

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part 4VAAA 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).

Taxation Determination

Income tax: can income from the sale of abalone taken by a person who is licensed to take and sell the abalone under the *Fisheries Act 1968 (Vic)* be assessable income of a partnership, company, trust, or another individual?

1. Yes.
2. An abalone licence entitles the holder to take abalone for sale. Under subsection 13(1) of the *Fisheries Act 1968* only a natural person is allowed to be the holder of an abalone licence, however, the licence holder may not be the owner of that licence.
3. The owner(s) of the licence can be the licence holder, another individual, a partnership, a trustee, or company.
4. The assessability of income from the sale of abalone taken by a licensed abalone diver will depend on the ownership of the abalone licence, and any income sharing agreement between the licence holder and the licence owner(s).

Example

John Shucking is a Victorian licensed abalone diver. The owner of his licence is John Shucking (Abalone) Pty. Ltd. and John is an employee of this company.

Income from the sale of abalone taken by John is included in the income tax returns lodged for John Shucking (Abalone) Pty. Ltd., and John is paid a salary as an employee of this company.

Commissioner of Taxation

29/04/93

FOI INDEX DETAIL: Reference No. I 1214771

Previously issued as Draft TD92/D229

Related Determinations:

Related Rulings:

Subject Ref: assessable income; income splitting; income derived; sale of abalone; abalone

Legislative Ref: ITAA 6(1); ITAA 19; ITAA 25(1); *Fisheries Act 1968 (Vic)* 13(1); *Fisheries Act 1968 (Vic)* 13(5); *Fisheries Act 1968 (Vic)* 13D(1)

Case Ref: *Pennington v McGoven* 1987 SASR 27, *Kelly v Kelly* 1990 92 ALR 74, *Richard De Tozser v Tasmanian Seafoods Pty Ltd* A86/1992 (Tasmanian Supreme Court),

ATO Ref: BXH0007