

TD 93/217 - Income tax: Offshore Banking Units (OBU) - what is the effect of funding an offshore banking (OB) activity with both OB and non-OB money?

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 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) - what is the effect of funding an offshore banking (OB) activity with both OB and non-OB money?

1. The profits resulting from funding an OB activity with both OB and non-OB money constitute OB money; that is, none of the money is non-OB money as defined in section 121C of the *Income Tax Assessment Act 1936*. However, any profits must be apportioned between 'assessable OB income' and other assessable income.
2. Assessable OB income is defined in subsection 121EE(2) and is the total of the assessable income derived by the OBU¹ from OB activities, or included in the assessable income because of such activities, other than income derived from the use of non-OB money. It is only this income which is taxed at the concessional rate. Income derived from non-OB money is taxed at the normal company rate. The profits from the OB activity, therefore, must be apportioned according to the proportion of OB and non-OB money used to generate the income. All of the profits, however, do constitute OB-money and may be used to generate concessional tax treatment from a subsequent OB activity.
3. The use of non-OB money, however, will be taken into consideration for purposes of the 'purity test' in section 121EH. Where more than 10% of the assessable income from OB activities is derived from non-OB money, concessional tax treatment will not apply to any of the income.

Example:

An OBU funds an OB activity with \$40 000 of non-OB money and \$60 000 of OB money. The activity generates income of \$10 000 which will be taxed in the following manner:

$$\underline{\$40\,000} \quad \times \quad \$10\,000 \quad = \quad \$4\,000$$

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.

\$100 000

\$4 000 taxed at 39%

\$60 000

x

\$10 000

=

\$6 000

\$100 000

\$6 000 taxed at 10%

The income of \$10 000 is OB money and may be used in subsequent OB activities to generate OB income.

In this example, if the above activity represented all of the OBU's assessable income, it would fail the "purity test" and all of the assessable income would be taxable at normal company rates of tax.

Commissioner of Taxation

28/10/93

FOI INDEX DETAIL: Reference No. I 1216529

Previously issued as Draft TD 93/D216

Related Determinations:

Related Rulings:

Legislative Ref: ITAA Pt III Div 9A

Case Ref:

ATO Ref: NAT 93/3707-5

ISSN 1038 - 8982