



Notice of Rulings 13 October 2021

The Commissioner of Taxation, Chris Jordan, gives notice by notifiable instrument under subsection 358-5(4) of Schedule 1 to the *Taxation Administration Act 1953* of the following public rulings, copies of which can be obtained from ato.gov.au/law

NOTICE OF RULINGS		
Ruling number	Subject	Brief description
TD 2021/7	Income tax: aggregated turnover – calculating the annual turnover of a connected entity or affiliate with a different accounting period to you	This Ruling supports entities in calculating their aggregated turnover for an income year where the accounting period of entities connected with them, or that are their affiliates, are not aligned. This Ruling applies both before and after its date of issue.
CR 2021/67	Primewest (HICT) Pty Ltd – return of capital	This Ruling sets out the income tax consequences for Primewest (HICT) Pty Ltd shareholders who received a return of capital from Home Investment Consortium Trust on 8 January 2021. This Ruling applies from 1 July 2020 to 30 June 2021.
CR 2021/68	FAR Ltd – return of capital	This Ruling sets out the income tax consequences for FAR Ltd shareholders who received a return of capital payment on 28 September 2021. This Ruling applies from 1 July 2021 to 30 June 2022.
CR 2021/69	Latitude Group Holdings Limited – Latitude Capital Notes	This Ruling sets out the income tax consequences for entities who subscribed for and acquired Latitude Capital Notes issued by Latitude Group Holdings Limited. This Ruling applies from 1 July 2021 to 30 June 2027.

NOTICE OF ADDENDA		
Ruling number	Subject	Brief description
TD 93/131	Income tax: Offshore Banking Units – does the OBU concessional tax regime apply to assessable income derived after 30 June 1992 where the OB activities were entered into by an OBU prior to 1 July 1992?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.

TD 93/132	Income tax: Offshore Banking Units – if an entity is registered as an OBU and that entity conducts both offshore banking activities and domestic banking activities, can the OBU trade in foreign currency with the domestic part of the bank (the 'domestic part')?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/133	Income tax: Offshore Banking Units – is an OBU entitled to concessional tax treatment for income from OB activities which were entered into prior to the entity being registered as an OBU?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/134	Income tax: Offshore Banking Units – can a sub-subsidiary of a bank be registered as an OBU?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/135	Income tax: Offshore Banking Units – what is the effect of a transaction which falls within the definition of offshore banking activity, which is entered into by the part of an OBU which handles the domestic (as opposed to offshore) activities of the bank and which is accounted for in the domestic books?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/136	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?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/202	Income tax: Offshore Banking Units (OBU) – can an OBU use offshore banking (OB) money (ie money that is not non-OB money) for purposes other than OB activities and replace those funds at a later date?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.

TD 93/203	Income tax: Offshore Banking Units (OBU) – does share capital subscribed by a resident owner to its subsidiary, before that subsidiary becomes registered as an OBU, constitute "OBU resident-owner money"?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/204	Income tax: Offshore Banking Units (OBU) – where a non-resident has an Australian branch and an Australian subsidiary, and the subsidiary is registered as an OBU, does any share capital subscribed in the subsidiary by the parent fall within the definition of 'non-OB money'?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/205	Income tax: Offshore Banking Units (OBU) – does trading in, or entering into commodity derivatives such as commodity futures, forwards, options and swaps constitute offshore banking (OB) activity for the purposes of section 121D?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/206	Income tax: Offshore Banking Units (OBU) – if an OBU carries on a business of trading in shares or debt instruments, such that the trading is an offshore banking (OB) activity for the purposes of subsection 121D(1), are dividends and interest derived from holding the shares or debt instruments assessable OB income?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/207	Income tax: Offshore Banking Units (OBU) – if an OBU acts as funds manager for a trust with offshore investors and an Australian trustee, does the funds management role fall within the definition of an investment activity under subsection 121D(6)?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/208	Income tax: Offshore Banking Units (OBU) – does the definition of advisory activity in subsection 121D(7) encompass the provision of financial knowledge and information to an offshore person?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.

TD 93/209	<p>Income tax: Offshore Banking Units (OBU) – does the definition of advisory activity in subsection 121D(7) encompass:</p> <ul style="list-style-type: none"> •advising offshore parties on offshore infrastructure financing; and •advising lessors or lessees on leasing transactions, where both lessor and lessee are offshore persons and the leased asset is not located in Australia? 	<p>This Ruling is amended to reflect that the Offshore Banking Unit (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.</p> <p>This Addendum applies from 13 September 2021.</p>
TD 93/210	<p>Income tax: Offshore Banking Units (OBU) – does the definition of advisory activity in section 121D(7) encompass advising an offshore debt investor or offshore borrower in an offshore leveraged lease which has an Australian end-user?</p>	<p>This Ruling is amended to reflect that the Offshore Banking Unit (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.</p> <p>This Addendum applies from 13 September 2021.</p>
TD 93/211	<p>Income tax: Offshore Banking Units (OBU) – where an OBU provides the services of its employees to a non-resident subsidiary to assist the subsidiary in advising offshore clients on offshore financial matters, can fees charged by the OBU to the subsidiary qualify as assessable OB income?</p>	<p>This Ruling is amended to reflect that the Offshore Banking Unit (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.</p> <p>This Addendum applies from 13 September 2021.</p>
TD 93/212	<p>Income tax: Offshore Banking Units (OBU) – are salaries and other operating expenses that are paid from non-OB money taken into account for purposes of the 'purity test' in section 121EH where the expenses are incurred in undertaking OB activities?</p>	<p>This Ruling is amended to reflect that the Offshore Banking Unit (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.</p> <p>This Addendum applies from 13 September 2021.</p>
TD 93/213	<p>Income tax: Offshore Banking Units (OBU) – if an OBU earns fee income for completing an assignment (say advisory activities) on a success only basis, are expenses incurred on unsuccessful deals exclusive offshore banking (OB) deductions or general OB deductions?</p>	<p>This Ruling is amended to reflect that the Offshore Banking Unit (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.</p> <p>This Addendum applies from 13 September 2021.</p>
TD 93/214	<p>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?</p>	<p>This Ruling is amended to reflect that the Offshore Banking Unit (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.</p> <p>This Addendum applies from 13 September 2021.</p>

TD 93/215	Income tax: Offshore Banking Units (OBU) – where an institution that is registered as an OBU lends money to another institution that is registered as an OBU, how do the counterparties know whether the loan qualifies as an offshore banking (OB) activity?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/216	Income tax: Offshore Banking Units (OBU) – is an OBU entitled to concessional tax treatment for income derived on a success only basis from offshore banking (OB) advisory activities which were entered into prior to the entity being registered as an OBU?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
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?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 93/241	Income tax: Offshore banking units – if an OBU sells down or disposes of its interest in a loan which originally qualified as an OB activity, does any fee receivable constitute assessable OB income?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
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?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.
TD 95/2	Income tax: Offshore Banking Units (OBU): can foreign currency denominated assets and receivables generated from offshore banking (OB) activities be hedged into Australian dollars (AUD) and if so, would the AUD received from the forward sale constitute non-OB money?	This Ruling is amended to reflect that the Offshore Banking Unit (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. This Addendum applies from 13 September 2021.

TD 2010/12	Income tax: can Part IVA of the <i>Income Tax Assessment Act 1936</i> apply to an asymmetric swap scheme?	<p>This Ruling is amended to reflect that the Offshore Banking Unit (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.</p> <p>This Addendum applies from 13 September 2021.</p>
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