



TD 2007/D7 - Income tax: are bees kept for use in a honey production business trading stock as defined in section 70-10 of the Income Tax Assessment Act 1997?

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This document has been finalised by TD 2008/26.

 There is a Compendium for this document: **TD 2008/26EC** .



Draft Taxation Determination

Income tax: are bees kept for use in a honey production business trading stock as defined in section 70-10 of the *Income Tax Assessment Act 1997*?

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

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation 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. You can rely on this publication (excluding appendixes) to provide you with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Ruling

1. Yes, bees kept for use in a honey production business are trading stock as defined in section 70-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)¹ because they are livestock.

Date of effect

2. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

2 May 2007

¹ All legislative references are to the ITAA 1997 unless otherwise stated.

Appendix 1 – Explanation

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

Explanation

3. Section 70-10 states that trading stock includes:
 - (a) anything produced, manufactured or acquired that is held for purposes of manufacture, sale or exchange in the ordinary course of a business; and
 - (b) live stock.
4. The use of the word ‘includes’ in the definition of trading stock in section 70-10 signifies that a thing may be trading stock for the purposes of the provision if it is trading stock within the ordinary meaning of that term or it meets the requirements in paragraphs 70-10(a) or 70-10(b).²
5. The term ‘live stock’ is defined in subsection 995-1(1) of the ITAA 1997 to ‘not include animals used as beasts of burden or working beasts in a business other than a primary production business’. The High Court in *Federal Commissioner of Taxation v. Wade* (1951) 84 CLR 105; (1951) 9 ATD 337 considered this definition of ‘livestock’ when it was then found in subsection 6(1) of the *Income Tax Assessment Act 1936*. Dixon and Fullagar JJ stated that the definition, by inference, makes it clear that all animals used in a primary production business are included as live stock.³
6. Bees, being insects, are animals.⁴ Paragraph (b) of the definition of ‘primary production business’ in subsection 995-1(1) includes as a primary production business a business of ‘maintaining animals for the purpose of selling them or their bodily produce (including natural increase)’. Honey is the bodily produce of bees.⁵ A business of keeping bees for the production and sale of honey is a ‘primary production business’ as defined in subsection 995-1(1) and the bees kept for use in that honey production business are livestock.
7. As bees kept for use in a honey production business are livestock, they are trading stock as defined in section 70-10.⁶

² See Stephen J’s observations in *FC of T v. St Hubert’s Island Pty Ltd* (1978) 138 CLR 210 at 216; 78 ATC 4104 at 4106; 8 ATR 452 at 454-455, and also see *FCT v. Suttons Motors (Chullora) Wholesale Pty Ltd* (1985) 157 CLR 277 at 281-282; 85 ATC 4398 at 4400; 16 ATR 567 at 570.

³ (1951) 84 CLR 105 at page 110; (1951) 9 ATD 337 at page 342.

⁴ The Macquarie Dictionary, [Multimedia], version 5.0.0, 1/10/01 defines ‘bee’ as 1. any of various hymenopterous insects of the superfamily Apoidea, which includes many social and solitary bees of several families, as the bumblebees, honeybees, etc. It also defines ‘insect’ as any animal of the subphylum Hexapoda.

⁵ The website of the Honeybee Industry Council of Australia (<http://www.honeybee.org.au/buzz.htm>) describes the process by which honey is created as follows: ‘Bees collect nectar, pollen and water each day to take back to the hive...The raw nectar comes from flowers. They mix this with secretions from their glands, thereby transforming it and after it is deposited in the comb, it ripens into honey.’

⁶ When the final Determination is issued the Commissioner intends to issue a concurrent Law Administration Practice Statement (General Administration) which will provide guiding principles on how to calculate the value of bees held as trading stock.

Appendix 2 – Your comments

8. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date. (Note: the Tax Office prepares a compendium of comments for the consideration of the relevant Rulings Panel or relevant Tax officers. The Tax Office may use a version (names and identifying information removed) of the compendium in providing responses to persons providing comments. Please advise if you do not want your comments included in the latter version of the compendium.)

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- honey bees
- livestock
- trading stock
- primary production

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 70-10
- ITAA 1997 70-10(a)
- ITAA 1997 70-10(b)
- ITAA 1997 995-1(1)

Case references:

- FC of T v. St Hubert's Island Pty Ltd (1978) 138 CLR 210; 78 ATC 4104; (1978) 8 ATR 452
- FCT v. Suttons Motors (Chullora) Wholesale Pty Ltd (1985) 157 CLR 277; (1985) 85 ATC 4398; (1985) 16 ATR 567
- Federal Commissioner of Taxation v. Wade (1951) 84 CLR 105; (1951) 9 ATD 337

Other references:

- The Macquarie Dictionary, [Multimedia], version 5.0.0, 1/10/01
- About the Honey Industry
<http://www.honeybee.org.au/buzz.htm>

ATO references

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