

Completing your Application for a private ruling on the Commissioner's discretion for non-commercial business losses

(Section 35–55 of the *Income Tax Assessment Act 1997*)

There are tax laws in place to prevent losses from non-commercial business activities being used to reduce the tax paid on other assessable income, such as salary or wages. The measures apply to any individual undertaking a business activity, whether alone or in partnership with other individuals or entities.

WHAT IS THE COMMISSIONER'S DISCRETION?

The Commissioner can exercise a discretion to allow the loss from your business activity in one of two circumstances:

- special circumstances outside your control that prevent the business activity from meeting at least one of the [four tests](#) (the [assessable income](#) test, the [profits](#) test, the [real property](#) test, the [other assets](#) test) or making a tax profit. [Special circumstances](#) may include a drought, bushfire, flood or other natural disaster
- you have started to carry on your business activity and, because of its nature, there is a period of time before it can pass one of the tests or make a tax profit. This period of time would be due to the nature of your activity and not because you are 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 vines and harvesting grapes to produce assessable income.

DO YOU NEED TO COMPLETE THIS APPLICATION?

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](#). 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.
- 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.

MORE INFORMATION

For more information on non-commercial losses:

- visit ato.gov.au/NCL
- phone **13 28 66** from 8.00am to 6.00pm Monday to Friday
- write to us at
Australian Taxation Office
PO Box 3000
PENRITH NSW 2740

HOW TO COMPLETE THIS APPLICATION

You can:

- complete this form on your computer and either
 - save it and submit it electronically via the Business Portal
 - print it and submit this printed copy
 - print the form and complete it by hand.
-
- Place **X** in all applicable boxes.
 - After answering a question, go to the next question unless directed otherwise.
 - Ensure you only complete the sections that apply to your business.
 - If you require additional space to answer a question, attach the additional information with the application before lodging, either electronically or on paper.
 - If you cannot save a completed copy of this application, print a copy before closing the application.

HOW TO LODGE THIS FORM

You can lodge this form as either an individual taxpayer or a tax professional.

Lodging as an individual

You can lodge this application:

- electronically via the Business Portal (Go to 'Online forms', select 'Private ruling application' and attach your completed application. Click on 'Submit further information' to attach any supporting documentation for your request.)
- by fax on **1300 139 011**
- hand delivery to an ATO shopfront
- post to
Australian Taxation Office
PO Box 3000
PENRITH NSW 2740

If you lodge via the Business Portal, you will receive an instant receipt and your application will be dealt with faster than if lodged by post.

Lodging as a tax professional

You can lodge this application:

- electronically via the Tax Agent Portal (Go to 'Online forms', select 'Private ruling application' and attach your completed application. Click on 'Submit further information' to attach any supporting documentation for your request.)
- by fax on **1300 139 011**
- hand delivery to an ATO shopfront
- post to
Australian Taxation Office
PO Box 3000
PENRITH NSW 2740

If you lodge via the Tax Agent Portal, you will receive an instant receipt and your application will be dealt with faster than if lodged by post.

OUR COMMITMENT TO YOU

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information in this publication and it turns out to be incorrect or misleading, and you fail to comply with the law as a result, we must still apply the law correctly. However, we will take the fact that you followed our information into account when deciding what action, if any, we should take.

If you make an honest mistake in trying to follow our information in this publication and you fail to comply with the law as a result, we will take the reason for the mistake into account in deciding what action to take.

If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for more recent information on our website at ato.gov.au or contact us.

This publication was current at **November 2014**.

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Application for a private ruling on the Commissioner's discretion for non-commercial business losses

(Section 35–55 of the *Income Tax Assessment Act 1997*)

➤ Read the instructions carefully before completing the application.

Section A: Applicant details

1 Provide the full name of the individual the ruling is for.

2 Provide your Australian business number (ABN) or tax file number (TFN).

ⓘ You are not obliged to quote a TFN, but your ruling may be delayed if you do not.
For information about providing us with TFNs, see 'Privacy' on page 8.

ABN

OR

TFN

Section B: Contact person details

3 Who is the contact person for this application?

Full name

Title: Mr Mrs Miss Ms Other

Family name

First given name

Other given names

Name of firm (if applicable)

4 Contact phone number

Business hours phone number

Mobile phone number

Email address

5 Registered tax agent details (if applicable)

Tax agent number

Tax agent phone number (if different from above)

Tax agent fax number

6 Address for the private ruling and related correspondence

Suburb/town

State/territory

Postcode

Section C: The business activity

7 Are you (or your client) carrying on a business?

No There is no need to complete this form. The non-commercial business loss rules only apply if you are carrying on a business. If you are not carrying on a business, or any other activity that produces assessable income, you cannot claim any related deductions.

