



TD 95/1 - Income tax: Offshore Banking Units (OBU): what is the effect of converting a profit from offshore banking (OB) activities denominated in a foreign currency into Australian currency in an arm's length transaction with a separate Australian counterparty or with another division of the entity of which the OBU forms part?

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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 converting a profit from offshore banking (OB) activities denominated in a foreign currency into Australian currency in an arm's length transaction with a separate Australian counterparty or with another division of the entity of which the OBU forms part?

1. The profits of the OBU¹ would retain their character as OB money (that is, money that is not non-OB money as defined in section 121C of the *Income Tax Assessment Act 1936* (the Act)). The fact that they have been translated into a different currency does not affect their status.
2. The arm's length transaction does not constitute an OB activity under section 121D of the Act. In particular, the transaction is not caught as a trading activity as defined in subsection 121D(4) because it involves Australian currency. This is the case whether the currency sale is with an Australian counterparty or with the domestic part of the same entity.
3. Where the arms length transaction involves the OBU selling currency to a separate Australian counterparty, a profit or loss may occur. In this case the ordinary rules on currency conversions would apply. However, in this case, the 'purity test', which under section 121EH provides for the loss of concessional tax treatment in certain circumstances, would have no application because any profit on conversion would not constitute 'assessable OB income' in terms of subsection 121EE(2).
4. Where the transaction is with the domestic part of the entity there can be no assessable income because the OBU and the domestic part of the bank form a single entity. Section 121EB (which treats permanent establishments as separate persons for the purposes of OB activities) is not relevant because the conversion of the currency does not constitute an OB activity as defined in section 121D.

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 1

An OBU makes a profit of \$US 100,000 from borrowing and lending activities in accordance with subsection 121D(2). The OBU sells the US dollars to the domestic part of the same entity at an arm's length price. The entity has not derived any assessable income from the currency conversion.

Example 2

An OBU derives fee income of \$US 200,000 from investment activity in accordance with subsection 121D(6). Some months later the OBU sells the US dollars to an unrelated Australian counterparty. By that time the US dollar had appreciated by 10%. The profit on conversion would be taxable at normal company tax rates as it is not assessable OB income.

Commissioner of Taxation

27/1/95

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Related Determinations:

Related Rulings:

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