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

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Generated on: 21 August 2026, 04:56:27 AM

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'.

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).

[10A] 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

'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

Example 12 – second arm of discretion not exercised 154

Example 12A – first arm of discretion not exercised 156

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

(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
NO: 2006/20258
ISSN: 1039-0731
ATOlaw topic: Income Tax ~~ Losses ~~ non commercial