

TD 94/6 - 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 , so that a loss can be recognised from eligible activities and used to reduce average eligible taxable income?

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! This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

! This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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: 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*, 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 does not envisage 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 that eligible taxable income cannot be a negative amount.

2. Since eligible taxable income cannot be a negative amount, 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.

Example:

		1988	1989	1990	1991	1992	Total
		\$	\$	\$	\$	\$	\$
<i>Eligible Assessable Income</i>	A	8000	6000	9000	8000	5000	36000
<i>LESS Related Deductions</i>	B	<u>2000</u>	<u>7000</u>	<u>12000</u>	<u>2000</u>	<u>6000</u>	<u>29000</u>
	A-B = C	6000	(1000)	(3000)	6000	(1000)	7000
ELIGIBLE TAXABLE INCOME	D	6000	NIL	NIL	6000	NIL	12000
<i>Ineligible Assessable Income</i>	E	5000	4000	10000	3000	7000	29000
<i>LESS Deductions</i>	F	-	<u>500</u>	<u>1000</u>	-	-	<u>1500</u>
INELIGIBLE TAXABLE INCOME	E-F=G	5000	3500	9000	3000	7000	27500
TAXABLE INCOME	C+G=H	<u>11000</u>	<u>2500</u>	<u>6000</u>	<u>9000</u>	<u>6000</u>	<u>34500</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 (row C), is to be treated as 'nil' for Division 16A purposes (row D). The average eligible taxable income in accordance with 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, that is, Total column row D).

Commissioner of Taxation

20/1/94

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Related Determinations:

Related Rulings:

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

Legislative Ref: ITAA Pt III Div 16A; ITAA 158J

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