

EXPOSURE DRAFT

1 Inserts for
2 **Tax Laws Amendment (2009 Measures**
3 **No. 5) Bill 2009: Non-commercial losses**
4

EXPOSURE DRAFT (26/06/2009)

If you have any comments on this exposure draft, they should be sent before 26 July 2009 to:

non-commerciallosses@treasury.gov.au

or

**The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600**

5

6

OPC drafter to complete	
1. Does this Insert need a message? (See H of R Practice, fifth ed, pp409-414, and OGC advice.) If yes: <ul style="list-style-type: none">List relevant clauses/items—Prepare message advice (see Drafting Direction 4.9)Give a copy of the message advice to the Legislation area.	No
2. Does this Insert need a notice? (See H of R Standing Order 178 and Drafting Direction 3.2.) If no, list relevant clauses/items—Schedule ??	No
3. Is there any constitutional reason why this Insert should not be introduced in the Senate? (See Constitution sections 53 and 55 and Drafting Direction 3.2.)	Yes

7

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details

1.

EXPOSURE DRAFT

Commencement information

Column 1**Column 2****Column 3**

Provision(s)**Commencement****Date/Details**

2. Schedule ??

The day on which this Act receives the Royal Assent.

3.

EXPOSURE DRAFT

Schedule ??—Non-commercial losses

Income Tax Assessment Act 1997

1 Section 35-1

Omit:

It sets out a series of tests to determine whether a business activity is treated as being non-commercial.

The deferred losses may be offset in later years against profits from the activity or, if one of the tests is satisfied or the Commissioner exercises a discretion, against other income.

Substitute:

It sets out an income requirement and a series of tests to determine whether a business activity is treated as being non-commercial.

The deferred losses may be offset in later years against profits from the activity. They may also be offset in later years against other income if the income requirement and one of the tests are satisfied, or if the Commissioner exercises a discretion.

2 Paragraph 35-10(1)(a)

Repeal the paragraph, substitute:

(a) you satisfy subsection (2E), and one of the tests set out in any of the following provisions, for the business activity for that year:

- (i) section 35-30 (assessable income test);
- (ii) section 35-35 (profits test);
- (iii) section 35-40 (real property test);
- (iv) section 35-45 (other assets test); or

3 Paragraph 35-10(2A)(a)

Repeal the paragraph, substitute:

(a) you satisfied subsection (2E), and one of the tests set out in any of the following provisions, for the business activity:

- (i) section 35-30 (assessable income test);

EXPOSURE DRAFT

-
- (ii) section 35-35 (profits test);
 - (iii) section 35-40 (real property test);
 - (iv) section 35-45 (other assets test); or

4 After subsection 35-10(2D)

Insert:

Income requirement

(2E) You satisfy this subsection for a *business activity for an income year if the sum of the following is less than \$250,000:

- (a) your taxable income for that year;
- (b) your *reportable fringe benefits total for that year;
- (c) your *reportable superannuation contributions for that year;
- (d) your *total net investment losses for that year.

For the purposes of paragraph (a), when working out your taxable income, disregard any excess mentioned in subsection (2) for the business activity for that year that you could otherwise deduct under this Act for that year.

5 Paragraph 35-55(1)(b)

Omit “the business activity has started to be carried on and, for that or those income years:”, substitute “if you satisfy subsection 35-10(2E) (income requirement) for the business activity for that or those income years—the business activity has started to be carried on and, for that or those years:”.

6 Paragraph 35-55(1)(b) (note)

Repeal the note.

7 At the end of subsection 35-55(1)

Add:

; or (c) if you do not satisfy subsection 35-10(2E) (income requirement) for the business activity for that or those income years:

- (i) the business activity has started to be carried on; and
- (ii) for that or those years, there is an objective expectation, based on evidence from independent sources (where available) that, within a period that is commercially viable for the industry concerned, the activity will produce assessable income for an income year greater

EXPOSURE DRAFT

1 than the deductions attributable to it for that year (apart
2 from the operation of subsections 35-10(2) and (2C)).

3 Note: Paragraphs (b) and (c) are intended to cover a business activity that
4 has a lead time between the commencement of the activity and the
5 production of any assessable income. For example, an activity
6 involving the planting of hardwood trees for harvest, where many
7 years would pass before the activity could reasonably be expected to
8 produce income.

9 **8 Application**

10 The amendments made by this Schedule apply in relation to the
11 2009-2010 income year and later income years.