Print whole section

Private ruling form (non-commercial losses)

If you are seeking a private ruling about non-commercial losses, you should use the following form.

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On this page

Applying for the Commissioner's discretion

How to obtain this form

You can't claim a loss for a business that is little more than a hobby or lifestyle choice. Even if it has business-like characteristics, if it is unlikely to ever make a profit and doesn't have a significant commercial purpose or character, you can't offset the loss against your other income. In this case, you can defer the loss until you make a profit from the business. This applies whether your business loss from an Australian or a foreign source.

Whether you pass the less than $250,000 income requirement will determine what information you will need to provide in order to attain the discretion.

The Commissioner may exercise **discretion** to allow the losses from your business activity for only one of two reasons:

- **Special circumstances** such as a drought, flood, bushfire or another circumstance outside your control that have prevented the activity from passing one of the **four tests**. If you do not pass the less than $250,000 income requirement you will also need to show how the special circumstances have stopped you from producing a tax profit.

- The business activity has commenced and, because of its nature, there is a **lead time** before it can pass one of the four tests or produce a tax profit. There must be an inherent characteristic that prevents this and doesn't include situations starting out small or building up a client base. For example, the nature of grape growing means that a number of years will pass between planting the first vines and harvesting grapes to produce assessable income.

Applying for the Commissioner's discretion

You (or your agent) must complete this application to apply for the exercise of the Commissioner's discretion.

> If you are seeking the Commissioner's discretion for several business activities, you must complete a separate application for each of your business activities, unless they are **similar business activities**.

The Commissioner can only exercise the discretion if **both** of the following apply:

- You are **carrying on a business** that has actually commenced. A hobby is not a business and passive income from, for example, a rental property, is not generally considered to be income from carrying on a business. If the business is still in its planning stage or hasn't started trading yet the discretion cannot be applied.
- You operate your business as a sole trader or an individual in partnership. The **non-commercial business losses rules** only apply to individuals who are carrying on a business.

Partnerships

The Commissioner cannot exercise the discretion for a partnership. However, where a business activity carried on by a partnership results in a loss, each individual partner can apply to the Commissioner for the exercise of the discretion.

There are special rules that apply if you are operating your business activity as a partnership. **Non-commercial losses: partnerships** explains these rules and will assist you to complete this application.

How to obtain this form

You can download this form in Portable Document Format (PDF) – download Application for a private ruling on the exercise of the Commissioner's discretion for non-commercial business losses (NAT 5806, PDF, 480KB).

See also:

- Non-commercial losses
- TR 2007/6 *Income tax: non-commercial business losses – Commissioner's discretion*
- TR 2001/14 *Income tax: Division 35 – non-commercial business losses*
- TR 2001/14A – Addendum *Income tax: Division 35 – non-commercial business* losses
- TR 2001/14A2 – Addendum *Income tax: Division 35 – non-commercial business losses*

QC 19150

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