

PS LA 1999/8 (Withdrawn) - 'Administrative Positions' for Multi-level Marketing Distributors

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! This practice statement is withdrawn as at 11 May 2007.

! This document has changed over time. This version was published on *11 May 2007*



ATO Practice Statement Law Administration

PS LA 1999/8

This practice statement is withdrawn as at 16 May 2007.

FOI status: may be released

This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax Office staff unless doing so creates unintended consequences. Where this occurs officers must follow their Business Line's escalation process.

SUBJECT: Administrative positions for multi-level marketing distributors

PURPOSE: To advise of the administrative positions agreed with certain multi-level marketing companies concerning the tax treatment of their distributors

STATEMENT

1. The Tax Office has agreed 'administrative positions' with particular multi-level marketing distributors. An administrative position sets out:
 - Principles to be applied in determining whether a distributor is in business for tax purposes, and
 - methods of calculating the proportion of expenses which are deductible to a distributor who is carrying on business.
2. Where an administrative position exists staff must follow the guidelines set out in that administrative position, so that the Tax Office:
 - Applies the principles agreed with the industry
 - takes a consistent approach when deciding whether a taxpayer, undertaking activities as a multi-level marketing member/distributor, is carrying on a business, and
 - takes a consistent approach to the apportionment of expenses by taxpayers who are carrying on a multi-level marketing business.
3. The Tax Office has released administrative positions with:
 - Amway of Australia, and
 - Omegatrend Australia Pty Ltd.

The Tax Office will also, in appropriate cases, seek to agree administrative positions with other organisations which operate in a similar manner to ensure that their members/distributors are treated consistently for tax purposes.

4. These administrative positions (along with other relevant information) are available for Tax Office staff on *ATOconnect*, and for all interested parties on the Tax Office website: www.ato.gov.au .
- <http://www.ato.gov.au/corporate/content.asp?doc=/content/amway.htm> (for Amway), and
 - <http://www.ato.gov.au/businesses/content.asp?doc=/content/23221.htm> (for Omegatrend).

EXPLANATION

5. The Tax Office has undertaken discussions over a number of years with various multi-level marketing companies regarding whether their members/distributors are carrying on a business for the purpose of section 8-1 of the *Income Tax Assessment Act 1997* (formerly subsection 51(1) of the *Income Tax Assessment Act 1936*), and can therefore offset losses from these activities against other income.
6. To provide clarity to multi-level marketing members/distributors who may be uncertain as to whether their activities constitute a business, or who are unsure how to apportion their expenses between business and private purposes, the Tax Office has agreed with both Amway and Omegatrend the guidelines contained in the administrative positions. These administrative positions supersede guidelines contained in previously agreed interim positions.
7. The administrative positions are directed at multi-level marketing members/distributors who:
- Return losses
 - are not predominantly involved in retail selling
 - are on a (relatively) low bonus level, and
 - have applied the interim position (where applicable) in their prior year returns.

The administrative positions do not apply to members/distributors whose activities are restricted to purchasing goods for themselves or their family at discounted prices – these people are not carrying on a business.

8. If a taxpayer does not apply the applicable administrative position then their liability will be determined on a case by case basis. The question whether activities constitute a business will be based on the business indicators which various Courts and Tribunals have formulated and applied in determining whether an activity constitutes a business for taxation purposes. These business indicators are described in the Tax Office brochure '*Am I in Business?*' (NAT 2598-4.1998), and also in Taxation Ruling TR 97/11 '*Am I carrying on a business of primary production?*'.
9. In any specific case, if it is determined that the activities do constitute a business, taxpayers and Tax Office staff need to consider the application of the non-commercial loss provisions to those activities. For information about the non-commercial business loss provisions, see Taxation Ruling TR 2001/14 – Income Tax: Division 35 – non-commercial business losses.

Further information is also contained in the Tax Office fact sheets:

- *Non-commercial losses: overview* (Nat 3379)
- *Non-commercial losses: the other assets test* (Nat 3380)
- *Non-commercial losses: the profits test* (Nat 3381)
- *Non-commercial losses: the real property test* (Nat 3382)
- *Non-commercial losses: the income test* (Nat 3383)
- *Non-commercial losses: similar business activities* (Nat 3384)
- *Non-commercial losses: partnerships* (Nat 3385)
- *Non-commercial losses: Commissioner's discretion* (Nat 3386)

These fact sheets can be accessed on the Tax Office website: www.ato.gov.au

<i>subject references:</i>	Amway direct selling multi-level marketing Omegatrend
<i>legislative references:</i>	<i>Income Tax Assessment Act 1997</i> section 8-1
<i>related public rulings:</i>	Taxation Ruling TR 97/11 Taxation Ruling TR 2001/14
<i>other references</i>	<i>Am I in business?</i> (Nat 2598-4.1998)
<i>file references:</i>	NO 99/14722-9

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