



TD 93/208 - Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in subsection 121D(7) encompass the provision of financial knowledge and information to an offshore person?

 This cover sheet is provided for information only. It does not form part of *TD 93/208 - Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in subsection 121D(7) encompass the provision of financial knowledge and information to an offshore person?*

 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) – does the definition of advisory activity in subsection 121D(7) encompass the provision of financial knowledge and information to an offshore person?

1. It would depend on the individual circumstances of each case.
2. The definition of advisory activity in subsection 121D(7) of the *Income Tax Assessment Act 1936* has been drafted widely, and as stated in the supplementary explanatory to *Taxation Laws Amendment Bill (No. 4) 1992*, 'the advice is not to be restricted as long as it does not involve any property or transactions in Australia. It may, for example, take the form of advice on financial structures, corporate strategic planning, defending takeovers etc as well as relevant investments.'
3. The explanatory memorandum also states that advisory activities are only to apply to 'fee income from advisory services for an offshore person'. It is clear that the concession does not extend to activities for which royalties could be expected to be paid, such as the provision of financial know-how and information. Nor would it extend to financial products, technology and systems or the provision of training in the use of the technology.

Note: 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.

Example 1

An OBU has developed computer software to assist corporate treasuries to identify currency risks. It markets this software and system to an offshore person.

This would not qualify as an advisory activity for purposes of subsection 121D(7).

Example 2

An OBU provides an offshore person with advice about leading and lagging to take advantage of expected exchange rate movements.

This would qualify as an advisory activity for the purposes of subsection 121D(7).

Commissioner of Taxation

28/10/93

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Related Determinations:

Related Rulings:

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