Yes When did your business activity commence? / /

If you make the statement that you are carrying on a business, the Commissioner of Taxation may rely on it in making the private ruling. However, the Commissioner is not prevented, for the purpose of determining whether the ruling is legally binding, from making enquiries during this ruling process or at a later date to confirm this point.

Unsure Place X in this box if you would like the Commissioner to consider whether your activity is a business activity. The Commissioner will consider this at the same time as your request for a private ruling on the exercise of the Commissioner's discretion.

 For more information on [carrying on a business](#), phone us on **13 28 66** or see your tax adviser. [Taxation Ruling TR 97/11](#) has more information about carrying on a business.

8 Briefly describe your business activity, including details of the size and scale of your business, and attach your business plan if available.

Only describe the activity for which you seek the Commissioner's discretion.

Example

An olive farm with 1,000 olive trees planted on 4 acres in 2011 and located on fertile land in McLaren Vale, SA. Operated by myself and my partner, employing 2 casual staff. We intend to sell olive oil and bottled olives.

9 Is your activity part of a managed investment or similar scheme covered by a prospectus, information memorandum or similar material?

No

Yes Supply a copy of the prospectus, information memorandum or similar material.

10 What income years are you seeking the Commissioner's discretion for?

Do not include any years you expect to pass a test or make a tax profit.

1 July to 30 June

11 What is the basis for this application for the Commissioner's discretion?

Special circumstances Go to section D.
(eg drought, fire, flood)

The nature of your activity Go to section E.
(eg lead time for growing grapes, fruit, hardwood trees)

Section D: Special circumstances

12 For the years that you are seeking the discretion, was your income for non-commercial loss purposes or do you expect your income for non-commercial loss purposes to be:

\$250,000 or more Go to question 13.

Less than \$250,000 Go to question 15.

Income for non-commercial loss purposes is the total of:

- taxable income (ignoring any business losses)
- total reportable fringe benefits
- reportable superannuation contributions
- total net investment losses – including financial investment losses and rental property losses (treat the loss as a positive figure for the purpose of the calculation).

Special circumstances, where your income for non-commercial loss purposes is \$250,000 or more

13 If you meet, or expect to meet, any of the four tests during the years* subject to this application, place an X in the appropriate boxes:

Assessable income test (business activity produces an assessable income of at least \$20,000)

Profits test (business activity resulted in a tax profit in three out of the past five years, including the current year)

Real property test (property you own or lease with a value of at least \$500,000 used in business activity)

Other assets test (assets you own or lease with a value of at least \$100,000 used in business activity)

* If you expect to meet different tests in different years, attach details to your application.

14 Describe the special circumstances and explain how they have prevented your business activity from producing a tax profit and, if applicable, prevented one or more of the four tests from being met.

For example, identify or estimate any additional costs incurred in the years for which the discretion is sought due to the special circumstances and provide the basis of this estimate. Attach extra pages if you do not have enough space.

Provide copies of relevant reports or other evidence of the special circumstances to support your application.

Attach details of your income and expenditure (actual and projected) and trading stock accounts (if applicable) for:

- four years (if possible) before the special circumstances occurred
- the years for which the discretion is sought
- the year your activity will again produce a tax profit.

Expenditure figures should include all costs incurred in relation to the business activity, including depreciation and interest expenses.

Explain the basis of your projected income and expenditure.

 You have now finished this section. Go to [section F](#).

Special circumstances, where your income for non-commercial loss purposes is less than \$250,000

15 Which of the four tests did the special circumstances prevent you from meeting?

- Assessable income test** (business activity produces an assessable income of at least \$20,000)
- Profits test** (business activity resulted in a tax profit in three out of the past five years, including the current year)
- Real property test** (property you own or lease with a value of at least \$500,000 used in business activity)
- Other assets test** (assets you own or lease with a value of at least \$100,000 used in business activity)

16 Describe the special circumstances and explain how they have prevented your business activity from meeting the tests indicated above.

For example, identify or estimate any additional costs incurred in the years for which the discretion is sought due to the special circumstances and provide the basis of this estimate. Attach extra pages if you do not have enough space.

Provide copies of relevant reports or other evidence of the special circumstances to support your application.

Attach details of your income and expenditure (actual and projected) and trading stock accounts (if applicable) for:

- four years (if possible) before the special circumstances occurred
- the years for which the discretion is sought
- the year your activity will again meet one of the four tests or produce a tax profit.

Expenditure figures should include all costs incurred in relation to the business activity, including depreciation and interest expenses.

Explain the basis of your projected income and expenditure.

 You have now finished this section. **Go to [section F](#)**.

