NEWSLETTER

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MEDICAL & DENTAL ACCOUNTING

THE HEALTH WEALTH SPECIALISTS

CHARTERED ACCOUNTANT

REVISITING NON COMMERCIAL LOSSES AS NOT AVAILABLE IF ADJUSTED TAXABLE INCOME $250,000 PLUS

Please note that if you have a net loss from a business activity you carry on as an individual, either as a sole trader or in partnership, the non commercial loss rules will apply. These rules determine whether you can use your business loss to offset income from other sources. Note these rules do not apply if the business is conducted via a trust. They do not apply in relation to negatively gearing a portfolio of shares or an investment property i.e. negatively gearing investments. The rules are simply in relation to business losses e.g. primary production or farm activities

From 1 July 2009 there have been changes to the operation of the non commercial business loss rules which affect the income year 2009/10 and later income years. It further restricts the circumstances where a business loss can offset other income; most specifically for individuals whose adjusted taxable income is $250,000 or more.

For the 2009/10 and later income years you can only offset your loss against assessable income from other sources if:

- One of the exceptions for primary production or professional arts business apply (will not generally be the case with medical practitioners as assessable income from sources not related to that business activity must be less than $40,000)
- You meet the income requirement and one of the four tests is satisfied (profits test, assessable income test, other assets te4st or real property test); see further below
- The Commissioner has exercised his discretion to allow you to claim the loss
- The loss is solely due to a deduction claimed under the small business and general business tax break.

In every year that your business activity makes a net loss, you must consider whether:

- You can deduct the loss in the current year
- You must defer the loss.

<u>The income requirement and the four tests</u>

If you meet the income requirement and one of the four tests, your business activity losses can offset income from other sources in that income year.

You will meet the income requirement if the total of the following amounts is <u>less than $250,000:</u>

- Taxable income (ignoring any business losses)
- Total reportable fringe benefits
- Reportable superannuation contributions
- Total net investment losses – including financial investment losses and rental property losses

If you meet the income requirement, you can claim your losses if your business activity met one of the following four tests:

- You had assessable income from the activity of at least $20,000
- You have produced a profit in three out of the five years (including the current year)

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- You use real property or an interest in real property worth at least $500,000 in the business on a continuing basis
- You use other assets worth at least $100,000 in the business on a continuing basis

If the business activity does not pass any of these tests, or you do not meet the income requirement, you cannot claim the loss in that income year.

If you can't claim your loss

Your loss will be deferred until a future year if you can't claim your loss in the current year under the non commercial loss rules.

Conclusion

Many individuals whose taxable incomes are $250,000 or more will now find themselves in the position that losses will be quarantined indefinitely. It makes sense to restructure any interest on such business loans or pay off such loans as quickly as possible as the benefits derived in the past may not be there in the future until such time as your adjusted taxable income (adjusted for reportable fringe benefits, superannuation, etc etc) falls below $250,000.

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The contents of this article are general in nature and are not advice that applies to any particular client situation. Whilst every care has been taken in preparing the article, specific advice should be obtained before proceeding with any suggestion or recommendation made

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