# *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 |
| *'Special circumstances'* | 70 |
| **Business activity has started to be carried on* | 75 |
| *Meaning of 'because of its nature'* | 77 |
| *Objective expectation of meeting a test or producing a tax profit within a period that is commercially viable for the industry concerned* | 79 |
| Exercise of the Commissioner's discretion – 2 arms | 94 |
| Second arm – certain start-up *business activities | 95 |
| *Meaning of 'because of its nature'* | 106 |
| *Alternative view* | 112 |
| Objective expectation of becoming commercially viable | 114 |
| *Example 10 – exercise of the first arm of the discretion, special circumstances* | 147 |
| *Example 11 – first arm of discretion not exercised* | 150 |
| *Example 12 – second arm of discretion not exercised* | 154 |
| *Example 12A – first arm of discretion not exercised* | 156 |
| *Example 13 – exercise of the second arm of the discretion* | 158 |
| *Example 13A – second arm of the discretion not exercised* | 162 |
| *Example 14 – second arm of the discretion unlikely to be exercised* | 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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