



PS LA 1999/6 - Opening Value of Trading Stock

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ATO Practice Statement

Law Administration

PS LA 1999/6

This Practice Statement is withdrawn from 5th April 2005 on the basis of the full Federal Court decision in *FCT v Energy Resources of Australia Ltd* 2003 ATC 5179; 54 ATR 608. In regard to this subject matter, reference should now be made to this decision, which held that the taxpayer was entitled to make an amendment (under the *Income Tax Assessment Act 1936* but not under the *Income Tax Assessment Act 1997*) to increase the opening value of its trading stock in one income year, despite being unable to make a corresponding adjustment to its closing stock in the preceding income year.

FOI status: may be released

This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.

SUBJECT: Opening Value of Trading Stock

PURPOSE: Clarification of opening value of trading stock

STATEMENT

1. Former section 29 of the *Income Tax Assessment Act 1936* can arguably be interpreted in two different ways.
2. As both interpretations are reasonably arguable we have decided to:
 - refrain from releasing a public ruling on the specific issue at this stage; and
 - identify a suitable case or cases to test the issue.
3. Pending a decision clarifying the matter, all staff will apply the same value view. That is, the value ascribed to an item of trading stock on hand at the start of an income year must be identical in amount to the value to that same item at the end of the previous income year (the same value view).
4. Cases involving this issue, may continue to be settled in accordance with the Code of Settlement Practice. However, there is to be no in-principle concession given on our views about opening value of trading stock.
5. All cases including this issue should be notified to Sharyn Castle, Taxation Rulings Unit, OCTC National Office. In the first instance, information can be forwarded by e-mail – this should briefly include an outline of the facts, the range of (other) issues involved, current status of the case, tax involved, case officer contact information, SIGNUM reference if appropriate, and any other information the case officer considers necessary for a proper understanding of the matter (note that in most cases the Case Reports System report would be adequate).

EXPLANATION

6. All adjustments to trading stock figures raise the question what value should be taken into account at the start of the year in which the adjustment is made

(subsection 70-40(1) of *the Income Tax Assessment Act 1997* ("the 1997 Act"), formerly section 29 of the *Income Tax Assessment Act 1936*).

7. This Law Administration Practice Statement directs the interpretation you are to apply so that we:
 - take a consistent approach to the issue;
 - identify affected taxpayers/cases; and
 - move to clarify the issue using the best possible case or cases (probably through litigation).

Section 29 – Two possible interpretations

8. One interpretation is the same value view (explained above). The alternative interpretation is that the amount brought to account as stock on hand at the start of the year is the amount which should lawfully have been brought to account at the end of the previous income year, irrespective of whether or not that amount was so taken into account (the corrected value view).
9. Both views are reasonably arguable on the law. However, the same value view has the advantages that it:
 - operates in a balanced way – it will operate for or against the revenue in different circumstances, whereas the corrected value view can be expected, in its practical use, rarely to operate for the revenue;
 - is consistent with the policy intent of the equivalent provisions of the 1997 Act; and
 - will, over a given period of time, produce a correct net income or loss from trading in stock in all circumstances.

Past inconsistency in our approach

10. The ATO has over a period of time taken inconsistent views about the interpretation of section 29 when dealing with different industries. We have in fact published views either way: Taxation Ruling IT 2350 (July 1986 – manufacturing) takes the corrected value view, but allows taxpayers to use the same value view if they wish, whereas Taxation Ruling IT 2667 (February 1992 – crayfish farming) takes the same value view, but allows taxpayers to use the corrected value view in specified situations.

The new law

11. It is considered that the equivalent provision of the 1997 Act (subsection 70-40(1)) expresses the same value view.

subject references: closing stock; opening stock; trading stock; valuation

legislative references: ITAA97 70-40
ITAA36 29

related public rulings: IT 2350; IT 2667

file references: NO 99/5750-2

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