


TD 93/D271 - Income tax: abnormal income of artists, sportspersons etc: can eligible taxable income be a negative amount for the purposes of Division 16A of Part III of the Income Tax Assessment Act 1936 (ITAA), so that a loss can be recognised from eligible activities and used to reduce average eligible taxable income?

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This document has been finalised by [TD 94/6](#).

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: abnormal income of artists, sportspersons etc: can eligible taxable income be a negative amount for the purposes of Division 16A of Part III of the *Income Tax Assessment Act 1936* (ITAA), so that a loss can be recognised from eligible activities and used to reduce average eligible taxable income?

1. No. The definition of eligible taxable income in Section 158J of ITAA does not imply the possibility of a loss. Eligible taxable income of a taxpayer is defined as '...the amount (if any) remaining after deducting from eligible assessable income...' any of those deductions specifically mentioned. The words 'if any' suggest that there may be **no** income in some cases. This implies a positive amount and therefore eligible taxable income cannot be a negative amount.

2. Since eligible taxable income cannot be negative, the amount of loss in a relevant year for the purposes of determining the average eligible taxable income in section 158K cannot also be negative.

The loss is treated as a nil amount.

<i>Example:</i>	<i>1988</i>	<i>1989</i>	<i>1990</i>	<i>1991</i>	<i>1992</i>	<i>TOTAL</i>
	\$	\$	\$	\$	\$	\$
<i>eligible assessable income</i>	8000	6000	9000	8000	5000	36000
<i>LESS related deductions</i>	<u>2000</u>	<u>7000</u>	<u>12000</u>	<u>2000</u>	<u>6000</u>	<u>29000</u>
<i>ELIGIBLE TAXABLE INCOME</i>	6000	(1000)	(3000)	6000	(1000)	12000
 <i>ineligible assessable income</i>	 5000	 4000	 10000	 3000	 7000	
<i>LESS deductions</i>	-	<u>500</u>	<u>1000</u>	-	-	
<i>INELIGIBLE TAXABLE INCOME</i>	-	3500	9000	-	-	
 <i>TOTAL TAXABLE INCOME</i>	 <u>11000</u>	 <u>2500</u>	 <u>6000</u>	 <u>9000</u>	 <u>6000</u>	

The taxpayer is assumed to be a resident throughout the above years of income. For the 1989, 1990 and 1992 years eligible taxable income, being a negative amount, is to be treated as 'nil' for Division 16A purposes. The average eligible taxable income in accordance to section 158K, for the 1992 year, would be \$3000 (ie. 1/4 of the total eligible taxable incomes of the preceding four years of income).

Commissioner of Taxation

28/10/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: abnormal income; average eligible taxable income; eligible taxable income

Legislative Ref: ITAA Pt III Div 16A

Case Ref:

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