Section E: The nature of your activity

17 Was your income for non-commercial loss purposes in the income year prior to the income year this application was received by the Commissioner:

\$250,000 or more Go to question 18.

Less than \$250,000 Go to question 21.

For example, if the Commissioner receives your application on 1 July 2013 the most recent income year will be the year ended 30 June 2013.

Income for non-commercial loss purposes is the total of:

- taxable income (ignoring any business losses)
- total reportable fringe benefits
- reportable superannuation contributions
- total net investment losses – including financial investment losses and rental property losses (treat the loss as a positive figure for the purposes of the calculation).

The nature of your activity, where your income for non-commercial loss purposes is \$250,000 or more

18 In your industry, what is the accepted number of years before an activity becomes commercially viable?

years. Provide evidence of this period from independent sources.

See [Non-commercial losses: Commissioner's discretion](#) for types of evidence required.

19 What is the inherent feature of your activity that has meant there is a period of time from when it commenced to when it makes a tax profit?

Attach copies of relevant evidence from independent sources that support your explanation.
Attach extra pages if you do not have enough space.

20 In what year do you expect your business activity to make a tax profit?

Year ending 30 June

Attach details of your income and expenditure (actual and projected) and trading stock accounts (if applicable) from when your activity commenced to when it is expected to produce a tax profit.

Expenditure figures should include all costs incurred in relation to the business activity, including depreciation and interest expenses.

Explain the basis of your projected income and expenditure.

➤ You have now finished this section. Go to [section F](#).

The nature of your activity, where your income for non-commercial loss purposes is less than \$250,000

21 In what year do you expect your business activity to first meet any of the four tests?

Year ending 30 June

If you don't expect your business activity to ever satisfy a test, place an X in the following box and go to question 22.

Never

22 Which tests do you expect to meet?

Assessable income test (business activity produces an assessable income of at least \$20,000)

Profits test (business activity resulted in a tax profit in three out of the past five years, including the current year)

Real property test (property you own or lease with a value of at least \$500,000 used in business activity)

Other assets test (assets you own or lease with a value of at least \$100,000 used in business activity)

 Go to question 24.

23 Where you do not expect to meet a test, in what year do you expect your business activity to make a tax profit?

Year ending 30 June 20

24 In your industry, what is the accepted number of years before an activity becomes commercially viable?

years. Provide evidence of this period from independent sources.

See [Non-commercial losses: Commissioner's discretion](#) for types of evidence required.

25 What is the inherent or innate feature of your activity that has meant there is a period of time from when it commenced to when it meets one of the tests or makes a tax profit?

Attach copies of relevant evidence from independent sources that support your explanation.

Attach extra pages if you do not have enough space.

Attach details of your income and expenditure (actual and projected) from when your activity commenced to when it is expected to meet one of the tests or produce a tax profit.

Explain the basis of your projected income and expenditure.

 You have now finished this section. **Go to section F.**

Section F: Checklist

26 Is there, or has there been, an ATO audit on the issues raised in this ruling request, or have you been notified of a proposed audit?

No

Yes Provide the ATO reference numbers and the names of the tax officers conducting the audit.

ATO reference numbers

Names of tax officers

27 Have you sought a written ruling for any of these issues before?

No

Yes Provide the ATO reference numbers and the dates of the rulings.

ATO reference numbers

Dates of rulings

28 Are you reasonably certain of the facts you set out?

No

Yes

Section G: Declaration

If you are applying for your own private ruling, or are applying as a legal personal representative, by signing this form you are declaring the information contained in this document, and any attached documents, is true and correct.

If you are an agent, by signing this form you are declaring that:

- this document and any attached documents have been prepared according to information supplied by the individual identified in section A of this form
- you have received a declaration from your client stating that the information provided to you to prepare this application is true and correct
- you are authorised by your client to give this application to the Commissioner of Taxation.

! 'Agent' includes a tax agent or tax professional authorised to give this application to the Commissioner of Taxation. 'Legal personal representative' means an executor or administrator of a deceased estate, a person holding a general power of attorney, or a trustee of an estate of a person under a legal disability.

Privacy

The ATO is a government agency bound by the *Privacy Act 1988* in terms of collection and handling of personal information and tax file numbers (TFNs). For further information about privacy law notices for private ruling applications forms, please go to ato.gov.au/privacy

Sign and date below if you are sending this form by **fax or post** or delivering it by hand.

If you are **lodging via the Business Portal or Tax Agent Portal**, you do not need to sign here.

Name

Signature

Date

Day	Month	Year
<input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

! Before submitting this application to us, make sure you have:

- answered all the relevant questions
- attached copies of any documents requested.