TR 2001/14A2 - Addendum - Income tax: Division 35 - non-commercial business losses

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Addendum

Taxation Ruling

Income tax: Division 35 – non-commercial business losses

This Addendum amends Taxation Ruling TR 2001/14 to remove discussion regarding the operation of the Commissioner's discretion in Division 35 of the *Income Tax Assessment Act 1997* as this is now covered by draft Taxation Ruling TR 2007/D1.

Taxation Ruling TR 2001/14 is amended as follows:

- 1. Paragraph 1
- (a) Omit:
- (iii) the Real property test in section 35-40;
- (iv) the Other assets test in section 35-45; and
- the operation of the Commissioner's discretion in section 35-55.

substitute:

- (iii) the Real property test in section 35-40; and
- (iv) the Other assets test in section 35-45.
- (b) After the paragraph insert:
 - 1A. It does not consider in detail the operation of the Commissioner's discretion in section 35-55. This aspect is the subject of a separate Taxation Ruling (TR 2007/D1 Income tax: non-commercial business losses: Commissioner's discretion).

2. Paragraph 30

(a) Omit the heading; substitute:

Exercise of the Commissioner's discretion - two limbs

- (b) Omit 'arms' in the second sentence; substitute 'limbs'.
- (c) Omit 'arm' (wherever occurring); substitute 'limb'.

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3. Paragraph 69

After the paragraph insert:

When does a business activity start to be carried on for the purposes of the second limb of the Commissioner's discretion in section 35-55?

69A Before the Commissioner can consider exercising the second limb of the discretion in section 35-55, a taxpayer must have started to carry on the relevant business activity. Broadly, this requires the taxpayer to have:

- made a decision to commence the business activity;
- acquired the minimum level of business assets to allow that business activity to be carried on;
 and
- actually commenced business operations.

A mere intention to start carrying on the business activity will not be sufficient. 10A

4. Paragraphs 70 to 82A

Omit the paragraphs (including headings).

5. Paragraphs 94 to 96

Omit the paragraphs (including headings).

6. Paragraph 97

Omit the heading; substitute:

Whether a business activity has started to be carried on for the purposes of the Commissioner's discretion in section 35-55

7. Paragraphs 106 to 114

Omit the paragraphs (including headings).

8. Paragraphs 147 to 170

Omit the paragraphs (including headings).

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^{10A} See paragraphs 97 to 105 of this Ruling.

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9.	Paragraph 175	
(a)	Omit:	
	Exercise of the Commissioner's discretion – 2 arms	30
substit	ute:	
	Exercise of the Commissioner's discretion – two limbs	30
(b)	After:	
	All tests – determining whether general law partnership exists	68
insert:		
	When does a business activity start to be carried on for the purposes of the second limb of the Commissioner's discretion in section 35-55?	69A
(c)	Omit the following entries:	
	Operation of section 35-55 – the Commissioner's discretion	70
	'Special circumstances'	70
	*Business activity has started to be carried on	75
	Meaning of 'because of its nature'	77
	Objective expectation of meeting a test or producing a tax profit within a period that is commercially viable for the industry concerned	79
	Exercise of the Commissioner's discretion – 2 arms	94
	Second arm – certain start-up *business activities	95
	Meaning of 'because of its nature'	106
	Alternative view	112
	Objective expectation of becoming commercially viable	114
	Example 10 – exercise of the first arm of the discretion, special circumstances	147
	Example 11 – first arm of discretion not exercised	150
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	Example 13 – exercise of the second arm of the discretion	158
	Example 13A – second arm of the discretion not exercised	162
	Example 14 – second arm of the discretion unlikely to be exercised	165

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(d) Omit:

Whether activity has started to be carried on 97

substitute:

Whether a business activity has started to be carried on for the purposes of the Commissioner's discretion in section 35-55

97

10. Related Rulings/Determinations

Insert:

TR 2007/D1

Commissioner of Taxation

24 January 2007

ATO references

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