


TD 93/10 - Income tax: is a bankrupt allowed a deduction for losses incurred before bankruptcy, or for later voluntary payments made towards a released debt under sections 79E, 79F, 80, 80AAA and/or 80AA of the Income Tax Assessment Act 1936?

 This cover sheet is provided for information only. It does not form part of *TD 93/10 - Income tax: is a bankrupt allowed a deduction for losses incurred before bankruptcy, or for later voluntary payments made towards a released debt under sections 79E, 79F, 80, 80AAA and/or 80AA of the Income Tax Assessment Act 1936?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: is a bankrupt allowed a deduction for losses incurred before bankruptcy, or for later voluntary payments made towards a released debt under sections 79E, 79F, 80, 80AAA and/or 80AA of the *Income Tax Assessment Act 1936*?

1. A loss incurred by the person before the date of his or her bankruptcy is not deductible against income derived in a later year to the extent that he or she has been released from debts that formed part of the loss. This will also apply where a person has been released from any debts by the operation of an Act relating to bankruptcy.
2. A person may claim a deduction in the year of income for voluntary payments made towards debts from which he or she has been released. Deductions for the payments cannot exceed the debts which formed part of the original losses which were:
 - (a) losses incurred before the 1990 year of income and within seven years relating to:
 - (i) non primary production activities, and/or
 - (ii) film production to which section 26AG applies; and/or
 - (b) losses incurred after the 1989 year of income relating to:
 - (i) non primary production activities, and/or
 - (ii) film production to which section 26AG applies; and/or
 - (c) primary production losses.

Note : A deduction may be further limited by the modifying subsections of the above provisions of the Act.

Example 1

Sally was declared bankrupt on 1 January 1991. She has not made any payment towards the debts. Losses available at 30 June 1990 were \$200,000. Between January 1991 and 30 June 1991 she derived income of \$50,000 from a new job.

The loss from the 1990 year can be deducted against the \$50,000 post-bankruptcy income in the 1991 year. She cannot claim a deduction for the balance of the loss (\$150,000) in the 1992 or later years.

Example 2

John was declared bankrupt on 15 February 1990. He has not made any payment towards the debts. For the 1991 year of income, he has losses available of \$200,000 in the 1988 and \$100,000 in the 1989 year of income.

These losses are not an allowable deduction for the year ended 30 June 1991.

Commissioner of Taxation

21/01/93

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Related Determinations:

Related Rulings:

Subject Ref: Losses, Voluntary Payments, Bankruptcy

Legislative Ref: ITAA 79E, 79F, 80, 80AAA, 80AA

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