TD 93/D12 - Income tax: is the business of 'beach worming' primary production under the definition in subsection 6(1) of the Income Tax Assessment Act 1936?

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This document has been finalised by TD 93/39.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft 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 definition 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. Worming is not included in the definition of 'fishing operations' in subsection 6(1) which refers to the taking or catching of fish, turtles, dugong, crustacea, oysters and shellfish, to pearling operations and to oyster farming.

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
21/01/93

FOI INDEX DETAIL: Reference No.
Related Determinations:
Related Rulings: IT 2301; IT2006
Subject Ref: beach worming; primary production.
Legislative Ref: ITAA 6(1)
Case Ref: Burnside & Marrakai Ltd v FC of T (1957) 11ATD 181
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