

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

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## Addendum

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### 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.<sup>10A</sup>

### 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).

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<sup>10A</sup> 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
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	<i>Example 12A – first arm of discretion not exercised</i>	156
	<i>Example 13 – exercise of the second arm of the discretion</i>	158
	<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

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**Commissioner of Taxation**

24 January 2007

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ATO references

NO: 2006/20258

ISSN: 1039-0731

ATOlaw topic: Income Tax ~~ Losses ~~ non commercial