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

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Generated on: 21 November 2026, 04:39:14 AM

Addendum

Taxation Ruling
Income tax: Division 35 - non-commercial business losses

Footnote 5 (paragraph 31, page 10), of Taxation Ruling TR 2001/14 foreshadowed the Government's intention to amend section 35-55 of the *Income Tax Assessment Act 1997*. Section 35-55 has subsequently been amended by *Taxation Laws Amendment Act (No. 1) 2002* with effect from the 2000-2001 income year.

This Addendum therefore amends TR 2001/14 as follows:

At paragraph 30, delete the words:

is yet to pass

and replace with:

has not satisfied

Delete paragraph 31 (including footnote 5)

At paragraphs 77, 94, 106 and 169, delete the word:

yet

Replace para 75 with:

The second arm of the Commissioner's discretion may be exercised where:

(a) the *business activity has started to be carried on; and

for the income year(s) in question:

(b) '**because of its nature**', it has not satisfied, or will not satisfy, any of the tests; and

(c) the individual can show that there is a objective expectation, based on evidence from independent sources (if available) that, within a period that is commercially viable for the industry

concerned, the activity will meet one of the tests or produce a tax profit (paragraph 35-55(1)(b)).

Insert the following heading after paragraph 82:

Effect of meeting a test or producing a tax profit within a period that is commercially viable for the industry concerned

After the above heading, insert the following new paragraph:

82A. The second arm of the Commissioner's discretion can be exercised where all three requirements of paragraph 35-55(1)(b) are satisfied, for all the income year(s) in question, even though the business activity may, on a one-off basis, meet a test or produce a tax profit.

Replace para 96 with:

Under paragraph 35-55(1)(b), the Commissioner's discretion can be exercised where the *business activity satisfies three requirements. These are:

(a) the *business activity has started to be carried on; and

for the income year(s) in question:

(b) because of its nature, it has not satisfied a test in Division 35; and

(c) there is an objective expectation that within a period that is commercially viable for the industry concerned it will pass one of the tests or make a tax profit.

Insert the following heading after paragraph 113:

Effect of meeting a test or producing a tax profit within a period that is commercially viable for the industry concerned

After the above heading, insert the following new paragraphs:

113A. Where all three requirements of paragraph 35-55(1)(b) are satisfied 'the Commissioner's discretion can be appropriately exercised for any income year or years within the period that is commercially viable for the business activity' (paragraph 1.10 of the Explanatory Memorandum, *Taxation Laws Amendment Act (No.1) 2002*). This is the case even though the business activity may meet a test or produce a tax profit for a year(s) within what is regarded as the commercially viable period for that business activity.

113B. For example, an individual undertaking a forestry business establishes a plantation with the purpose of harvesting the trees in 21 years, which is consistent with industry standards for that particular variety of trees. However, the individual expects to undertake a thinning of the plantation in year 10, which will result in the business activity meeting the Assessable income test for that year. The business activity of the individual satisfies all three requirements in paragraph 35-55(1)(b). The Commissioner can exercise the second arm of the discretion in favour of the individual, for any relevant income year within the commercially viable period for the activity, which in this case is 20 years, even though the business activity is expected to pass a test in year 10.

At paragraph 72, delete the word:

second

and replace with:

first

Commissioner of Taxation
19 June 2002

ATO references:
NO: T2001/014151
ISSN: 1039 - 0731