

TR 2001/14A2 - Addendum - Income tax: Division 35 - non-commercial business losses

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Addendum

Taxation Ruling

Income tax: Division 35 – non-commercial business losses

This Addendum amends Taxation Ruling TR 2001/14 to remove discussion regarding the operation of the Commissioner's discretion in Division 35 of the *Income Tax Assessment Act 1997* as this is now covered by draft Taxation Ruling TR 2007/D1.

Taxation Ruling TR 2001/14 is amended as follows:

1. Paragraph 1

(a) Omit:

- (iii) the Real property test in section 35-40;
- (iv) the Other assets test in section 35-45; and
- the operation of the Commissioner's discretion in section 35-55.

substitute:

- (iii) the Real property test in section 35-40; and
- (iv) the Other assets test in section 35-45.

(b) After the paragraph insert:

1A. It does not consider in detail the operation of the Commissioner's discretion in section 35-55. This aspect is the subject of a separate Taxation Ruling (TR 2007/D1 Income tax: non-commercial business losses: Commissioner's discretion).

2. Paragraph 30

(a) Omit the heading; substitute:

Exercise of the Commissioner's discretion – two limbs

- (b) Omit 'arms' in the second sentence; substitute 'limbs'.
- (c) Omit 'arm' (wherever occurring); substitute 'limb'.

3. Paragraph 69

After the paragraph insert:

When does a business activity start to be carried on for the purposes of the second limb of the Commissioner's discretion in section 35-55?

69A Before the Commissioner can consider exercising the second limb of the discretion in section 35-55, a taxpayer must have started to carry on the relevant business activity.

Broadly, this requires the taxpayer to have:

- made a decision to commence the business activity;
- acquired the minimum level of business assets to allow that business activity to be carried on; and
- actually commenced business operations.

A mere intention to start carrying on the business activity will not be sufficient.^{10A}

4. Paragraphs 70 to 82A

Omit the paragraphs (including headings).

5. Paragraphs 94 to 96

Omit the paragraphs (including headings).

6. Paragraph 97

Omit the heading; substitute:

Whether a business activity has started to be carried on for the purposes of the Commissioner's discretion in section 35-55

7. Paragraphs 106 to 114

Omit the paragraphs (including headings).

8. Paragraphs 147 to 170

Omit the paragraphs (including headings).

^{10A} See paragraphs 97 to 105 of this Ruling.

9. Paragraph 175

| | | |
|-----|---|-----|
| (a) | Omit: | |
| | Exercise of the Commissioner's discretion – 2 arms | 30 |
| | substitute: | |
| | Exercise of the Commissioner's discretion – two limbs | 30 |
| (b) | After: | |
| | All tests – determining whether general law partnership exists | 68 |
| | insert: | |
| | When does a business activity start to be carried on for the purposes of the second limb of the Commissioner's discretion in section 35-55? | 69A |
| (c) | Omit the following entries: | |
| | Operation of section 35-55 – the Commissioner's discretion | 70 |
| | <i>'Special circumstances'</i> | 70 |
| | <i>*Business activity has started to be carried on</i> | 75 |
| | <i>Meaning of 'because of its nature'</i> | 77 |
| | <i>Objective expectation of meeting a test or producing a tax profit within a period that is commercially viable for the industry concerned</i> | 79 |
| | Exercise of the Commissioner's discretion – 2 arms | 94 |
| | Second arm – certain start-up *business activities | 95 |
| | <i>Meaning of 'because of its nature'</i> | 106 |
| | <i>Alternative view</i> | 112 |
| | Objective expectation of becoming commercially viable | 114 |
| | <i>Example 10 – exercise of the first arm of the discretion, special circumstances</i> | 147 |
| | <i>Example 11 – first arm of discretion not exercised</i> | 150 |
| | <i>Example 12 – second arm of discretion not exercised</i> | 154 |
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| | <i>Example 13A – second arm of the discretion not exercised</i> | 162 |
| | <i>Example 14 – second arm of the discretion unlikely to be exercised</i> | 165 |

(d) Omit:

Whether activity has started to be carried on 97

substitute:

*Whether a business activity has started to be carried
on for the purposes of the Commissioner's discretion
in section 35-55* 97

10. Related Rulings/Determinations

Insert:

TR 2007/D1

Commissioner of Taxation

24 January 2007

ATO references

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