

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



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*?

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

This publication (excluding appendixes) 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, 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. This Determination applies to years of income commencing 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

19 November 2008

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 view has been reached. It does not form part of the 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 meets the requirements in paragraphs 70-10(a) or 70-10(b) or is otherwise trading stock within the ordinary meaning of that term.²

5. The term 'live stock' is defined in subsection 995-1(1) to 'not include animals used as beasts of burden or working beasts in a *business other than a *primary production business'.³ The High Court in *Federal Commissioner of Taxation v. Wade*⁴ considered this definition of 'live stock' 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.⁵

6. Bees, being insects, are animals.⁶ 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.⁷ 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 live stock.

7. As bees kept for use in a honey production business are live stock, they are trading stock as defined in section 70-10.⁸

² See Stephen J's observations in *Federal Commissioner of Taxation v. St Hubert's Island Pty Ltd* (1978) 138 CLR 210 at 216; 78 ATC 4104 at 4106; (1978) 8 ATR 452 at 454-455, and also see *Federal Commissioner of Taxation v. Suttons Motors (Chullora) Wholesale Pty Ltd* (1985) 157 CLR 277 at 281-282; 85 ATC 4398 at 4400; (1985) 16 ATR 567 at 570.

³ An asterisk appearing before a word in the ITAA 1997 denotes that the meaning of the word is defined in section 995-1 of the ITAA 1997 for the purposes of the Act.

⁴ (1951) 84 CLR 105; (1951) 9 ATD 337

⁵ *Federal Commissioner of Taxation v. Wade* (1951) 84 CLR 105 at page 110; (1951) 9 ATD 337 at page 342.

⁶ *The Australian Oxford Dictionary*, 1999, Oxford University Press, Melbourne defines 'bee' as:

(1)(a) ... a stinging hymenopterous insect of the genus *Apis*, which collects nectar and pollen, produces wax and honey, and lives in large communities. (b) a related insect of the superfamily Apoidea, either social or solitary; (2) any insect of similar type.

The dictionary also defines 'insect' as: (1)(a) a six-legged arthropod of the class Insecta, frequently having one or two pairs of wings; (b) (loosely) any small invertebrate animal with several pairs of legs.

⁷ The website of the Honeybee Industry Council of Australia (<http://www.honeybee.org.au>) describes the process by which honey is created as follows: 'As [the bee] sucks the nectar from the flower, it is stored in her special honey stomach ready to be transferred to the honey-making bees in the hive...When her nectar "sacs" are full, the honeybee returns to the hive. Nectar is delivered to one of the indoor bees and then passed mouth-to-mouth from bee to bee until its moisture content is reduced from about 70% to 20%. This changes the nectar into honey...Finally, the honey is placed in storage cells and capped with beeswax...'

⁸ The accompanying Law Administration Practice Statement PS LA 2008/4 (GA) provides guiding principles on how to calculate the value of bees held as trading stock.

References

Previous draft:

TD 2007/D7

- ITAA 1997 995-1(1)
- TAA 1953

Related Rulings/Determinations:

TR 2006/10

Subject references:

- agriculture
- honey bees
- livestock industry
- livestock valuation
- trading stock
- primary production

Case references:

- Federal Commissioner of Taxation v. St Hubert's Island Pty Ltd (1978) 138 CLR 210; 78 ATC 4104; (1978) 8 ATR 452
- Federal Commissioner of Taxation v. Suttons Motors (Chullora) Wholesale Pty Ltd (1985) 157 CLR 277; 85 ATC 4398; (1985) 16 ATR 567
- Federal Commissioner of Taxation v. Wade (1951) 84 CLR 105; (1951) 9 ATD 337

Legislative references:

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

Other references:

- Law Administration Practice Statement PS LA 2008/4 (GA)
- The Australian Oxford Dictionary, 1999, Oxford University Press, Melbourne
- About the Honey Industry
<http://www.honeybee.org.au>

ATO references

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Income Tax ~~ Trading stock and work in progress