TD 93/D211 - 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 an Australian counterparty or with another division of the entity of which the OBU forms part?

This document has been finalised by TD 95/1.

Australian Taxation Office

Taxation Determination TD 93/D211

Draft 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 an Australian counterparty or with another division of the entity of which the OBU forms part?

1. The arm's length currency sale does not constitute an OB activity under subsection 121D(4) of the *Income Tax Assessment Act 1936* 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.

2. These funds would retain their character as OB money (that is, money that is not non-OB money as defined in section 121C). The fact that they have been translated into a different currency does not affect their status.

3. Where the currency sale 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 OB activity.

4. Where an OBU sells 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).

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 not assessable OB income.

Commissioner of Taxation
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