above is an '**eligible contract**', a term which is defined in section 121C of the *Income Tax Assessment Act 1936*. The definition has been drafted widely and there is nothing to suggest that only interest rate derivative products and loans of foreign currencies should fall within the definition.

2. Although trading with an offshore person in any eligible contract is an OB activity under subsection 121D(4) (as long as any amounts payable by non-residents are in non-Australian dollars), it should be noted that, under subsection 121D(5), if the OBU enters into an eligible contract (as distinct from trading in it), an eligible contract does not include a loan contract.

Commissioner of Taxation

28/10/93

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