


TD 93/214 - Income tax: Offshore Banking Units (OBU) - must an OBU enter details of expenditure that it intends to claim as allowable offshore banking (OB) deductions or allowable non-OB deductions in its relevant books of account at the time of incurring that expenditure?

 This cover sheet is provided for information only. It does not form part of *TD 93/214 - Income tax: Offshore Banking Units (OBU) - must an OBU enter details of expenditure that it intends to claim as allowable offshore banking (OB) deductions or allowable non-OB deductions in its relevant books of account at the time of incurring that expenditure?*

 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) - must an OBU enter details of expenditure that it intends to claim as allowable offshore banking (OB) deductions or allowable non-OB deductions in its relevant books of account at the time of incurring that expenditure?

1. Yes, where the expenditure is to be claimed as either an exclusive OB deduction or an exclusive non-OB deduction.
2. However, where the expenditure relates to both OB and non-OB activities it will constitute either a general OB deduction or an apportionable OB deduction. The expenditure must, therefore, be apportioned between OB and non-OB activities using the formulas set out in subsection 121EF(4) and (5) of the *Income Tax Assessment Act 1936* which are based on the OBU's¹ assessable income for the year of income.
3. As the assessable income of the OBU will not be known until the end of the year of income, the OBU will be unable to enter details of general or apportionable expenditure until balance date. All expenditure of this type could, therefore, be recorded in the general ledger of the company. When the OBU's adjusted assessable OB income and adjusted total assessable income are determined at the time of preparing the company's taxation return, the correct apportionment of expenses can be made in the taxation return.
4. Alternatively, all expenditure of this type could be separately identified and recorded as potential general and apportionable OB deductions until the OBU's adjusted assessable OB income and adjusted total assessable income are determined.

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.

Example

An OBU derives a fee of \$100 000 for providing advice to an offshore person in accordance with subsection 121D(7). It incurred exclusive OB expenditure of \$30 000 and general expenditure of \$10 000.

The fee and exclusive OB expenditure should be entered in the separate OB books of account at the time the moneys were derived and incurred respectively. The general expenditure may be recorded separately, perhaps in a special register kept for this purpose, or in the company's general ledger and then apportioned in the tax return.

Commissioner of Taxation

28/10/93

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Related Determinations:

Related Rulings:

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