TD 93/39 - Income tax: is the business of 'beach worming' primary production under the definition in subsection 6(1) of the Income Tax Assessment Act 1936?

This cover sheet is provided for information only. It does not form part of *TD 93/39 - Income tax: is the business of 'beach worming' primary production under the definition in subsection 6(1) of the Income Tax Assessment Act 1936?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of PartáIVAAA 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: is the business of 'beach worming' primary production under the definition in subsection 6(1) of the *Income Tax Assessment Act 1936?*

1. No. 'Beach worming' is not primary production as defined in subsection 6(1). Production from beach worming does not result directly from:-
   (a) the cultivation of land;
   (b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce;
   (c) fishing operations;
   (d) forest operations; or
   (e) horticulture.

2. Worms are, by definition, 'animals' (see *Macquarie Dictionary*). Only animals that are domesticated or tamed are within the definition of primary production and animals '*ferae naturae*' (of a wild nature) are not (*Burnside & Marrakai Ltd v. FC of T* (1957) 11 ATD 181). A wild animal loses its character of being *ferae naturae* when its possessor has such power over it that it is always under some form of restraint and cannot follow its natural propensities completely (e.g. hived bees) (per Wright J., *R v. Philbey* 48 S.J 216). The 'maintenance of animals' requires the primary producer to have ownership and possession of the animals or to be their keeper, but nobody has possession or full ownership of animals of a wild nature until they are taken (*Burnside*). Beach worming does not fall within the defination of primary production because beachworms are animals *ferae naturae.* In addition, nobody can be said to have full ownership or possession of beach worms until they are taken.

3. 'Fishing operations' is defined in subsection 6(1) to include operations conducted for the purposes of a business which directly relate to the taking or catching of fish, turtles, dugong, crustacea, oysters and shellfish. We consider that the catching of worms for the purpose of selling the worms to another person does not constitute such operations.

4. Holding a fishing licence, which entitles a person to carry on a 'beach worming' business, does not bring this activity within the definition of 'fishing operations'.

Commissioner of Taxation
11/03/93

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Related Determinations:
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Subject Ref: beach worming; primary production.
Legislative Ref: ITAA 6(1) .
Case Ref: Burnside & Marrakai Ltd v. FC of T (1957) 11ATD 181; R v. Philbey 48 S.J.216..
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