


TD 2017/7 - Income tax: can freshwater crayfish be trading stock and, if so, can you use a reasonable estimate of the number of freshwater crayfish to value them under Subdivision 70-C of the Income Tax Assessment Act 1997 ?

 This cover sheet is provided for information only. It does not form part of *TD 2017/7 - Income tax: can freshwater crayfish be trading stock and, if so, can you use a reasonable estimate of the number of freshwater crayfish to value them under Subdivision 70-C of the Income Tax Assessment Act 1997 ?*



Taxation Determination

Income tax: can freshwater crayfish be trading stock and, if so, can you use a reasonable estimate of the number of freshwater crayfish to value them under Subdivision 70-C of the *Income Tax Assessment Act 1997*?

❶ This publication provides you with the following level of protection:

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. Yes, freshwater crayfish are 'trading stock' as defined in subsection 70-10(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)¹ because they are livestock.
2. You may use a reasonable estimate of the number of freshwater crayfish to value your trading stock on hand at the end of the financial year, based on:
 - (a) the weight of the freshwater crayfish on hand to specific volume of water, or
 - (b) the number of original parent stock and any introduced parent stock.
3. The basis of estimating the closing number of freshwater crayfish is one that is most likely to reflect the quantity of freshwater crayfish you have on hand. The approach should not be changed unless you can demonstrate that another approach would be more accurate.

¹ All legislative references in this Taxation Determination are to the ITAA 1997, unless otherwise indicated.

Date of effect

4. This Determination applies to income years commencing both before and after its date of issue. This Determination will not apply to taxpayers to the extent that it conflicts with dispute settlement terms agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

29 March 2017

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

Meaning of 'trading stock'

5. The term 'trading stock' includes 'live stock' at paragraph 70-10(1)(b) of the ITAA 1997.

6. 'Live stock' is defined in subsection 995-1(1) and excludes 'animals used as beasts of burden or working beasts in a business other than a primary production business'. This definition is essentially unchanged from the former definition of 'live stock' in subsection 6(1) of the *Income Tax Assessment Act 1936*.

7. In the context of the former definition, the High Court considers that, by inference, 'live stock' includes all animals used in a business of primary production.² Freshwater crayfish, being crustaceans, are animals.³

8. A 'primary production business' includes a business of 'maintaining animals for the purpose of selling them or their bodily produce (including natural increase)'.⁴

9. A business of keeping and raising freshwater crayfish for sale falls within the definition of 'primary production business'.

10. Accordingly, freshwater crayfish produced for sale are 'live stock' and fall within the definition of 'trading stock'.

Quantifying freshwater crayfish on hand

11. We recognise that quantifying freshwater crayfish on hand at the end of the financial year is difficult because the population fluctuates.⁵

12. We will therefore accept the following industry-based methods of quantifying freshwater crayfish on hand at the end of a financial year as a reasonable basis to value trading stock for the purposes of section 70-35:

- an estimate using a specific weight of livestock in a given volume of water, applying that ratio to the whole pond or dam, and valuing on the total estimated number, or
- valuing the number of original parent stock, plus any introduced parent stock, and adopting this total value as the closing stock on hand at each year end for the life of the farm or hatchery.

² *Federal Commissioner of Taxation v. Wade* (1951) 84 CLR 105 at 110, per Dixon and Fullagar JJ.

³ *The Australian Oxford Dictionary*, 2004, 2nd edn, Oxford University Press, Melbourne defines 'crayfish' as:

1. a small lobster-like freshwater crustacean.

The dictionary also defines 'crustacean' as:

1. any arthropod of the class Crustacea, having a hard shell and usually aquatic.

The dictionary further defines 'arthropod' as:

1. an invertebrate animal of the phylum Arthropoda, with a segmented body, jointed limbs, and an external skeleton.

⁴ Dictionary at subsection 995-1(1).

⁵ Department of Primary Industries 2016, *Freshwater crayfish – aquatic prospects*, Department of Primary Industries.

13. You must adopt the approach most likely to reflect the quantity of freshwater crayfish you have on hand. The approach should not be changed unless you can demonstrate that another approach would be more accurate.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Previous Rulings/Determinations:

IT 2667

Legislative references:

- ITAA 1997
- ITAA 1997 70-10(1)
- ITAA 1997 Subdiv 70-C
- ITAA 1997 995-1(1)
- ITAA 1936 6(1)

Cases relied on:

- Federal Commissioner of Taxation v. Wade (1951) 84 CLR 105; (1951) 25 ALJ 626; (1951) 9 ATD 337; [1951] ALR 962; [1951] HCA 66

Other references:

- The Australian Oxford Dictionary, 2004, 2nd edn, Oxford University Press, Melbourne

ATO references

NO: 1-A8ODO8A

ISSN: 2205-6211

BSL: TCN

ATOlaw topic: Income tax ~~ Assessable income ~~ Other types of income ~~ Trading stock

**© AUSTRALIAN TAXATION OFFICE FOR THE
COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).