


TR 2001/14A5 - 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 provide further guidance on the meaning of the phrase 'assessable income from the business activity' in Division 35 of the *Income Tax Assessment Act 1997* to reflect the decision of the Federal Court in *Watson v. Deputy Commissioner of Taxation* [2008] FCA 1173; 2008 ATC 20-042.

TR 2001/14 is amended as follows:

1. **Paragraph 57**

Omit:

(see paragraphs 91 and 92 of the Explanations and **Example 5** at paragraphs 134 to 136 below)

Substitute:

(see paragraphs 91 to 92C and **Example 5** at paragraphs 134 to 136 of this Ruling)

2. **Paragraph 92:**

Insert after the paragraph:

Assessable income from the business activity

92A. *Watson v. Deputy Commissioner of Taxation* [2008] FCA 1173; 2008 ATC 20-042 (*Watson*) concerned whether income protection policy payments were assessable income from the business activity, being the taxpayer's financial planning business. Mansfield J held at paragraph 41, that this depended upon the particular facts, but that one relevant consideration was the relationship of the payments to the business in question, as illustrated by the purpose of the taxpayer in entering into the income protection policy.

92B. Whilst acknowledging a business/business activity may comprise 'related or incidental activities', Mansfield J held at paragraph 50 of *Watson* that there was no element of the business to which the payments were connected, and they had no 'causative connection' with the taxpayer's business. The decision in *Watson* stands for the proposition that assessable income will not be 'from the business activity' for the purposes of Division 35, unless it has a 'causative connection' with the activity, in the sense of being sourced from or originating in some element of the business activity.

92C. At paragraph 43 of *Watson*, Mansfield J also rejected any view that income would be 'from' a business activity where it was a substitute for a revenue stream that would otherwise have flowed from the business, but for the insured event occurring. Nor was the issue to be determined by showing that a substantial purpose of the insurance was to secure an income stream that would enable the business to continue during a period of temporary incapacity (*ibid*).

3. Paragraph 175

Insert:

Assessable income from the business activity 92A

4. Case references

Insert:

- *Watson v. DC of T* [2008] FCA 1173; 2008 ATC 20-042

This Addendum applies before and after its date of issue.

Commissioner of Taxation

12 November 2008

ATO references

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