

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

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## Addendum

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### 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'.

### 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.<sup>10A</sup>

### 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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<sup>10A</sup> See paragraphs 97 to 105 of this Ruling.

**9. Paragraph 175**

|     |                                                                                                                                                 |     |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| (a) | Omit:                                                                                                                                           |     |
|     | Exercise of the Commissioner's discretion – 2 arms                                                                                              | 30  |
|     | substitute:                                                                                                                                     |     |
|     | 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  |
|     | <i>'Special circumstances'</i>                                                                                                                  | 70  |
|     | <i>*Business activity has started to be carried on</i>                                                                                          | 75  |
|     | <i>Meaning of 'because of its nature'</i>                                                                                                       | 77  |
|     | <i>Objective expectation of meeting a test or producing a tax profit within a period that is commercially viable for the industry concerned</i> | 79  |
|     | Exercise of the Commissioner's discretion – 2 arms                                                                                              | 94  |
|     | Second arm – certain start-up *business activities                                                                                              | 95  |
|     | <i>Meaning of 'because of its nature'</i>                                                                                                       | 106 |
|     | <i>Alternative view</i>                                                                                                                         | 112 |
|     | Objective expectation of becoming commercially viable                                                                                           | 114 |
|     | <i>Example 10 – exercise of the first arm of the discretion, special circumstances</i>                                                          | 147 |
|     | <i>Example 11 – first arm of discretion not exercised</i>                                                                                       | 150 |
|     | <i>Example 12 – second arm of discretion not exercised</i>                                                                                      | 154 |
|     | <i>Example 12A – first arm of discretion not exercised</i>                                                                                      | 156 |
|     | <i>Example 13 – exercise of the second arm of the discretion</i>                                                                                | 158 |
|     | <i>Example 13A – second arm of the discretion not exercised</i>                                                                                 | 162 |
|     | <i>Example 14 – second arm of the discretion unlikely to be exercised</i>                                                                       | 165 |

# TR 2001/14

- (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

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**Commissioner of Taxation**

24 January 2007

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ATO references

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