




TD 93/70 - Income tax: 1. are live pearl oysters (Pinctada maxima) used in a business of pearl culture, trading stock for the purposes of the Income Tax Assessment Act 1936 ? 2. What is the value to be allocated to live pearl oysters used in a business of pearl culture pursuant to section 32?

 This cover sheet is provided for information only. It does not form part of *TD 93/70 - Income tax: 1. are live pearl oysters (Pinctada maxima) used in a business of pearl culture, trading stock for the purposes of the Income Tax Assessment Act 1936 ? 2. What is the value to be allocated to live pearl oysters used in a business of pearl culture pursuant to section 32?*

 This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

 This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA 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:

1. are live pearl oysters (*Pinctada maxima*) used in a business of pearl culture, trading stock for the purposes of the *Income Tax Assessment Act 1936*?

2. What is the value to be allocated to live pearl oysters used in a business of pearl culture pursuant to section 32?

Trading Stock

1. Trading stock is defined in subsection 6(1) to include live stock. In the same subsection, live stock is defined to exclude only beasts of burden and working beasts in businesses other than primary production. All animals are thus live stock in a business of primary production (*FCT v. Wade* (1951) 84 CLR 105). Primary production is defined in subsection 6(1) to include production resulting directly from fishing operations and 'fishing operations' are defined to include pearling operations. The *Pinctada maxima* are animals.

2. The trading stock provisions are thus applicable to live pearl oysters used in a business of pearl culture.

Value of Trading Stock

3. Subsection 32 (1) {former subsection 32(5)} enables a primary producer to value live pearl oysters at cost price or market selling value. Case precedent has established that market selling value is only appropriate where a market exists and the item is one traded.

4. As seeded live shell are not generally traded by pearl producers, a market selling value does not exist.

5. We are satisfied, however, that the unusual nature of the pearl producers' circumstances justifies the adoption of an alternative valuation under subsection 32(2) {former subsection 32(6)}.

6. It is understood that oysters may be terminated at harvest where the pearl produced is of such a poor quality that further operations would not be carried out. Because of this it is accepted that both the poor quality pearl and the oyster producing this pearl are of little value at year end. A reduction in the value of the closing stock of oysters for the preceding 30 June is thus considered appropriate. As harvest generally occurs in August, it is expected that the number of oysters terminated for this reason will be known, for preparation of the preceding year's income tax return. We accept that pearls which are of minimal value at time of harvest were of minimal value at the close of the preceding financial year.

7. Oysters terminated because they produce a poor quality pearl may be valued at the 'mother of pearl' market value. This alternative valuation method does not extend to pearl oysters that are terminated at harvest for reasons other than the above. The concession does not, therefore, extend to half pearl extractions.

8. Cost price is to be determined using full absorption costing up to the first nucleus insertion. Costs include, all costs up to, but not including the cost of the operation to insert a nucleus. The cost of inserting the nucleus forms the cost of the pearl, not the oyster. Therefore, the value of the pearls on hand at year end would include these costs.

Commissioner of Taxation

15/04/93

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Related Determinations:

Subject Ref: live stock; primary production; pearl producers; valuation; trading stock

Legislative Ref: ITAA 6; ITAA 28, ITAA 32(1); ITAA32(2)

Case Ref: *FC of T v Wade* 84 CLR 105

ATO Ref: NOR J36/355/2

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