Losses

Fast facts

You generally make a tax loss when the total deductions you can claim for an income year exceed the total of your assessable and net exempt income for the year.

Sole traders or individual partners in a partnership tax loss – non-commercial loss rules

If you're in business as a sole trader or in a partnership, non-commercial loss rules may apply to your business. If they do, the loss you make from that business activity is deferred until the next income year in which you carry on the same business.

The steps to determine if non-commercial rules apply to a loss you make from an activity are:

Step 1: Can the non-commercial loss rules apply to my business?

If you're a sole trader or an individual partner in a partnership and you're in business and make a tax loss, then non-commercial loss rules may apply to

your business activity.

To determine if you're 'in business', consider:

- What are all the relevant and related activities?
- Are my activities a business?

Step 2: Do I have similar business activities that can be grouped together?

If you have more than one business activity and they're similar, you can group them together for the purposes of considering whether the non-commercial loss rules apply to you.

Grouping similar business activities together may be beneficial to you, as when grouped:

- you may not have made a loss, or
- it may mean that the non-commercial loss rules don't apply to a loss you made from that combined activity because you meet the income test and pass one of the four tests.

Step 3: Is my business activity an excepted activity?

If you have a primary production or professional arts business that makes a loss, and your assessable income from other sources is less than $40,000, the non-commercial loss rules don't apply to your business activity and you can offset the loss from your business activity against your other income (e.g. wages). Any remaining amount (tax loss) is deferred to a future income year.

Primary production business activities that are 'excepted' include:

- plant and animal cultivation
- fishing and pearling
- tree farming and felling.

A professional arts business that is excepted is a business as:

- an author of a literary, dramatic, musical or artistic work
- a performing artist
- a production associate.

Step 4: Do you meet the income requirement?

Determine if you meet the income requirement of an adjusted taxable income of less than $250,000.

To calculate the income requirement, add these 4 elements together; the total must be less than $250,000:

- Element 1: Taxable income.
- Element 2: Reportable fringe benefits.
- Element 3: Reportable super contributions.
- Element 4: Total net investment losses.

If you meet the income requirement you must then check whether you pass one of the four tests. If you don't, the non-commercial loss rules apply, unless the Commissioner exercises discretion to allow you to offset the losses against your other income.

Step 5: If you meet the income requirement – does the loss-making activity pass one of the four tests?

Determine if you pass at least one of the following four tests.

The four tests are:

- Assessable income test: Your business's assessable income from your business activity is at least $20,000.
- Profits test: Your business has made a tax profit in 3 of the past 5 years (including the current year).
- Real property test: Your business uses 'real property' on a continuous basis that has a value of at least $500,000.
- Other assets test: The value of the 'other assets' you use in your business on a continuing basis is at least $100,000.

If you pass at least one of the four tests, you can claim deductions against other income (e.g. from a job) in the same income year. If you don't, the non-commercial loss rules will apply, unless the Commissioner exercises discretion to allow you to offset the losses against your other income.

Step 6: Commissioner's discretion

If you don't meet the income requirement or pass any of the four tests, you may be able to apply for the Commissioner's discretion to allow you to offset losses from your business activity against your assessable income. There are limited circumstances in which the Commissioner can exercise the discretion.

Offsetting deductions and deferring losses under non-commercial loss rules

If the non-commercial loss rules apply to your business, you can only offset your business deductions against your income from the same business. You cannot

offset it against other income.

If you have a tax loss after deducting expenses from income, you defer the loss to use in a future income year.

Claiming a tax loss in a trust

If your business is a trust and you have a tax loss, you can't distribute the loss to the trust's beneficiaries. Losses must be quarantined in a trust and carried forward indefinitely until they can be offset against future net income.

The trust loss rules apply in different ways to:

- fixed trusts
- non-fixed trusts
- excepted trusts.

Claiming a company tax loss

Companies can carry forward a tax loss indefinitely and use it when they choose. If the company's ownership or control has changed by at least 50% it can only claim losses if it satisfies the:

- same business test, or
- similar business test, which applies to losses incurred in an income year beginning on or after 1 July 2015.

Last modified: 17 May 2024