


***TD 93/D36 - Income tax: Offshore Banking Units - if a loan entered into by a foreign branch of an Australian resident bank is assigned to the Australian OBU head office, does this constitute an OB activity?***

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This document has been finalised by TD 93/136.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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### **Income tax: Offshore Banking Units - if a loan entered into by a foreign branch of an Australian resident bank is assigned to the Australian OBU head office, does this constitute an OB activity?**

1. Yes, provided the loan contract is traded in accordance with subsection 121D(4) and not merely transferred.
2. Section 121EB of the *Income Tax Assessment Act 1936* treats the overseas permanent establishment as a separate person from the Australian part of the bank conducting offshore banking. Therefore, a loan contract may be traded in accordance with subsection 121D(4) provided any amounts payable under the loan contract are payable by non-residents and are not payable in Australian currency.
3. Accordingly, all or part of a portfolio of offshore loans can be transferred provided the transfer takes the form of a sale. The sale could entail an assignment or novation of the loan for tax purposes.

#### **Example**

*An Australian OBU buys a portfolio of loans from its Singapore branch which is an ACU (an Asian Currency Unit which is essentially a Singaporean OBU). The sale entails an assignment for tax purposes of non-resident parties to the loan contracts and any amounts payable are not denominated in Australian dollars. The transaction would be an OB activity in terms of section 121D.*

#### **Commissioner of Taxation**

18/3/93

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Related Determinations:

Related Rulings:

Subject Ref: Offshore Banking Units

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